SYLLABUS AND COURSE OUTLINE

In *Men in Dark Times*, Hannah Arendt urges us to remember that friendship has a political, as well as an emotional, dimension:

It is hard for us to understand the political relevance of friendship. When, for example, we read in Aristotle that *philia*, the friendship among citizens, is one of the fundamental requirements for the wellbeing of the City, we tend to think that he was speaking of no more than the absence of factions and civil war within it. But for the Greeks the essence of friendship consisted in discourse. They held that only the constant interchange of talk united citizens in a *polis*...However much we are affected by the things of the world, however deeply they may stir and stimulate us, they become human for us only when we can discuss them with our fellows...We humanize what is going on in the world and in ourselves only by speaking of it, and in the course of speaking of it we learn to be human.¹

This seminar will constitute an extended exercise in the political dimension of friendship or in “strong, democratic talk.”² Using as an analytical paradigm the


²I am indebted to Professor John Calmore (deceased), University of North Carolina School of Law, for introducing me to Benjamin Barber’s concept of “strong, democratic talk”–talk which Barber suggests makes possible the exploration of “diverse mutuality.” Professor Anthony Cook of Georgetown
concept of race (and its intersection with other hierarchies such as gender, class, and sexual orientation), we will examine various modes of legal analysis regarding the role of law in relation to racial subordination. This examination includes, among other things, the place of race consciousness in and the impact of racial ideology on legal decisionmaking. Critical Race Theory and the criticism it has engendered will be the core mode of analysis examined. In the end, this seminar invites students to develop new and critical approaches of their own to the relationship among race, racism, and power in legal theory.

**COURSE MATERIALS:**

The texts for this seminar consist of materials posted on NYU Classes or distributed as handouts throughout the semester.

**COURSE REQUIREMENTS:**

**Attendance.** The Law School’s Academic Policies Guide provides, in part, as follows:

*Rules of the American Bar Association, the New York State Court of Appeals, other state high courts, and the Law School itself all require regular classroom attendance. Students are advised that excessive absenteeism can result without warning in: 1) grade lowering or 2) denial of*

University School of Law describes the kind of discussion this seminar seeks to promote: “not only is it possible to talk, but, when that talk is informed by certain sensibilities, it is possible to modulate one’s position as well, actually learning from the voice once heard only as a foreign tongue.”
permission to complete course work and/or sit for the exam or receipt of a grade of WD (withdrawn) or FAB (failed for absence). Missing more than one-fifth of classes is presumptively excessive....

This standard is adopted for this seminar.

Participation. Forty percent of the final grade will be based on class participation. The participation grade has two components—individual (30%) and group (10%).

a. Individual: Each student is expected to be prepared and to participate actively in class discussion, to submit Reflection Statements and paper topics on a timely basis, and, if requested, to deliver a presentation on the subject matter of the student’s final paper.

b. Group: Each student will be assigned to a Working Group and each group will be required to lead the discussion for at least one class session, to discuss, propose, and answer questions presented by the class materials and topics covered. All members of the group will receive the same grade for the assignment unless there is a serious imbalance in the division of labor and assumption of responsibility in the group.

Final Papers. Sixty percent of the final grade will be based on a paper of 15-20 pages in length. The seminar is available for substantial writing credit. Additional details about the final paper requirement will be described in a separate memorandum.

Over the course of the semester, each student will be required to submit five (5) Reflection Statement of 2-5 pages in length analyzing the materials for a
particular session of the course. Reflection Statements must be submitted via NYU Classes by Noon on the Wednesday preceding the class meeting in which the materials on which the Reflection Statement is based are assigned. At least two of the required Reflection Statements will be assigned so that every student in the class will comment on the same materials. The remaining three Reflection Statements may address course material in the class sessions of the student’s choice.

OFFICE HOURS:

Office hours will be observed on Tuesdays from 2:30-4:00 p.m. in Room 318 Vanderbilt Hall, or otherwise by appointment. To avoid scheduling conflicts with this and other courses, appointments for regularly scheduled office hours or requests for appointments at other times should be made with my assistant, Adrian Coto, at the address set forth above.

READING ASSIGNMENTS:

The first reading assignment for the course is set forth below. Additional reading assignments will be made throughout the semester. These assignments are subject to alteration to accommodate guest speakers and weather or other exigencies. New materials, such as newspaper articles and reports, often appear on short notice. These materials will be sent via e-mail using the e-mail addresses provided on NYU Classes. Students should check these e-mail accounts weekly to be sure they have all additions to the reading assignment for that week.
CRITICAL RACE THEORY
Spring 2018
Professor Paulette Caldwell
318 Vanderbilt Hall
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READING ASSIGNMENT NO. 1

Week 1: January 18:

I. INTRODUCTION: WHY CRITICAL RACE THEORY MATTERS

A. What is Critical Race Theory?

1. Definitions


2. Premises

Excerpt, Matsuda, et al., Words That Wound , pp. 6-7

3. Genealogies


Week 2: January 25:

B. Where Do We Go From Here?

1. Unfinished Business


Excerpts, Report of The National Advisory Commission on Civil Disorders (The “Kerner” Commission)

a. Statement of President Johnson, 1967


2. From Colorblindness to Post-Racialism to Post-Racial Racism?


**Week 3: February 1:**

II. Constructing Race
A. Race and Racism: Definitions and Theories

1. Excerpt, Toni Morrison, *Beloved*, p. 190

2. Aspen Institute: Glossary

3. Law and the Making of Race

   a. Moyers & Company, For the Record, “How the Nazi’s Used Jim Crow Laws as the Model for Their Race Laws” (in conversation with author, James Whitman)

   b. St. Francis College v. Al-Khazraji


4. Racial Formation


**Week 4: February 8:**

B. Counting by Race

   Tehranian, “Compulsory Whiteness: Towards a Middle Eastern Legal Scholarship, 82 Indiana L. Rev. 2 (2007), pp. 2-23

   Khaled Beydoun, “A Demographic Threat? Proposed Reclassification


C. Race and Popular Culture

Film, “Ethnic Notions” [in class]

Week 5: February 15:

NB: FIRST MANDATORY REFLECTION STATEMENT DUE. SEE SEPARATE INSTRUCTIONS


Tehranian, “Compulsory Whiteness,” pp. 27-28

Introduction

In a search for a tentative expository answer to the question "What is critical race theory?" critical race scholars have identified the following defining elements:

1. Critical race theory recognizes that racism is endemic to American life. Thus, the question for us is not so much whether or how racial discrimination can be eliminated while maintaining the integrity of other interests implicated in the status quo such as federalism, privacy, traditional values, or established property interests. Instead we ask how these traditional interests and values serve as vessels of racial subordination.

2. Critical race theory expresses skepticism toward dominant legal claims of neutrality, objectivity, color blindness, and meritocracy. These claims are central to an ideology of equal opportunity that presents race as an immutable characteristic devoid of social meaning and tells an ahistorical, abstracted story of racial inequality as a series of randomly occurring, intentional, and individualized acts.

3. Critical race theory challenges ahistoricism and insists on a contextual/historical analysis of the law. Current inequalities and social/institutional practices are linked to earlier periods in which the intent and cultural meaning of such practices were clear. More important, as critical race theorists we adopt a stance that presumes that racism has contributed to all contemporary manifestations of group advantage and disadvantage along racial lines, including differences in income, imprisonment, health, housing, education, political representation, and military service. Our history calls for this presumption.

4. Critical race theory insists on recognition of the experiential knowledge of people of color and our communities of origin in analyzing law and society. This knowledge is gained from critical reflection on the lived experience of racism and from critical reflection upon active political practice toward the elimination of racism.

5. Critical race theory is interdisciplinary and eclectic. It borrows from several traditions, including liberalism, law and society, feminism, Marxism, poststructuralism, critical legal theory, pragmatism, and nationalism. This eclecticism allows critical race theory to examine and incorporate those aspects of a methodology or theory that effectively enable our voice and advance the cause of racial justice even as we maintain a critical posture.

6. Critical race theory works toward the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression. Racial oppression is experienced by many in tandem with oppression on grounds of gender, class, or sexual orientation. Critical race theory measures progress by a yardstick that looks to fundamental social
transformation. The interests of all people of color necessarily require not just adjustments within the established hierarchies, but a challenge to hierarchy itself. This recognition of intersecting forms of subordination requires multiple consciousness and political practices that address the varied ways in which people experience subordination.
CHAPTER TWO

Historicizing Critical Race Theory’s Cutting Edge: Key Movements That Performed the Theory

*Sumi Cho and Robert Westley*

In this chapter, we attempt to retrieve an obscured history that we believe was central to the development of Critical Race Theory—the history of student activism for diversity in higher education from the 1960s to the 1990s. To do so, we focus on one longitudinal case study in particular, that of the University of California at Berkeley’s Boalt Coalition for a Diversified Faculty (BCDF). This local movement, which became national in 1989 with the BCDF-coordinated Nationwide Law Student Strike for Diversity, embodied and practiced many of the insights theorized by CRT; it was a movement that performed the theory. This retrieval thus may help critical race theorists not only to understand CRT’s first decade better, but also to draw key lessons for its second.

This retrieval is especially valuable because existing accounts of CRT’s development as a movement tend to emphasize the agency of individual scholars. To be sure, these individual stories are important because they map the intellectual history of a movement formed by the courageous actions of people who were dissatisfied with both critical legal studies (CLS) and traditional civil-rights paradigms. We applaud such historicization of the movement’s origins in the major CRT anthologies but hope to supplement the origin stories in the following two ways.

First, we strive to demonstrate more closely the linkages between the 1960s Civil Rights Movement and student activism with the 1980s legal-intellectual movement. According to the introduction in one of the leading anthologies on Critical Race Theory, CRT became a “self-conscious entity” in 1989, when the first CRT workshop was convened. The editor acknowledges the intellectual influence of CLS and the political inspiration of the Civil Rights Movement and other national movements. We believe the CLS–CRT genealogy has been well developed in the popular understand-
ing of CRT’s origins and therefore aim in this essay to draw a closer nexus between student activism and CRT.¹

Second, we seek to offer a more nuanced political history of CRT’s birth that can help explain, for example, why CRT burst onto the legal academic scene at the time that it did. The other leading CRT anthology contains a detailed description of CRT’s origins in its Introduction. Like the first anthology’s origin story, this description of CRT’s development notes the importance of the Civil Rights Movement for “inspiration” and “direction,” as well as the CLS leftist intervention into legal discourse, as “elements in the conditions of [CRT’s] possibility.” The editors then identify two events central to the development of CRT as a movement—a student protest at Harvard Law School in 1981 over an alternative course on race and law, and the 1987 National Critical Legal Studies Conference on race and silence.² The emphasis placed on the Harvard protest is suggestive and, from our perspective, very useful, but still incomplete. Why such protest emerged in 1981 and why there was a six-year gap between the two central events remain unexplained. It remains unclear how the 1981 protest played a developmental or catalytic role in CRT’s rise.

On the whole, therefore, genesis stories of the movement now known as Critical Race Theory are focused mostly on the scholarly writings that “formed the movement.” We strive in this essay to complete the story and counter, to an extent, the “super-agency” approach to collective action that movement histories sometimes adopt.³ We attempt to ground CRT in resistance movements not to proliferate competing genesis stories but, rather, to contextualize politically CRT’s birth and growth. What follows is our attempt to pursue a more politicized and multi-factored historiography in explaining the conditions of possibility behind the intellectual projects that became CRT.

This chapter also analyzes the cross-polli-
nation of movement and theory, assessing both achievements and shortcomings. By historicizing the efforts of the initial critical-race proponents against the larger background of communal struggle, we demonstrate how antiracist practices and antiracist theorizing were metabolically intertwined. In the course of making this linkage, we credit not only the BCDF movement, but other local and national struggles that employed race-consciousness in their problem-and-goal-definition, action strategies, and organizational structure.

In doing so, we also use as our point of departure insights from the recent critical-race–praxis literature that underline the significance of progressive lawyering to critical-race theorizing. We extend this praxis analysis by highlighting the importance of political organizing for the past, present, and future of the CRT antisubordination project, and vice versa.⁴ This broadened understanding of CRT’s roots, status, and prospects is timely and valuable because it has significant implications for our appreciation of the mutual obligations between progressives in the academy and political communities. We utilize the methodology of longitudinal case study to illuminate and ground a discussion of the current conjuncture, when the Race-Crit community sometimes seems uncertain as to the meaning and necessity of coalition building, praxis, activism, and, indeed, self-historicization.

The activism at Boalt Hall School of Law for faculty diversity in the late 1970s and late 1980s was part of a tradition of race-conscious resistance at UC Berkeley. Because UC Berkeley is a public, land-grant institution, it is subject to far greater community scrutiny and public pressure than its private counterparts. In addition, as an elite state university in one of the most racially diverse states of the country, its applicant pool yielded a mix of students that could form the basis for effective political
coalitions—coalitions that would not be so easily dismissed or ignored. These unique circumstances led to some of the earliest, and most sustained, race-plus coalitional efforts. This Berkeley tradition, beginning with the Free Speech Movement of 1964, valorized political self-actualization and thereby promoted a positive culture and historical memory of coalitional activism among its student body—a positive culture that embraced diversity to promote coalitions and that can aid an increasingly diversified CRT to retain its momentum in the coming decades.

As we will show, student-diversity activism at Boalt Hall constituted itself as a membership organization committed to diversity in three primary spheres: faculty, student body, and curriculum. The focus on law-faculty diversity was driven in part by particular events—that is, the consistent refusal by Boalt’s faculty over a long period of time to hire, tenure, or even seriously consider candidates other than openly heterosexual white men who had benefitted structurally and personally from the historical exclusion of women, people of color, and openly lesbian/bisexual/gay people from legal education and the legal profession.

Yet the struggle for a more open legal education at Boalt was waged not only at the level of the substantive goal of faculty diversity, but also at the level of self-determination and empowerment of marginalized groups through race-conscious organizational and leadership structures. As a result, a group-based-coalition model developed among student groups active on the issue—the Black Law Students Association (BLSA; later Law Students of African Descent [LSAD]), the La Raza Law Students Association (LRLSA), the Asian American Law Students Association and Pacific Islander Law Student Association (AALSA/PILSA), and the Boalt Hall Women’s Association, among others. Under this model, each BCDF demand on the administration was first vetted and ratified among a membership that was made up primarily of members of these groups. Thus, diversity within BCDF’s own ranks and leadership, as well as in its agenda, was a core operational principle. The BCDF’s tactics effectively represented a kind of mobile coalition that required students to bridge lines of difference through self-education, cooperation, and risk-taking.

The substantive themes that this essay explores relate largely to continuing tendencies within some CRT scholarship to separate theory from activism, and we seek through this exploration to show how this separation can defeat the antisubordinationist aspirations of outsider activists and scholars such as CRT scholar–activists. Our analysis will show that the gesture toward separation of theory from activism assumes both methodological and thematic forms. From a methodological standpoint, separation entails individualist strategies at the level of organizing resistance; intertextual approaches at the level of writing scholarship; and sublimation at the level of doing theory. From a thematic standpoint, separation has meant an impolitic and ahistorical infatuation with unmodified antiessentialism and the critique of identity politics. The separation of theory from activism, we argue, spells defeat by promoting theoretical extravagance and reactive strategies that permit external co-optation.

To pursue alternatives to these defeatist strategies and tendencies within CRT, this essay explores the history of student-led diversity activism with an eye toward revealing and drawing the lessons of productive linkages between theory and activism. We propose to show that maintaining productive linkages between theory and activism in the context of CRT movement politics, from a methodological standpoint, leads to the following preferred options: race-conscious collective action rather than individualism at the level of organizing resistance;
intersubjective rather than intertextual method at the level of writing scholarship; and synergism rather than sublimation at the level of doing theory. Thematically, this analysis implies rejection of “unmodified antiessentialism” as an overall ethic of outsider discourse. This analysis also embraces a general reclamation project that retrieves histories of resistance that help create the conditions of solidarity necessary to minimize theoretical extravagance and to promote progressive community formation. We believe that this retrospective understanding of CRT’s first decade is pivotal to the prospective fulfillment of CRT’s potential in the second decade.

The chapter proceeds in two parts. In part one, we review the historical significance to CRT of student-of-color activism. By focusing on the unique role and qualified successes of student-of-color activism in the rise of CRT as an intellectual movement, we hope that the necessary linkage between race-conscious antisubordination theory and practice will surface. In part two, we offer thoughts on the need to understand movement history as part of a valuable yet suppressed body of knowledge. In this part, we explain how the modes of interaction between CRT and movement history may either sublimate and repress subjugated knowledge of student-of-color movements or pursue synergistic strategies with them. Because sublimation entails underestimating the importance of political structures and the need for solidarity between theory and activism, and because it overestimates the level of regressive disposition within activist communities of color, we argue that CRT in its next decade should adopt synergistic strategies in relation to movement history and join with other justice-minded communities to develop a coalitional, race plus organizational structure for the advancement of antisubordination transformation through legal theory and praxis.

Linking Antiracist Organizing and Antiracist Theorizing: Race-Conscious Models of Political Organizing: A Case Study (1964–86)

**Historical Significance of Race-Conscious Student Movements**

There are quite a few students who have attended school at Berkeley who went South to work with the Student Nonviolent Coordinating Committee, and who have been active in the civil rights movement in the Bay Area... I was one of these returning students. We were greeted by an order from the Dean of Students’ Office that the kind of on-campus political activity which had resulted in our taking part in the Summer Project was to be permitted no longer.

... This is what gave the Free Speech Movement its initial impetus.

—Mario Savio, June 1965

This fight now is ours as much as it is yours. If there had been no students, we would have had no Freedom Rides.

—James Farmer, national director of the Congress of Racial Equality (CORE)

We begin this genealogical tracing in 1964 with the rise of the Free Speech Movement at UC Berkeley, an event that marks the beginning of the mass student-movement era. The Free Speech Movement, known primarily as a student rebellion against the university’s attempts to restrict students’ speech, had a definitive but largely overlooked racial origin. When a police squad car summoned by the university administration attempted to arrest a member of CORE for violating a new regulation curbing education and recruitment efforts on Sproul Plaza by student organizations, it was spontaneously surrounded by hundreds of students who prevented the car from leaving for the next thirty-two hours. Although destined to be abstracted from its origins and construed as a battle only or chiefly over freedom of expression, the Free
Speech Movement is significant to this inquiry because it is one of the first post-World War II campus movements to originate substantively from antiracist student organizing. Although the movement's adherents were mostly white students, its racial roots persisted and laid the political groundwork for the earliest collective UC Berkeley student-of-color organizing effort—the Third World Strike of 1969.

The Third World Strike at UC Berkeley was the longest, costliest, and arguably the most institutionally significant student strike of UC Berkeley's history. It is also one of the least known movements of the 1960s. This strike did not originate at the Berkeley campus, but Berkeley students of color responded to the call by their counterparts across the bay at San Francisco State University, where a racial coalition of groups calling itself the Third World Liberation Front (TWLF), was demanding educational change. The Third World Strike of 1969 is significant as a paradigmatic moment of late- or post-civil-rights activism undertaken by multiple communities of color in historically white educational institutions because it led to the creation of the ethnic studies departments at UC Berkeley, affirmative-action admissions and recruitment, and other racial-justice reforms.

Apart from their notable success in achieving institutional reform, the ensuing student strikes were particularly noteworthy for providing a model for student-of-color organizing. The TWLF, which organized and led UC Berkeley's Third World Strike, was a coalition of student organizations representing the Afro-American Student Union, Asian American Political Alliance, Mexican American Student Confederation, and Native American Students Association. The TWLF was composed of a steering committee with two representatives from each member organization to promote egalitarian cross-racial coalition. The TWLF's race-conscious, group-based approach to coalitional leadership and decision-making ultimately would become the model for successful race-plus coalitions organized by student movements in the subsequent decades.

After the Third World Strike victory in 1969, two issues dominated 1970s protest politics: apartheid and affirmative action. The Soweto uprisings in 1976 brought international attention to the inhumanity of the South African racial regime, and student organizers began developing coalitions that reflected connections between antiracist organizing at home—in the context of the Bakke case—and abroad. The Bakke decision, rendered in 1978, was seen at the time as a setback, which demoralized affirmative-action organizers. In time, civil-rights organizations discovered the "silver lining" of Justice Lewis Powell's opinion permitting race-conscious admissions. However, the "promise" of Bakke would be quietly realized not by activists, but by administrators and staff who implemented affirmative-action admissions. In addition, competition and sectarianism among rival leftist organizations—often expressed as vanguardism—further fractured the diversity coalition.

Thus, although these 1970s movements enjoyed peak periods of activity, they had waned by the time of Ronald Reagan's election to the presidency in 1980.

Due to these developments, student-of-color antiracist activism on the whole slowly would subside from the late 1970s to early 1980s, with most campus political activity focusing on anti-nuclear protests, Central American solidarity work, and environmental issues. However, the anti-apartheid movement regained momentum in the watershed year of 1984. Three important factors contributed to this revival: 1) the November 1984 protests at the South African embassy in Washington, D.C.; 2) Jesse Jackson's first 1984 bid for the presidency and the work of the Rainbow Coalition; and 3) the twenty-year
commemoration of the Free Speech Movement, observed in the fall of 1984. These events once again spotlighted continuing racial injustice, both domestically and internationally, thereby recalling and re-energizing Berkeley’s role as a site of student social-justice activism. In this setting, students of color also established two important political structures in 1984.

Borrowing from the 1969 example of the TWLF, one structure took the form of a “race-plus” coalition model known as Cal-Students for Equal Rights and Valid Education (Cal-SERVE). This coalition united students of color and les/bi/gay organizations interested in slating candidates for student-government positions. These groups united in the context of Cal-SERVE in part because they had been marginalized by previous progressive coalitions. Tellingly, this electoral coalition remains as the oldest campus political party to this day. The other structure involved an individual-member-based organization of progressives of color known as United People of Color (UPC), discussed in greater detail later. With these two political structures in place—Cal-SERVE’s electoral race-plus coalition and UPC’s individual-member-based organization of progressives of color—organized students of color were poised to assume leadership on campus issues. In fact, UPC would become the leading organization in the anti-apartheid movement during the next few years, until the Board of Regents of the University of California voted finally to divest funds in the summer of 1986. But with the ascendance of student-of-color leadership, friction with the white left arose—tensions not unlike those encountered by early RaceCrits vis-à-vis CLS scholars.

As in CRT’s early history, and specifically in its dialogue with CLS, this contestation during the mid-1980s with the white left at Berkeley was a formative experience for organizers in UPC, including the engagement of similar debates on “formality” and “informality” in the political as well as the intellectual arena. For example, one key conflict between UPC and the predominantly white anti-apartheid group Campaign Against Apartheid (CAA) was over the decision-making process to be followed in coalition meetings. The CAA insisted on an informal, consensus-oriented decision-making process that rejected any hierarchical leadership structure. While reasonable, if not ideal, in theory, this approach in operation empowered those who had the most discretionary time on their hands to persevere through hours of discussion, and it effectively excluded or limited participation by those who had competing time pressures. Unfortunately, the impact of this process worked to the detriment of students of color, who found they generally had less time on their hands for such open-ended meetings and less inclination for this kind of exercise in consensuality by attrition. As a result, planning meetings and political actions, such as the protest on the steps at Sproul Plaza against University of California investments in South Africa, became virtually devoid of student-of-color participation in the name of radical hyperdemocratic (consensus-only) decision-making.13 Ironically, for both CLS and the CAA, what was considered “radical” took precedence over the substantive and structural inclusion of people of color in antiracist resistance.

The UPC and CAA were the principal organizers of a vibrant anti-apartheid campus movement in the last half of the 1980s. However, as the anti-apartheid movement wound down after important victories such as the UC regents’ vote to divest the university system’s funds from South Africa, a clear and open split between the CAA and the UPC became more and more evident because the former group was relying increasingly on “radical” tactics of confrontation and sensationalism to highlight
the urgency of the struggle. The CAA’s lack of discipline and non-commitment to non-violence meant that joint activities of the CAA and the UPC would be unduly hazardous for UPC members. When, for example, an anonymous CAA member would spit or throw bricks at police from a crowd, those police would invariably seek targets—usually tall men of color from the UPC—on whom to focus their disciplinary wrath. Beyond placing students of color unnecessarily at physical risk, such activities under the guise of radicalism were problematic for most UPC members because the tactics were designed not to build and grow the movement, but simply to “defy authority.” Moreover, that authority often was rather removed from the stated target of the movement—that is, the South African apartheid regime. Thus, akin to CLS’s critique of rights as legitimation, the CAA’s overriding commitment to radical defiance and its insistence on informal, non-hierarchical processes grossly underappreciated and obscured the dynamics of racial oppression as a lived experience. In this way, the allegedly egalitarian make-up and radical stance of both the CAA and CLS bespoke white perspectivalism and privilege.14

The highs and lows of these two decades of race-conscious organizing at UC Berkeley illustrate how the design of political structures to ensure the effective participation and leadership of students of color was central to the success of antiracist student movements. Absent such structures, the majoritarian bent of politics-as-usual systematically relegated students of color to a supporting role and failed to produce meaningful, institutional change for racial justice. However, with the formation of the TWLF of 1969, an effective race-conscious political structure that shared power equally between and among African Americans, Asian Americans, Chicanos/Chicanas, and Native Americans was put into place. This structure was adopted and modified in the 1980s to form Cal-SERVE as a race-plus campus electoral coalition, which remains effective to this day. At the same time, the UPC, an organization of progressives of color, also emerged to lead the anti-apartheid movement and, subsequently, the diversity movements of the late 1980s and early 1990s, to successful institutional reforms. These lessons are corroborated by the more recent experience focused on law schools.


Aquí, ayar, apartheid morira!
—1980s UPC chant

The success of the Berkeley anti-apartheid movement, measured by the end goal of divestment, validated the race-conscious organizing developed through the UPC as well as the race-plus coalitional model adopted by Cal-SERVE. Because this organizational infrastructure was squarely in place, this victory also opened up the vista of political possibilities for future student activism and cultural contestation. In addition, the anti-apartheid movement had established the UPC as a student-of-color organization with members who were seasoned organizers and who understood, and were committed to, a principle of political self-determination.

The linkage, well established in the 1970s and highlighted during the 1980s, between apartheid “there” and “here” made natural for those student activists a transition from the focus on divestment to an engagement of racism closer to home. Therefore, anti-apartheid veterans next focused on two areas of unfinished business left over from the 1969 Third World Strike agenda: 1) curricular reform, including the specific
demand for an ethnic-studies graduation requirement; and 2) affirmative action, in terms of employment (tenuring junior faculty of color, pursuing affirmative action in faculty hiring) and in admissions (undergraduate, graduate, and law school). These race-conscious efforts (in both form and substance) at Berkeley and across the country became known more broadly as “diversity movements.” And it was in this historical context of close lineage to the antiracist struggle against apartheid that the diversity student movement specifically at Boalt Hall would come into being. Indeed, Berkeley’s 1969 Third World Strike provided the catalyst for Boalt student activism on racial-justice issues at the law school and inspired a Boalt student strike in 1972 to secure the reform of admissions policies.

Affirmative-action admissions to law school for African American, Asian American, Latina/Latino, and Native American students had begun in the first fall following the successful campuswide Third World Strike of 1969. Reflecting that success, the first two years of post-strike affirmative-action admissions to law school yielded 12 percent and 18 percent students of color in the incoming fall classes of 1969 and 1970, respectively. In the fall of 1971, the proportion of special-admissions students increased to 31 percent of the entering class due to an unexpectedly high “show-up rate” among those admitted. The Boalt admissions committee had clearly underestimated the pent-up demand among California’s communities of color for low-cost, high-quality legal education.

According to Linda Greene, a student leader of the BLSA at the time, this sudden change of student demographics was experienced as a “traumatic event” by Boalt faculty, who had not expected such a large enrollment in part because the school had not made a commensurate increase in financial aid to support minority admittees. In response to this trauma, the Boalt faculty proposed eliminating the special-admissions program altogether, thus prompting the 1972 law-student strike organized by the BLSA and joined by the LRLSA, AALS and, and the one Native American student enrolled at the school. The 1972 strike lasted two weeks before the faculty proposed to continue the special admissions program, but with a lowered target goal of 28 percent for “Third World” students. The BLSA and AALS accepted the faculty proposal, effectively ending the strike.

Although that strike produced a successful result, its lack of an organizational structure fostered disunity among students of color, as substantive and strategic decisions were made seemingly without regard to the needs or views of other allied groups, much less with proactive intergroup coordination of complex issues. Thus, for instance, Chicano students refused to end the strike after the BLSA and the AALS reached agreement, continuing to press for “parity” between law-school admissions and state population percentages. Pursuing parity, the LRLSA organized a separate sit-in at the Boalt admissions office as part of the 1972 strike, which was unsuccessful in part because it was unilateral. Without any coalitionary structure from 1972 to 1977, separate groups organized various activities on an ad hoc basis, and with limited success, as issues arose.

During this fluid period and into the early 1980s, student-of-color input into the Boalt admissions process was significantly curtailed. During these years, student participation in admissions shrunk incrementally from full organizational voting rights on the admissions committee, to formal but perfunctory advisory rights for student-of-color organizations, to the most limited advisory role for individual committee appointees selected from (not by) student-of-color organizations. Thus, although the power of student-of-color organizing clearly
was evident in the early to mid-1970s, as was the influence of earlier movements, the failure of Boalt student groups during this time to build an effective political structure and to coordinate antiracist efforts permitted the administration to contain individual and organizational demands on a case-by-case basis. This period of decline, like earlier (and later) lows, correlated to choices over design and structure in the formation and operation of antiracist movements.

The Formation of the Coalition for a Diversified Faculty:

In terms of hiring, the school’s affirmative-action record is good.
—Phillip Johnson, chair of Boalt faculty appointments committee, March 1978

Responding to the mounting frustration engendered by this ongoing decline, the next significant race-based organization at Boalt emerged in fall of 1977 as the Coalition for a Diversified Faculty (CDF). Like the TWLF before them, seven organizations representing the “old” race-plus coalition of earlier times issued a position paper with a number of proposals to rectify the racial problems that students perceived. The proposals were neither discussed nor mentioned at subsequent faculty meetings. Meetings between CDF members and the the law school’s administration proved fruitless. Dean Sanford Kadish refused to permit CDF members to address a faculty meeting to discuss the issues raised in the position paper. After determining that no substantive dialogue with the institution was possible, the CDF called for an all-day teach-in and strike on March 21, 1978, which was supported by 75 percent to 90 percent of Boalt students. This action revitalized antiracist student activism.

The late 1970s CDF activity peaked with a student-drafted Title VI and Title IX complaint filed with the U.S. Department of Housing, Education, and Welfare (HEW) on April 9, 1979. The complaint alleged that Boalt’s hiring policies resulted in a lack of minority and women faculty (see Table 2-1) and contended that the faculty’s composition denied students differing perspectives on important legal issues, especially in the areas of public-interest law and poverty law. To the CDF’s surprise, HEW officials decided to investigate the students’ complaint. However, using the standard of other elite law schools’ hiring as a guide, the federal report concluded that Boalt’s faculty was no less diverse than the non-diverse faculties of top law schools across the country. Following this setback, and like the political activity on the main campus, antiracist organizing at the law school faded at the close of the 1970s and early 1980s, perhaps as a result of the same meta- and micro-forces: the increasing national political and cultural conservatism, internal divisions, student turnover, and political retrenchment.

The Reformation of CDF in the 1980s: The reinvigoration of the diversity movement at Boalt in the mid- to late 1980s originated with the formation of United Law Students of Color (ULSC) in the fall of 1985, when law students in the campuswide UPC came to the realization that a similar organization would benefit diversity specifically at the law school. Various subcommittees were formed to address specific law-school issues, among which was a subcommittee on faculty diversity. Although the ULSC was short-lived as an organization due to its

| Table 2-1 |
| 1978 Boalt Faculty Composition |
| 1 Asian American male |
| 1 African American male |
| 3 white females |
| 37 white males |
overly ambitious initial agenda, competing time demands, and established strength of student-of-color organizations the faculty-diversity subcommittee prospered and grew, expanding to include white allies. With the decline of ULSC, the subcommittee on faculty diversity reorganized itself, coincidentally under the name Boalt Coalition for a Diversified Faculty (BCDF), without any awareness that such a group with the same name had existed in the previous decade.\textsuperscript{21}

Spearheaded by this new formation, the Boalt diversity movement became reinvigorated in the mid- to late 1980s. Gaining political and popular momentum from the galvanizing successes of the campuswide divestment movement, which culminated in the 1986 regents’ vote, this reinvigoration also was spurred on by negative actions of Boalt’s faculty in their decision to deny tenure to two faculty members, Marjorie Shultz in 1985 and Eleanor Swift in 1987. The denial of tenure to these two popular, white, female law teachers brought human faces to the struggle for diversity at Boalt and propelled the BCDF into a focal organizational role at the law school. In the fall of 1987, the BCDF highlighted the lack of progress over the decades in diversifying the law faculty by publicizing widely and graphically the appalling racial and gender caste system that had seen but one tenured faculty member of color from 1967 to 1987, while increasing the number of tenured (white) female faculty from one to two-and-one-half over the same twenty-year period (see Figure 2-1).

In the following year, 1988, an unprecedented four diversity hires out of five total hires (including an African American man

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2-1.png}
\caption{1987 Tenured Faculty at Boalt.}
\end{figure}
and woman, a Latino, and a white woman) were made in response to the movement's diversity hiring demands, and in implicit acknowledgment of the school's embarrassment over the BCDF's public documentation of its monolithic straight-white-male faculty identity.

Adding to this pressure to diversify was the threat of Eleanor Swift's pending lawsuit, which she had filed alleging sex-based discrimination after her negative tenure vote. The public pressure on the law school became acute when Professor Swift held a press conference in the fall of 1988 to announce that the Privilege and Tenure Committee of UC Berkeley had made an unprecedented prima facie finding of sex-based discrimination in her case. Two weeks after Swift's press conference, the Boalt faculty abruptly voted to reverse its denial of tenure to Marjorie Shultz. However, another year would pass before Swift also received tenure.

While the BCDF was organizing this external struggle for diversity against the Boalt administration and faculty, an internal struggle for power was developing within the coalition. Students of color generally had felt relegated to the margins by the BCDF organizational structure, which was largely an individual-membership organization. Unlike the campuswide UPC, the BCDF at the time was open to anyone enrolled at Boalt. Outnumbered and alienated by white liberals who approached the problem without an understanding of institutionalized forms of racism, and who combined this ignorance with a considerable dose of white paternalism and paternalism, students of color reduced their participation in the BCDF dramatically and quickly. In recognition of the internal contradiction caused by white domination of the BCDF, the remaining students of color active in the organization called for a reorganization of the leadership structure to a more group-based coalitional model that would initially include on the steering committee representatives from the BLSA, LRLSA, AALSA, and Boalt Hall Women's Association. The elements of a race-plus coalitional structure within the BCDF thus were assembled.

This restructuring was a key to the BCDF's continuing momentum because it allowed a new internal balance, which shifted the BCDF's culture, consciousness, and strategy to students of color and their racial perspectives and experiences on the nature of power and struggle. Generally at that time, the liberal and predominantly white students who had come to dominate the BCDF before its restructuring had manifested a different orientation toward the white faculty than the more disaffected students of color. Principally, liberal white students at first believed in the sincerity of the administration and some faculty members when they said that the institution really wanted to hire faculty of color but just could not find any. Accordingly, liberal BCDF members had advocated a kind of "constructive engagement," while progressive students (disproportionately students of color) were ready to engage in direct action by the spring of 1987. These social and strategic differences, which led to the restructuring of the organization, were also racialized in the sense that they flowed in large part from the gap between the lived experiences of white versus racial-minority students in contending with daily power negotiations. After the BCDF was restructured as a minority-organization-based coalition, the participation and leadership of students of color changed the organization's direction dramatically and led to important victories.

Crucially, early CRT works offered theoretical tools that proved useful to organizers during this time. The first positive theoretical intervention was a *Harvard Civil Rights–Civil Liberties Law Review* volume devoted to
“Minority Critiques of Legal Academe,” published in 1987. Although white members of the BCDF at the time were more liberal than leftist, this classic volume’s naming of white paternalism, which too often has characterized relations between the white left and communities of color, resonated with alienated students of color in the BCDF. Reading critical analyses of similar paternalistic dynamics occurring within legal academe, students of color gained insight and confidence to insist on political structures that would help preclude, and create means to ensure accountability for, any further perpetuation of deeply ingrained patterns of racial subordination within antiracist political movements.

Similarly, a second CRT intervention important to the BCDF’s work occurred simultaneously within the civil-rights community: the move designed to insert a more progressive politics into traditional rights-oriented movements. The attempt by CRT to radicalize our understanding of civil-rights strategies was useful to student-diversity movements contending with liberal factions for influence over agenda-setting and strategizing priorities because of the general tendency to internalize negative conceptions of counter-majoritarian, progressive politics—particularly when asserted by people of color. The incisive CRT (and CLS) critiques of the limitations of traditional civil rights emboldened students of color who were challenging not only the law school’s daily operations, but also the expectation of liberal white students to lead protest movements—even those focusing on the exclusion of people of color. Under this new structure, the BCDF continued its numerous educational events (often involving critical-race, feminist, and critical-legal scholars) and organizational meetings, but it also presented demands to the faculty and administration that fit within a direct-action strategy. After building a base of support among student groups through these activities, and having received no commitments to include students in the faculty-hiring process, the BCDF called for a student strike and teach-in (coincidentally, almost ten years to the day after the 1978 CDF strike). On March 22, 1988, that call was honored by 80 percent of the Boalt student body, as well as by significant numbers of students from the rest of the campus. The event culminated in twenty-eight arrests in Dean Jesse Choper’s office.

This action announced a clear break within the BCDF both with the substance of “constructive engagement” as a viable strategy for faculty diversification and with the process of white paternalism as a viable strategy for self-determination and political empowerment within and through antiracist movements. As a result of the 1988 strike, the administration entered into protracted negotiations that proved inconclusive. Nevertheless, this strike invigorated the student movement for success in upcoming battles.

After another year of administrative non-action and ongoing educational efforts, the BCDF called for a nationwide strike of law students on April 6, 1989. Law schools across the country observed the day of action with various activities, sending a clear message to their faculties to diversify. As discussed in the next section, this first Nationwide Law Student Strike was even more successful than the 1988 Boalt strike, as measured by its impact on legal education nationally. In retrospect, the 1989 nationwide strike represented the crest of the BCDF’s resurgence, culminating that summer in the central administration’s overriding of the Boalt faculty’s denial of tenure to Eleanor Swift.

This high point was followed in 1990 by another nationwide effort that effectively marked the beginning of the movement’s decline. In fact, the next year’s Nationwide Law Student Strike probably would have been a failure at the originating school
(Boalt Hall) had a main campus diversity strike (the first campuswide strike since the Third World Strike) not been effective in funneling students to aid the Boalt effort. Both local and national conditions contributed to this weakening of student activism at Boalt.

Locally, a strategic over-emphasis on direct action for action’s sake and a concomitant abdication of base-building through education led to a significant erosion in the membership of the BCDF. In addition, the perceived success of the movement reduced the sense of urgency that underpinned the once widespread popular support of the BCDF among the student body and community. Perhaps most significantly, the organization-based coalitional structure in place at Boalt was soon abandoned after the anemic 1990 National Law Student Strike. To compensate for its inability to sustain group-based support, the BCDF leadership (which now included a former CAA member) chose to dissolve the coalitional structure and reinstate the individual-membership organization that was “race-neutral.” From that point on (until the BCDF’s revival in the late 1990s), the protests organized by the coalition enjoyed little popular support, nudging the reorganized BCDF to undertake progressively more dramatic actions to compensate for its diminished stature and influence.26

This renewed decline of the BCDF in the 1990s can be traced in part to its failure to heed the centrality of race-consciousness being forwarded at that time by critical race theorists. The race-plus model of the mid-1980s BCDF, rooted in the Third World Strike of 1969, responded to the problems of racism, white privilege, and white paternalism/maternalism externally as well as within progressive coalitions. By affirmatively designing a coalitional structure that did not permit internal marginalization of racial-minority groups, the BCDF coalitional model of the mid-1980s grounded the movement in experiences and insights of out-group students. This form of “affirmative action” in the design and operation of coalitional structures could also be applied within other formations that arise from out-groups that historically have faced similar marginalization.

Nationally, other and larger forces contributed to the decline of the diversity movement at Boalt and elsewhere—namely, the organized right’s effective strategy to delegitimize diversity movements through its “political correctness” campaign, and the Supreme Court’s avid retrenchment on race jurisprudence. Following what would be the peak of the student-diversity movements in 1989, a pivotal New York Times article, “The Rising Hegemony of the Politically Correct,” was published in fall of 1990. The article popularized the term “political correctness” to taboo the articulation of demands for racial, gender, and sexual justice. To illustrate, in Nexis database searches, only seventy citations indicating the use of the term “political correctness” appeared in newspapers and magazines in 1990, the year the Times article ran, whereas in the next year, the number of citations increased to 1,532 and reached a peak of more than 7,000 references in 1994.27 This recasting of diversity activism as political correctness served to undermine the moral claims of such movements, previously a difficult task for conservatives and institutions in the face of both the ample data and the obvious skews of race and gender exclusion.

This assertion of majoritarian backlash was validated by the other key macro-event of those times: judicial retrenchment. It is likely that every generation of law students experiences a legal development that shapes its disposition toward law and legal practice in a profound, possibly career-altering way. For the BCDF generation, it was Croson. Not so much for what it said but for what it sym-
bolized, the 1989 *Croson* ruling dropped like psychological napalm onto Boalt’s burgeoning diversity movement, which by that time, and after years of frustrated efforts to diversify the faculty, was beginning to enjoy successes at home as well as national recognition of the problems associated with the lack of diversity in law-school faculties. As students were arrested for “trespassing” on law-school property in acts of civil disobedience, *Croson* seared the political imagination, demoralizing and debilitating diversity constituencies. The case was dispiriting because it symbolized retreatment at a higher level of authority within the legal profession and the system of justice, a retreatment that stood in stark contradiction to the diversity principles that only recently had guided the student movement to its modest successes.28

Not long after *Croson* came *Adarand*, and then *Podberesky* and *Hopwood*. Then the University of California regents voted in 1995 to end affirmative action. Finally, in 1996 Proposition 209 was passed by a majority of California voters. In light of these events, the Boalt administration’s old slogan—“Our Hands Are Tied”—now seemed like a self-fulfilling prophecy. Today, faculty committed to diversity at Boalt and elsewhere in California are in the position of “managing the resegregation” of public education. In this context, it is of course sobering to recall and contrast the militant official resistance to *Brown v Board of Education* throughout the South and other parts of the nation with the current institutional acquiescence to the dismantling of affirmative action, which in recent years has wrought a kind of collective sigh of relief from much of the legal profession and from law-school administrations.29

Despite the movement’s latest dormancy and unfulfilled potential, the student challenge to “business as usual” at one of the nation’s top public law schools forced into the open the heretofore informal hiring and promotion practices that tended to exclude outsiders from membership within the elite, white, openly heterosexual men-only club of law faculty. Despite the shortcomings of race-plus student organizing, the message sent by student organizing for diversity at Berkeley and elsewhere was heard loud and clear across the nation. The material gains of the diversity movement, assisted in part by CRT insights and interventions, would in turn reinforce the emergence and development of CRT. By helping to effect a change in legal-academic culture, and specifically by helping to bring about dramatic increases in the hiring of faculty of color nationwide, race-plus student coalitions helped to set the stage and open the door for CRT’s growth and popularity.

**Outcomes**

The organized student activism recounted here challenged the structure, substance, and culture of U.S. legal education, helping to fertilize the proliferation of institutional-cultural30 resistance to the reigning (non-)analyses of race and law. Thus, prior to its spread as a form of critical legal scholarship, race-consciousness in the form of student activism already had proved itself as a viable approach to law-school organizing. This record of contemporary and historical struggle thereby stood ready to serve as a living reference point upon which to ground a race-conscious jurisprudence. Moreover, the vibrant political contestation in law schools across the country specifically in the late 1980s and early 1990s directly and positively affected critical race scholars’ access to top law reviews—access that is crucial to their legitimacy and popularity and, subsequently, to their placement in top law schools.31 Although our objective in this essay is to acknowledge student activism as a factor in these developments, we recognize
that a multitude of actors, including organizations and individuals, worked to bring about law faculties that today are relatively more representative of this society. In this fluid and intricate milieu, the positive relationship of student activism to antiracist legal theory and culture is borne out by the following empirical sketch of material gains attributable to diversity-movement politics.

According to a Society of American Law Teachers (SALT) survey conducted in 1981, 30 percent of the nation’s law schools belonged to the “Zero Club” in that they had not yet hired even one person of color onto their faculties. Another 34 percent had made one (token) hire. In other words, almost two-thirds of the law schools that responded to the survey had none or just one law faculty of color in 1981. From the mid-1970s throughout the 1980s, faculty of color thus hovered around 4–6 percent of full-time law teachers. The record for hiring women was similarly dismal. Ninety percent of law schools responding to a 1982 SALT survey recorded that they had 0–20 percent female faculty who were tenured or on the tenure track. More than one-third of those respondents had 0–10 percent women on the tenured or tenure-track faculty at that time. And as late as 1988–89, full-time law teachers of color made up only 5.4 percent, with women composing only 23 percent of the total number of full-time law professors.

Moreover, the spurious “pool argument”—that no diverse pool of qualified law-school graduates existed from which to hire—was not credible given the fact that people of color and women represented at the time 11.8 percent and 42 percent, respectively, of all enrolled J.D. students—approximately twice the levels reported for faculty members. At some schools, such as Boalt, the disjuncture between student and faculty diversity was particularly appalling. In 1986, when the BCDF became active, UC Berke-

<table>
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<tr>
<th>Year</th>
<th>Percentage</th>
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<tr>
<td>1975-76</td>
<td>3.78</td>
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<tr>
<td>1980-81</td>
<td>3.8</td>
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<td>1982-83</td>
<td>5.63</td>
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<td>1996-97</td>
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1996–97 high of 13 percent full-time faculty of color—a 141 percent increase from the 5.4 percent of the 1988–89 status quo.⁸

While the simple correlation reflected in Figure 2-2 does not “prove” that student activism “caused” the contemporaneous spate of diversity hires, these statistics, combined with the retrieval of political history offered earlier, make a case that the correlation reflects more than mere coincidence.

Student-diversity movements contributed to faculty diversification across race and gender lines in part because the closed system of hiring and promotion in law schools had never before been subjected to such sustained public scrutiny. The public gaze cast on the formerly secretive, arbitrary, and cronypist process of hiring and tenuring disrupted the equilibrium of power on law faculties and brought about leadership crises that led to changes. For example, in 1987, the BCDF’s organizational demands to the faculty emphasized student inclusion in the faculty-hiring process and that the next five hires be diverse. Amid broad-based student and some faculty support, the BCDF would strike classes, sit in at the dean’s office, take over the law library, and undergo arrest to bring about change. In the face of such turbulence, the dean’s firm grip on the reins of power had to give way to more liberal or moderate actors, who could negotiate between protesting students and an entrenched old guard that was momentarily losing its balance. Understanding the negative publicity generated by such “impact agitation,” many institutions of legal education undertook proactive measures to avoid Boalt’s turmoil, incorporating at least token representation into their faculty ranks.

It was in this political context that CRT as a scholarly movement proliferated and achieved its initial national publicity and acclaim. The rise of CRT was aided by newly hired law teachers of color, including successive hires of “junior” RaceCrits who supported CRT scholarship in part by canonizing the early works of those we now consider “senior” RaceCrits. To be sure, the
quality of work by early RaceCrits was impressive for its theoretical insight, methodological innovation, and analytical depth and breadth. But the popularization and legitimation of the intellectual movement through publication in premier student-operated law journals, and the installation (and retention and promotion) of leading RaceCrits into top law schools a few years later, was fostered in no small part by the student-catalyzed transformation of the institutional culture of legal education.

To overlook the role of local and national student organizing in bringing about these changes is dangerous to CRT as a long-term project. Such oversight buttresses the liberal myth of self-correcting societal institutions, such as law faculties, that respond to social injustice and "better argument." In this telling, law schools diversified when exceptional candidates of color miraculously presented and proved themselves worthy. Thus, the sudden arrival of academic non-white "stars" precipitated social change; sustained and heated political activism was merely incidental, maybe even detrimental, to the diversification process. However, in our view, this myth of self-correcting institutions not only masks actual workings of sociological power; it can also lead to strategies among progressives that easily may be coupled and turned against progressive politics. In our view, a more appropriate and antisubordinationist history would not lose sight of the centrality of collective agency in the rise of CRT.

Our analysis of various movement structures suggests that individualistic or race-neutral strategies at the level of organizing resistance are not as effective or empowering as race-conscious structures. The next part of the essay attempts to show that intersubjective, rather than intertextual, method at the level of writing scholarship, and synergism rather than sublimation at the level of doing theory, help to avoid co-option of progressive politics. Moreover, as we will show in the following arguments, radical separation of theory from activism not only encourages progressive strategies that permit external co-optation but also promotes theoretical extravagance. In particular, we focus on how unmodified antiessentialism and the outsider critique of identity politics not only overlook the lessons to be drawn from race-plus, group-based student coalitions, but also fail to meet the challenges posed to activist communities of color by two ongoing developments: retrenchment on the right and attacks on identity politics by the allegedly progressive/radical left.

Movements and Critical Theory

In the first half of this essay, we considered the development of a race-conscious, race-plus, group-based infrastructure for political resistance in higher education and highlighted points of articulation between this resistance and CRT. We now offer some thoughts on the need to understand movement history as part of a valuable body of subjugated knowledge—knowledge considered illicit, crude, and low-ranking. Throughout, we remain convinced of the possible synergism between movement politics and critical theory. In so doing, we register a warning against the dangers of sublimating movements.

Subjugated Knowledge and Movement Histories

The new student [African American, other minority, women's and radical white] groups changed the atmosphere at Boalt Hall, not only because many of them tended to be militant and distrustful, but because they often did not respond to traditional law school teaching methods....
The strained relationships of the 1980s were confirmed in faculty interviews.... Whatever the contrasts in motivation or approach, it was generally agreed that the dozens of confrontations that had occurred over the previous 20 years had taken a heavy toll on the environment at Boalt Hall and that the warm, collegial atmosphere of earlier days had been replaced with formality, distrust and hostility.

—Sandra Epstein

Since its foundation in 1882, the School of Law (Boalt Hall) has demonstrated through progressive admissions policies its commitment to diversity in legal education.

—Cecilia V. Estolano et al.

Instead of shutting down the school or protesting at the dean’s office, we are doing heavy duty lifting of policy analysis.

—Chicago Tribune

The work of student-diversity activists constitutes a form of subjugated knowledge as defined by Michel Foucault: “a whole set of knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledges, located low down on the hierarchy, beneath the required level of cognition.” One task of critical opposition to supremacy and subordination is to disinter such knowledge in order to “establish a historical knowledge of struggles and to make use of this knowledge tactically today.” Subjugated knowledge challenges unitary theories, from both the right and the left, that purport to offer a totalizing picture of how societies are ordered.

A recent work on the “history of Boalt Hall” shows the process by which a dominant discourse absorbs and invisibilizes the illicit knowledge produced by movements of resistance. In that history, Sandra Epstein writes about the 1980s student movements only briefly in her lengthy celebration of Boalt’s past, and without citing a single member of the BCDF. Instead, the story is told through the eyes of faculty and admin-
by stipulating to a sanitized institutional history, presumably in exchange for greater currency with the administration and faculty. Such a “policy not protest” approach may produce short-term gains but at the cost of doing a potential violence to the very culture of movement politics that makes possible meaningful student input toward progressive reform policies. Put plainly, a “good cop—bad cop” reform strategy can work only if the “good” cop does not begin to believe that the “bad” cop actually is bad and expendable. An institutional history that offers no account of political struggles fought over the institution’s identity and future is not only seriously incomplete. It also aids other apologist discourse that elides subjugated knowledge.\textsuperscript{44} CRT’s sense of self and its antisuordination purpose mean that it must deny this aid.

Generally, CRT scholarship seeks transformation through recovery of, and emphasis on, excluded and marginalized elements of the body politic. CRT participates in the production of knowledge through the creation of a counter-discourse that documents and disseminates the knowledge and experience of the oppressed and silenced.\textsuperscript{45} The antisubordination counter-discourse of CRT consequently stands opposed to powerfully entrenched systems of totalizing knowledge that function in part through the selection and exclusion of data, such as the administration’s version of Boalt’s history. But the systems of domination that CRT opposes cannot bear having their histories told. History is dangerous territory for oppressors because it cannot sustain their shopworn alibis, which legitimate unjust power arrangements through the purgation of history and the subjugation of illicit knowledge produced in resistance experiences. Thus, CRT from its inception has taken seriously the power-knowledge coupling recognized by critical theory. For this reason, we should bear in mind that social movements long have been a primary effect, as well as a constituent of, power-knowledge configurations.

To engage in relevant and effective antisubordination theorizing, CRT therefore must not lose sight of the histories of resistance. These histories orient the collective intellectual project toward combating the danger of internal disunity. These histories also may help create the conditions of solidarity necessary for progressive political-community formation. And indeed, key CRT texts also subscribe to this commitment, claiming it as foundational to CRT from the outset. Proceeding from this commitment to community formation, we next urge that the internal antagonisms and solidarities lived by movements become both sites of critical intervention and places from which we speak as counter-discursive subjects. In order to account for social movements more seriously in our work, we will turn to two methods that can be adopted by CRT scholars attempting reclamation of resistance histories to advance CRT’s antisubordination project: the methods of synergism and sublimation.

\textit{Between Synergism and Sublimation}

We have tried to establish closer developmental linkages in this essay between CRT and contemporary race-conscious political struggles, suggesting how the latter have been foundational to the former. In this final section, we explore two models for relating movement histories to CRT “synergism” and “sublimation.” We conclude that CRT’s next decade should adopt more synergistic modes of interacting with movements and movement histories because synergism, unlike sublimation, is congruent with CRT’s commitments to community formation and social transformation.

\textit{The Benefits of Synergism: Theory, Practice, and Politics:} Synergism refers generally to an
interaction of agents or conditions that produces a combined effect that is greater than the sum of the individual parts and effects. In this essay, we use the term as metaphor. Here, it signifies a heightened potential for social-justice change, which may be unleashed specifically through a conscious commitment to the dialogical project of linking subjugated spheres of knowledge with the established yet evolving scholarly practices of CRT. Synergism is a vitally important possibility for a project, such as CRT, that attempts to affect the political world through discursive intervention. Such a project is necessarily collective and collaborative, requiring analysis of information and exchange of insights gleaned from the experiences of movements to formulate discursive strategies that, in turn, ultimately must be tested in the context of actual, prospective struggle.

The intersubjective nature of the CRT project underscores its political-theoretical essence: The moment critical race theorizing loses its grounding in the political and the communal is the moment that CRT ceases to be an antisubordinationist project. The search for subjugated knowledge therefore is an attempt to preserve the history and the meaning of struggle as well as the context of movement politics. In this sense, such a search manifests a synergistic approach to critical theorizing, while the ahistorical pursuit of the “theoretical” represents an abdication of political engagement and the relinquishing of the full promise of antisubordinationist intellectual production.

We consequently envision a mode of synergistic theorizing grounded in movement history and knowledge that contains both substantive and methodological commitments. This envisioned mode of theorizing instantiates the contestation with power by racially conscious political movements by “doing” race-conscious theory whose “science”—data, logic, verifiability, etc.—grows organically from political context. Under this vision of synergism, theory is judged against its ability to have coherence, relevance, and explanatory power vis-à-vis particular movement histories and actual power struggles; if a defining substantive commitment of CRT is understood to be “antisubordination” in favor of outsider groups, this method would entail not only “looking to the bottom” to inform CRT’s focus, but also transcending the split between subject (theory) and object (outsider politics) by reconfiguring the relations of cognition. This much has been recognized since CRT’s founding.

One of CRT’s early critiques of CLS was that the latter’s abstract theoretical trashing of “rights” did not capture community dynamics or the lived experience of people of color. CRT set out to remedy this approach by incorporating practice and experience from political struggle into the production of theory. As outsider intellectuals, our goal and strategy articulation was—and is—to construct a dialogue that is intersubjective and genealogically wedded to the resistance discourses and practices that perform the movement.

Uniting grounded theory with informed practice through synergism perhaps is more urgent as we enter CRT’s second decade than it was in its early years. The continuing and accelerating degeneration of equality jurisprudence, and the long-standing political–rhetorical attacks on the diversity ethic, cry out for a close, critical association between antisubordination theory and antisubordination practice through and within CRT. Right-wing political–rhetorical strategies such as the political-correctness attack on diversity activists, which in turn buttress judicial and scholarly retrenchment, underscore the need for CRT’s oppositionalist intellectuals to be aware of movement dynamics in order to sustain and nurture
progressive change. In addition, CRT scholars must remain cognizant of the “little histories” of resistance so that they can resist essentializing the “History” of social and jurisprudential change.

This heightened attention to movement needs and histories can ensure during the coming decade a healthy synergism between theory and praxis. It can also avoid the dangers of sublimation because, when they are successful, coalitional movements represent the practice of synergism—uniting grounded theory with informed practice. As we begin CRT’s second decade, we must recall and recognize that the history and lessons of student resistance and other social-justice movements can help ground and animate antisubordinationist discourse projects in the realm of law and culture. Indeed, we may look to student and community organizing for examples of synergism from which CRT can learn.

In sum, CRT scholars must strive to become more accountable in our work to the people, goals, and ideas of movements. We must strive in the coming decade to overcome the tendency to construct with our work an intertextual universe that has, at best, a “virtual” relationship to social struggle. The intersubjectivity, not intertextuality, of the synergistic approach also can help ensure that our work will grow under ever more congenial “relations of production.” And as critical academics, we must acknowledge the difficulty of maintaining the immediate connection to movement politics: To the extent that we perform as “disenchanted intellectuals,” we should be mainly disenchanted with our collective first-decade failure to stay grounded at all times. The second decade thus presents CRT with a basic challenge: to remain audacious in our demands to power, and in speaking simple truths to power, but without the arrogance of telling communities in struggle how to dream, to imagine their empowerment, or to narrate their political identity—especially insofar as we remain in the gilded cage of academe. We have to achieve a certain humility and accountability vis-à-vis those who not only confront power directly, but also bear the costs of that confrontation. Synergism is “good” precisely because it helps us meet this basic challenge.

The Dangers of Sublimation: Before and After Postmodernism: Using activist understandings in one’s work is often viewed within critical intellectual circles as the crude expression of selfish desire, a faux pas to be suppressed or forgiven—or, at best, to be appropriately cabined within a redeeming theoretical insight. But to us, this type of self-censorship is an example of sublimation. Sublimation, in its psychoanalytic use, has a structural form in which a primary realm (primitive desire) is subordinated to a secondary realm (socially acceptable behavior). To sublimate, in its metaphorical use here, thus means to divert the expression of an insight or an instinct to a form that is considered socially or culturally acceptable. In this context, sublimation may characterize a particular structuring of the historical and conceptual relationship between CRT and movement history, in which the primary realm (movement politics) is repressed or made harmless under the imagined imperatives of the secondary realm (theoretical discourse). To illustrate, we offer the embrace and spread of antiessentialism within CRT as an example of sublimation.

Sublimation took shape in CRT through its “postmodern turn,” especially its adoption of antiessentialism as a primary intellectual stance and dominant cultural norm. Antiessentialist theorists associated with CRT based their work in part on the experiences of the marginalized. In particular, they have recounted the experiences of African American women, who too often are
absorbed, made invisible, and marginalized within predominantly white, straight, middle-class progressive movements. Similar moves also highlighted parallel issues regarding lesbians in feminist movements and of gay people of color in predominantly white-dominated gay/lesbian/bisexual/transgendered (GLBT) movements. These interventions were important and necessary. Indeed, insofar as antiessentialist theory is built on a foundation of movement experiences, it is consistent with our synergistic approach: At its best, antiessentialism sets the stage for the deconstruction of falsely universalistic group identities that obscure significant group particularities. But what starts as a bold critique of racism, or of other forms of exclusion within a larger progressive movement, may generate a troubling call to reject “shared victimization” in favor of more “positive,” relational, and contingent identities. The antiessentialist critique may yield such troubling calls because it questions the viability of identity-based communities, valorizing instead shifting “coalitions” composed simply of individuals and based on perceptions of common interest.

The grounding of such a coalition of “individuals” purports in antiessentialist theorizing to offer a more advanced and accurate account of both the political subject and politics, but the Boalt case study discussed earlier suggests that this proposition deserves to be approached with some skepticism. Recall, for example, that when the BCDF shifted from a group-based coalition of identity-based groups to an individual-membership organization, it fell into disarray and decline. When it lost its essentialist, race-plus, group-based structure, the coalition dissolved into an organization of leaders who lacked a base. Unfortunately, CRT’s first decade of “unmodified antiessentialism” has included few limiting principles to prevent minority collectivities from being utterly deconstructed into disunited and atomized individuals, themselves understood as unstable constructs who attain “identities” only through a process of perpetual cultural re-performance.

Consequently—and ironically—critical antiessentialist theorists may end up underestimating the power and force of racism and other forms of supremacy as formidable and concrete political structures. Focusing primarily on the realms of ideologies and cultures of racism, antiessentialists seek to combat racial oppression with conceptual reframings, counter-discourses, paradigmatic shifts, creative performances, and cultural contestations. But on the whole, they do not emphasize direct confrontation with entrenched political institutions and structures of racism that require strategic thinking, disciplined organization, and coordinated tactics. In this way, unmodified antiessentialism potentially underestimates the need for political unity and group-based, even “essentialist,” structures of political organization to respond to the existing structures of oppression.

Of course, CRT’s postmodernism was motivated by the hope that antiessentialism would help to empower people of color, securing for racial out-groups an autonomy of self-definition that historically has been denied. In this way, race and gender essentialisms would be overturned. Incoherent group classifications would be unmasked as a stratagem of oppressive power that reinforced the invisibility of marginalized groups. Implicit in this turn was the valorization of syncretic methods of analysis and, ironically, a humanist ideal of intellectual and social exchange. Despite its imperfections, the postmodern turn’s promise was both deconstructive and restorative: It would reveal the discursive and actual violence of modernist racial practices and open genuine space for the flourishing of the diverse, the multicultural. Antiessentialism invited coalitional
possibilities for autonomously defined identities, but its danger would arise from the politics of timing and immediate context.51 The postmodern turn of the early 1990s took place across disciplines, including, but by no means primarily, within the legal academy. And although postmodernism seemed mainly to affect the scholarly and methodological approaches of left-leaning academics, its antiessentialism lent itself to furthering certain aspects of the right’s attack on race-consciousness. Concurrently with CRT’s embrace of antiessentialism, sociopolitical critics on the right and left questioned at the same time, but for different reasons, the coherence of the race concept, the assumption of its immutability, and the fiction of its transparency. Within and beyond CRT, race was being retooled variously as a social construction, a dangerous trope, or a performance, in contrast to outdated and discredited notions of race as a biological fact of difference among groups. Thus, one of the most significant outcomes of the postmodern turn for Race-Crits was that “race,” as a basis of antiracist consciousness and group identity, was put under pressure, even erasure.52 The political-correctness rhetoric, coupled with the erasure of race facilitated by antiessentialism, was synergistic in its racist effects.53 In this political context, the postmodern turn in academe did not help diversity-movement politics that faced formidable administrative aggression (targeting student leaders for disciplinary action, arrest, and prosecution) and political and judicial retrenchment on race and rights.54

Today, in the aftermath of that unfortunate convergence, the unmet challenge for CRT, and especially for antiessentialists, is to propose political-organizing structures that can be an alternative to “essentialist” group-based political formations. How are such organizations to be built under the formulation of a contingent, temporary, and relational identity? On what foundation can difference and creativity be used to “will” political formations into existence? How will such a program be effective in challenging established structures of subordination that are powerful and organizationally structured—the reality of Euroheteropatriarchy?55

In our view, then, one of the main dangers to theory and movements posed by sublimationist forms of antiessentialism is its potential to promote an abstract and endless expedition into the celebration of individual particularity. We believe that an autonomous theory of antiessentialism with no limiting principles plays too easily into the hands of the enemies of progressive politics. Unmodified devotion to antiessentialism simply is beside the point in a political arena in which those opposed to inclusive change are themselves virulently essentialist.

What should be the limiting principles on antiessentialism discourse for a progressive scholarly organization seeking to implement antisubordination principles through movement politics? Limiting principles should reflect a commitment to activist struggle within and among communities of color for social justice. In recognition of the reality that social-justice aims often cannot be achieved in the absence of coalitional efforts, limiting principles on antiessentialism discourse must satisfy the rule of relevance to the possibility of effective coalitions for justice. In other words, the only reason to engage in antiessentialist discourse from an activist standpoint is to reckon with patterns of thought or action within progressive politics that inhibit coalitional efforts to implement antisubordination principles or achieve social justice.

Another danger of the sublimationist treatment of movements within CRT is the overestimation of both the extent and scope of regressiveness within race-plus organizational models to justify the antiessentialist
groups that were performing of necessity, and from the outset, a modified form of antiessentialism. Those missed original lessons cry out for recognition today, after ten years not only of CRT but also of backlash.

By excavating and sharing subjugated knowledge and repressed movement histories, CRT in its second decade may come to understand better how even imperfect movements have pushed forward the struggle we inherit today, just as our flawed efforts will nevertheless provide a basis for future resistance. Understanding through synergism our fragility and ability to prevail against overwhelming odds might inculcate a greater appreciation for intergroup justice as a key CRT goal, and help to stimulate intersubjective method that will promote greater expression of the “political” in our search for the “theoretical” through a modified form of antiessentialism. CRT in its second decade can help revive key lessons to be drawn from historical memory, which are so vital to the regeneration of community formation, to the advancement of race-based resistance, and to the grounding of antbsubordination legal scholarship.57

**Closing Thoughts on CRT’s Organizational Structure**

In closing, we raise some questions for the future of CRT as an organization. We see CRT in its current form of annual workshops and occasional conferences as an individual-membership organization of progressives of color, not a race-plus group-based coalition. In the future, the current formation may be replaced by other forms of organization. How will leadership development, agenda-setting, and strategic decision-making by people of color be respected under various models we might consider? Should CRT open its membership to all sympathetic parties? Is a race-plus coalitional structure in order? And if so, what are the implications
for the current status of CRT under such a new structure? Would CRT “dissolve” into such a coalition? Or would it become an organizational member of the coalition? CRT should heed the historical social-movement lessons noted earlier regarding the substantive and strategic significance of political structure. CRT should approach calls to open itself to becoming a membership organization composed of individuals with caution. Based on our case study, the ongoing centrality of race, as well as the ongoing salience of racial paternalism in progressive movements, demands that a race-conscious approach and leadership structure be built into progressive political organizations. It seems rather curious to us that some who acknowledge the importance of CRT’s race-consciousness in legal scholarship seem to suggest simultaneously that we get “beyond identity” and, therefore, beyond the race-conscious organizational structure of CRT’s historic workshops in favor of structureless gatherings open to all comers.

We see an increasing, rather than decreasing, necessity for progressive intellectuals of color to convene and form an identity-conscious community. For this reason, we believe that intellectuals of color can be a vital component in radically resisting contemporary race-based and race-coded subordination, from “three strikes you’re out,” to Propositions 187, 209, and 227, to Hopwood, and so forth. We also predict that if, instead, a “colorblind” formation prevails, organized around the (ironically) modernist basis of “politics, not identity,” it will have a deleterious impact on the development of leadership among people of color—particularly of women of color, les/bi/gay people of color, and immigrants of color—in the larger intellectual-activist community. Indeed, colorblind political structures proposed in the name of more “progressive” politics ignore the very dynamics that historically gave rise to CRT and to other racial political forma-

tions—that is, the disaffection and alienation from the “left,” which, in its “non-race-consciousness,” produced default norms, agendas, theories, strategies, decision-making processes, and leadership that reflected white perspectivalism and dominance.

We should clarify that we are not suggesting a pre-Mecca Malcolm X rejection of progressive whites in the movement. Rather, we recognize the continuing force of racism even in progressive political communities, and the legacy of white supremacy in its suppression of leadership development among people of color, particularly those that are multiply identified. Until these larger forces are tamed, we believe, membership organizations of people of color will be needed. However, once such organizations or communities have been established, meaningful coalitions may be built with other organized constituencies. To develop this project further, we should encourage the further development of LatCrit, APACrit, and other racial sub-groupings, such as American Indian legal scholars, that will interact with CRT’s constituency on an egalitarian basis. CRT might serve as the convener of a race-plus coalition with these groups, which might also include other LawCrits with established bases, such as FemCrits, GLBTCrits, CLS, SALT members, and New Approaches to International Law (NAIL) members, to name a few. If we take seriously the challenge of collective political engagement, synergistic theorizing, and intersubjective methodology, CRT in its next decade will need to address and resolve these questions of organizational structure. And to do so, it should heed the lessons of movement histories outlined earlier.

Conclusion

Antiracist organizing, we have shown, shares some of the complexities encountered in
antiracist theorizing, but the strengths and weaknesses of the former are different from those of the latter. One of the great strengths of antiracist organizing within the student-diversity movement at Boalt was its adoption of organizational methods forged in the practical, everyday concerns of political struggle. In particular, the innovative approaches of prior successful student-of-color movements led to an organizational-coalition model linked to membership organizations made up of individuals from a range of people of color, les/bi/gay, and women’s groups. This structure of race-plus organizing enabled students of color to contend with the entrenched power structure of legal education for significant institutional changes.

Our goal in this essay therefore has been to ground CRT in the history of student resistance movements both to reveal the political context of CRT’s emergence and to raise for further reflection the strengths and weaknesses of the historical cross-pollination between praxis and theory. We have sought to do this not simply to add one more legend to the genesis stories that are told about a successful and powerful institutional innovation. Instead, our chief aim has been to suggest ways in which CRT-identified scholars might act collectively to contend with the continuing and coming storms of backlash and retrenchment against racial and social justice, which already engulf us.

Looking forward to the next decade of CRT, our synergistic, intersubjective approach links theory with the lived experience of subordination and political resistance there. Concretely, this approach may mean replacing or modifying the culture of antiessentialism in CRT, reclaiming the moral high ground for identity-based political organizing, and reaffirming the centrality of collective agency in the creation of political and counter-discursive space. In light of the subjugated, and now reclaimed, knowledge of the student-diversity struggles, the practical turn for CRT scholars in the coming decade could mean the employment of CRT to develop and mobilize egalitarian, race-plus coalitions to expand and advance transformative antisubordination strategies.

Appendix: Timeline Addendum: Race-Conscious Student Activism at UC Berkeley (1964–91)

Fall 1964: A new era of student activism is ushered in with the Free Speech Movement of 1964, which has its racial roots in the university’s attempted suppression of antiracist organizing by members of CORE and other civil-rights organizations who had returned from Freedom Summer in Mississippi.

Fall 1968: Early race-conscious forms of political organizing on college campuses, beginning with the Third World Strikes at San Francisco State University, innovated a group-based coalitional model for shared decision-making and power-sharing that was successfully re-created in subsequent decades.

Winter 1969: TWLF forms and calls for Third World Strike

Spring 1969: Third World Strike ends with creation of ethnic-studies departments and adoption of affirmative-action recruitment and admissions policies.

Fall 1969: Entering class at Boalt comprises 12 percent students of color.

Fall 1970: Entering class at Boalt comprises 18 percent students of color.

Fall 1971: Entering class at Boalt comprises 31 percent students of color. Boalt faculty considers eliminating or significantly curtailing special admissions.

April–May 1972: Boalt Hall strike on admissions, led by Black, Chicano, and Asian American students and the school’s lone Native American student, wins the law school’s commitment to a 28 percent special-admissions goal.

March 1975: Alan Bakke is denied admission to the University of California, Davis, medical school at trial court. The school’s special
admissions program is declared unconstitutional. Both sides appeal directly to the California Supreme Court.

1975: AALSA protests the removal of Japanese Americans from Boalt's special-admissions program and 50 percent cutback of Chinese Americans, absent any study.

September 1976: The California Supreme Court finds the special-admissions program in Bakke case to be unconstitutional.

1976: Soweto uprisings take place in South Africa.

1977–78: Anti-apartheid/divestment movement and activism/affirmative-action organizing around Bakke case. Issues involving international racism, such as South African apartheid and Central American solidarity work, attracted primarily white activists in the 1970s and early 1980s. Conversely, student-of-color activists tended to link racism overseas to racism closer to home, organizing actively around the Bakke decision on affirmative action in the late 1970s.

Fall 1977: The Coalition for a Diversified Faculty (CDF) forms at Boalt.

March 21, 1978: All-day CDF strike and teach-in is 75–90 percent successful.

June 28, 1978: The U.S. Supreme Court rejects quotas and affirms race as a "plus" factor in admissions.

Late 1970s: Formation of critical legal studies (CLS).


January 1980: HEW investigates the complaint but ultimately concludes that Boalt's faculty is no less diverse than that of other elite law schools.


1983: Chambers publishes results of SALT Survey on Women in Law School Teaching.

November 1983: Jesse Jackson announces his presidential candidacy and forms the Rainbow Coalition.

Fall 1984: Twenty-Year Commemoration of the Free Speech Movement. Veterans return and encourage anti-apartheid coalitions. UPC forms as a membership organization of progressives of color to address apartheid in South Africa and local issues of racism. Student-of-color and les/bi/gay students form the electoral coalition Cal-SERVE, which remains the oldest active political party in UC Berkeley student electoral politics.

November 1984: Randall Robinson of Trans-afrika; Civil Rights Commissioner Mary Frances Berry; and Washington, D.C., Representative Walter Fauntroy are arrested for their symbolic demonstration against apartheid in front of South African embassy. Within weeks, their arrests spark similar protests at embassies in a dozen cities, including Salt Lake City, Boston, Chicago, and Houston.

1985: Boalt faculty deny tenure to Marjorie Shultz, the first woman to come up for tenure at Boalt since 1972. Shultz appeals the decision within the university. The campuswide administration grants her an unusual lifetime security of employment as a lecturer.

November 1985: Law students active in UPC form United Law Students of Color (ULSC) to discuss issues of hostile environment, faculty diversity, and admissions at the law school.

April 7, 1986: Boalt students strike to protest the University of California's support of apartheid in South Africa and at home.

1986: Over President Reagan's strong objections, Congress imposes strict economic sanctions against South Africa.

Spring 1986: Strategic differences mount among students of color and whites who are organizing against apartheid across the country and lead to a public split at UC Berkeley. Efforts to build and grow the movement by UPC are criticized as "not radical enough" by the mostly white Campaign Against Apartheid (CAA) members, while CAA tactics designed to defy authority are seen by UPC as self-indulgent and far removed from the stated target of the
movement—that is, the South African apartheid regime.

**Summer 1986:** UC Regents vote to divest funds from South Africa. Having won divestment of UC funds from South Africa in 1986, anti-apartheid activists of color focus on issues of racism at the faculty, student body, and curricular levels of the university. With the organizational structures and political momentum of the anti-apartheid movement, the diversity movements of the late 1980s and early 1990s begin to take shape.

**Fall 1986:** The faculty-diversity committee of ULSC expands its membership to the larger law-school community and adopts the name Boalt Coalition for a Diversified Faculty (BCDF).

1986: Feminists and scholars of color begin to organize at the annual CLS conference. The critical race scholar Charles Lawrence calls for voluntary quotas for minority hiring in member law schools of the Association of American Law Schools (AALS).

1986–87: The BCDF engages in an intensive lobbying and consciousness-raising efforts.

**Fall 1987:** The BCDF adopts a “race-plus” coalitional structure, with members from AALSA, BLSA, LRLSA, and the Boalt Hall Women’s Association on the steering committee and continues base-building, education, and organizing efforts.

**June 1987:** Boalt faculty deny Eleanor Swift tenure. At the time of Swift’s denial, Boalt has only two tenured female faculty out of forty-five total faculty. Swift files a grievance with the Committee on Privilege and Tenure.

1987: Scholars of color issue racial critiques of CLS and annual conference on the theme “The Sounds of Silence.” Papers at this gathering are published as “Minority Critiques of Legal Academe” by Harvard Civil Rights–Civil Liberties Law Review.

**March 1988:** The BCDF calls for law-school strike, which is 80 percent effective. Twenty-eight students are arrested for trespassing after a six-hour sit-in to protest Boalt’s hiring and tenureing record.

**Fall 1988:** Out of five hires, four are “diversity hires,” including the first critical race theorist, Angela Harris; the first Latino, Dan Rodriguez; the feminist scholar Reva Siegel; and Bryan Ford, an African American. These hires more than double the number of faculty of color at Boalt and increase the female faculty on the tenure track by approximately 50 percent.

**October 1988:** Eleanor Swift and her attorney, Mary Dunlap, announce a prima facie finding of sex discrimination by UC Berkeley’s Committee on Privilege and Tenure. Two weeks later, Boalt faculty reconsider Marge Shultz’s case and vote to grant her tenure.

1988: Law professor and SALT member Richard Chused conducts follow-up report to Chambers’ surveys on the hiring and retention of women and minorities on American law-school faculties.

**April 1989:** The BCDF organizes the first Nationwide Law Student Strike for Diversity, which is highly successful. The National Lawyers Guild compiles the activities across the country into information packets.

**August 1989:** UC Berkeley Chancellor Heyman grants tenure to Eleanor Swift.

1989: The U.S. Supreme Court decides the *Croson* case, requiring strict-scrutiny standard of review for local affirmative-action plans.

1989–90: The proportion of full-time law faculty of color increases by 61 percent in one year.

**April 1990:** A campuswide strike for diversity at UC Berkeley is 80–90 percent effective and lends support to the second Nationwide Law Student Strike for Diversity.

**Fall 1990:** Richard Bernstein publishes “The Rising Hegemony of the Politically Correct,” an influential article decrying “political correctness,” in the *New York Times Magazine*. The *Croson* decision, tactical missteps by the BCDF, an emphasis on direct action and away from education and base-building, and the perception of success and institutional reforms lead to a decline in BCDF organizing, until California voters pass Proposition 209 in 1995, which eliminates affirmative action in public education. In response, Boalt student activism again becomes national news through the report “New Directions for Diversity,” the Boalt Coalition for a Diversified Faculty/Student Body, and Students for Equal Opportunity.
Notes


Indeed, Richard Delgado was one of a handful of early faculty supporters of the 1980s–90s student movement for diversity. He supported the BCDP by speaking at our educational events and rejecting forcefully the standard rationalizations offered by the administration for its failure to diversify. Most recently, he performed the same function for a national group of students organizing to maintain diversity in legal education in the wake of Hopwood and Proposition 209.


3. We also should avoid overstating the Harvard-centricity of CRT by focusing perhaps too much attention on Harvard’s 1981 Alternative Course protest and the Harvard-based CLS movement generally. One first-wave RaceCrit provides a useful counterpoint in this context. Acknowledging that the material gains won by student-led diversity movements had a direct impact on CRT’s rise, Mari Matsuda identifies as part of CRT’s genesis the “resurgence of student activism,” including “sit-ins, rallies, and guerrilla actions” at Boalt, Stanford, Harvard, and Columbia that resulted in “affirmative action hiring” and race-themed conferences: Mari J. Matsuda, Where Is Your Body? (Boston: Beacon Press, 1996), 50.

4. Eric K. Yamamoto, “Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America,” Michigan Law Review 95 (1997): 821, 869, 874, observing that the disjuncture between “high theory” generated by critical race theorists and “frontline practice” exercised by progressive lawyers tends to result in abstracted theories that are untested and untestable through either practical experience or material gain for those who are racially subordinated. Although Yamamoto does integrate the role of community activists into his formulation of critical race praxis, throughout the article and in the title he emphasizes the interaction between legal race theory and political lawyering: ibid., 830–9.

5. We use the term “race-plus” to designate the centrality and historicity of race-based organizing that recognized a network of oppressions and embraces coalitional consciousness and solidarity with other outsider groups. Other potential bases for coalition include axes of antisubordination resistance, specifically feminist projects, GLBT liberation, and progressive white identity formation.


7. Farmer addressing a Free Speech Movement rally of more than 1,500 students and faculty members at UC Berkeley, December 20, 1964, quoted in ibid., 7.

8. Arguably, one could begin this tracing with the House of Un-American Activities Committee (HUAC) hearings conducting in San Francisco in 1960 that were protested by UC Berkeley students. However, the racial origins of that protest were more nebulous. Although there was chronological overlap between the HUAC protest and Civil Rights struggles in the South, the linkages among participants were much more tenuous: see Raya Dunayevskaya, “FSM and the Negro Revolution,” in Savio et al., Free Speech Movement, 21–2. We start with the Free Speech Movement as one of the earliest, defining moments of mass antiracist student protest. Upon their return from Mississippi Freedom Summer of 1964, Berkeley civil-rights activist–students were confronted with a University of California administration ruling on September 14, 1964, that curtailed not only the substance and manner of speech on university grounds, but also the solicitation of funds and recruitment by civil-rights and other political organizations: ibid., 23–4.

See Eugene Walker, “Mississippi Freedom Summer,” in Savio et al., Free Speech Movement, 12, noting that the leadership of the Free Speech Movement “were those who had been part of the Mississippi Freedom Summer Project.” It is inter-
esting to note that the abstraction of the racial focus of the Free Speech Movement was foreseen and resisted by its leaders, who, like later critical race theorists, had a power-based critique of liberals' understanding of free speech. "The liberal University of California administration would have relished the opportunity to show off in the national academic community a public university enjoying complete political and academic freedom and academic excellence. And if student politics had been restricted either to precinct work for the Democrats and Republicans, or to advocacy (by public meetings and distribution of literature) of various forms of wholesale societal change, then I don't believe there would have been the crisis there was... The corporations represented on the Board of Regents welcome Young Democrats and Young Republicans as eager apprentices, and sectarian 'revolutionary' talk can be tolerated because it is harmless. The radical student activists, however, are a mean threat to privilege. Because the students were advocating consequential actions (because their advocacy was consequential): the changing of hiring practices of particular establishments, the ending of certain forms of discrimination by concrete acts—because of these radical acts, the administration's restrictive ruling was necessary": Savio, "Berkeley Fall," 16. Savio observed that the Free Speech Movement "gained its initial impetus from the very different involvements of what are mostly middle-class students in the struggles of Negro people": ibid., 18.

9. San Francisco State University's Third World Strike triggered similar protests across the country. See "Campus Protests Rock California, Nation," Daily Californian, January 10, 1969, 1, reporting on Black and Third World student unrest at Brandeis University in Massachusetts and at San Jose State College and San Fernando Valley State College in California; "Unresolved Demands Spark U.S. Protests: One Week of Student Strike—Student Strikes, Protests Trouble Nation's Schools," Daily Californian, January 13, 1969, 1, 4, updating reports on the Brandeis and San Fernando Valley student strikes and reporting on further actions taken by students of color at Swarthmore College in Pennsylvania, Queens College in New York, and Northwestern University in Illinois. In response to this and similar challenges by students of color nationwide, institutions of higher education across the country would undergo dramatic changes in admissions, hiring, and curricular development policies during the next decades.

To illustrate the need for such demands, prior to the strike a 1966 survey of the racial composition of the undergraduate student body at UC Berkeley revealed that African Americans, Chicano, and Native Americans together amounted to a mere 1.5 percent of the student population while constituting 24 percent of the California state population: Matthew Dennis, "Defeat in Victory, Victory in Defeat: The Third World Liberation Front Strike of 1969," (unpublished ms., June 1987), 1–2, on file with Sumi Cho, noting that of more than 26,000 students, 1 percent, or 226, were Black; 0.36 percent, or 76, were Chicoan; and 0.28 percent, or 61, were Native American.

10. San Francisco State's Third World Strike began in the fall of 1968, prompted in part by the firing of an African American professor and Black Panther, George Murray. A coalition of African American, Asian American, Chicano, and Native American student organizations made up the Third World Liberation Front, which organized the strike. San Francisco State strikers challenged their Berkeley counterparts to demand similar changes in higher education.

See notes 12 and 19 (citing news coverage of the agreement by San Fernando Valley State College to establish two ethnic-studies departments and to make greater efforts to hire faculty of color), which describe the adoption of a similar structure by both Cal-SERVE and the 1978 formation of the Coalition for a Diversified Faculty; Phil Semas, "San Francisco State Strike Dies; White Strikers Return to Class," Daily Californian, March 14, 1969, 1, 8, reporting on the partial victories of the strike, including the establishment of a Black Studies department and a school of Ethnic Studies and increased minority student admissions.

The TWLF's leadership structure featured a steering committee with equal numbers of voting representatives from each of the member groups. Decisions were taken by consensus whenever possible, and by majority vote when not possible. On replication of the TWLF model, see discussion at notes 12 and 19 and accompanying text.

11. The two issues of anti-apartheid and affirmative-action work were linked in student protests by organizers from each movement. For example, one May 18, 1977, Daily Californian newspaper ad for an anti-apartheid rally read:

Victory to the People of South Africa!
US, UC Out Now
Defeat the Bakke Decision
Similarly, at a 1977 sit-in at which fifty-six members of Campuses United Against Apartheid were arrested, the two demands of protesters were: 1) University of California and the United States out of South Africa; and 2) defeat Bakke: "Cops Arrest 56 at Sproul Sit-in," Daily Californian, June 3, 1977.

While students organizing for divestment of UC funds from South Africa were predominantly white, students of color were more active in organizing resistance to racism on issues closer to home, particularly around the Bakke case and the denial of tenure to Harry Edwards, an African American professor and founder of sports sociology. The 1970s anti-apartheid coalition included primarily the white student left (i.e., Campuses United Against Apartheid, Students for Economic and Racial Justice, the Revolutionary Student Brigade, the Council for Economic Democracy, and the Young Socialists Alliance), and secondarily organizations of students of color (United Students Against the Bakke Decision, the Third World Coalition, the Pan-Africanist Student Board, and the Ethnic Studies Fee Committee). See Sumi Cho, “A History and Analysis of the Anti-Apartheid Movement at UC Berkeley” (unpublished paper, December 1986, 4–11, on file with the authors. See also “Blacks Lack Campus Unity,” Daily Californian, May 3, 1978, quoting Erica Huggins of the Black Panther Party stating, “I am ashamed white students are organizing a movement which should be full of blacks.” The article later quotes the president of the BLSA, who explained that Black students had to combat the paternalistic assumption that they were at UC Berkeley simply out the generosity of liberals, and thus had to work harder to “prove” themselves and therefore did not have extra time to invest in outside activities.


We use the term “race-plus” to designate the centrality and historicity of race-based organizing that recognizes a network of oppressions and embraces coallitional consciousness and solidarity with other outsider groups. As such, other axes of anti-subordination resistance—such as feminist projects, gay/lesbian/bisexual/transgendered liberation, progressive white-identity formation, etc.—are potential bases for coalition. The race-plus electoral coalition known as Cal-Students for Equal Rights and Valid Education (Cal-SERVE) included the African Students Association, Asian Student Union, Inter-Tribal Council, Lesbian Gay Bisexual Alliance, and Movimiento Estudiantil Chicano de Aztlán (MECHA). The UPC organized the key events in the 1980s anti-apartheid movement, including a ten-hour sit-in and the “largest number of students arrested at any one protest since the ‘early 1970s’; the student–faculty meetings with the UC Regents; and Bishop Tutu’s visit to the Greek Theater: Chris Krueger, “UC Police Make 138 Arrests at Sproul Divestment Protest,” Daily Californian, November 7, 1985, 1, 5.

13. For a thorough summary of CRT’s contestation withCLS, see Crenshaw et al., Key Writings, xxii–xxvi. The formality–informality debate is perhaps best captured by the mini-story told by Race-Crit Patricia Williams recounting the experience of looking for a New York apartment with Peter Gabel, a CLS scholar. Gabel quickly located an apartment and sealed the deal with a “$900 dollar deposit, in cash, with no lease, no exchange of keys, and no receipt.” In contrast, Williams sanged a detailed, lengthy negotiated, finely printed lease: Patricia Williams, “Reconstructing Ideals from Deconstructed Rights,” in Delgado, Cutting Edge, 86–7. Commenting on their vastly differing approaches to apartment-hunting, Williams observed:

Peter, I speculate, would say that a lease or any other formal mechanism would introduce distrust into his relationships and that he would suffer alienation, leading to the commodification of his being and the degradation of his person to property. In contrast, the lack of a formal relation to the other would leave me estranged...

Peter’s language of ... informality, of solidarity, of overcoming distance—sounded dangerously like the language of oppression to someone like me who was looking for freedom through the establishment of identity, the formation of an autonomous social self. To Peter, I am sure, my insistence on the protective distance which rights provide seemed abstract and alienated. (Ibid., 87–8)

For a discussion of differing approaches and strategies of the UPC and CAA, see Melissa Crabbe, “Anti-Apartheid Forces Join, but Cultures, Tactics Differ,” Daily Californian, April 29, 1986, 11, chronicling the different decision-making processes of the UPC and CAA.
14. On the open split between the UPC and CAA, see Crabbe, "Anti-Apartheid Forces," 1, 6, 11. Crabbe also quotes a University of California official stating his opinion that CAA believed that it had to "create a situation where confrontation will occur so they can get media attention... The feeling is that legitimate protest, which does not disrupt, will not get sufficient attention, therefore it is not effective": ibid., 11. Crabbe also discusses the CAA's lack of direct-action principles, quoting the CAA's leader, Andrea Pritchett as saying, "The fact that we don't have a rigid program is good because it allows us to be influenced by other political views, but it's also a problem because in dealing with a situation like a riot, we don't have a unified position," and the increased vulnerability of men of color during protests, reflecting agreement among organizational leaders that "Third World students receive the brunt of police violence in any demonstration": ibid.

In rebuttal to the CAA charge of conservatism, UPC member Patricia Vattuone suggested the differing agendas and perspectives of the two groups: "We've been labeled less militant, and that's a problem... We're not about rebelling against our parents and the institutions—those aren't the issues": ibid. See also "Statement of Purpose by UPC," Daily Californian, April 29, 1986, 6: "We do not view this movement as a struggle against authority. For us, the anti-apartheid movement, like the... tutorial program run by students in the Berkeley elementary schools or our efforts to improve affirmative action on the campus, are all related to the overall purpose of our organization: to work for and support the liberation of our people and all people"; Pedro Noguera, "Fighting Racism Doesn't End with Your Diplomas," Daily Californian, May 15, 1986, 4-5: "We're trying to win our people over not just to struggle for divestment. We're trying to win them over for life, because we want them to be in this struggle after they graduate from school... For those of you who would say that we are conservative for taking this on as our task, I challenge you. I ask what will you be doing in 10 years?"

15. On the established linkage between international and domestic racism, see Crabbe, "Anti-Apartheid Forces," 6, 11, noting that UPC agenda items and demands for improved graduate affirmative action and the institution of an ethnic-studies graduation requirement were adopted by other anti-apartheid groups for the sake of unity. On the unfinished business of the Third World Strike, see Keith Palchikoff, "Celebration and Rally: Activists Laud Divestment, Call for Action," Daily Californian, September 4, 1986: "Besides celebrating the July divestment vote, the [anti-apartheid] activists also called upon the crowd to support the institution of a required ethnic studies course." And see "After Divestment, What's Next? Ethnic Studies!!!?" UPC flyer (undated), on file with Sumi Cho, and n. 21 later.

16. A 1969 Daily Californian article reported on an illegal rally staged by Boalt students to protest the administration's ban on rallies during the Third World Strike and observing that "law students are becoming actively involved in campus politics for the first time": Mathis Chazanov, "Boalt Students Stage Rally, Protest Administration Ban," Daily Californian, February 29, 1969, 1, 16. For coverage of the 1972 Boalt strike, see generally Hazel Harper, "Third World Cutbacks at Boalt Hall, Black Law Student Association Protests," Daily Californian, April 19, 1972, 1, 16; idem, "Black Students Strike at Boalt," Daily Californian, April 20, 1972, 1, 16; "Open Challenge to Boalt Faculty" (editorial page), April 20, 1972, 7; "Negotiations at Boalt," Daily Californian, April 21, 1972, 12; Ed Coyne, "Chicano Law Students End Boalt Hall Sit-In," Daily Californian, April 21, 1972, 1, 16; Hazel Harper, "Black Students Confront Faculty," Daily Californian, April 25, 1972, 1, 12; idem, "Boalt Decision," Daily Californian, April 25, 1972, 1, 16; "Boalt Faculty Response," Daily Californian, April 27, 1972, 1; "Black Students OK Boalt Offer," Daily Californian, April 28, 1972, 1; Jeanette Harrison and Robert Joffee, "Boalt Hall Blacks, Asians Vote to End Strike," Daily Californian, May 1, 1972, 1, 12; Hazel Harper, "Boycott Continues at Boalt," Daily Californian, May 2, 1972, 12. Information on the 1972 Boalt strike is supplemented by two interviews by Sumi Cho with participants at the time—Linda Greene, former president of the BLSA and a founding member of the Critical Race Theory Workshop who is now a professor of law at the University of Wisconsin, and Gerald Horne, a BLSA member and director of African American Studies at the University of North Carolina: Linda Greene, telephone interview by Sumi Cho, November 1997; Gerald Horne, interview by Sumi Cho, Flushing, N.Y., October 11, 1997.

input into admissions decisions, see Epstein, *Law at Berkeley*, 278, 281.


19. The seven organizations that made up the coalition included the AALS, the BLSA, the Boalt Hall Students Association, LRLSA, the National Lawyers Guild, the Native American Law Students Association, and the Boalt Hall Women's Association: "Diversified Faculty Issue Intensifies," *Suspended Sentence*, April 1979, 1, 3, on file with Sumi Cho. See also Tom Pecoraro, "Boalt's Minority Recruitment Effort Lagging," *Daily Californian*, February 28, 1978, 3. For coverage of the 1978 strike, see Mercer, "Strike, Teach-In," "Diversified Faculty Issue"; Barbara Franklin and Grant Mercer, "Boalt Hall Hit by Sit-In, Strike," *Daily Californian*, March 22, 1978, 1, 12. For Dean Kadiach's refusal, see "Diversified Faculty Issue," describing how Dean Kadiach refused to begin the "official" February 1978 faculty meeting before CDF members spoke in order to avoid "setting a precedent" for student participation and input. The article also records the CDF's activities for 1977–78, closing the year with the March 21, 1978 strike: ibid., 3, 8.

20. The HEW investigation was discredited when the Boalt administration discovered that a department investigator had monitored three law classes without its knowledge or permission. Seriously undermined by the controversy, the investigation failed to confirm the students' charges: see Sue Feldman, "Boalt Hiring to be Probed by HEW," *Daily Californian*, September 26, 1979, 1; idem, "Agent Secretly Attends Boalt," *Daily Californian*, January 25, 1980, 1, 22; Epstein, *Law at Berkeley*, 282–3. On internal divisions within the Berkeley left, see Mike Casey, "Groups Seek to Unify Berkeley Left," *Daily Californian*, December 4, 1979, 1.

21. See ULSC, "Founding Meeting," flyer, November 19, 1985, on file with Sumi Cho, advertising the first meeting of United Law Students of Color to discuss "minority and women faculty, divestment, racism in the classroom, and affirmative action." As a result of the formation of the ULSC and its connection to the campuswide anti-apartheid movement, Boalt students sponsored a strike on April 7, 1986, to "protest UC support of apartheid in South Africa and at home," noting the "fruits of UC philosophy" to include "$2.5 billion in UC investments in South Africa, exactly 2 tenured Boalt minority faculty, and only 9.7% graduate students of color at UC Berkeley": see "Boalt April 7, 1986 Strike Flyer," on file with Sumi Cho. Neither of the co-authors recalls any consciousness of a previous CDF at the re-formation of BCDF in the 1980s.


23. As two of the few students of color still involved with the BCDF, the authors intervened to propose a race-plus coalitional structure to the BCDF, which was passed by the membership. Cho and Westley served as two of the four original steering-committee members of the newly structured BCDF—as members of the Asian American Law Students Association and the Black Law Students Association, respectively—along with Renée Saucedo of La Raza Law Students Association, and Juliet Davison of the Boalt Hall Women's Association.


25. For a report on the 1988 strike, see Ellen Goodwin, "28 Cited in Six-Hour Sit-In Protesting Bias in Hiring," *San Jose Mercury News*, March 23, 1988, 1B; Roland De Wolke, "Students Protest Shortage of Minorities and Women on Boalt Hall Faculty; 28 arrests," *Oakland Tribune*, March 23, 1988, B1. The authors credit Renee Saucedo, co-chair of the BCDF, for conceiving and coordinating the Nationwide Law Student Strike of 1989. There was some concern among the BCDF leadership that expanding the movement to a national level was premature and threatened to destabilize the local movement. One of the authors (Sumi Cho) felt that the BCDF should solidify its base and ally more closely with the campuswide movement for diversity before "going national." In retrospect, both positions seemed legitimate. For coverage of the 1989 Nationwide Law Student Strike, see National Lawyers Guild, "A Report from the National Lawyers Guild: Unequal Treatment under the Law—Racism, Sexism, Classism, Homophobia in America's Law Schools," *National Lawyers Guild*, April 1989. See also

In the summer after the nationwide strike, the campuswide administration awarded tenure to Eleanor Swift. On the campuswide administration’s reversal of the Swift denial, see Sandy Louey, "Boalt Professor Wins Discrimination Fight," *Daily Californian*, August 28, 1989, reporting on an independent panel’s unanimous finding of sex discrimination and UC Berkeley Chancellor Heyman’s subsequent offer of tenure to Professor Swift. See also Ashby, "Eleanor Swift;" 14. In exchange for the chance to have her case reviewed by an independent committee outside the law school, Professor Swift agreed to drop her gender-discrimination lawsuit against the university.

26. One of these missteps involved a letter from BCDF leaders to an academic couple being hastily recruited by the Boalt faculty for tenure-track positions. The BCDF charged that the waiver of standard search procedures was designed to eliminate student input in the name of affirmative-action recruitment (of a white female candidate and her white husband). Further, students felt that the “target of opportunity” (TOP) affirmative-action positions being used to convey additional funds to departments fielding diversity candidates were being misused, as TOP funds were benefiting the white male spouse of the white female candidate. In light of this history, the BCDF leadership and other law-student groups wrote to the candidates who had been extended offers and asked them not to accept based on the need for greater racial diversity and for the process-based failures in their hiring. The letter to the candidates created an uproar from Boalt faculty and from a considerable segment of the student body. The BCDF’s strategy seemed to emphasize increasingly ill-conceived direct actions, with no clear link to attainable demands and commensurate defense of those arrested. Ironically, the BCDF’s major successes (in reversing two tenure denials and winning four of five diversity hires in one year) led to a perception among many students that the administration was now in good faith willing to diversify the faculty, or that the faculty had been adequately diversified.


*City of Richmond v. J. A. Croson*, 488 U.S. 469 (1989), requiring strict scrutiny review of local affirmative-action plans. Prior to 1989, it could be said by diversity activists that no controlling legal authority had determined that publicly sponsored race-conscious remedies were illegal in an educational or academic setting. In 1989, Croson held that local racial set-asides in public construction contracts were subject to strict scrutiny. The narrative of Croson, which viewed the case as one about a majority-minority Black-white coalition seeking to ensure relatively modest but meaningful minority participation in a lucrative publicly funded enterprise saw the light of day only in Justice Thurgood Marshall’s exasperated dissenting opinion. The majority, by contrast, saw only “reverse discrimination.” What Croson seemed to say to diversity activists in particular was that our generation could not rely on the high court to support our politics in the way that a previous generation of Civil Rights activists could. In the language of Justice Sandra Day O’Connor’s opinion, our politics would be viewed as “racial politics,” and that was a bad thing as well as constitutionally
forbidden to the state. For BCDF members, the message of Croson was even clearer: Time had run out on judicial tolerance of result-oriented diversity politics’ Croson, 488 U.S. 469.

29. Adarand Constructors, Inc v. Pena, 515 U.S. 200 (1995), holding that all racial classifications imposed by government actors are subject to strict scrutiny analysis.

Podberesky v. Kirwin, 38 F. 3d 147 (4th Cir. 1994), amended and rehearing denied, 46 F. 3d 5 (4th Cir. 1994), cert. denied, 514 U.S. 1128 (1995), holding that a Black-only scholarship program was not narrowly tailored to asserted the goal of remedying present effects of past discrimination.

Hopwood v. University of Texas, 78 F. 3d 932 (5th Cir. 1996), rehearing denied, 84 F. 3d 720 (5th Cir. 1996), cert. denied sub nom. Texas v. Hopwood, 116 S. Ct. 2581 (1996), holding that racial preferences in a state university law school’s admissions program violates equal protection.

Coalition for Economic Equity v. Wilson, 122 F. 3d 718 (9th Cir. 1997), cert. denied, 118 S. Ct. 17 (1997), denying motion for a stay of mandate.

On June 26, 1997, it was revealed that not one of the fourteen Black students admitted to Boalt Hall under the new policies adopted after passage of the anti-affirmative-action measure had decided to enroll.


On resegregation, see Amy Wallace, “UC Law School Class May Have Only 1 Black,” Los Angeles Times, June 27, 1997, At.

On massive resistance, see Derrick A. Bell, Jr., Race, Racism and American Law, 2d ed. (New York: Little, Brown, 1980), 381–9, chronicling the varieties of resistance pursued by Southerners opposed to desegregation facilitated by the court’s “all deliberate speed” order.

30. We use the term “institutional–cultural” to emphasize the importance of social institutions as both constrainers of action and constituators of actors and interests. Institutional–cultural struggle by CRT and student activists was thus at once struggle against the institutional constraints of deracialized modes of pedagogy and legal analysis and for a constituting culture wherein radical subjects of color could flourish.

31. See, for example, Matsuda, Where Is Your Body? 74: “In April 1988, law students across the country held a national day of protest. They sat in to demand changes in hiring practices…. That same year, I got a call inviting me to teach as a visitor at Stanford Law School.” Although Matsuda had the wrong year for the first nationwide strike—which was held in 1989, not 1988—the first (Boalt-only) law-student strike called by the BCDF did occur in April 1988 and received considerable local, regional, and national publicity.

32. As merely a partial listing, some of these actors include the Society of American Law Teachers and their members’ surveys and reports that provided a wealth of information on the exclusionary effects of the closed system of hiring. In particular, the work of David Chambers, Charles Lawrence, and Richard Chused deserves special mention. Michael Olivas’s “dirty-dozen” list, annual data compilation and resource base, and patient prodding/scolding prompted Latino/a hiring at many schools. The AALS Minority section, formed in the early 1970s, turned its attention early and often to the issue of minority hiring, issuing reports and sponsoring recruitment conferences for prospective candidates. We believe that a serious study of these diversity efforts by faculty would complement our study of student diversity activism.


37. For faculty data, see Sumi K. Cho, “Multiple Consciousness and the Diversity Dilemma,” University of Colorado Law Review 68 (Fall 1997): 1035, 1052, n. 63, citing memo confirming statistics from Nola Yee, coordinator of publications and communications, Boalt Hall School of Law.

38. Data for this paragraph provided by White interview.

39. Epstein, Law at Berkeley, 276, 322: “Written under the aegis of Boalt Hall Dean Herma Hill Kay and Dean Emeritus Sanford Kadish.” For “under the aegis,” see the back-cover summary. Epstein’s sources for this period of heated contestation never cite a student but are confirmed by “faculty interviews,” “one emeritus professor,” and various deans: ibid.


43. Epstein, Law at Berkeley, 283 (“Angry students”), 322–3 (“law school agenda”). Epstein does note that the class boycott strategy was developed at Boalt and followed elsewhere, but the context is not one of ringing endorsement of the movement.

44. For “New Directions in Diversity” authors’ erasure and disparagement of Boalt student activism, see nn. 51–2.

45. We use the term “counter-discourse” in the sense suggested by Nancy Fraser: “Members of subordinated social groups have found it advantageous to constitute alternative publics . . . parallel discursive arenas where members of subordinated social groups invent and circulate counterdiscourses.”” A counter-discourse, then, interprets social reality in a manner opposed to subordination: see Nancy Fraser, “Politics, Culture, and the Public Sphere: Toward a Postmodern Conception,” in Social Postmodernism: Beyond Identity Politics, ed. Linda Nicholson and Steven Seidman (New York: Cambridge University Press, 1995), 287, 291.

46. Indeed, much of the first wave of CRT scholarship represents the synergistic approach in its relationship to antiracist organizing. In fact, many CRT founders wrote about movements or with movements in mind, attempting to intervene through their writings to produce new understandings of old problems in order to generate better theory. To name just a few examples, Derrick Bell’s work directly confronted civil-rights lawyers’ conflict of interest in representing their clients in the movement for school desegregation. Mari Matsuda grounded her call for a jurisprudential methodology that would “look to the bottom” by analyzing the Japanese American redress and reparations movement. Matsuda, Charles Lawrence, Richard Delgado, and Kimberlé Crenshaw collaborated to address the problem of “balancing” hate speech against First Amendment rights in their anthology, Words That Wound, a work that addressed the hostility that students of color often faced in campus environments. Based on his years of organizing, especially in the Chicano community, Gerald López developed a new orientation toward “rebellious” community lawyering that emphasized collaboration and empowerment, rather than the paternalistic, noblesse oblige model that civil-rights lawyers too often brought to the table. See generally Derrick A. Bell, Jr., “Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation,” Yale Law Journal 85 (1976): 470; Gerald López, Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice (Boulder, Colo.: Westview Press, 1992); Mari Matsuda, “Looking to the Bottom: Critical Legal Studies and Reparations,” Harvard Civil Rights–Civil Liberties Law Review 22 (1987): 323; Mari J. Matsuda et al., Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment (Boulder, Colo.: Westview Press, 1993).

Angela Harris contributed an important critique of feminist legal theory as falsely universal in “Race and Essentialism,” based in part on experiences of women of color. In her subsequent “Foreword—Jurisprudence of Reconstruction,” Harris realizes the synergistic potential of CRT’s ability to provide analysis and direction for activist intellectuals to interact with intellectual activists. Most recently, Eric Yamamoto has called for a more “practical turn” in theorizing that would emphasize the relationship between progressive lawyering and critical theorizing through “critical race praxis. Yamamoto speaks to the Lowell high-school admissions controversy and the Hawaiian sovereignty movement in his production of knowledge. These are but a few of the early works that explicitly foregrounded
power relations and collective community struggle as an empirical foundation for their theorizing. It is interesting to note that, with the exception of Yamamoto, all these works are clearly within the early foundational period of CRT, an observation we will revisit and expand on later. We believe that Harris’s critical insights in “Race and Essentialism” were based on contestation of racism within the women’s movement and certainly had potential to be synergistic, but ultimately ignored the larger political dynamic and danger of the right and segments of the left essentializing race-based movements. See generally Angela P. Harris, “Race and Essentialism in Feminist Legal Theory,” Stanford Law Review 42 (1990): 581. We view much of Harris’s later work as an eloquent corrective to her earlier work on antiessentialism. See generally Angela P. Harris, “Foreword: The Jurisprudence of Reconstruction,” California Law Review 82 (1994): 741, 778. On critical race praxis, see Yamamoto, “Critical Race Praxis,” 821.

47. Radical economists refer to the set of mutually reinforcing social and economic institutions as the “social structure of accumulation” (SSA). See John Miller and Chris Tilly, “The U.S. Economy: Post-Prosperity Capitalism?” Crossroads 23 (July–August 1992): 1, 2: “Successful accumulation requires a set of mutually reinforcing … institutions—rules of the economic game, implicit and explicit agreements, and the organizations that carry them out, including government agencies, business groupings, and popular organizations”). Such structures are fluid, have a limited lifetime, and are constantly being disassembled and reconstructed. For example, the post-World War II SSA involved three main components: 1) a “capital–labor accord,” which offered labor stability to key economic sectors by offering “productivity-plus” pay formulas in exchange for “no-strike” provisions in bargaining agreements; 2) a “capital–citizen” accord that provided the safety net of New Deal programs in exchange for social stability; and 3) a Pax Americana accord, which relegated the United States to the dominant role in the world (capitalist) economy, with its attendant role as global policeman. These three “pillars” permitting smooth accumulation of capital remained solidly in place until the early 1970s. Each pillar began to “crack” at this time, leading to the disruption in the social processes of accumulation and economic instability: ibid., 2–3. See also David M. Gordon, Thomas E. Weisskopf, and Samuel Bowles, “Power, Accumulation, and Crisis: The Rise and Demise of the Postwar Social Structure of Accumulation,” in Radical Political Economy: Explanations in Alter-


The professional intelligentsia, especially in a field such as law, may have their own particular labor–capital/capital–citizen accords. Because of their generous remuneration (relative to other academics) and elevated social status, law professors—even antisuordinationist law professors—may feel obliged to honor the implicit agreement of “collegial discourse,” at times a euphemism for the normalization of non-resistance to oppressive forces. The corporate academic institution, in exchange for its inclusion of the subaltern, can head off attacks of exclusionary practices from outside critics and thus guarantee its smooth accumulation process.

Angela Harris coined the term “disenchanted intellectual,” in “Foreword,” 741, 778.

48. The definition for “sublimation” is derived from Merriam-Webster’s Collegiate Dictionary, 10th ed. (Springfield, Mass.: Merriam-Webster, 1993). On sublimation in its psychoanalytic use, Freud developed the controversial sublimation thesis, and we should point out that our appropriation of the term in no way is an endorsement of its application of psychoanalytic theory. Rather, as the text states, our use is a kind of structural analogy. See Sigmund Freud, Introductory Lectures on Psychoanalysis (New York: Norton, 1966), 23, 345–6.


50. This thought is counterintuitive for some feminists who have found the basis of a political community built around women to be the common situation of women. On the incompatibility
between anti-foundationalism and feminist politics, see Kate Soper, "Feminism, Humanism and Postmodernism," Radical Philosophy 55 (1990): 11, asserting that feminist politics implies a movement based on the solidarity and sisterhood of women and doubting whether there can be specifically feminist politics under the anti-foundationalist assumptions of postmodernism. Also left nonplused are racialized group members who experience race as belonging to a racially defined community with common interests and perspectives.


53. Of course, the charge of PC-repression was incendiary, unfair, and utterly effective—with no semblance of "equal time" given to student activists accused of engineering "hegemony" to respond through the mass media to the outlandish accusations leveled at them by the press and pundits. Unfortunately, it was conservative intellectuals, not critical theorists, who were practicing synergistic theorizing at this time—combining theory and action to assist right-wing movements in recapturing the moral high ground on race politics. Aided by the crusading disparagement of "identity politics" by academics on the left, conservatives generally made it difficult and unpopular—worse yet, unfashionable—to respond to charges of "political correctness" with a forthright defense of race-conscious politics and law.

For a discussion of the rise of right-wing think tanks and their role in constructing a regressive civil-rights discourse, see Richard Delgado and Jean Stefancic, No Mercy: How Conservative Think Tanks and Foundations Changed America's Social Agenda (Philadelphia: Temple University Press, 1996). For an analysis of the simultaneous rise and popularization of the attacks on "identity politics" and "political correctness" by the academic left and the political right, see Cho, "Essential Politics," 443-53.

It is more than ironic that, at the historical moment that people of color began entering the halls of higher learning in appreciable numbers and making demands for greater inclusion, we are asked to check our identities at the door, when our identities were the excuse for denying us entrance in the first place. Up to this moment, it was the almost exclusive prerogative of white power to both subordinate and exclude people of color and women and then tell us in a basically white communication how it was done. See, for example, Richard Delgado, “The Imperial Scholar: Reflections on a Review of Civil Rights Literature,” in Crenshaw et al., Key Writings, 46, decrying the dominance of white male authors in leading law reviews writing about civil rights and only citing one another.

55. Though our responses to these questions are beyond the scope of this essay, we take up these issues in a forthcoming work. Prelimarily, we suggest that the essentialism-antessentialism debate represents a false dichotomy that reflects not so much a theoretical problem as a political one. This problem is correctly identified by Angela Harris in her critique of feminist jurisprudence: “In feminist legal theory, as in the dominant culture, it is mostly white, straight, and socioeconomic that we are both the group to which the story is told and the voice through which the story is told” (Angela P. Harris, “Race and Essentialism in Feminist Legal Thought,” in Critical Race Feminism: A Reader, ed. Adrien K. Wing [New York: New York University Press, 1993], 11). Given that the problem is distorted representation of group unity due to white, straight, or class privilege, we should challenge the illegitimate exercise of power and demand accountability while continuing to place a premium on political solidarity of viable group formations. Rather than championing creative individualism and attacking group-based political formations that have produced some relief from hegemony, we should insist on political accountability from the unrepresentative group that is speaking for all of us. Such an approach can challenge, rather than capitulate to, the continuing attack on group identities through the right’s political-correctness campaign and the left’s critique of identity (read: race, feminist, and gay) politics.

In our view, then, the crux of the problem is that the antessentialist critique may misdiagnose the classic tension within progressive movements—that is, that of solidarity versus accountability. Antiessestialists remain wary of inter-group political solidarity, equating it with a dangerous flattening of relevant difference. But the sublimation of the political problem of accountability into the more socially acceptable theoretical expression of antinessentialism within legal academe does a disservice to solidarity.

56. To address this problem, we suggest that activist RaceCrits provide the example to disenchanted RaceCrits that radical, race-based movements were not somehow more sexist, elitist, and homophobic than society at large. Many CRT scholars, especially those of the first wave, participated in race-based political formations, internalizing the various positive lessons and ethics of the movement, such as unity, solidarity, audacity, self-determination, critique and self-critique, and coalition. However, activist intellectuals also experienced the movement’s negative excesses and weaknesses—its sexism, ethnocentrism, homophobia, fratricide, sectarianism, vanguardism, etc. In addition, the power of social institutions (media, entertainment industry, universities, law enforcement, courts) to disparage, defame, and make invisible such movements, combined with antinessentialist skepticism toward racial formations, resulted in a one-sided, negative characterization of such movements that even its former participants are hesitant to rebut publicly. This self-censorship by movement participants, combined with the distanciation of the antinessentialist wing of CRT, tends, ironically, to foster an essentialized notion of all racial political formations as crudely nationalistic, sexist, and homophobic. Detachment from such movements prevents theorists from appreciating the wide range of race-based political organizing, from progressive-coalitional to chauvinist-nationalist forms.

57. We borrow the term intergroup justice, closely related to “interracial justice,” from Eric Yamamoto, who defines interracial justice as follows: “Interracial justice . . . reflects a commitment to anti-subordination among nonwhite racial groups. It entails in substance a hard acknowledgment of ways in which racial groups have harmed and continue to harm one another, sometimes through forms of oppression, along with affirmative efforts to redress past harms with continuing effects” (Eric K. Yamamoto, “Rethinking Alliances: Agency, Responsibility and Interracial Justice,” UCLA Asian Pacific American Law Journal 3 [1995]: 3).
PART FIVE

THE SEARCH FOR AN OPPOSITIONAL VOICE

CRITICAL RACE THEORY, ARCHIE SHEPP, AND FIRE MUSIC: SECURING AN AUTHENTIC INTELLECTUAL LIFE IN A MULTICULTURAL WORLD

John O. Calmore

If you ever find yourself, some when lost and surrounded by enemies
who won't let you speak in your own language
who destroy your statues & instruments, who ban your omm bomm ba boom
then you are in trouble
they ban your omm bomm ba boom
you in deep deep trouble
humpf
probably take you several hundred years
to get out!

—Amiri Baraka, Why/White

I. INTRODUCTION

A. Orientation Principles: Oppositional Cultural Practice, Fundamental Criticism, and Border Crossings

This article addresses the matters of race and culture. It reacts against assumptions similar to Gunnar Myrdal’s that “it is to the advantage of American Negroes as individuals and as a group to become assimilated into American culture, to acquire the traits held in esteem by dominant Americans.” This promise of social mobility is made in opposition to the idea that blacks and whites in the United States are inevitably tied to distinctly separate cultures. While I do not believe that distinct cultural division is inevitable, it is a persistent fact of life. Moreover, normatively I do not believe this is necessarily a bad thing.

As many whites experience competitive advantage and relative prosperity over blacks, they are encouraged to believe in an imagined cultural superiority that, in turn, reinforces their conviction—like that of nineteenth-century missionaries—that our blackness is a condition from which we must be liberated. In retreat briefly during the sixties, this conviction is once again salient. This article examines its underlying assumptions and value judgments against a background in which the nation’s meanings of race and social justice are being contested within a context of the increasingly complex dynamics of an evolving multicultural society, as non-European outside others press for a reinterpretation of America’s common ground, shared values, and rules of the game.

African-American jazz music relates to my quest here. Cornel West makes a number of points about jazz appreciation which I believe reflect upon how the art form inspires my approach to scholarship to the point that I place so much jazz stuff in a law review article. According to West:

One of the reasons jazz is so appealing to large numbers of white Americans is precisely because they feel in this black musical tradition, not just black musicians but black humanity is being asserted by artists who do not look at themselves in relation to whites or engage in self-pity or white put-down.

Jazz is the middle road between invisibility and anger. It is where self-confident creativity resides. Black music is paradigmatic of how black persons have best dealt with their humanity, their complexity—their good and bad, negative and positive
aspects, without being excessively preoccupied with whites. Duke Ellington, Louis Armstrong, and Coltrane were just being themselves.³

In the mid-sixties, Archie Shepp took his "fundamentally critical" tenor saxophone and stepped outside the commercially laden mainstream's musical community of assumptions and voiced his dissent beyond the ways it would be tolerated within the constraints of conventional jazz. Twenty-five or so years later, some legal scholars of color, including myself, are voicing our dissent from many of the law's underlying assumptions. It is Critical Race Theory's basic move from bit criticism to fundamental criticism that authenticates us as intellectuals of color and legitimizes us as exemplars of oppositional cultural practice. We are grounding critical race scholarship in a sense of reality which reflects our distinctive experiences as people of color. Race-conscious experience is a springboard from which we engage in fundamental criticism. . . .

II. Archie Shepp: The Who and Wherefore

A. Archie Shepp—The Creative Intellectual and His Oppositional Cultural Practice

As artistic expression, Archie Shepp's music reflects much of what Critical Race Theory's legal scholarship reflects, for art denotes skill in performance, as acquired through experience and observation as well as through study. Although this is an obsolete use, art once meant learning and scholarship. In its most distinct sense, art implies a personal, unanalyzable creative imagination and power. Art is a direct cultural manifestation that synthesizes and refines a lifestyle and worldview. Critical Race Theory's scholarship, at its best, creates an art style that represents a fulfillment of culture. Not content to imitate white or dominant scholarship's canons, methods, and analyses, people of color are adding our own distinctly stylized dimensions to legal scholarship. As Albert Murray observes, art stylizes experience: "What it objectifies, embodies, abstracts, expresses, and symbolizes is a sense of life. . . . More specifically, an art style is the assimilation in terms of which a given community, folk, or communion of faith embodies its basic attitudes toward experience."⁴

Archie Shepp was born in Fort Lauderdale, Florida, in 1937, and he grew up in Philadelphia. He graduated from Goddard College in 1959 with a degree in dramatic literature. Shepp first came to popular attention in this country in the early sixties. My "association" with Shepp dates back to my junior year of college at Stanford, in 1966, when the university sponsored a jazz weekend and Shepp presented his music. It was one of the most moving and black-reinforcing experiences of my life. Then as now, black intellect and black culture—black voices, if you will—were greatly misperceived and discounted. In college I was a token representative in what was literally an alien land, and from that position, the psychology of race compelled me to examine how values about differences were formulated and acted upon. Through Archie Shepp's fire music I came to appreciate how the psychology of race forces us to examine behavior at the personal, interpersonal, and societal levels. Prior to college, growing up in the black northwest community of an otherwise white Pasadena, I had never been forced to undertake such an examination, at least not rigorously, because in my small world being black was not the tight fit it proved to be in Palo Alto.

Archie Shepp entered this foreign, sometimes hostile world and stood as an artistic and intellectual giant who, in no more than two or three hours, presented to me (and the predominantly white audience) a counterdominant difference that simply had to be valued. He played his horn brilliantly and he articulated, with words like "transmogrification," what his role and artistry were all about. . . . He personified a positive contrast not only to the musical world of white America but also to the assimilationist ethic that purportedly had to be embraced and represented in order to "succeed."

. . . Amiri Baraka has described Shepp's music as "openly agitational art meant to get people hot and make them do something about the ugliness of what is. It was meant to be a revolu-
Oppositional Voice

In the context of American folk, or communal art, the black novelist Ralph Ellison has observed that the music of the blues and rock and roll were "for the Negro people, the people who live in the shadow of the blues, the people who long for the blues, the people who yearn for the blues, the people who are ready to embrace the blues, the people who are ready to dance to the blues, the people who are ready to sing the blues, the people who are ready to feel the blues, the people who are ready to think the blues, the people who are ready to write the blues, the people who are ready to paint the blues, the people who are ready to act the blues, the people who are ready to protest the blues, the people who are ready to love the blues, the people who are ready to hate the blues, the people who are ready to kill the blues, the people who are ready to die for the blues." This is the essence of the blues, as it is the essence of life for many African-Americans. It is a form of expression that is deeply rooted in the history and culture of the African-American community. The blues is a form of music that has been used to express a wide range of emotions, from joy to痛苦, from love to hate, from hope to despair. It is a form of music that has been used to tell the stories of the African-American experience, to express the struggles and triumphs of the African-American community. It is a form of music that has been used to inspire and challenge, to unite and divide, to celebrate and mourn. The blues is a form of music that is deeply connected to the history and culture of the African-American community, and it is a form of music that continues to be an important part of the lives of many African-Americans today.

B. The Bebop Roots of Fire Music

Bebop represented a conscious step toward African and African-American music that could not be commercialized by whites. Bebop represented a form of music that was not only to the musical community but also to the assimilationist community that was supposedly to be embraced in order to "succeed." The focus of this movement was on the black community, and it was meant to get people to recognize something about the black community as being both a revolution in terms of the black community and the community's attitudes toward the blues. The blues were a form of music that was created and developed by African-Americans, and it was a form of music that was used to express the experiences of African-Americans. The blues were a form of music that was used to express the struggles and triumphs of the African-American community. The blues were a form of music that was used to inspire and challenge, to unite and divide, to celebrate and mourn. The blues were a form of music that was deeply connected to the history and culture of the African-American community, and it was a form of music that continued to be an important part of the lives of many African-Americans today.

C. Fire Music Contextualized

Frank Kofsky has analyzed the revolutionary music—the fire music—that came out of the sixties, and he demonstrates that developments in that music paralleled the developments in the black community, developments that were characterized by black nationalism, the return to African roots, and increasing expressions of militancy. He argues that this music did not evolve in an aesthetic vacuum but, rather, reflected the social history of urban blacks in
America. At the time, many of the primary jazz innovators were expressing and anticipating black ghetto moods, emotions, and aspirations. He thus introduced his book with the normative assertion of Archie Shepp: “The Negro musician is a reflection of the Negro people as a social phenomenon. His purpose ought to be to liberate America aesthetically and socially from its inhumanity.”

Just as some have questioned the distinctive voice of Critical Race Theory, jazz critics sought to devalue the music of Shepp and other blacks who had departed from the mainstream. These critics argued that jazz is not primarily an African-American art form because anyone can learn to play it; jazz has no particular social content—“specifically, it in no way pertains more closely to black experiences, perceptive modes, sensibilities, and so on, than it does to white.”

It is of course true that whites play jazz. Indeed, groups led by Archie Shepp often included important white musicians, such as bassist Charlie Haden and trombonist Russell Rudd. Moreover, many of the most famous and commercially successful jazz musicians have been white: Dave Brubeck, Bob James, Stan Getz, David Sanborn, Bill Evans, Gerry Mulligan, Chet Baker, Benny Goodman, and Stan Kenton come to mind. But the jazz that whites play has historically been very different from that played by blacks. Much jazz innovation has been led by black artists whose music was influenced by their experience of living in a black world segregated from white society.

For example, a Langston Hughes poem explains bop music’s derivation as follows:

“You must not know where Bop comes from,” said
Simple, astonished at my ignorance.
“I do not know,” I said. “Where?”
“From the police,” said Simple.
“What do you mean, from the police?”
“From the police beating Negroes’ heads,” said Simple.
“Every time a cop hits a Negro with his billy club, that old club says,
‘BOP! BOP! . . . BE-BOP! . . . MOP! . . . BOP!’

“That Negro hollers, ‘Ooool-ya-koool! Ou-o-o-o!’
“Old Cop just keeps on, ‘MOP! MOP! . . . BE-BOP! . . . MOP!’

That’s where Be-Bop came from, beaten right out of some Negro’s head into these horns and saxophones and piano keys that plays it . . .

The contention that the fire music of the sixties was either antijazz or devoid of social content is myopic. As Shepp says: “Some of us [jazz musicians] are more bitter about the way things are going. We are only an extension of that entire civil-rights—Black Muslims—black nationalist movement that is taking place in America. That is fundamental to music.” By relying on an identification with urban black America and by rejecting the canons of European culture, Shepp’s fire music was distinctively black. And like Critical Race Theory’s readership, for many listeners it was an acquired taste.

III. Critical Race Theory Themes, Perspectives, and Directions

A. An Overview of Critical Race Theory

Critical Race Theory begins with a recognition that “race” is not a fixed term; instead, it is a fluctuating, decentered complex of social meanings that are formed and transformed under the constant pressures of political struggle. The challenge thus presented is to examine how individual and group identities, under broadly disparate circumstances, as well as the racial institutions and social practices linked to those identities, are formed and transformed historically by actors who politically contest the social meanings of race.

As a form of oppositional scholarship, Critical Race Theory challenges the universality of white experience and judgment as the authoritative standard that binds people of color and normatively measures, directs, controls, and regulates the terms of proper thought, expression, presentment, and behavior. As represented by legal scholars, Critical Race Theory challenges the dominant discourses on race and racism as they relate to law. The task is to identify values and norms that have been dis-
Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life

guised and subordinated in the law. As critical race scholars, we thus seek to demonstrate that our experiences as people of color are legitimate, appropriate, and effective bases for analyzing the legal system and racial subordination. This process is vital to our transformative vision. This theory-practice approach, a praxis, if you will, finds a variety of emphases among those who follow it, and the concepts are now rather open and still being explored.

John Brenkman provides some insight as to what makes Critical Race Theory “critical.” Although he focuses on how literary criticism can foster social criticism, his “critical hermeneutics” can be applied to interpreting texts as I have characterized them here. He sees culture as constituting the forms of symbolization, representation, and expression through which a group secures its identity and solidarity. Culture enables a group to situate reciprocal relationships and mutual understandings while simultaneously differentiating itself from other groups with which it is interdependently linked, whether as a matter of cooperation or of antagonism. Hence, there is a tightly woven interplay between social critique, especially as oppositional cultural practice, and experiential interpretation. One’s hermeneutic experience, however, does not automatically lend itself to critique. Instead, Brenkman contends that what determines whether our interpretations are socially critical or uncritical is the set of commitments we develop regarding the symbolic and social struggles between the legitimation and the opposition to domination, oppression, and injustice. So, then, Critical Race Theory can be identified as such not because a random sample of people of color are voicing a position but, rather, because certain people of color have deliberately chosen race-conscious orientations and objectives to resolve conflicts of interpretation in acting on the commitment to social justice and antismall.

Drawing again from Brenkman, I contend that Critical Race Theory can be described in part as an expression of critical hermeneutics which reflects what he characterizes as a way of appreciating the dynamics of a “critical-utopian interpretation of cultural practices and tradi-

Insofar as the transmitted text comes to address new interpreters, it occasions or invites a communicative experience that is no longer contained within the horizon of the text’s original context or the close circle of its original audience. As so as the text comes to address interpreters who are differently situated historically and socially, its promise of uncoerced mutual understanding undergoes a change. The text now makes a claim to validity that was not imminent in its original context. The new claim to validity comes from the specific, historically contingent demands for validity on the part of the interpreters—demands shaped by contemporary forms of resistance and opposition to domination and to the systematic distortions of communication which legitimate domination.

Like fire music’s oppositional stance, Critical Race Theory presents not only a different method-ology and grounding but also a message different from traditional race scholarship, now euphemistically known as “civil rights” or “anti-
discrimination" scholarship. Critical Race Theory recombines and extends existing means of legal redress; hence, it is necessarily eclectic, incorporating what seems helpful from various disciplines, doctrines, styles, and methods. The theory attempts to extend the narrow world of traditional legal scholarship without indulging in dysfunctional deviance, instead establishing intellectual credibility, on the one hand, and reconciling the elements of effective theory and practice, on the other. Explanation arises from the particular and the personal. In contrast to traditional scholarship, the focus is much more extralegal and contextual, less restricted by doctrinal analysis as a controlling center. It is concerned with redressing conditions of oppression and subordination which exist beyond their narrow translation into judicially recognizable claims and relief. Historical discrimination and its legacy merge more definitively and symbolically with the present to provide the temporal context. While not abandoning a faith in rights strategy, Critical Race Theory recognizes that such a strategy cannot be divorced from the larger economics and politics of things. It recognizes that whatever the specific issues of legal cases and controversies may be, the overriding issues of social justice and institutional legitimacy always lurk nearby.

Critical Race Theory recognizes the inadequacy of disaggregating individual plaintiffs and causes of action from the larger context of social conflict which lies at the heart of a racist regime. Hence, formal, individualized equality of opportunity and objective norms of meritocracy can hardly serve as viable opposition to group inequality and subjective bias. Moreover, societal fault and accountability cannot be reduced to actionable claims only when evidenced by individual responsibility for intentional wrong. Finally, many adherents of Critical Race Theory see an interlocking set of oppressions that extend beyond the singular base of race and include the bases of gender, economic class, and sexual orientation.

Critical Race Theory attempts to construct a social reality and direct operation within it. It is a way of finding meaning within legal scholar-

ship through combining language, thought, and experience. Voice is important—how voice is expressed, how voice is informed, how our voice differs from the dominant voice. Hence, Critical Race Theory's linguistics is experiential and pragmatic, focusing on "the nature of language as a social instrument, an instrument through which human beings create or constitute or stipulate a (social) world they may share, and then... 'get things done with words' in that world." Our voice, as heard in legal scholarship, recounts our perception, experience, and understanding of law in ways that are primarily colored, if you will, by our own unique biography and history. As people of color, we recognize the centrality of race in a social order that is maintained and perpetuated in significant ways by the rule of law. As scholars, our writing acknowledges this centrality that contextualizes our work.

B. Authenticity and the Existential Grounding of Critical Race Theory

The power to define ourselves and our world is radical per se. However, Critical Race Theory also helps to erect and maintain a sense of authenticity, without which our work will probably fail to connect significantly with our community's agenda of social action. Authenticity implies trustworthiness and good faith in presentation. I associate it quite closely with integrity. According to Robert Terry, by guiding our actions, authenticity characterizes a force in our lives that allows us not only to make sense of our world but also to act purposefully within it. In this way, authenticity connotes being true to both oneself and one's world. Terry explains further: "If I am untrue to the world, I lose my grasp on what is happening around and to me and thus make judgments that lead to behaviors inappropriate to situations in which I find myself. I distort what is happening to me and, because of this false diagnosis of my situation, continually make erroneous judgments."19

Terry is analyzing racism as a source of inauthenticity in white people, their organizations, and their institutions. He distinguishes the inauthenticity of whites from the alienation of
Introduction

This book collects the best writing of a new generation of civil rights scholars—the cutting edge of Critical Race Theory, or CRT. Here you will find the ironic, challenging Chronicles of narrativist Derrick Bell, the evocative first-person stories of Patricia Williams, the implacable assault on traditional civil rights strategies of Girardeau Spann. You will read Paul Butler’s startling suggestion that black juries acquit black defendants who are not dangers to the community, and James Gordon’s painstaking historical sleuthing that concludes that the first Justice Harlan, author of the dissent in *Plessy v. Ferguson*, had a black brother. You will read Julie Su’s story of how activists successfully confronted garment-district sweatshops in a contemporary city, Gerald López’s and Anthony Alfieri’s impassioned defenses of engaged lawyering, and Peggy Davis’s arresting description of legal “microaggressions”—those stunning, ambiguous assaults on the dignity and self-regard of people of color. You will read about Latino/a–Critical (“Lat-Crit”) studies, an emerging subdiscipline within CRT, and the debate over whether a black-white binary paradigm of American antidiscrimination law paradoxically discriminates against Latinos and Asians. Lat-Crit scholar George Martinez analyzes judicial decisions grappling with whether Mexican Americans are white, and concludes that they generally were held to be so when this would hurt the group—but nonwhite when it makes no difference.

Are radical law professors who spend their hours in the ivory tower vampires? In a supremely satirical article, American Indian law scholar Robert Williams argues that they are, and that they should come down from the tower, roll up their sleeves, and join the fray at street level. And in an essay that rivals the best of Tom Wolfe, you will read the late Trina Grillo and Stephanie Wildman’s demonstration of how white people, even ones of good will, unconsciously turn discussions about race around so that the conversation ends up being about themselves! You will read about the atrocities of federal Indian law, the problem of statistical discrimination and what to do about racism that seems “reasonable”—based on statistically valid generalizations about a group—and interethnic group alliances and tensions. You will read about black women who chose to wear their hair in braids (and lived to tell the tale), and about those who wear race as a mask. You will read about what it is like to be a professor of color teaching law at a major school, or a gay or lesbian of color trying to find a place for oneself in the larger civil rights movement. Have you ever wondered how the white race created itself? You will read here Ian Haney López’s surprising answer that the Supreme Court played a large part in that construction.

This book is for the reader who wishes to learn about Critical Race Theory,
a dynamic, eclectic, and growing movement in the law, and about the young writers, many but by no means all of color, who have been challenging racial orthodoxy, shaking up the legal academy, questioning comfortable liberal premises, and leading the search for new ways of thinking about our nation's most intractable, and insoluble, problem—race.

Critical Race Theory sprung up in the mid-1970s with the early work of Derrick Bell [an African American] and Alan Freeman [a white], both of whom were deeply distressed over the slow pace of racial reform in the United States. It seemed to them—and they were quickly joined by others—that the civil rights movement of the 1960s had stalled, and indeed that many of its gains were being rolled back. New approaches were needed to understand and come to grips with the more subtle, but just as deeply entrenched, varieties of racism that characterize our times. Old approaches—filing amicus briefs, marching, coining new litigation strategies, writing articles in legal and popular journals exhorting our fellow citizens to exercise moral leadership in the search for racial justice—were yielding smaller and smaller returns. As Freeman once put it, if you are up a tree and a flood is coming, sometimes you have to climb down before finding shelter in a taller, safer one.

Out of this need came Critical Race Theory, now a body of more than four hundred leading law review articles and dozens of books, most of which are noted or excerpted in this volume. The movement has predecessors—Critical Legal Studies, to which it owes a great debt, feminism, and continental social and political philosophy. It derives its inspiration from the American civil rights tradition, as represented by such leaders as Martin Luther King, W.E.B. Du Bois, Rosa Parks, and César Chávez, and from nationalist movements, as manifested by such figures as Malcolm X and the Black Panthers. Although its intellectual origins go back much further, as a self-conscious entity the CRT movement began organizing in 1989, holding its first working session shortly thereafter. This book grew out of the 1993 annual summer workshop held at Mills College in Oakland, California, when the organization decided to put its energies into producing a reader. The first edition, which appeared in 1995, was adopted in courses in more than one hundred colleges and universities around the world. This second edition builds on the first but contains much new material, including major sections dealing with crime, gay-lesbian issues, the black-white binary, intergroup tensions, and critical race practice and activism. It also includes much new writing by young Asian and Latino/a scholars.

CRT begins with a number of basic insights. One is that racism is normal, not aberrant, in American society. Because racism is an ingrained feature of our landscape, it looks ordinary and natural to persons in the culture. Formal equal opportunity—rules and laws that insist on treating blacks and whites (for example) alike—can thus remedy only the more extreme and shocking forms of injustice, the ones that do stand out. It can do little about the business-as-usual forms of racism that people of color confront every day and that account for much misery, alienation, and despair.
Critical Race Theory’s challenge to racial oppression and the status quo sometimes takes the form of storytelling in which writers analyze the myths, presuppositions, and received wisdoms that make up the common culture about race and that invariably render blacks and other minorities one-down. Starting from the premise that a culture constructs its own social reality in ways that promote its own self-interest, these scholars set out to construct a different reality. Our social world, with its rules, practices, and assignments of prestige and power, is not fixed; rather, we construct it with words, stories, and silence. But we need not acquiesce in arrangements that are unfair and one-sided. By writing and speaking against them, we may hope to contribute to a better, fairer world.

A third premise underlying much of Critical Race Theory is interest convergence. Developed by Derrick Bell, this concept holds that white elites will tolerate or encourage racial advances for blacks only when such advances also promote white self-interest. Other Criticalists question whether civil rights law is designed to benefit folks of color, and even suggest that it is really a homeostatic mechanism that ensures that racial progress occurs at just the right pace: Change that is too rapid would be unsettling to society at large; that which is too slow could prove destabilizing. Many question whether white judges are likely to propel racial change, raising the possibility that nonjudicial avenues may prove more promising. A number of writers employ Critical tools to address such classic civil rights issues as federal Indian law, remedies for racist speech and hate-motivated crime, and women’s reproductive liberty.

In addition to exploring new approaches to racial justice, Criticalists have been trying out new forms of writing and thought. Many Critical writers are postmoderns, who believe that form and substance are closely connected. Accordingly, they have been using biography and autobiography, stories and counter-stories, to expose the false necessity and unintentional irony of much current civil rights law and scholarship. Others have been experimenting with humor, satire, and narrative analysis to reveal the circular, self-serving nature of particular legal doctrines or rules. Most mainstream scholars embrace universalism over particularity, and abstract principles and the “rule of law” over perspectivism (an approach characterized by an emphasis on how it was for a particular person at a particular time and place). Clashing with this more traditional view, Critical Race Theory writers emphasize the opposite, in what has been termed the “call to context.” For CRT scholars, general laws may be appropriate in some areas (such as, perhaps, trusts and estates, or highway speed limits), but political and moral discourse is not one of them. Normative discourse (which civil rights is) is highly fact-sensitive, which means that adding even one new fact can change intuition radically. For example, imagine a youth convicted of a serious crime. One’s first response may be to urge severe punishment. But add one fact—he was seen laughing as he walked away from the scene—and one’s intuition changes: Even more serious punishment now seems appropriate. But add another fact—he is mentally impaired or was abused as a child—and now leniency seems in order. Because civil rights is more like the latter case than the former (highway law),
neutral universal principles like formal equality can be more of a hindrance than a help in the search for racial justice. For this reason, many CRT writers urge attention to the details of minorities' lives as a foundation for our national civil rights strategy.

Each of the prime Critical themes just mentioned—the insistence that racism is ordinary and not exceptional, the notion that traditional civil rights law has been more valuable to whites than to blacks, the critique of liberalism, and the call to context—has come in for criticism. Some mainstream critics challenge the use of stories and parables, warning that they can be employed to mislead as easily as ordinary analysis can. Others charge that the "race-Crits" are too negative, and that the despairing images of racial progress and regress that they put forward leave too little room for hope. Still others write that we play fast and loose with truth, or "play the race card" in trials. A number of these arguments appear in this volume, particularly in Part XV, along with the Crits' responses. Ultimately, the reader will have to decide whether our system of civil rights law needs a complete overhaul, as the CRT writers argue, or just a minor tune-up, and, if the former is true, whether the race-Crits' suggestions are good places to start. It is with the hope that the sixty-three closely edited selections by the enfants terribles (and éminences grises) of the left can help the reader make this decision, that Temple University Press offers this book.
WHAT IS CRITICAL RACE THEORY?

This interpretation of antidiscrimination law is part of a larger critique loosely termed critical race theory. While no determinative definition of this work is yet possible, one can generally say that the literature focuses on the relationship between law and racial subordination in American society. It shares with liberal race critiques a view that law has provided an arena for challenging white supremacy. Critical race theory goes beyond the liberal critiques, however, in that it exposes the facets of law and legal discourse that create racial categories and legitimate racial subordination.

Other broad themes common to critical race theory include the view that racism is endemic to, rather than a deviation from, American norms. This developing literature reflects a common skepticism toward dominant claims of meritocracy, neutrality, objectivity, and color blindness. Critical race theory embraces a contextualized historical analysis of racial hierarchy as part of its challenge to the presumptive legitimacy of societal institutions.

The work manifests an appreciation of the role of the lived experience of people of color in constructing knowledge about race, law, and social change.

Critical race theory draws upon several traditions, including poststructuralism, postmodernism, Marxism, feminism, literary criticism, liberalism, and neopragmatism and discourses of self-determination such as Black nationalism and radical pluralism. The work is thus aggressively interdisciplinary in an effort to understanding more fully how race is constructed, rationalized, and experienced in American society. Critical race theory goes beyond liberal understandings of race and racism by exploring those of its manifestations that support patriarchy, heterosexism, and class stratification. The normative stance of critical race theory is that massive social transformation is a necessary precondition of racial justice.
CHAPTER ONE

The First Decade: Critical Reflections, or “A Foot in the Closing Door”

Kimberlé Williams Crenshaw

In the introduction to Critical Race Theory: The Key Documents That Formed the Movement, Gary Peller, Neil Gotanda, Kendall Thomas, and I framed the development of Critical Race Theory as a dialectical engagement with liberal race discourse and with critical legal studies. We described this engagement as constituting a distinctively progressive intervention within liberal race theory and a race intervention within CLS. As neat as this sounds, it took almost a decade for these interventions to be fleshed out fully. Reflecting on the past ten years of CRT, this essay explores the course of these interventions from the personal perspective of an organizer and early participant of CRT. Looking forward, I offer some speculative and aspirational views about our future.

It should be noted at the outset that this dialectical engagement occurred not in the abstract but in a context shaped by specific institutional struggles over concrete issues that were set in motion by certain individuals. While the broad ideological trajectory of CRT was set forth in the introduction to Key Documents, here I amplify that analysis by setting forth more of a social narrative of CRT’s origins: a series of interactions, events, personal relationships, and institutional engagements that prefigured a conscious recognition of CRT. Some of these interactions were undertaken consciously to develop CRT as a movement; others were only later revealed to have contributed significantly to the formation of CRT as a movement.

Though aimed at setting forth a social narrative of CRT’s first iterations, this account is inherently a personal narrative that reflects the multiple positions from which I have related historically to the events I tell. From the vantage point of a student, a young professor, an organizer, and now a first-generation participant of a multigenerational project, I recall events that not only inspired CRT’s formation but that also shaped me. It thus is a personal narrative in the sense that the author and narrative tell each other. No doubt many of the events I discuss here are especially memorable because they shaped my perspectives
about a number of things, including the teaching profession, institutional politics, organizing and leadership—particularly its gender and race dimensions—the media, and, of course, the functional dynamics of race in post-civil-rights society.

Consequently, there are as many different points of departure in the narrative of early CRT as there are people associated with it. In this account, the contributions of one scholar stand out, a scholar whose academic insurgency lit the path toward Critical Race Theory and one to whom we owe an enormous intellectual debt: Derrick Bell.

Derrick Bell: From “Race, Racism, and American Law” to the “Alternative Course”

Bell was at the center of the germination of CRT in at least two important ways. Institutionally, it was his (first) departure from Harvard Law School (HLS) in 1981 that prompted a group of students to struggle with the dean over the curricular marginalization of race. As students of the post-integration generation, many of us were close enough to an activist tradition to question certain institutional arrangements—specifically, the dearth of minority law professors and the relative complacency of those who were convinced that this problem lay outside the discourse of desegregation and antidiscrimination. As the Civil Rights Movement segued into various liberationist movements, students and young activists were confronting the reality that formal segregation was not the only mechanism through which racial power would find expression in American institutions. These realities were readily apparent in the hallowed halls of HLS, where many of us found ourselves in the midst of a struggle over the curricular and personnel consequences of Bell’s departure. We understood that Bell’s departure was in part a consequence of his long and only partly successful struggle with the law school on issues relating to the recruitment of professors of color. In the wake of his departure, the school failed to put in place any plans to have Bell’s courses taught. In our view, not only should Bell’s courses be taught, but this curricular vacuum provided the school with an important opportunity to desegregate the faculty by hiring a person of color.

The articulated resistance to our demands was enlightening. Not only did our dean question the value that a course such as “Constitutional Law and Minority Issues” would add to our curriculum, but he also made the rather startling claim that there were few if any people of color in the country “qualified” to be hired at HLS. This framing of the issue gave many of us involved in that struggle a clear sense about how conceptions such as colorblindness and merit functioned as rhetorics of racial power in presumptively race-neutral institutions. Bell’s resignation thus set in motion a chain of events that ultimately would erupt into a controversy surrounding affirmative action that drew national attention. The ensuing struggle would provide fertile ground for the emergence of a critical discourse around contemporary forms of race and social power. The ensuing struggle would also provide the occasion for scholars across the country to gather in the heat of this contest and to develop important intellectual relationships that would strengthen and grow in a series of subsequent connections.

Professor Bell was influential not only in setting the context for contesting the exclusionary practices of elite law schools, but also in helping to establish a scholarly agenda that placed race at the center of intellectual inquiry rather than at the margins of constitutional theory. Bell’s bold departure from the discursive conventions
of legal scholarship laid down an analytical track that would satisfy our quest for new ways of framing the complex relationships between law and our everyday experiences of race in America. This was no small undertaking.

At a long-overdue tribute to Bell in 1992, I recounted how I had come to understand Bell's stance in academe as analogous to that infamous image of Tommy Smith and John Carlos, two African Americans who raised their black-gloved hands in a Black Power salute while the National Anthem played in their honor at the 1968 Olympics. I was a child at the time, yet I remember vividly the near-hysteria that overtook the country at the very sight of these sleek athletes imposing this powerful symbol of the Black liberation at such an august occasion. Although the labeling of and debate about identity politics was not fully articulated at the time, critics condemned the act as a dangerous and ill-conceived performance of racial grievance that tragically undermined and fractured the presentation of the American subject. That this explicit critique of America was performed on the world stage at precisely the moment that America's pluralistic superiority was to be celebrated struck some as virtually treasonous. To critics, this reckless decision to insert racial politics into that pristine patriotic moment had embarrassed the country in front of the world. For this act, Smith and Carlos were certain to be punished.

There was a lot that I didn't understand about race at the time, but I certainly knew from the angry reports at the time that Smith and Carlos were in serious trouble for performing something Black in front of the world. In explaining to me why so many people seemed to be so angry, my parents likened such reactions to how they themselves would respond if I had decided to act out in church. (Interestingly enough, my mother's term for such misbehavior was "performing in public," and the punishment for such transgressions was severe.)

Given my family's own rules about acting outside the family's approved public script, it struck me that, unlike many Americans, my family was not at all mad at Smith and Carlos. My brother, a Panther wanna-be (actually, I'd really have to say that Panther politics were shared by my mom, as well), said "Right on!" when he saw the replay of the raised-fist salute. My mother said something about the fate of Jesse Owens, an earlier "colored" Olympian who apparently had done what he was supposed to do at Hitler's Olympics—win—and in return was rewarded with the opportunity to race against horses following his heroic homecoming. My father, impressed by the courage of Carlos and Smith, talked about how everything was going to "hit the fan" as a result of that raised-fist salute. "They're tellin' it like it is," they all agreed with pride.

Maybe that vivid memory was why I immediately resonated with Bell's text Race, Racism and American Law when first I opened the pages to find that sketch of Smith and Carlos. It was 1981, and I was one of many students who had chosen Harvard because the renowned Derrick Bell was there, only to be disappointed to find that he had departed a few months earlier. I bought the book nonetheless, eager to see whether the pages of his text filled in the gaps between what our very expensive education offered and what many of us felt we needed to know.

From the very first chapter it was apparent that Bell's approach diverged from standard fare in several important respects. Traditional scholarship on race was at this point firmly grounded in the liberal individual-rights model. The objective was to get these second-class citizens some rights, but the efforts to secure these rights had to be reconciled with other important interests, such as federalism, the free-market
economy, institutional stability, vested expectations, and the like. Anticipating a conservative counter-critique, early scholarship around race sought to legitimate a certain amount of judicial "activism" in the face of concerns about judicial overreach, social engineering, political agenda setting, and recommitting the interventionist errors of Lochner.6

Bell's approach diverged from this conventional orientation in at least two important ways. First, for Bell, the question was not how to justify judicial interventions on behalf of the interests of racial equality against independent, pre-existing interests. These interests themselves often functioned as repositories of racial subordination. Nor, in his view, should success in achieving constitutional protection be measured solely in terms of individual rights. The point was to understand how laws contributed to the systemic empowerment of African Americans more broadly. Moreover, Bell understood that the measure of civil-rights law is its concrete effectiveness in helping to contest the actual conditions of racial domination. Bell, therefore, was a realist in that he looked at legal rules in terms of their function in a racial world; he was a Crit in that he understood the indeterminate and frequently contradictory character of law.7 Bell was thus not only a racial realist but an early critical race theorist.

No one, of course, was using the "Critical Race Theory" label at the time—it would be years before that term would be coined. But it was clear that Bell marched to a different beat, and a lot of us wanted more exposure to that rhythm through a course that the school was prepared to let slip into obscurity. We students felt that it was unfortunate that Professor Bell had left HLS, but we did not understand why his course had been dropped from the curriculum and why no plans were in the offering to use this curricular need as an opportunity to recruit minority professors. Pressing the matter against an initially uninterested administration, nearly 500 students signed a petition urging HLS to reinstate "Constitutional Law and Minority Issues" and to hire tenure-track professors to teach this and other courses addressing minority issues. At a follow-up meeting to underscore our concerns, Dean Vorenberg asked a startled student delegation whether we wouldn't prefer "an excellent white teacher" to a "mediocre black one." To emphasize his point, the dean contrasted a leading white civil-rights lawyer with a nameless mass of unqualified minorities. This stunning invocation of one of the principle justifications for the dearth of minority professors set the terms for the protracted contest over affirmative action that would eventually spill over into the national arena.

Although the dean's inartful articulation of the "pool problem" was more than enough to make the meeting significant, the dean also articulated a more subtle challenge to our demands that would eventually generate a powerful response. What was it, he queried, that was unique about a specific course on constitutional law and minority issues that required such a specific course? Why couldn't we students distill what we wanted from existing courses—say, Constitutional Law—in conjunction with a legal-aid placement? We knew we lacked the language to explain what was unique and important about such a course. We also knew that if burden remained on students to articulate what we would learn in a course that had not yet been offered, the school was poised to win by default.

The Black Law Student Association (BLSA) responded to the pool problem by generating a list of more than thirty minority professors around the country whom it urged HLS to consider as candidates to teach the course. Yet at year's end, the course remained unstaffed. In the midst of
growing tension about HLS's apparent reluctance to engage any of the available minority law professors to teach the course, the school announced that ten white male professors had been hired. This announcement served to sharpen the conflict and broaden the coalition of students demanding affirmative action, but it was HLS's next move that tipped agitation into active protest. In response to students' demands for the course "Constitutional Law and Minority Issues," the school offered a three-week mini-course on civil-rights litigation, an inadequate response on numerous fronts. First, we wanted a full-semester course—something that would constitute a sustained treatment of race throughout the entire term. Second, we wanted a course with a broader scope than one that focused on civil-rights practice as such. We understood that the course being offered was a review of remediation structures. Although we know that remediation was important, we wanted to ground our studies in a thorough understanding of how law constituted the problem of race in the first place. At this time, we were encountering heavy silence about race throughout the curriculum, even though we knew that it lay just beneath the surface of many of our courses.

Finally, we wanted the school to use the course opening as a target of opportunity to recruit a full-time minority law professor. Harvard certainly was behind the eight-ball in terms of integrating its faculty: At the time, there was one tenured and one untenured faculty of color among HLS's seventy-plus professors. Thus, the crux of the difficulty between us students and the administration was that we saw racial experience as a "plus" factor, whereas conventional and widely held opinion dictated that such considerations be rejected as discriminatory and backward. Nevertheless, we remained convinced that we needed more professors of color at Harvard, not simply because of the superficial "color" they would bring to the halls, but because we valued the varying perspectives on law that would be brought into the classroom by those who have lived lives as non-white in American legal culture.

Clearly, other criteria mattered as well, but it was obvious to us that traditional criteria did not begin to value a range of experiences that we thought were qualifying while the administration did not. To the considerable extent that the school's down-to-the-wire decision to offer a mini-course taught by two visiting civil-rights lawyers was grounded in the assertion that there were no qualified people of color to be hired by HLS to teach race-related courses, we felt it was imperative to demonstrate our deep rejection both of that logic. But our student boycott was neither a rejection of the importance of studying civil-rights practice nor a rejection of the well-respected men who were coming to teach it. Rather, it was a rejection of the mini-course as a completely inadequate response to our pedagogical demands and of the institutional rhetoric through which our demands were distorted and ultimately dismissed.

Necessity is the mother of all invention, and so it was with the dean's refusal to have the course taught. The Third World Coalition decided to organize an "Alternative Course."8 The coalition was made up of representatives of all the student-of-color organizations. We worked with the support of other students groups as well. We pooled our resources and raised money from other sources to invite academics of color to come to Harvard to teach a chapter out of Bell's book. We saw our efforts not only as an attempt to create for ourselves the educational experience the school had denied us, but also as an opportunity to provide a showcase of intellectual talent that effectively would counter the dean's claim that the pool of qualified scholars of color was
prohibitively shallow. Among the scholars who answered our request to participate were several who would become central figures in CRT: Chuck Lawrence, Richard Delgado, Linda Greene, Denise Carty-Bennia, and Neil Gotanda. Other participants in the course who were similarly engaged in a critical project were John Brittain, W. Haywood Burns, Robert Coulter, Harold MacDougall, and Ralph Smith. There were students, too, who would later contribute to the development of a new intellectual moment, including Mari Matsuda and myself. CLS faculty members at Harvard contributed to the effort as well by attending lectures and by giving students independent-study credit for papers written in conjunction with the course.

With a registered enrollment of more than two hundred students and the participation of a dozen faculty throughout the country, the Alternative Course was a success. It would also be a gift to the future that keeps on giving. It served as an important precursor to CRT having brought legal scholars and students together from across the country to address race from a self-consciously critical perspective. The Alternative Course, and the institutional struggle that created it, produced a critical mass of people of color who were intellectually and politically connected to one another and to a particular transformative moment. This critical mass of academics would now have in common an institutional text from which to decipher the institutional rhetorics of racial exclusion, and a collective engagement with an alternative textbook that provided a sustained counter-critique to prevailing conceptions of equality. Of course, at the time we did not fully appreciate the opportunity that the law school had given us to ground a future movement. To be sure, we were sorely disappointed by Harvard’s reaction to our demands. Yet in terms of future dividends, the school’s rejection may have been the best thing to have happened to us. Indeed, it could be that CRT was conceived in the very moment we were challenged to articulate what was compelling and unique about an inquiry focused on the relationship between race and law.

Of course, the Alternative Course was just an embryonic consequence of our determination to exercise political will against institutional resistance; its viability as a sustained enterprise was scarcely imaginable at the time. Yet the intellectual muscle many of us gained from being forced to create a meaningful dialogue about race and law in the teeth of institutional resistance was apparent even then, and it has served us well since. We gained proficiency in negotiating the institutional politics of race, including the ability to nurture cross-racial coalitions. We learned to decipher the institutional language through which racially subordinating values and preferences would be encoded, whether intentional or not. We learned to anticipate gross distortions of our viewpoints through the sometimes vicious attacks we received from the media, especially from liberal spokespeople. More important, we each found support in our rejection of discursive conventions that typically forced us to think and talk about racial injustice in ways that distanced us from our own experiences.

That there were others—dozens of others—who believed one could think meaningfully and legitimately as a legal “scholar” while remaining committed to progressive racial transformation gave us the liberty to think creatively and to write boldly. Perhaps as a consequence of this inception, CRT has been able to eschew and transcend racial convention. For many of us who later became critical race theorists, the Alternative Course made possible a sustained interaction with one another while foregrounding a text and an interpretive framework on civil-rights law that was as different from
the norm in legal education as was Smith and Carlos's symbolic salute at the 1968 Olympics.

Although we scattered after the course, the momentum continued. Some participants in the Alternative Course—including its instructors, organizers, students, and sponsors—would come together in various venues over the next few years, many at CLS conferences and summer camps. Students at Stanford, Berkeley, Columbia, and other law schools took up the demands to desegregate the faculty and curriculum, some drawing inspiration from the events at Harvard. Lawrence, Gotanda, Delgado, and others continued to expand the parameters of race scholarship and, by so doing, opened the terrain to subsequent scholars, some of whom included students exposed to these openings through these very desegregation struggles. Mari Matsuda, for example, returned to Hawaii to become the first Asian American woman to teach at the University of Hawaii Law School and there began to shape a pathbreaking career in legal education. Several other participants in the course wound up in legal education, including the late Muhammad Kenyatta (Buffalo), Tony Thompson (New York University), George Bisharat (Hastings), Ibrahim Gassama (Oregon), Glenn Morris (University of Colorado), and F. Burnette Carter (George Washington University).

For me, the Alternative Course confirmed that there was an answer to the question the dean had put before us: There was indeed substantive content and pedagogical value to be derived from a focused study of the relationship between race and law. Neither could be appreciated by any course on constitutional law, any placement with legal aid, or even a three-week seminar on civil-rights litigation. This much was clear. What wasn't clear, however, was the sometimes contentious relationship between the emerging perspectives of scholars of color and those of our progressive allies in CLS. The limitations of traditional liberal discourses on race that we encountered at Harvard had firmly convinced me that we weren't fish, but it also seemed to me from some of the emerging rhetoric on race within CLS that perhaps we weren't fowl, either. I left Harvard and headed for the University of Wisconsin—some would say the "official" birthplace of CLS—with a goal of thinking more about this double marginality.

The CLS Conferences of the Mid-1980s

The events described in the previous section constituted one dialectical engagement: the critical intervention in conventional institutional rhetorics of race. CRT, however, also reflects a simultaneous encounter of people of color with CLS. Since the inception of CLS, a few people of color have always been present to varying degrees. Some have maintained a sustained presence. Neil Gotanda, for example, participated in the founding meeting of CLS at Madison, Wisconsin, in 1977. Others cycled through at various points, attending meetings and retreats during some of the more dynamic moments of CLS's early formation. Some were professors, such as Regina Austin, Denise Carty-Bennia, Chuck Lawrence, Gerry Spann, Patricia Williams, Linda Greene, and Gerald Torres. Others first visited CLS as students, including Mari Matsuda, Stephanie Phillips, Teri Miller, and me. Regardless of our status as professor or student, newcomer or veteran, at each meeting or retreat we usually found ourselves off in someone's room, engaged in animated discussion about the racial politics of CLS. These "off-stage" meetings gave us an important opportunity to talk about what attracted us to CLS and what held us at bay.

Our meetings had a furtive quality about them, crowded as we were in those little
hotel rooms like revelers at a Depression-era speakeasy. Yet for some of us, those all-too-quick conversations were the highlight of whatever conference we were attending, and we began to look forward to them. These adjuvant meetings created substantive connections that helped to ground our gradual emergence as a loosely organized caucus in CLS. A pivotal event during this time that signaled the beginning of the “race turn” in CLS occurred at the 1985 CLS conference organized by the feminist wing of CLS, more popularly known as the FemCrits. Prompted by Regina Austin’s call to women of color to discuss how we might want to participate in the conference, several of us began discussing how to facilitate a discussion about race at this FemCrit conference. We ultimately decided to organize a workshop on racism in which the conference attendees could be divided into breakout groups to facilitate greater discussion. There, participants would be invited to turn CLS’s critical lens inward.

The provocative question that launched the workshop—“What is it about the whiteness of CLS that keeps people of color at bay?”—foreshadowed the eventual recognition that interrogating whiteness is an important dimension of any critical discourse on race. Unfortunately, this cutting-edge intervention was not well received, particularly by some of the white male heavies of CLS. Amid the vocal resistance was the charge that we were “mau-mauing” CLS and that the framework we had introduced certainly would tear the organization apart.12

As the dust was settling from the 1985 conference, plans were under way to shift the CLS stage to California. A contingent from the UCLA, USC, and Loyola law schools began planning the 1987 conference, with the goal of focusing on race. By 1986, I was also headed west to join the faculty at UCLA. There, I joined the ongoing dialogue about the focus of the upcoming conference.

Although this 1987 conference promised to move the discussion of race to the center of CLS, a number of factors tempered the enthusiasm of many people of color associated with CLS. Many harbored serious reservations about the value of such a conference in light of the maelstrom prompted by the 1985 race workshop. Those of us who had experienced such resistance to the internal dialogue about race in CLS were concerned that the upcoming conference would sidestep the more controversial discourse and focus instead on developing a CLS critique of race in legal institutions “out there.” Neil Gotanda, for example, had participated in the initial discussions of the conference-planning committee and perceived early on reluctance to build on the previous workshop and other work related to race and racism that already had occurred within.13 Indeed, the initial orientation of the conference was to examine race within legal institutions and even more broadly—race within the larger society. The goal of examining race within CLS was noticeably absent as a conference objective.

Deep ambivalence about the promise of further engagement with CLS was fueled by other high-profile events that had heightened the frustration level among people of color associated with CLS. A stunning controversy involving Derrick Bell’s visit at Stanford Law School deepened the recognition among many minority scholars that we would remain vulnerable to patterns of unconscious racism from students and colleagues, despite our achievements in the profession. In short, the administration at Stanford, heeding complaints of white students unhappy with Professor Bell’s approach to constitutional law, arranged a series of supplemental lectures to be given by other faculty members. Bell was invited to participate as well, but the fuller story behind the creation of the supplemental lectures was revealed only when BLSA students
prepared a written statement of protest. Minority law professors across the country were aghast that Stanford would subject a pathbreaking scholar such as Bell to this type of disrespectful treatment. Those of us closer to CLS were particularly disappointed that such a debacle would happen at Stanford, thought to be a CLS stronghold, with a dean and prominent faculty members who long had been associated with CLS.

In struggling to understand how students' complaints against Bell possibly could have persuaded the administration to pursue such an insulting, institutionally embarrassing strategy, there were, of course, the obvious possibilities that many professors of color report confronting on a daily basis. An additional factor was found in the possibility that there was sympathy for at least one allegation apparently made by students—that Bell's approach to constitutional law, grounded as it is in the breathtaking contradiction between the constitutional rhetoric of freedom and the reality of slavery, illegitimately foregrounded race. This inference dovetailed with criticisms that were beginning to emerge from Stanford quarters in the form of a counter-critique to our early work, characterizing it as essentialist. Whether intended or not, in that critique some of us heard a crude characterization of our work as theoretically unsophisticated and politically backward.

If these events were not enough to cloud the horizon, yet another piece of evidence emerged to suggest that behind CLS's hip irreverence lurked an element of racial condescension. In the CLS newsletter, The Lizard, an account of a conference in Bremen, West Germany, included a remark that deployed a racial stereotype of Mexicans. The remark—"Don't you realize that telling a German he has no theory is like telling a Mexican he has no gun?"—was apparently thrown in to add "color" to the conference report. As Jose Bracamonte, Richard Delgado, and Gerald Torres would later write, what was amazing about the inclusion of the remark was that no one in the editorial process apparently deemed it to be inappropriate for publication.

All of this made the reactions of those resistant to the internal racial gaze in CLS even more indefensible: Racial power was exerting itself within CLS, just as it had in other legal institutions. The question remained whether anything could be gained by participating fully in the conference and contesting the terms of the group's racial discourse.

Troubled by these events, a small group of us teleconferenced to discuss "how those of us who struggled through the racism workshops (in 1995) might share that experience with the others ... and what, if anything, that experience suggest[ed] regarding our participation in the upcoming conference."

We had before us textbook illustrations on how to "read" race, and the spirit of contestation was part of our own civil rights history as well as that of CLS. Coming on the heels of the annual meeting of the American Association of Law Schools (AALS), the 1987 conference also presented us with an excellent opportunity to gather together scholars of color to talk about race scholarship and politics not only within CLS but also in the nation's law schools more generally. The 1987 CLS conference in Los Angeles indeed provided us with a crucial staging ground to push our presence and projects further.

The final format of the 1987 conference reflected a negotiation among various objectives, providing us with the opportunity to meet as a caucus, to air and respond to the minority critique of CLS, and to discuss and develop critical approaches to articulating race within substantive legal topics. The 1987 conference became the site of the first formal meeting of the minority caucus within CLS, which necessitated, in turn, an all-white
caucus held concurrently. Whiteness was again on the agenda, but this time the discussion would not be facilitated by us.

Dozens of professors of color attended the minority caucus, most of them eager to discuss the climate, our scholarship, and the need to create a more sustained interaction. Cornel West, bell hooks, and Rodolfo Acuña were invited as plenary speakers to provide an interdisciplinary perspective on race. Some of us hoped that our invited guests would help grease the wheels of the “race turn” in CLS by effectively speaking to the various constituencies within CLS, challenging pockets of resistance to race-conscious scholarship in the very language that was sometimes used against us. But we didn’t leave all the heavy lifting to our guests.

In a panel entitled “The Minority Critique of CLS Scholarship (and Silence) on Race,” Denise Carty-Bennia, Harlon Dalton, Richard Delgado, Mari Matsuda, Gerald Torres, and Pat Williams spoke out from the inside on the racial politics of CLS. Their comments focused on the racially specific culture of CLS, the critique of rights, and on the silencing of voice of color in the legal academy more broadly. Attendees at that conference found the session memorable for any number of reasons, not the least of which was the airing of Randall Kennedy’s very public challenge to the embryonic movement, a challenge that would find its way onto the pages of the Harvard Law Review a few short years later.\(^{16}\)

Looking back at the “Sounds of Silence” conference crystallizes for me that this 1987 gathering was a watershed moment for CRT. Within the space of a few years, we had progressed from a loose group of colored folk at the margins of CLS to an experienced group of insurgents who occupied center stage at a national CLS conference. Clearly, there were disappointments—there was little resolution to some of the central points of contention between CLS and its minority critics, and there is reason to believe that some of the negative reaction to the “race turn” continued well into the next decade. Some white male heavies never returned—whether because of the coincidental appeal of other interests or an organizational “ripping” problem remains unclear. What was clear by the end of that conference was that we had exercised some institutional muscle: We had staked out an intellectual project by giving voice to a range of our institutional experiences living in a post-apartheid legal culture.

It was also clear, however, that the anterooms of CLS would no longer be sufficient to build on this momentum. To consolidate this race turn, we would have to find a way to institutionalize ourselves. That opportunity would come the following year.

The Birth of the Critical Race Theory Workshop

In 1988, while on research leave from UCLA, I returned to the University of Wisconsin as a visiting fellow. Stephanie Phillips was also at Wisconsin as a Hastie Fellow, and together we began discussing ways to convene the usual suspects in a manner that went beyond hotel-room caucusing. We were both veterans of CLS summer camps—smallish meetings that drew together a core group ofCrits to explore a range of topics—and we thought it might serve as a useful model to facilitate the more sustained intellectual interaction we sought. Richard Delgado was by that time on the Wisconsin faculty, and together we approached David Trubek, director of the Institute of Legal Studies, seeking financial support for a workshop tentatively entitled “New Developments in Race and Legal Theory.” The purpose of this workshop was to gather together our motley crew of marginal types—people of color who were attracted
to and frustrated by CLS—to a several-day summer camp.

Although there were undoubtedly many objectives to be served by such a retreat, foremost in my mind was determining whether something substantive held the group together, something that constituted a distinctive contribution to the discourse on race and the law. More specifically, I wondered whether it could be said that there was a “there” somewhere in the interstices of conventional civil-rights discourse and conventional critical legal studies. We had launched simultaneous critiques of CLS, on the one hand, and of liberal race theory on the other; in doing so, were we actually setting forth something that could be fashioned into a theory in its own right? Could some common threads be found in our collective work that might be woven together to form an intellectual whole?

It was clear that we were inviting folks to something formative, but the “New Developments” tag that appeared in the initial call for papers didn’t fully capture the aim. Somewhere in the process, we made what essentially amounts to a marketing decision: We jettisoned the generic title and sought something more provocative. Stephanie and I, now joined by the summer-camp veterans Neil Gotanda and Teri Miller, wanted to attract a specific audience of other “misfits” who were looking for both a critical space in which race was foregrounded and a race space where critical themes were central. We wanted the conversation to start at a point beyond questioning critical theory, on the one hand, or race on the other. We wanted to play with folks who would not be dissuaded from the association with a leftist project, who were interested in defining and elaborating on the lived reality of race, and who were open to the aspiration of developing theory.

Having participated in the FemCrits’ West Coast meetings, I had been thinking about how useful it had been to organize our work around the framework of “feminist legal theory” rather than the considerably narrower category of “sex-discrimination law.” Feminist legal theory laid claim to a broader undertaking than a mere study of rules governing sex discrimination: Contained within the broader feminist concept was the project of unpacking law’s relationship to gender. What would be the parallel concept for critical scholars of color seeking to lay claim to the broader study of law’s relationship to race? What was to civil rights what feminist legal theory was to sex-discrimination law?

Turning this question over, I began to scribble down words associated with our objectives, identities, and perspectives, drawing arrows and boxes around them to capture various aspects of who “we” were and what we were doing. The list included: progressive/critical, CLS, race, civil rights, racism, law, jurisprudence, theory, doctrine, etc. Mixing them up and throwing them together in various combinations, one combination came together in a way that seemed to capture the possibility we were aiming to create. Sometime toward the end of the interminable winter of 1989, we settled on what seemed to be the most telling marker for this peculiar subject. We would signify the specific political and intellectual location of the project through “critical,” the substantive focus through “race,” and the desire to develop a coherent account of race and law through the term “theory.”

But the work wasn’t quite done yet. Was this an independent thing or merely a descriptive or generic term? Should we capitalize it or leave it as two modifiers and a noun? We decided to go for broke. If we were going to give this inchoate thing a name, let it be a proper sign on the intellectual landscape: Critical Race Theory. (I had this preoccupation at the time with the politics of proper nouns, having just won a battle with the Harvard Law Review about capitalizing
"Black" when used as a racial identifier.) So the name Critical Race Theory, now used as interchangeably for race scholarship as Kleenex is used for tissue, was basically made up, fused together to mark a possibility.

It was far from clear at the time whether the name would stick, and there were discussions at the first workshop about what, if anything, the name actually meant. In fact, participants at the first workshop kicked around several other possibilities, including the idea of calling our project "Reconstruction Theory." It so happened, however, that a new periodical edited by Randall Kennedy was called Reconstruction, and concerns about the potential confusion generated by two similarly named projects with very different ideological premises may have contributed to the somewhat greater appeal of the name "Critical Race Theory." In any case, the name stuck. The task remained to define it.

After naming the project, we set out to gather souls to join us in Madison. Aside from the usual suspects, we had no idea who else would be attracted to a "Critical Race Theory" workshop. What exactly was the profile of the scholar who would be interested in our project? We began to generate a list of people whom we had met, read, or heard about—folks whose work was similarly situated at the margins of traditional race scholarship. We wrote letters, solicited recommendations, and cold-called people, often with the awkward inquiry of whether they would like to apply to a workshop that they had never heard of previously. Oddly enough, dozens of people did agree to apply, and on July 8, 1989, the twenty-four participants of the first Critical Race Theory Workshop gathered in Madison, Wisconsin.18

The first couple of workshops were designed to get at the question of what constituted CRT, and we structured the program with this goal in mind.19 Borrowing models derived from both Martha Fine- man's "Feminism and Legal Theory" workshops and a CLS–German workshop on critical theory in Bremen, we created a blend of paper writers, presenters, and commentators. Although the production and presentation of written work was, of course, the focal point of our meeting, our sense was that we would benefit more as a potential movement if someone other than the author presented the key themes of each paper and yet another person was responsible for weaving those key themes together with the themes from all of the other papers.

This scheme played out with varying degrees of success. Some common themes did emerge, and we honed them further in the next workshop. Yet we remained fundamentally eclectic in many respects. We eventually achieved some degree of intellectual coherence down the road, but the notion of CRT as a fully unified school of thought remains a fantasy of our critics. Many participants yearned for a space apart from law faculties, conferences and the like where we could explore ideas and express ourselves in ways that were not constrained by the expectations of our colleagues or the established parameters of race discourse in our respective institutions.

The safe-space interests and the intellectual-coherence objectives were occasionally pitted against one another. For example, some disagreement developed in the second workshop over the relationship between resisting racism and resisting patriarchy and homophobia. Some of us felt that patriarchy and homophobia were intertwined in racial power and thus were inseparable from the scope of CRT. Others felt that racial subordination was distinct and should be theorized as such. Some participants framed the issue as a conflict over whether CRT would have a theoretical "line" or whether, as a safe space, it was a big tent open to all comers. Yet others pointed out that, in some respects, the
debate was really about competing visions over what was necessary to make CRT a safe space. If CRT resisted acknowledging and theorizing the intersection of racism with patriarchy and heterosexism, could it really be considered a safe space for all members of this diverse group of men and women of varying sexual identities?

One also could recalibrate other debates that were pitched as tension between the call for safe space and the call for substantive content as, in fact, a tension between competing conceptions of substantive content. For example, the organizational goal of “safe space” served as the provisional justification for the initial inclusion of people of color only. One might frame the issue as safe-space values having trumped substantive content: Identity rather than substantive criteria won out as a defining factor in determining participation in the workshop. However, this, too, could be reframed as competing substantive perspectives. Was CRT a product of people of color, or was CRT a product of any scholar engaged in a critical reflection of race? Because I subscribe to the latter proposition, I regard the traditional exclusion of whites from our workshops as an unfortunate development. But, of course, opinions on this and similar issues vary considerably among original and subsequent workshop participants.

While safe space clearly was a value that developed out of the first workshop, we were not bereft of specific themes that captured in some way the group’s interest. Critiques of neutrality, objectivity, colorblindness, meritocracy, and formal equality constituted the most common themes that linked our work. Because these critiques were informed in part by critical theory and other intellectual traditions, organizers decided to devote the second workshop to developing a clear theoretical grounding for CRT. Thus, in the next workshop, hosted by Stephanie Phillips at Buffalo Law School, we shifted to a format that mixed paper presentations with substantive seminars. With the able assistance of Kendall Thomas, who had joined the organizing committee along with Linda Greene and Mari Matsuda, we organized four critical-theory seminars in addition to discussed papers. Topics included “Liberalism and Its Critics,” “Post-Structuralism and the Concept of Race,” “Race and Political Economy,” and “Intellectuals, Race and Power.”

With this foundation, CRT was off to a running start. Of course, in the intervening years, the format, focus, and personnel would continue to be debated along with efforts to establish the substantive parameters of the work. Questions about the role of identity and the inclusiveness of the tent remain ripe, particularly in light of the emergence of Asian American Jurisprudence and LatCrit Theory. Yet to be fully fleshed out is the question of how wide the space is between a race-conscious intellectual project informed by experiential particularities and a project grounded in successive turns of identity politics. If the legacy of CRT has in fact crystallized into identity formations, then questions about whether it was so at its inception, or whether it became so at particular moments for particular reasons, remain ripe for discussion. Surely these are vexing questions around which there is ample room for debate. But true to their genealogy, all these contemporary questions bear a striking resemblance to the debates and struggles that shaped the early years of CRT.

This narrative of the early years of CRT would not be complete without a word about our sponsors. Although the development of CRT has been framed as emerging out of the overlapping of various oppositions with liberal race theory and CLS, it is also quite clear that without specific support of individuals within each of those spheres, CRT would not have developed in
that time and space. David Trubek, a founding member of CLS, funded the first workshop, despite, as I mentioned earlier, some faculty opposition and some of his own reservations about the minority critique of CLS that was developing at the time. Buffalo Law School, the host of the second annual CRT workshop, also boasted several CLS adherents among its faculty who supported the project. And Jim Jones, a true civil-rights visionary, supported the CRT workshop despite his deep reservations about CLS. I think this type of support suggests that many non-CRT scholars saw CRT as continuous in important ways with their own projects. Perhaps CRT had a different focus and endorsed approaches to solving equality issues that may have made some in the traditional civil-rights community uncomfortable. However, in the broad scheme of things, traditional civil-rights adherents saw CRT as fundamentally “on the same side” as they were.

Critical Race Theory Then and Now: From Birth to Backlash

On the basis of this brief overview, I will note some points of comparison between CRT at its birth and CRT now. I think the overarching point of comparison is the fundamental difference in the historical and institutional context. CRT came into existence in the twilight of what had been a transformative social period. The grassroots movement for civil rights was, by most accounts, a distant memory by the mid-1980s, and although we believed we were in a full-scale retrenchment by that point, we were really just seeing its prologue. Nevertheless, there were still vestiges of the movement (preserved perhaps by the rarefied air of the academy), vestiges of the old insurgency that constituted a loosely defined sensibility about the imperative of social change. Sociologists might describe this in terms of expectations that were still rising throughout the academy and within civil-rights practice. On the books, there were still favorable precedents, cases we might call remnants of Alan Freeman’s “victim perspective” that remained good law. Affirmative action was still hotly contested, and most people had not heard yet of Clarence Thomas.

There was also a sense that there was something to a left-liberal reform discourse, something worth struggling for. Students thus fought to expand these vague commitments into specific curricular and hiring objectives: Constitutional scholars such as Charles Lawrence fought to extend the liberal opprobrium toward race-dependent decisions to include unconscious racism; civil-rights lawyers fought to include race-neutral exclusionary practices within the liberal rejection of white supremacy. On the left angle, CLS was alive and vibrant, and many of us struggled to expand its critique of social power and illegitimate social hierarchy to address the social power and illegitimate hierarchy of race as well. In sum, there were live contestations, both within the mainstream and in the margins, that contributed to the generation and incorporation of new ideas.

Today, by contrast, we are in the throes of a powerful, tightly organized, almost evangelical movement. It is well-organized and highly visible, and it boasts a string of impressive victories to call its own. It has friends in high places: the media, Congress, the White House, and the Supreme Court. It has a political strategy, a research agenda, and a grassroots and propaganda campaign that are among the most sophisticated and efficient in today’s hyperbolic society. It has no known rival, and its resources seem to be endless. Unfortunately, this movement is not ours.

In fact, to the extent that we are in the picture, it is only as cannon fodder. As a
result, the interests we champion have been under attack for some time. We managed to survive the first round of crude “P.C.” hysteria, yet the ideas with which we are associated have made us subject to more sophisticated modes of censure. In short, we have been race-baited.

Although it has been in the making for some time, this moment constitutes a significant shift in the intellectual and political terrain. Now, the very effort to expand doctrinal categories or to argue about the broader scope of what constitutes racial discrimination presumptively disqualifies able candidates from holding positions of responsibility, whether in government or elsewhere. The vestiges and remnants of the 1960s grassroots movements, already anachronistic in the 1980s, are now repackaged alternatively as the source of all contemporary social ills or as noble movements for an equality that has already been won. The left is itself demobilized, demoralized, and disorganized.

This moment obviously presents a challenge of a different magnitude for CRT scholars. Our story has always been one of a struggle to survive, but while the earlier struggle was one of coming into existence, the question then being whether this motley crew could last long enough to become viable, the question now is whether the movement can survive in the face of a more complex and better-organized counter-resistance. While people once puzzled over whether we were fish or fowl, now they brand us easily; indeed, they can draw on a veritable casebook of racially inflected insults. Moreover, as Patricia Williams has noted, as in the case of the man who is asked whether he still beats his wife, there is no response that doesn’t confirm the charge.

Our critics’ reconstruction of who we are and what we do is so complete that we can barely recognize ourselves in the mass media. Indeed, if we were to read more about ourselves in the media, we would find out that we are a pretty amazing bunch. We would learn from the New Republic, for example, that CRT is part of the “lunatic fringe” of the academy. (Duncan Kennedy and Catharine MacKinnon will be relieved to know that they are exempted from this exclusive category; they represent the rational fringe.) Richard Delgado might be amused to know that Judge Richard Posner has passed to him the hand of fellowship to the white race, remarking that Delgado, claims to be a member of, and a spokesman for, a group that he calls “people of color.” The group seems to be more a state of mind than a race. I have met Professor Delgado. He is as pale as I am, has sharply etched features in a long face, speaks unaccented English, and, for all that appears upon casual acquaintance, could be a direct descendant of Ferdinand and Isabella. He lives and teaches, contentedly so far as I know, in an “Enlightenment-based democracy,” namely the United States. Delgado’s whiteness lends an Evelyn Waugh touch to critical race theory.

Similarly, we would learn from Jeff Rosen, writing also for the New Republic, that we apparently have connections in Hollywood—that artists from rappers to movie executives have bowed to our influence. And it will come as a surprise to those of us who took strong positions against the Million Man March and Louis Farrakhan that the logical conclusion of our work “leads to Farrakhan.”

Indeed, we would learn from Daniel Farber and Suzanna Sherry that we are anti-Semitic because our support of disparate impact theory and our critique of exclusion from colleges and universities, taken to its logical conclusion, implicitly suggests that the over-representation of Jews in American law schools is the work of a conspiracy. This last item is curious for a number of reasons, not the least of which is that our
apparent interest in wresting a greater share of law-school slots from privileged whites is at odds with Neil Lewis’s claim that “critical race theory is providing an intellectual foundation for black separateness.”

Despite what we may have thought we have written, our critics now inform us that we do not support the Civil Rights Movement, that we believe that nothing is better today than it was thirty years ago, and that we think law is utterly useless as a means of social reform. Puzzlingly, despite all this apparent madness, CRT has enormous influence. Our jurisprudence in law reviews “reigns supreme” (take that, you impressionable student editors!), and even judges have been “taken in” by us. The flurry of bias studies in the court system across the country was actually “prodded by feminist and critical race theorists.”

Although we have spent so much time mesmerizing lawyers, deans, producers, students, and judges, surprisingly our newfound influence seems to have done little to soften our rough edges. We are “loud and militant,” and we “wage open warfare over appointments and tenure.” Although we are a minority, we apparently can kick up quite a fuss in law schools. Indeed, Daniel Farber and Suzanna Sherry are sympathetically presented as anguished members of the great majority of white liberals in legal academe. Our critics, it seems, have adapted racial profiling to the ivory tower. Apparently, these two traditional liberals have been mugged by their “radical colleagues in the ivory tower,” and we intellectual gangbangers are presumptively guilty.

Critical race theorists, we’re told, are not only rude; our work is beyond all reason. To readers of the Toronto Sun, we represent “the most embarrassing trend in American publishing.” We offer no analysis, we just tell stories—bad ones, at that—and we don’t do law. Because our movement “has achieved influence and dominance within any number of the country’s most prestigious universities,” we have to be dealt with severely. We replicate like a virus. Says one authority on problems like us: “Unless you challenge them at their source, you will always be fighting a rear-guard action when their influence spreads into broader American society.”

Make no mistake about it: We are in a full-scale race-baiting campaign. It is well organized, and it could be effective if we fail to mine the lessons of Crit-bashing in the 1980s and red-baiting in the 1950s. Indeed, the structure of the assault is virtually identical: The baiters identify some threat to our cherished institutions or way of life, tie it to some “pointy-headed intellectuals,” and then claim that ruthless suppression is the only way to be sure the threat has been contained.

Consider the classic baiting technique used by Jeffrey Rosen. Rosen is fully aware that many whites were apoplectic about O. J. Simpson’s acquittal. “There’s anger there, a sense that something cherished has been lost.” Rosen points this anger at CRT. What seems to scare him is that critical race theorists are theorizing relations that many Americans do not want to think about yet must encounter occasionally when they want something very badly and have to engage the sensibilities of people of color to get it. Take, for example, his portrayal of the acquittal of O. J. Simpson. Here Rosen’s message goes: If you didn’t like the verdict, then you really won’t like these CRT folks—they gave members of the jury the idea; the Simpson verdict is nothing but Critical Race Theory applied.

Of course, we really are not alone in being targeted in all this hysteria. This reaction has the contours of all other baiting campaigns, including its implicit disciplining of liberals for having allowed us into the legal academy in the first place—evidence of their lack of resolve. It’s all of a piece, a new line in an old chorus: “Liberals are soft on communism, soft on crime, soft on Crits, soft
on RaceCrits.” Ultimately, it may not matter that in some ways we may be in the trenches with liberals as targets of a conservative assault. First, some liberals have joined the fray, as evidenced by Beyond All Reason. And the jury truly is out on the question of whether we can count on our colleagues more broadly for support as the heat turns up. If the institutional reaction to resegregating policies in California, Texas, and Washington is any indication, the road ahead may be bumpy indeed.

Where We’ve Been, Where We’re Going

So what should we critical race theorists do now, facing the second decade? I think we need to take up a war of maneuver against racial entrenchment, on the public and on the private front. As to the public front, I think we need more organized intervention. Patricia Williams and Richard Delgado have responded courageously, yet they can’t go this alone. Conventional wisdom about the nature of ideological attack says that there is little we can do—“take the high road; don’t give them the satisfaction of a response.” I have some sympathy for this view. If we were to respond to all of our detractors, we would probably do little else. But the truth is more complicated than that.

I learned this the hard way from a call I received from a government-service worker in St. Louis. It was somewhat of an apology, actually. The caller had simply assumed from various media reports that CRT truly is the backward, racist, unsophisticated assortment of half-baked scholarship that he had heard about. Luckily, he said as much to someone who knew better and began to read us for himself. I realized while listening to his “discovery” that the days when we could expect people from our very own communities to read between the lines of an attack were long gone. To paraphrase an old saying, “A distortion travels around the world before the truth puts its boots on.”

These developments have reminded us that the days when different communities are exposed to fundamentally different information sources are dwindling. To speak to a mass community often means speaking in mass media. We need to determine how to translate our work better, to intervene in ways that help model interventions at the local level, to show people what a difference critical race thinking makes in their own workplaces and communities. And we need to learn how to demand popular space and make good use of it when we get it.

At the local level, back in the academy, I think we have to remember the basic lessons of indeterminacy and put energy into fighting battles in the trenches of interpretation. Unlike some colleagues I respect, I see nothing immoral or amoral about pressing the malleability of legal interpretation into service to defend affirmative action and other equity policies against assault. For example, the battle over the elimination of “preferences” presumes an agreed-upon baseline from which to measure. But what is a “preference,” and what is “discrimination”? There is much work to be done in our own institutions to rethink and challenge this baseline, and fundamentally to rethink how legal education should be distributed. We may have some time to stem the tide, but not much.

Finally, I think the times require a reengagement with our colleagues. What seems to be lacking among both our liberal colleagues and our Crit colleagues is a spirit of confronting exclusionary policies, a familiarity with our own basic texts, and a contemporary critique of the standard operating procedures in our institutions. In this sense, perhaps we’ve come full circle. As I place the genesis of CRT in a confrontation within institutions of higher learning over
curricular and hiring matters, it seems that the lessons we learned from a course of study focusing on race, racism, and American law continue to resonate throughout a new decade.

Yet these lessons have not penetrated the outer periphery of institutional consciousness within American law schools. We have been afforded pluralistic (tokenistic?) inclusion within the academy, but one wonders whether this, too, will go the way of "diversity" in the face of wholesale external assault. If our colleagues cannot defend a set of programs against competing institutional constraints that pit the edict against "preferences" with the prohibition against "discrimination," do we think they (or we) will fare better when and if the organized cabal that has attempted to discredit us in the media manages to turn up the heat on our own institutions? What can and should we do to recapture our sense of identity, struggle, and empowerment? These are the questions I think we must put to ourselves as we think about the future.

Conclusion: In Search of a Caption

In assessing the first decade of Critical Race Theory I asked myself: If I were to gather it all up into a snapshot, what caption would I inscribe beneath? I thought of several, ranging from the mundane ("A Good Start," "Against All Odds") to the noble ("Keeper of the Flame," "Bridge from the Past"). I settled on one that is far less poignant but descriptively apt: "A Foot in the Closing Door." I truly believe that what separates this period of retrenchment and counter-assault from that which transpired in the nineteenth century is the wealth of resources—institutional, organizational, intellectual, and the like—represented by the people who do Critical Race Theory. We have managed to keep alive a spirit, diffuse though it may be, that resists all attempts to declare the project of ending white supremacy a done deal.

Now, if I were to gather up all my hopes for our future into a snapshot, what would its caption say? Again, my thoughts ranged from the truly trite ("New and Improved," "Bigger and Better," "Smarter and Wiser") to the buzzword of today's mega-trend ("Critical Race Theory Turns Global"). In the end, I settled on a retrieval from the past, brought back to the future.

Ten years ago, I wondered: Where do we take our sit-ins when the white-only signs come down, when Kresge closes its lunch counters and moves out of town, when power doesn't live where it used to anymore? What happens when the contemporary configuration of power doesn't have an address; when dogs and water hoses are traded in for numbers and tests; when gatekeepers are automated, and exclusion is formulaic; when ideas are red-lined, and people are warehoused? These days, colorblind discourse is the virtual lunch counter, the rationalization for racial power in which few are served and many are denied. Thus, in my fantasy, ten years from now, the caption reads: "Discursive Disobedience: Critical Race Theory Stages a Virtual Sit-in in American Consciousness."

The task ahead is to pull up a seat and stake out our positions in large and small ways, as individuals and as groups, as discrete formations and as broad coalitions. Frederick Douglass said something about the ways of power that holds true even a century after it was first uttered: "If there is no struggle, there is no progress. . . . Power concedes nothing without a demand. It never did, and it never will." In this spirit, and in light of the daunting tasks we face and the remarkable resources we bring to bear, I hope our journey onward in the coming decades is provocative, productive, and proactive.
Notes

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5. Derrick A. Bell, Jr., Race, Racism and American Law, 2nd ed. (Gaithersburg, Md.: Aspen Publishers, 1980).


7. See, for example, bell, Race, xxiii, noting that for all the “furor” of the civil-rights cases and laws dealing with racial problems in the three decades before the second edition of his casebook in 1980, “these civil rights cases and laws are today [1980] increasingly regarded as either obsolete or insufficient . . . before they could be enforced effectively. In a nation dedicated to individual freedom, laws that never should have been needed face neglect, reversal, and outright repeal, while the discrimination they were designed to eliminate continues in the same or a more sophisticated form.” For a more recent account of the same themes, see Derrick A. bell, Jr., “Racial Realism,” Connecticut Law Review 24 (1992): 363, reprinted in Crenshaw, Key Writings, 302, noting that “every civil rights lawyer has reason to know—despite law school indoctrination and belief in the ‘rule of law’—abstract principles lead to legal results that harm blacks and perpetuate their inferior status.” Bell recognized that “legal precedents we thought permanent have been overturned, distinguished, or simply ignored,” and “precedents, rights theory, and objectivity merely are formal rules that serve a covert purpose; even in the context of equality theory, they will never vindicate the legal rights of black Americans.”

8. The Third World Coalition was an umbrella committee made up of representatives from organizations representing African American, Arab, Asian American, Chicano, Native American, and Puerto Rican law students. Founded in 1979 as the united voice of students of color at HLS, the coalition sought to “forge the shared hopes and frustrations
of its member groups into affirmative policy expressions which bring to the fore the legal needs and legal injustices which characterize the daily lives of men and women of color in this country and in the world. A critical part of the coalition’s efforts has been devoted to providing a meaningful and realistic critique of legal education in this country: What is taught, how it is taught, and who is teaching. Third World Coalition, letter, February 8, 1983, on file with the author. Some of the members of the coalition involved in the events described herein are George Bisharat, F. Burlete Carter, Kimberlé Crenshaw, Jose Garcia, Ibrahim Gassama, Mari Mayeda, Cecil McNab, Glenn Morris, and Nick Sheats. For a contemporaneous account of the Alternative Course, including a chronology, syllabus, position papers, and sample letters, see Kimberlé Crenshaw, “The Case for an Alternative Course,” unpublished ms., 1983, on file with the author.

9. The magnitude of the attack against the boycott was as crushing as the media’s distorted coverage of the controversy. See, for example, Carl T. Rowan, “Blind Pride at Harvard,” op-ed, New York Times, August 11, 1982, A22 (“There is little point of pride if its price is ignorance”), and “Bad Behavior at Harvard,” op-ed, Washington Post, August 20, 1982, A15 (“Now we have black students in the exalted climes of Harvard declaring all whites guilty of something—because they are white”). Martin Kilson, “Ethnic Arrogance at Harvard,” August 13, 1982, accused BLSA of intellectual infantilism and banal ethnocentrism and declared that “Black students who require ethnocentric crutches as part of their academic regime have to start growing up, and soon, or they will be overwhelmed by the intellectual sophistication and scholarly rigor associated with good and superior levels of learning and performance at places such as Harvard Law School.” A letter to the editor (Bayard Rustin, “A Misguided Protest by Blacks at Harvard,” New York Times, August 17, 1982, A26) called the objection that Jack Greenberg, a civil-rights lawyer and visiting professor at Harvard, was white nothing more than blatant racism.

The full-scale denunciation, coming on the heels of Dean Vorenberg’s decision to release all correspondence between BLSA President Muhammad Kenyatta, Dean Vorenberg, Julius Chambers, and Greenberg to second- and third-year students over the summer, caught the coalition and BLSA off guard. Dean Vorenberg’s decision to go public with the threatened boycott introduced the issue in a manner that stressed the points of least agreement within the coalition while obscuring the deeper issue of the school’s abysmal hiring record and its resistance to students’ demands for a course taught by a full-time instructor. Reporters for the Post and the Times quickly ceased on the dog-bites-man aspect of Kenyatta’s letter, in which he criticized Greenberg for his leadership of the Legal Defense Fund. See for example, “Minority Students at Harvard Protest Boycott,” New York Times, August 9, 1982, A9 (“Black students at HLS are calling for a boycott of a course on race and legal issues that is to be taught in part by a white civil rights lawyer”); “Blind Pride,” A22 (“Black law students are calling for a boycott of a course in race and legal issues because one of its teachers, Jack Greenberg, is white”); and Rustin, “Misguided Protest” (“Students are calling for a boycott of a course on race and legal issues because it will, in part, be taught by a white civil rights lawyer”).

Because students involved in the boycott were away for the summer, Dean Vorenberg’s spin on the issue went largely uncontested. The broader issue regarding the school’s unwillingness to offer “Constitutional Law and Minority Issues” and the inadequate response to the coalition’s affirmative-action demands were entirely lost in the media fracas over the boycott as the debate became reduced to one of “reverse discrimination.” Lost, too, in the media’s coverage of the controversy was the multiracial makeup of the coalition. Despite many efforts to clarify what the boycott was and was not about, the media persisted in framing the controversy as a contest between Dean Vorenberg and BLSA President Muhammad Kenyatta. This distortion was only heightened by Kenyatta’s letter to the dean citing Greenberg’s leadership of the NAACP-LDF as an additional reason for boycotting the course, and Dean Vorenberg’s decision to release that correspondence to support the claim of “reverse racism.” Although the letter neither represented the coalition’s position nor reflected the substance of the negotiations between the coalition and the HLS administration, it became the lightning rod that drew the wrath of many in the civil-rights community.

Although the issue was tragically distorted in the media, there was a question about whether it was legitimate to assume that race would in any significant way shape the content of a course or should be considered as a factor in making academic appointments. Many of the most vocal critics of the boycott in fact supported affirmative action. When faced with what they viewed as racial discrimination against a man who had devoted his entire career to fighting for civil rights, however, these critics
embraced a colorblind rhetoric that framed the students’ demand for a full-time minority law professor to teach Bell’s course as patently absurd. An interesting version of the tension in viewing this matter as reverse racism versus affirmative action is embodied in two op-ed pieces by Carl Rowan. In the first (“Blind Pride”), Rowan excoriated BLSA for racist, anti-intellectual, anti-civil-rights behavior: “Many black people of my generation have faced death in defense of the idea that people are to be judged on their own merits.” In the second (“Bad Behavior”), he continued to criticize BLSA, this time for “letting Harvard off the hook by causing the press to focus on extraneous issues.” The real issue had become the “surprisingly pathetic list of excuses as to why so few minority professors are appointed.” Rowan went on to criticize Harvard’s President Derek Bok for not valuing intrinsic educational benefits that diversity provides. For a thoughtful and balanced insider's view of the events leading up to the boycott and a pedagogical defense of race as a factor in hiring decisions, see Christopher Edley, Jr., “The Boycott at Harvard: Should Teaching Be Color-blind,” Washington Post, August 18, 1982, A23 (“Race remains a useful proxy for a whole collection of experiences, aspirations and sensitivities, in that it is at least as strong a way as anyone's ethnic heritage or professional experiences [in shaping] the way he understands and explains life. It’s not just a matter of having a particular slant on things; it’s a question of what kind of glasses you’ve been wearing as the years roll by”). Edley also revealed that negotiations were under way with several minority candidates, but several were still mulling over their offers. As was traditional, this information was not shared with the students. Despite his public defense of Harvard’s poor hiring record as reflecting a dearth of qualified minority candidates, Dean Vorenberg apparently targeted select candidates to recruit, some of whom were eventually hired by HLS. This duality—the public rhetoric declaring the pool of qualified minorities to be virtually nonexistent and the tremendous support Vorenberg gave to some minority candidates—no doubt accounts for his simultaneous legacy as a pioneer in integrating select people of color into law teaching as well as the embodiment of institutional resistance to broadening HLS’s hiring criteria to assess more fairly the potential of scores of other minority law candidates. Whether this limited hiring effort would have occurred in the absence of sustained student struggle is anyone’s guess, but some think not. See generally Derrick Bell, Contesting Authority (Boston: Beacon Press, 1994).


11. See, for example, Ruth Marcus, “Black Law Group Supports Boycott of Harvard Course,” Washington Post, August 18, 1982, A3. The National Association of Black Law Students also passed a resolution supporting the actions of the Third World Coalition and calling for broad measures to increase the presence of professors of color at Harvard and all American law schools. See Cynthia Muldrow and Donald Tyler, “Goal of a Boycott at Harvard Law,” letter to the editor, New York Times, August 20, 1982, 26. See also, “Stanford Rights Class Dropped After Black Protest,” New York Times, March 20, 1983, 27, 20. The National Board of BLSA also convened a special task force on affirmative action to which I was appointed as co-chair. The task force was charged with the responsibility of examining affirmative-action policies in various law schools and formulating strategies to effect change. In this capacity, I prepared a report detailing the events leading up to the course, offering a critique of exclusionary hiring policies and providing a guide on how to mount such an undertaking. The report was made available to all chapters at BLSA’s 1983 annual convention.

12. Some would say that this dire prediction was accurate in that many of the white male heavies did eventually pull away from CLS after the FemCrit and RaceCrit turn. I must confess that although I expected some degree of resistance from the old guard, I remained mystified by the visceral nature of the reaction. I had witnessed some amazingly confrontational interventions by white feminists in CLS, yet none prompted the emotional intensity that our workshop elicited. I was struck not simply by the apparent contradiction between the CLS rhetoric extolling local contestation and its own resistance to the interrogation we were demanding, but also by the dismissive rejection of the discourse as something that they had already done and were not going to do any more. As some folks explained it, this “been there, done that” attitude was a contemporary response to various offenses suffered by white radicals at the hands of African American activists in the 1960s. However accurate this account of lingering white angst from the 1960s may have been, the extent to which this claim reflected real lived experiences of our CLS colleagues remained unclear. So, too, did the question of whether the
narrative was appropriated as a parable about the hazards of racial contestations on the left. A provocative take on the dynamics of the 1960s racial encounters on the left can be found in Gary Peller, "Black Rage Confronts the Law," *Tikkun*, November 21, 1997, which argues that the rhetorical politics of Black Power constituted a psychosexual threat that continues to cast a shadow over the white left, suppressing any meaningful critique of race from its quarters. For an argument that links the disintegration of the left to the destructive emergence of identity politics, see Todd Gitlin, *The Twilight of Common Dreams* (New York: Henry Holt, 1995). The debate continues in various forms today. See for example, Vanessa Daniel, "Ralph Nader's Racial Blindspot," *Colorlines Magazine*, Internet edition (August 17, 2000), available from: <http://www.arc.org/C_Lines/CLArchive/story_web00_01.html>.

13. Neil Gotanda to Carrie Menken-Meadow, memorandum, July 24, 1986, on file with the author (critiquing the planning committee for its "unwillingness to build from previous panels and work... unwillingness to deal with Black women...[and] inability to talk about race within the organizing committee.")

14. The remark prompted Bracamonte, Delgado, and Torres to write an open letter to CLS, unpacking the messages conveyed in the cartoonlike stereotype and arguing that the unfortunate event suggests the possibility that Critics "focus so closely on the hegemonic tactics of liberals that [they] fail to notice [their] own." See "Statement by Jose Bracamonte, Richard Delgado, and Gerald Torres, Minority Critique Panel," CLS Annual Meeting, Los Angeles, January 1987, on file with the author.


16. Randall L. Kennedy, "Racial Critiques of Legal Academia," *Harvard Law Review* 102 (1989): 1745. That was not the only surprising challenge in store for conference attendees. While some of the conference organizers imagined hooks making a race intervention within feminist discourse in CLS, and West making a parallel intervention within the ranks of the critical theory wing, all bets were off when hooks critiqued West for speaking a language that was inaccessible and mystifying. Needless to say, the moment was electric: Its complexity and surprise represented precisely the kind of charge that kept many of us coming back to CLS events, despite some of the more predictable problems.


19. In the letter announcing the first Annual Workshop, a provisional definition of CRT suggests that "critical race scholarship generally challenges the legitimacy of dominant approaches to race and racism by positing values and norms that have traditionally been subordinated in the law. Critical race theorists thus seek to validate minority experiences as an appropriate grounding for thinking about law and racial subordination... Many approach antidiscrimination law as ideological discourse which does not so much remedy racial subordination as provide continuing rationalizations for it. Traditional notions of civil rights are simply conceptual starting points to explore the limitations of civil rights reforms and the possibilities of developing a more deeply grounded transformative practice. Others are interested in examining implicit racial assumptions that exist beneath the surface of dominant discourse and in revealing how language conveys meanings beyond its ordinary legal sense. Included also in critical race scholarship are critiques of the political sociology of our profession and its embedded racial implications": see "Invitational Letter," April 19, 1989, on file with author.

20. This policy was not without some controversy. Indeed, some faculty members at the University of Wisconsin were not entirely comfortable with the all-minority make-up of the group and sought a review of Trubek's decision to fund it. The decision would not be easily replicated in today's environment.

21. The issue is somewhat academic at this point in light of the growing body of critical articles on race written by white colleagues. Alan Freeman, Gary Peller, Barbara Flagg, and Duncan Kennedy are just a few Anglo scholars whose articles are key texts within CRT.

22. Trubek's support was notable, as he was at the time fully aware of the emerging critique of CLS, having been an adviser on my graduate thesis and a colleague of Patricia Williams and Richard Delgado. All three of us were critics of CLS, and our


24. See, for example, Clint Bolick, “Clinton’s Quota Queens,” Wall Street Journal, April 30, 1993, A12. For descriptions of President Clinton’s efforts to distance himself from Lani Guinier, his onetime nominee for the head of the Civil Rights Division of the Justice Department, see Michael Isikoff and Ruth Marcus, “Administration Leaves Guinier in Limbo,” Washington Post, June 3, 1993, A1, and Michael Putzel, “Rights Nominee Digs in as Clinton Backs Off,” The Globe (Boston), June 3, 1993, 1. See also Lani Guinier, Lift Every Voice (New York: Simon and Schuster, 1998), describing her nomination and nomination-revocation processes. Guinier quotes Yale Professor Harlon Dalton as saying, “Her Senate hearing would have been a conversation about what democracy looks like in a multicultural society in the 1990s, and I think that’s a conversation we need to have. Instead, the Senate and the president ran away from it”. Guinier, Lift Every Voice, 130. Though less publicized than Guinier’s nomination, the planned nomination of Gerald Torres to head the Justice Department’s Environment and Natural Resources Division was criticized because of his association with the CLS movement: see Michael Isikoff, “2 Withdraw Justice Department Candidacies,” Washington Post, December 18, 1993, A1.


27. Ibid.


34. Ibid.


37. See Rosen, “Bloods and the Crits,” 27.

38. See Farber and Sherry, Beyond All Reason, 52–71.


40. See Williams, “De Jure,” and Bracamonte et al., “Statement.”