

One by one, Bell and his disciples dispatched their black critics through smears and character assassination. Bell called his black opponents “minstrels” and accused them of participating in “the slave masters’ practice of elevating to overseer and other positions of quasi-power those slaves willing to mimic the masters’ views.”<sup>69</sup> His students reproduced this strategy in subtler therapeutic language, diagnosing black critics as suffering from the disease of “internalized racial inferiority.”

The critical race theorists had built their philosophy on the unstable foundation of postmodernism, designated themselves the avatars of the oppressed, and created a manipulative political praxis in search of a nebulous and always-failing utopia. All of this was obvious to the early critics. Yet, despite these glaring flaws, the critical race theorists managed to vanquish their opposition one by one and begin the process of installing their ideology in elite enclaves. The real brilliance of critical race theory was not intellectual, but tactical. The “activist scholars” learned how to wield the politics of race in elite milieus and use it as a fulcrum for accumulating power.

After the ideological foundations were set, the critical race theorists turned to the next phase of their campaign: conquering the institutions.

*theories of critical race theory have been used to challenge traditional understandings of racism and to challenge the dominant narrative of white supremacy. Critical race theory has been used to argue that racism is systemic and deeply embedded in American society, and that it cannot be eliminated through individual efforts or legal action alone. Instead, it requires a fundamental rethinking of the way we think about race and justice.*

Over the course of thirty years, the critical race theorists and their allies in left-wing social movements seeded this ideology in nearly every elite knowledge-making institution in America, from the university academic department to the Fortune 100 corporation. They synthesized, reduced, and euphemized the intellectual work of Derrick Bell and his disciples for mass adoption in school curricula, government bureaucracies, and diversity training programs. Over time, the ideology transformed itself from the abstract principles of the academic theory into the concrete policies and practices of “diversity, equity, and inclusion.”

This move was inevitable—and brilliant. In order to achieve hegemony within the institutions, the critical race theorists had to create a means of attaching their ideology to administrative power. They first developed these techniques in the confines of the university, then moved laterally through weak points in the bureaucracies of other institutions, most notably the federal diversity apparatus, corporate human resources departments, and the sprawling administration of the public schools. They created a circular, self-reinforcing system that created its own demand and installed a new, universal class of “diversity officials” across the institutions, which seeks to break down the old protections of individual rights, colorblind equality, and private property and replace them with a substitute morality and system of government based on the principles of critical race theory.

*Twisted*

In a way, critical race theory has become the überdiscipline of the critical theories. It has harnessed the essential frame of Marcuse’s critical theory,

## DEI and the End of the Constitutional Order

absorbed the strategy of Angela Davis's critical praxis, merged with the application of Paulo Freire's critical pedagogy, and combined them all into a formidable, if largely invisible, political movement, which has moved from the margins to the center of American power. Their theory—that the Constitution upholds the regime of white supremacy and must be superseded by a regime of "racial equity"—has become dominant across the entire range of elite institutions.

Their praxis—the Gramscian war of position, supplemented by the tactics of identity politics—has been astonishingly successful in advancing their ideology into power.

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The first step for the critical race theorists was to devise a rhetorical strategy for expanding their power within the universities.

From the beginning, the critical race theorists constructed their argument like a mousetrap. They used their epistemology of the oppressed to justify their claims on the grounds of identity, rather than reason, evidence, and rationality, which they dismissed as the logic of the oppressor. From there they were able to use the premise of historical racism to raise sympathies, then pressure the listener into affirming their conclusions, whether or not they were logically or historically justified. By using this technique, the critical race theorists could reinterpret even the highest points in American history, such as the signing of the Emancipation Proclamation or the passage of the Fourteenth Amendment, as a racial conspiracy to subordinate blacks. If anyone disagreed, the critical race theorists had a battery of explanations: the black critic was suffering from "internalized racial oppression"; the white critic was suffering from "white fragility," "unconscious bias," and "internalized white supremacy." They used the emotions of guilt and shame to bludgeon their enemies into accepting their conclusions.

This tactic worked perfectly in the universities. The methods of critical race theory served as high-concept, easy-to-use rationalizations for the practices of denunciation, vendetta, and moral posturing. One simply has to deploy them to gain professional status within elite institutions, where the accusation of racism is enough to transform a member in good standing into an intellectual leper. Left-wing academics could experience the moral thrill of accusation at little cost for error—an attractive calculus

for intellectuals to bolster their reputation as brave truth-tellers while never assuming any real personal or professional risk.

The broader goal, from the outset, was conquest. The critical race theorists deployed these techniques of manipulation, subversion, and status games with the goal of embedding their ideology "so thoroughly in academic scholarship and teaching that its precepts became commonplace, part of the conventional wisdom."<sup>1</sup> Their first beachhead was the law school, but the principles of critical race theory—victim epistemology, intersectionality, systemic racism, affirmative action—proved irresistible to other scholars, who used them to advance their own politics and career advancement.

In the face of this new politics, the universities immediately buckled. As the economist Thomas Sowell noted in 1990, administrators seemed powerless to resist the racial hostage-taking of Derrick Bell and his imitators. The universities had "perfected the technique of pre-emptive surrender," Sowell said.<sup>2</sup> "At the very time that there's all this mouthing of the word 'diversity,' there is this extremely narrow ideological conformity that is being enforced wherever people have the power to enforce it."<sup>3</sup>

The defenses continued to fail through the subsequent decades. Critical race theory, which claimed to represent the decolonial impulse, colonized discipline after discipline. The "activist scholars," moving outward from the law schools, quickly established footholds in ethnic studies, women's studies, social sciences, public health, philosophy, and education.

The rise of critical race theory can only be described as an intellectual coup. From its beginning in the late 1980s to the present, the theory has become pervasive in virtually every discipline in the universities. Their output has been enormous: the academic databases yield 390,000 results for "critical race theory," including thousands of papers, reviews, articles, studies, books, and conference presentations. The movement's key figures—Derrick Bell, Kimberlé Crenshaw, Richard Delgado, Jean Stefancic, Mari Matsuda, and Gloria Ladson-Billings, who founded critical race theory in education—have notched nearly 200,000 citations in a broad range of academic journals.<sup>4</sup> There are now entire departments, majors, and minors in critical race theory at dozens of American universities.<sup>5</sup> "The name Critical Race Theory," said Crenshaw, began as an aspiration but, within a decade of the discipline's founding, was "used as interchangeably for race scholarship as Kleenex is used for tissue."<sup>6</sup>

In a way, the critical race theorists achieved victory through volume. In the education field alone, the critical race theorists have published an avalanche of materials and nested their ideas into the architecture of the education departments, which train the teaching force for American primary and secondary schools. By conquering these departments over a period of thirty years, the critical race theorists built a powerful transmission belt for their ideology, moving it from the universities into the public school system. "We didn't set out to colonize, but found a natural affinity in education," said critical race theorist Richard Delgado. "Seeing critical race theory take off in education has been a source of great satisfaction."<sup>7</sup>

Today, critical race theory has achieved hegemony in the educational systems in many blue enclaves. The states of California, Oregon, and Washington have all incorporated the principles of critical race theory into the official state curriculum.<sup>8</sup> Children as young as kindergarten are studying the theories of "systemic racism," "white privilege," and "intersectionality," whether directly or through euphemism.<sup>9</sup>

In Detroit, the superintendent of schools said that his district's "curriculum is deeply using critical race theory" in all of its humanities and social science courses.<sup>10</sup> In Seattle, administrators have hired a full-time critical race theorist, endorsed critical race theory as part of its black studies curriculum, performed "racial equity training" using "critical race theory tenets" for teachers, and deployed more than two dozen "racial equity teams" that practice critical race theory in individual schools across the district.<sup>11</sup> At the national level, the National Education Association, which represents more than 3 million public school teachers and employees, has explicitly endorsed critical race theory and pledged to promote it in all 14,000 local school districts.<sup>12</sup>

But the capture of the classroom was hardly the greatest prize. During this same period, the discipline underwent an even more significant transformation: from critical race theory to "diversity, equity, and inclusion."

From the beginning, the critical race theorists understood that hegemony is achieved not through ideological debate, but through administrative power; the intellectual coup must be followed by the bureaucratic coup. This is where critical race theory has been most successful. The "activist scholars" and their allies—an entire professional network of social justice activists, diversity trainers, philanthropic foundations, affirmative action administrators, and left-wing human resources professionals—adapted

the rhetorical strategies from the universities and turned them into a standardized administrative program that would lend legitimacy, power, financing, and status to their ideology.

The process began with simplification: the academics provided the concepts; the professionals translated them into bureaucratic language. The symmetry between the two expressions—in other words, between theory and praxis—is revealed through a careful reading of the basic terms that compose the acronym of DEI.

First, "diversity." The term appeals to the verbal connotation of demographic representation. But at a deeper level, the euphemism of "diversity" is built on the intellectual foundations of intersectionality, which argues that the individual represents not only a demographic reality, but a political imperative—that person must check the boxes of identity and also advance the "victim perspective" as an ideology. As Derrick Bell once explained: "The goals of diversity will not be served by persons who look black and think white."<sup>13</sup> The practical outcome of this policy is the deliberate inversion of the hierarchy of oppression: the "victim perspective" is raised above the "perpetrator perspective" within the institution, and the supposedly "marginalized" individual who represents the favored ideology moves to the center.

Next, "equity." If diversity is the framework, equity is the method. The word is a deliberate obfuscation. It is a near homonym to the word "equality" but carries an entirely different meaning. The American principle of equality was first proclaimed in the Declaration of Independence, consecrated in blood with the Civil War and the Fourteenth Amendment, and codified into law with the Civil Rights Act, which attempted to create a colorblind system that treated individuals equally under the law. But for the critical race theorists, these documents provided a fig leaf of equality that disguised the reality of continuing racial domination.

The critical race theorists explicitly rejected the American standard of colorblind equality, arguing that equal treatment under the law represents "mere nondiscrimination" and serves as a mask for white supremacy and capitalist oppression. Equity is the other side of the coin. It would replace the regime of individual rights with a regime of group entitlement, calling for "equalizing treatment by redistributing power and resources in order to rectify inequities and to achieve real equality."<sup>14</sup>

Finally, “inclusion.” Again, the signifier and the signified are in opposition. The word “inclusion” has the surface meaning of tolerance for a wide range of people and opinions. But, following the epistemology of the oppressed, the true meaning of “inclusion” is the regulation of speech and behavior to protect the subjective well-being of the intersectional coalition. Anything that is deemed “exclusive,” or representing the interests of the oppressor, is excluded; anything that is deemed “inclusive,” or representing the interests of the oppressed, is included. This is the logic of racial reasoning, turned into a tautology, managed from above by the bureaucracy. Since the beginning, the critical race theorists argued that the restriction of “racist” and “sexist” speech and behavior was essential to the governance of the university and, by extension, to the governance of society.<sup>15</sup> The bureaucracies internalized this philosophy and used the language of critical race theory—“microaggressions,” “microinequities,” “unconscious bias,” “hate speech”—to construct policies that replaced the rule of free expression with the rule of limited expression.

Together, the acronym for “diversity, equity, and inclusion” represents a new mode of institutional governance. Diversity is the new system of racial standing, equity is the new method of power transfer, inclusion is the new basis of enforcement. All of this could be presented to institutional leadership in a language that appears to be soft, benign, tolerant, and open-minded—something that, combined with the threat of accusation, elite administrators were culturally incapable of resisting.

After establishing this method of colonization in the universities, the critical race theorists and their administrative counterparts extended into the bureaucracies of other institutions. The first and most natural extension was the government, which functioned much the same way as the university: subsidized by taxpayers, layered with administration, operating on a prestige economy, and existing outside the discipline of the free market. As such, the ideology and tactics of critical race theory, adapted into the professionalized language of diversity and inclusion, were easily transposed onto the agencies of the federal government.

The blitz was made even easier by the federal government’s existing civil rights apparatus—the various offices of equal opportunity, minority programs, and legal compliance—which was easily captured and converted from the ideology of colorblindness to the ideology of color-consciousness.

In quick succession and, in most cases, without any explicit mandate from Congress, the federal agencies converged on the principles of critical race theory in their internal programs. The bureaucracies retrooled their civil rights offices to replace the old lodestar of “equality” with the new objective of “equity.” The pattern of conquest was perfectly circular: the intellectuals provided the ideology, the administrators captured the infrastructure, and private diversity contractors attached themselves to a new source of financing and distribution.

Over the past decade, the entire range of federal agencies, from the Environmental Protection Agency to the Federal Bureau of Investigation, has adopted critical race theory as an in-house ideology. In quick succession, these departments created new programming that condemned the United States as “systemically racist,” interrogated employees for their “whiteness,” and demanded loyalty to government by “anti-racism,” or, more accurately, government by the principles of critical race theory.<sup>16</sup>

This formula was repeated across the federal apparatus. In the wake of George Floyd, the National Credit Union Administration told employees America was founded on “white supremacy.”<sup>17</sup> The Department of Homeland Security told white employees they have been “socialized into oppressor roles.”<sup>18</sup> The Centers for Disease Control and Prevention hosted a thirteen-week training program denouncing the United States as a nation dominated by “White supremacist ideology.”<sup>19</sup>

The agencies then told employees to abandon their historical commitment to neutrality and engage in explicit, left-wing political activism. The EPA told workers to internalize the principles of “anti-racism, white fragility, microaggressions, white privilege, and systemic racism” in order to become “allies” for the cause. The State Department organized a three-week anti-racism “habit building challenge” and asked employees to sign a “pledge” in “the pursuit of racial equity.” The Department of Veterans Affairs hosted a series of “Race Cafés,” with administrators signing an “equity pledge” in front of employees.<sup>20</sup>

When investigators at the Office of Personnel Management conducted an inquiry into critical race theory in the federal government, they discovered an avalanche of ideological materials across the federal agencies. “The first thing I remember was the sheer volume of the material,” recounted one official. “A single agency produced nearly 1,000 pages of documents

on ‘unconscious bias’ training alone. We had to hire additional staff just to get through all the material. Another agency had several in-person seminars on ‘whiteness’ which cost tens of thousands of dollars scheduled for that month alone.”<sup>21</sup>

Even federal defense contractors have submitted to the new ideology. Lockheed Martin, the nation’s largest defense firm, sent white male executives on a mission to deconstruct their “white male privilege.” The instructors told the men that “white male culture” and the values of “rugged individualism,” “hard work,” and “striving towards success” were “devastating” to minorities.<sup>22</sup>

Raytheon, the second-largest defense firm, followed suit. The company launched an “anti-racism” program, teaching the principles of “intersectionality” and instructing employees to recognize “interlocking systems of oppression” and “break down power into privilege and marginalization.” Whites, according to Raytheon’s diversity consultant, “have the privilege of individuality” and must silence themselves in front of minorities. Finally, following the logic of critical race theory to its conclusion, the firm told employees to reject the principle of equality outright. The colorblind standard of “equal treatment and access to opportunities” is not enough; the company must instead strive for “equity,” which “focuses on the equality of the outcome.”<sup>23</sup>

The training program at the Department of the Treasury is representative of the increasing bureaucratization of critical race theory in the federal government. As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Obama administration created Offices of Minority and Women Inclusion in all of the federal financial agencies and Federal Reserve banks across the country. According to multiple federal employees, who agreed to speak on condition of anonymity, the leaders of the Offices of Minority and Women Inclusion serve as political commissars, promoting the official ideology and enforcing orthodoxy. One Treasury employee said that the office bombards staff “almost daily” with racially and politically charged content. Conservative employees are “terrified,” anticipating that “managers within the federal government [will] start coercing federal employees into repeating [anti-racist] slogans.”<sup>24</sup>

The Treasury Department’s programming followed a familiar narrative: America is a racist one-dimensional society, the country’s institutions are

mechanisms of oppression, and white citizens, in particular, must atone for their collective guilt and renounce their “whiteness.”

In 2020, Treasury hired a pair of outside consultants, Howard Ross and Johnnetta Cole, to conduct a series of training programs for thousands of workers in the financial agencies.<sup>25</sup> Together, Ross and Cole reprise the two roles of Marcuse’s new proletariat: the white bourgeois and the black militant. Ross is a white, college-educated activist turned “diversity consultant” with a long history with the federal government: across a fifteen-year time span, he billed American taxpayers more than \$5 million for racial training programs, including dozens of programs on “diversity,” “unconscious bias,” and “privilege,” at federal agencies including the Departments of Justice, Energy, Veterans Affairs, and Health and Human Services, and NASA.<sup>26</sup>

Cole, on the other hand, is a Marxist “scholar-activist” with a distinguished pedigree in black militancy. In the 1970s, Cole was a leader in multiple communist-supported organizations, including the pro-Castro Venceremos Brigade,<sup>27</sup> the Marxist-Leninist Angola Support Conference,<sup>28</sup> a Soviet front group called the US Peace Council,<sup>29</sup> and the Weather Underground-aligned July 4 Coalition.<sup>30</sup> She repeatedly denounced the United States for “genocidal practices against peoples of color around the world” and the desire to “destroy all enemies of corporate America.” Cole celebrated the communist victory in Vietnam, even endorsing the new government’s “reeducation camps,” and argued that the Castro regime could provide the model for “eliminating institutional racism”<sup>31</sup> in the United States. As the revolution faded, Cole continued to work in academia as a professor and college administrator, then began to join corporate boards and consulting firms, including Cook Ross Inc., led by her co-lecturer Howard Ross.

At the Treasury Department, Ross and Cole began their presentation to 8,500 employees with a short history of the United States, filtered through the counternarrative of critical race theory. “We have a system that is built on race,” Ross began. “And one of the core flaws, the original sin of this country, is that it was built on the backs of people who were enslaved, and in order to keep that structure in place, we’ve had to form systems and structures . . . for hundreds and hundreds of years.” Whites, Ross continued, bear special responsibility for these historical crimes, because they are

complicit in “a system that’s based on racism,” and perpetuate that system “not necessarily by choice, but by automatic response to the ways we’re taught.” Even “good and decent [white] people” uphold “systemic racism” unless they are “actively engaged in trying to disassemble the system.” Blacks, Cole added, have endured a four-hundred-year reign of “racial terrorism” that continues “to this very day.”

The solution, according to Cole, was for federal employees, especially “White folk” who have an obligation to do serious “inner work,” to become “activists” and advance the agenda of “racial equity.”

In a follow-up, the Office of Minority and Women Inclusion circulated a document outlining the expectations for the federal financial agencies and their 100,000 employees: they must adopt the language of critical race theory—“Whiteness,” “white privilege,” “institutional racism,” “unconscious bias”—“sit in the discomfort that these notions could cause,” and recruit “everyone in the federal government” into “the dismantling of systemic racism.” Blacks, who suffer from “post-slavery traumatic syndrome” and the “deep emotional and physiological toll of racism,” should undergo therapy, meditation, journaling, and healing in order to overcome their “oppression.” Members of both groups, Cole concluded, can then begin the work of political activism and “make policy changes” in local, state, and federal government, in the interest of overturning existing institutions.<sup>32</sup>

The reversal is dramatic. Cole had once promoted her radical ideology as a fellow traveler of the Soviet Union and editorial board member of the journal *Rethinking Marxism*. Now she was promoting it as an official contractor of the United States government. After fifty years, the long march had been completed. The radical Left had finally won its Gramscian “war of position” and attained ideological power within the American state.

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The ambition of the critical race theorists and their confederates in “diversity, equity, and inclusion” is not simply to achieve cultural hegemony over the bureaucracy, but to use this power to reshape the structures of American society. But in the miasma of mystical reasoning and therapeutic language, it is sometimes easy to lose sight of the critical question: What specifically do they want?

The answer is to be found in the original literature of critical race theory,

which, before its transformation in the euphemisms of “diversity, equity, and inclusion,” was remarkably candid about the discipline’s political objectives. They had abandoned the Marxist-Leninist vocabulary of their precursors, such as Angela Davis and the Black Panther Party, but the critical race theorists imagined a revolution that struck just as deeply. They cobbled together a strategy of revolt against the Constitution, using the mechanisms of institutional power to change the words, meanings, and interpretations that provide the foundation of the existing order.

“The Constitution is merely a piece of paper in the face of the monopoly on violence and capital possessed by those who intend to keep things just the way they are,” said Mari Matsuda.<sup>33</sup> Tearing it down was not a transgression; it was a moral obligation. When necessary, Matsuda argued, the critical race theorists could appeal to the Bill of Rights and the Constitution to advance their interests, but ultimately, they believed, “rights are whatever people in power say they are.”<sup>34</sup> The point was not to uphold the principles of the Constitution, but to wield them as a weapon for securing authority.

In place of the existing interpretation, the critical race theorists proposed a three-part overhaul of the American system of governance: abandoning the “colorblind” notion of equality, redistributing wealth along racial lines, and restricting speech that is deemed “hateful.”

To begin, following the line of Derrick Bell, the critical race theorists made the case that “color-blind constitutionalism” functions as a “racial ideology” that “fosters white racial domination”<sup>35</sup> and advances an implicit form of “cultural genocide.”<sup>36</sup> The system of individual rights and equal protection, they argued, provided an illusion of equality that failed to address the history of racial injustice. The way stations of “multiculturalism,” “tolerance,” and “diversity” were inadequate substitutions for “legitimate governmental efforts to address white racial privilege.”<sup>37</sup> To rectify this deficiency, the critical race theorists proposed a new interpretation of the Fourteenth Amendment that moves from a system of negative rights—or, protection against state intrusion—to a system of positive rights, or an entitlement to state action.

As Bell explained, the remedy for the limitations of the Fourteenth Amendment, which had failed to achieve substantive racial equality, was to broaden the Constitution’s protections to include economic rights” and

an "entitlement to basic needs—jobs, housing, food, health care, education and security—as essential property rights of all individuals."<sup>38</sup> In practice, the implementation of this view would require a system of affirmative action, racial quotas, reparations, and group-based rights. The Constitution would thus become "color-conscious" and the state would treat individuals differently according to race, deliberately reducing privileges for whites and securing privileges for minorities. "The only substantive meaning of the equal protection clause," explained Mari Matsuda, "mandates the dis-establishment of the ideology of racism."<sup>39</sup>

There is no bottom to this line of thinking. For the critical race theorists, the word "racism" included everything from explicit discrimination to unconscious bias to unequal outcomes of any kind. And, as Bell insisted, it had an eternal, indestructible power over American society. As a consequence, the critical race theorists abandoned the hope of racial integration and equality under the law, which was deemed naïve, and would replace it with a permanent machine of racial reasoning and reapportionment.

At the abstract level, this would mean foreclosing the promise of the

Declaration, the Emancipation, and the Fourteenth Amendment. At the practical level, it would mean permanently categorizing, ranking, sorting, rewarding, and punishing individuals on the basis of identity, rather than character, merit, or individual accomplishment. For the critical race theorists, the question was how, not if, racism has occurred, and any alternate explanations for disparities, such as family, culture, and behavior, were dismissed as rationalizations for white supremacy.

How could this system of white supremacy be corrected? First and foremost, through the equalization of material wealth through racial redistribution.

The key justification for this policy came from UCLA law professor Cheryl Harris, who wrote an influential *Harvard Law Review* paper called "Whiteness as Property," which was celebrated by Derrick Bell and republished as one of the founding texts in *Critical Race Theory: The Key Writings That Formed the Movement*. In the essay, Harris argued that property rights, enshrined in the Constitution, were in actuality a form of white supremacy and must be subverted in order to achieve racial equality.

"The origins of property rights in the United States are rooted in racial domination. Even in the early years of the country, it was not the concept of

race alone that operated to oppress blacks and Indians; rather, it was the interaction between conceptions of race and property which played a critical role in establishing and maintaining racial and economic subordination," Harris wrote. "Only white possession and occupation of land was validated and therefore privileged as a basis for property rights. These distinct forms of exploitation each contributed in varying ways to the construction of whiteness as property."<sup>40</sup>

Harris thus established the emotionally loaded premise—whiteness and property are inseparable from slavery—that she then projected onto modern society. "Whiteness, initially constructed as a form of racial identity, evolved into a form of property, historically and presently acknowledged and protected in American law,"<sup>41</sup> she wrote. But this had been mystified by the racial ideology of the Constitution. "Although the existing state of inequitable distribution is the product of institutionalized white supremacy and economic exploitation, it is seen by whites as part of the natural order of things that cannot legitimately be disturbed. Through legal doctrine, expectation of continued privilege based on white domination was reified; whiteness as property was reaffirmed."<sup>42</sup>

Harris, however, believed that this system was not inevitable and, through the process of demystification, could be overthrown. She argued that the basic conceptual vocabulary of the constitutional system—"rights," "equality," "property," "neutrality," and "power"—are mere illusions used to maintain the white-dominated racial hierarchy. In reality, Harris contended, "rights mean shields from interference; equality means formal equality; property means the settled expectations that are to be protected; neutrality means the existing distribution, which is natural; and, power is the mechanism for guarding all of this."<sup>43</sup>

The solution for Harris was to replace the system of property rights and equal protection, which she described as "mere nondiscrimination," with a system of positive discrimination tasked with "redistributing power and resources in order to rectify inequities and to achieve real equality."<sup>44</sup> To achieve this goal, she advocated large-scale land and wealth redistribution, inspired in part by the African decolonial model. Harris envisioned a temporary suspension of existing property rights, followed by a governmental campaign to "address directly the distribution of property and power" through property confiscation and race-based reapportionment.

"Property rights will then be respected," Harris noted, "but they will not be absolute and will be considered against a societal requirement of affirmative action."<sup>45</sup>

In Harris's formulation, if rights were a mechanism of white supremacy, they must be curtailed; if property was "racialized property,"<sup>46</sup> it was the legitimate subject for racialist reconquest. And the state is justified in pursuing a regime of "affirmative action," which Harris defined broadly as "equalizing treatment,"<sup>47</sup> including South Africa-style wealth seizures, which, she said, were "required on both moral and legal grounds to de-legitimate the property interest in whiteness—to dismantle the actual and expected privilege that has attended 'white' skin since the founding of the country."<sup>48</sup>

The next question facing the critical race theorists was more practical: How would this proposed system of group-based rights and racialist redistribution be enforced? The answer was clear: through the regulation of "harmful" speech.<sup>49</sup>

In a book titled *Words That Wound*, Mari Matsuda, Charles Lawrence III, Richard Delgado, and Kimberlé Crenshaw laid out the case for dramatically restricting the First Amendment in order to suppress individuals and institutions that represent the forces that would "advance the structure and ideology of white supremacy."<sup>50</sup>

The foundation of their argument was that speech can be a form of violence and, as such, must be restricted by the state in a similar manner. "This is a book about assaultive speech, about words that are used as weapons to ambush, terrorize, wound, humiliate, and degrade," they write in the book's opening paragraph.<sup>51</sup> As with private property and colorblind equality, the critical race theorists proposed that the First Amendment was not designed to protect individual speech, but to cynically enable "racist hate speech" and protect the system of white supremacy.<sup>52</sup>

Freedom of expression, they argued, does not serve citizens equally; in fact, it is both a means and a mask for the subordination of minorities. When the state permits harmful speech, which ranges from subconscious racial messaging to explicit racist polemics, it threatens the physical and psychological safety of racial minorities. "We are not safe when these violent words are among us," Matsuda wrote.<sup>53</sup> "Victims of vicious hate propaganda experience physiological symptoms and emotional distress ranging

from fear in the gut to rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide. Patricia Williams has called the blow of racist messages 'spirit murder' in recognition of the psychic destruction victims experience."<sup>54</sup>

In order to adjudicate guilt, the critical race theorists argued that the concept of "harmful speech" must be interpreted through the lens of intersectionality, with the victim-perpetrator distinction offering a rubric for culpability. The writers of *Words That Wound* were explicit in their argument that whites, and whites only, had the capability of committing speech violence.

Racist language used by minorities against whites, such as Malcolm X's famous tirades against the "white devil," would be exempted from restrictions. "Some would find this troublesome, arguing that any attack on any person's ethnicity is harmful," Matsuda argued. "In the case of the white devil, there is harm and hurt, but it is of a different degree. Because the attack is not tied to the perpetuation of racist vertical relationships, it is not the paradigm worst example of hate propaganda. The dominant-group member hurt by conflict with the angry nationalist is more likely to have access to a safe harbor of exclusive dominant-group interactions. Retreat and reaffirmation of personhood are more easily attained for members of groups not historically subjugated."<sup>55</sup>

In addition to racial speech, the critical race theorists would also regulate political speech. Under their ideal regime, Marxist speech would be protected by the First Amendment; "racist," "fascist," and "harmful" speech would not.<sup>56</sup>

This simple binary described in *Words That Wound* was a basic reformation of Marcuse's "liberating tolerance," using the black-white and left-right distinctions as crude sorting mechanisms. But unlike Marcuse, whose critique was general and philosophical in nature, the critical race theorists, as law professors, created a detailed framework for the regime of speech suppression. They linked the subtlest expression of "racist speech," from the emanations of unconscious bias to academic research with politically damaging conclusions, to the larger "structure of racism,"<sup>57</sup> which, they claimed, should be regulated, shaped, and confined by the state in order to make free expression "a vehicle of liberation" rather than "an instrument of domination."<sup>58</sup>

In practice, the critical race theorists would institute a system of speech codes, behavior regulation, bias detection, and reshaping of the subconscious in order to produce a predetermined outcome of “anti-racist” speech, behavior, and culture. The justification, following the example of Cheryl Harris’s treatment of private property, was that speech power must be redistributed in order to dismantle the institutions and ideologies that prop up the racist system. Speech that embodies “whiteness” must be suppressed; speech that embodies “blackness” must be supported. The content of speech, beginning with “unconscious racism”<sup>59</sup> and ending with the “fighting words” of racial threats,<sup>60</sup> must be reordered and redirected toward the substantive goal of overturning the existing system.

Taken together, the three pillars of the critical race theorists’ ideal system of governance—the replacement of individual rights with group rights, the race-based redistribution of wealth, the suppression of speech based on a racial and political calculus—constitute a change in political regime. Under the ideology of the critical race theory, the meaning of the First Amendment, the Fourteenth Amendment, and the protections of private property would be demolished. The result would be a form of tyranny: the state would not only control the distribution of material resources, as in a collectivist economic regime, but would also extend its domain over individual psychology, speech, expression, and behavior. These twin goals—material and nonmaterial reapportionment—would be achieved through the heavy hand of the state, which would be granted unprecedented intrusion into public and private life.

As the ideologists and bureaucrats of critical race theory entrenched themselves in the institutions, they worked to turn these concepts into policy. They believed their ideas were ready to see the light of day.

The rise of the DEI regime is no longer an academic exercise.

In recent years, left-wing bureaucracies have proposed and enacted a range of policies predicated on the logic of critical race theory. For example, during the coronavirus pandemic, some states created a race-conscious formula for distributing vaccinations that would deny treatment to whites in order to achieve “racial equity.”<sup>61</sup> On the West Coast, some cities have created income transfer programs exclusively for racial and sexual minorities.<sup>62</sup> In government, some agencies have started to mandate separate em-

ployee training programs for “whites” and “people of color” so that whites can “accept responsibility for their own racism” and minorities can insulate themselves from “any potential harming [that] might arise from a cross-racial conversation.”<sup>63</sup> Some public schools have followed suit, segregating students by race for field trips and extracurricular activities, which are, according to school officials, designed to “create a space of belonging,” which, they say, without a hint of irony, is “about uniting us, not dividing us.”<sup>64</sup>

At the federal level, Massachusetts senator Elizabeth Warren has introduced an “Anti-Racism in Public Health Act” that seeks to use the theory of “intersectionality” to direct resources to favored racial-political factions and to embed the monocausal “racial disparities” doctrine into every appendage of the federal government.<sup>65</sup> Likewise, on his first day in office, President Joseph Biden issued an executive order seeking to nationalize the approach of “diversity, equity, and inclusion” and “embed equity principles, policies, and approaches across the Federal Government.” In business, every Fortune 100 corporation in America has submitted to the ideology of “diversity, equity, and inclusion.”<sup>66</sup>

This is only the beginning. This movement seeks to establish itself in every layer of the public and private administration, which will be refitted to advance the substitute morality of critical race theory and replace governance by the Constitution with governance by the bureaucracy. The strategy is not to amend the Constitution through the democratic process—which, the critical race theorists concede, would be an impossibility—but to subvert it through a thousand administrative cuts. Their gambit is to normalize the regime of group-based rights, active discrimination, speech suppression, and racialist redistribution of resources through small administrative decisions, which can, over time, legitimize broader policies.

The critical race theorists’ ultimate ambition is to establish these principles as state orthodoxy from the top down. In an essay for *Politico Magazine*, Boston University professor and bestselling popularizer of critical race theory Ibram Kendi unveiled his proposal for an “anti-racist amendment” to the Constitution.<sup>67</sup> “The amendment would make unconstitutional racial inequity over a certain threshold, as well as racist ideas by public officials,” Kendi explained. “It would establish and permanently fund the Department of Anti-racism (DOA) comprised of formally trained experts

on racism and no political appointees. The DOA would be responsible for preclearing all local, state and federal public policies to ensure they won't yield racial inequity, monitor those policies, investigate private racist policies when racial inequity surfaces, and monitor public officials for expressions of racist ideas. The DOA would be empowered with disciplinary tools to wield over and against policymakers and public officials who do not voluntarily change their racist policy and ideas.”<sup>68</sup>

In other words, the scope and power of the new “Department of Anti-racism” would be nearly unlimited. In effect, it would become a fourth branch of government, unaccountable to voters, that would have the authority to veto, nullify, or suspend any law in any jurisdiction in the United States. It would mean an end to the system of federalism and to the law-making authority of Congress. Furthermore, under the power to “investigate private racist policies” and wield authority over “racist ideas,” the new agency would have unprecedented control over the work of lawmakers, as well as auxiliary policymaking institutions such as think tanks, research centers, universities, and political parties.

Although Kendis proposal—a crude translation of the policies intimated in *Words That Wound* and *The Key Writings That Formed the Movement*—is framed as an amendment to the American constitutional order, it is better described as an end to the constitutional order. In the name of racial justice, the critical race theorists and their fellow travelers would limit, curtail, or abolish the rights to property, equal protection, due process, federalism, speech, and the separation of powers. They would also replace the system of checks and balances with an “anti-racist” bureaucracy with nearly unlimited state power—and every other institution would be forced to fall in line.<sup>69</sup>

If critical race theory should succeed as a system of government, it is easy to imagine the future: an omnipotent bureaucracy that manages transfer payments between racial castes, enforces always-shifting speech and behavior codes through bureaucratic rule, and replaces the slogan of “life, liberty, and the pursuit of happiness” with the deadening euphemism of “diversity, equity, and inclusion.”

This is not yet the regime in America, but unless there is a reversal within the institutions, the slow, hulking machine of critical race ideology will continue to accumulate power and marginalize democratic opposition. Once

the public has been sufficiently alienated from the Constitution of 1789—when its heroes have been destroyed and its memories severed from their origins—the Constitution will finally become “merely a piece of paper,” a palimpsest to be written over in pursuit of the “total rupture” with the past. It will become, in the words of Derrick Bell, nothing but “roach powder” used to suffocate and destroy American liberty.