

# Foreword

## Who Are We? And Why Are We Here? Doing Critical Race Theory in Hard Times

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*Editors' note: This Foreword is a slightly edited transcript of a speech given by Charles Lawrence at the opening session of the November 1997 Critical Race Theory Conference at Yale University, where many chapters of this book were first presented as panel presentations and working papers. We have published Professor Lawrence's speech as he spoke it to preserve its intimacy and energy, as well as its historical context.*

WHEN HARLON DALTON asked me to give the opening remarks at this conference, and I asked him what I should talk about, he said something like, "Just be your warm, wise self." My first reaction to Harlon's typically playful and generous response was ambivalence. It was the same feeling I had experienced when I first received the announcement of the conference in the mail. The flyer described the meeting as a tenth birthday celebration for Critical Race Theory and named my Stanford article on unconscious racism<sup>1</sup> among the genre's foundational canon. I felt honored by this generous acknowledgment of my work. I knew it was a gesture of love and respect by the conference organizers. But I wasn't at all sure I liked Harlon's undisguised pleasure in calling me an "old man" and getting away with it. He even suggested that when I gave this talk I might wear an old brown leather jacket—a favorite of mine that was fashionable, even hip, in the early days of Critical Race Theory but would now look quaint. Harlon swears that he was but a child when he first saw me wear it.

But as the day drew closer, my primary emotion was anxiety. What I was experiencing was something more than the ordinary jitters that always accompany public presentations of self. This was not a lecture to students or colleagues who would judge me on terms I had learned to mediate and master, even as I held the judges at arms length. This would be a conversation with friends and comrades. I do not know you all, but there are many of you who know me well—who have shared my joys and sorrows, stood with me against my ene-

mies, and covered my back. And I know that many of you whom I do not know well have been with me, too, because I have seen your work and it is work that teaches, nourishes, and shelters me and reminds me that I am not crazy—or maybe it is that I am not the only crazy one. So fast and facile footwork with theory and text will not do. I must speak the truth, as best I can, about things that matter to me. Now what I feel is not primarily anxiety but exhilaration and pride at the sight of you and in the beauty of my chosen family.

I remember feeling the same way ten years ago. There were only forty, maybe fifty, of us then. We were gathered in a large upstairs room that looked like a combination auditorium/gymnasium. Folding chairs were arranged in a large circle around the room's perimeter. It was the first session of the tenth National Critical Legal Studies Conference. A small group of us had been attending CLS meetings for several years, seeking intellectual community in what was then the dominant progressive movement in the legal academy. There were more of us at this CLS conference than ever before. Our numbers were larger because the conference, entitled "Sounds of Silence: Racism and the Law," had placed us momentarily at the center of the CLS agenda. Although in its initial incarnation it was a conference planned by and for white folks, we had, in the end, played a significant role in its creation. Ultimately, it was a genuine response by our friends and collaborators in CLS to our personal experiences of alienation and marginalization in their community and to our challenge that their work contained insufficient attention to and understanding of the issues we considered central to the work of combating racism.<sup>2</sup> We were also asking them to examine their own racism (never an easy request to make or respond to) and trying to figure out for ourselves where we fit in—how to situate ourselves as progressive people of color in law teaching.<sup>3</sup>

The organizers of the conference had decided that the colored people and white folks should meet in separate "minority" and "non-minority" caucuses for the opening evening session. We hoped that this would allow the white folks to take responsibility for dealing with their own racism (the help said we wouldn't do windows that evening), and we wanted an opportunity to speak to one another with candor, and without posturing, about our own condition as people of color on the left. This was a chance to sit down with family and really talk.

Kimberlé Crenshaw had asked me to chair the colored caucus. Kimberlé was only in her first year of law teaching, but she had been a moving force in putting the conference on the right track, and would soon become one of Critical Race Theory's founding sisters. I had been in the teaching business longer than Kimberlé and thought of myself as a big brother, but even then, when Professor Crenshaw said "We need you to do this," there was no saying no.

Because we were a much smaller group then, I could do what I wish were possible here—that is, listen instead of talk. I suggested that we proceed by going around our large circle, with each of us speaking briefly, so that we could hear from everyone in the room. I asked each person two questions: "Who are you?" and "Why are you here?" I wanted to know where we were from, who our people were, and by what route we had come to this place. What had attracted us to critical legal studies, and what made us feel alienated? What were our frustrations, and what were our hopes.

The stories we told one another that night were wonderful and richly complex. We had lots to say, and suddenly it could all be said: our anger, pain, and even joy; our strength and vulnerability; the ambivalence of our roles as outsiders on the inside; the schizophrenia that comes with mastering the master's language while struggling to maintain flu-

ency in languages that are expressive of liberating themes. We were lonely souls seeking community and refuge from the white worlds where we worked. We looked less diverse than we do now. Most of us were African Americans, but the clear and vibrant voices of Native, Latino, and Asian American brothers and sisters presaged the considerable gifts and important work that they represent among us today.

What we had most in common was a genealogy. On the second day of the conference, Harlon Dalton described our shared biography in an eloquent and irreverent speech. Contrasting us with the “typical crit” who “lived in his head disconnected from much of the richness of the surrounding world,” he said this of us,

No matter how smart or bookish we were, we could not retreat from the sights, sounds, and smells of the communities from which we came. We learned from life as well as from books. We learned about injustice, social cruelty, political hypocrisy and sanctioned terrorism from the mouths of our mothers and fathers and from our very own experiences. . . . And from the beginning we learned, not as an article of political faith but rather as a simple fact of life, that our fate and that of all persons of similar hue were inseparably intertwined. That fundamental connectedness, together with our distinctive subcultures, nourished and sustained us, created in us an unshakable sense of community. The lucky ones among us reveled in that community, fed on it. Others of us resented it or tried to hide from it. But escape was not possible, for the community was within us, and we were branded forever.<sup>4</sup>

Those of us who were most senior, and even *we* were young people then, had come of age in the midst of the rushing river of the Civil Rights Movement.<sup>5</sup> In 1966, the summer of my first year in law school, I traveled to southwest Georgia to work with C. B. King.<sup>6</sup> When we drove to court in Baker County or Americus, the brothers in the movement would meet us at the county line and escort us to the courthouse, with the barrels of their shotguns sticking out the window. The following summer, I dropped out of law school for a year to teach and organize in North Philadelphia. High-school kids were reading Malcolm and Fanon and Harold Cruz—or, at least, they were carrying the books around and quoting from them. In 1970, I dropped out again, leaving a legal-services job to become the principal of a parent-run community school in Roxbury, a poor Black neighborhood in Boston. Mary Helen Washington, in her presidential address to the American Studies Association, describes this period in her own professional history, when she was a young assistant professor in the English Department at the University of Detroit,

Besides teaching a full load, fighting to increase the pitifully small number of black students on campus, negotiating with the traditional departments for their reluctant acceptance, we were under a great deal of pressure, in the Black Power climate of Detroit, to be politically involved; you had to read Mao and Marx and Malcolm; you had to be “in struggle.” I remember one meeting at Wayne State, where I went to hear the fiery Ron Dellums speak, that featured the entire spectrum of black political thought in Detroit: There were Black Muslims, Black Panthers, Pan-Africanists, black cultural nationalists, black Christian nationalists, Marxist-Leninists, and communists; I was there as a closeted integrationist. In my journals I reported coming home that night and becoming deeply involved in cleaning my house so I could restore my sense of order.<sup>7</sup>

Like the young Professor Washington, I do not remember so much choosing to be an activist as being pulled along by the current of the times: trying to understand and keep up with an onrushing river of liberation, trying to do the practical work of representing jailed freedom fighters and drafting resolutions at neighborhood meetings and Black

political conventions. I embarked on my professional career at the high point of the long, forward-moving doctrinal march from *Sweatt* to *Griggs*.<sup>8</sup>

Many of the folks in that room ten years ago were a decade younger than I, and it was this generation of law teachers who first called themselves critical race theorists. Kimberlé Crenshaw locates Critical Race Theory's conception in the late 1980s when she began law school.<sup>9</sup> It was a period of retrenchment, an initial assault against the gains made during the Civil Rights Movement. This somewhat younger group of progressive colored law teachers were part of the militant resistance to that retrenchment. Their political consciousness and intellectual agenda were forged in the activism that opposed visions of race, racism, and law that were dominant in this post-civil-rights period. The *Bakke* case is the doctrinal marker of the times that shaped this generation of critical race theorists. They were part of an organized grassroots movement that waged an effective fight against the backlash embodied in *Bakke*. The result of this struggle was an uneasy compromise: watered-down affirmative-action programs remained in place alongside a new rhetoric of "reverse discrimination."<sup>10</sup>

If the youthful biographies of early critical race theorists were shaped by the movements that culminated in *Griggs* and *Bakke*, the biographies of our younger brothers and sisters, and the middle passage of my contemporaries, are marked by *Croson*, *Adarand*, *Hopwood*, Propositions 187 and 209,<sup>11</sup> the confirmation of Justice Clarence Thomas, and the Million Man March. How do we do Critical Race Theory in these perilous times? How do we define ourselves when there is no ideologically grounded mass movement to define us? How do we resist an organized and well-funded ideological assault from the right that has been vicious and successful beyond anything we anticipated?<sup>12</sup> How do we talk to one another about the hard stuff—sexism, heterosexism, nationalism, class privilege, internalized racism—moving beyond the Black-white paradigm and still understanding its special place in the construction of American racism?<sup>13</sup> "Who are we? And why are we here?"

In the remainder of this talk I want to say some things about how we might begin to talk with one another about the answers to these questions. I start with a list of things that keep coming up in the conversations I have been having with myself as I struggle to find, or define, a place and way to work, and a community to work with, in this season of my life. I offer this short and tentative list not as answers to my questions but as places to begin our conversations:

1. Speaking simple truths to power.
2. Making our own communities our first audience.
3. Creating a homeplace for refuge and hard conversations.
4. Defining boundaries (knowing who is us and who is them).
5. Starting small (knowing that small is important and good).
6. Remembering that we are beautiful and that we are bad (or "the bomb").

## Speaking Simple Truths

Mari Matsuda and I recently spoke on a panel at the American Studies Association annual conference. The conference organizers had asked us to speak about our book *We Won't Go Back: Making the Case for Affirmative Action*.<sup>14</sup> Roger Wilkins, the historian, journalist, and long-time civil-rights activist, was the respondent to our papers. He gave a wonderful talk

that was at once penetrating, thoughtful, and inspiring. Two things that he said stand out for me. First, he reminded us that Proposition 209, the anti-affirmative-action initiative in California, and *Hopwood*, the Fifth Circuit Court decision holding a race-based affirmative-action program at the University of Texas unconstitutional, are reenactments of those provisions of the slave codes that made it a crime to teach a slave to read or cipher; and second, both the eighteenth- and late-twentieth-century versions are products of the slave masters' fear of revolt. "It doesn't surprise me," said Roger, "that when white folks read Matsuda and Lawrence's work, they say, 'We better stop teaching these folks to read and write.'"

When a member of the audience asked Wilkins why the children of middle-class Black folk like him should benefit from affirmative action, he answered, "Because fighting racism in white institutions is hand-to-hand combat. And if my daughter is among the best-trained and most committed freedom fighters, we must have her here with us. We need every warrior we can muster."

These are simple truths, simply said. The dismantling of affirmative action is segregation. Its purpose and meaning are the same as the Jim Crow laws. We need to call Pete Wilson and Orrin Hatch what they are—old-fashioned segregationists. When our liberal colleagues stand by and wring their hands, saying, "Now that these measures are law, nothing can be done," we need to ask, "Which side are you on?" and tell them that we will judge them by the results of their actions. Law faculties determine the standards by which we judge who is qualified to attend our schools, and if we are unwilling to reexamine measures of merit that replicate white privilege, we must explain our collaboration with segregationists.<sup>15</sup> Just as respectable white folks in Birmingham, Alabama, and Jackson, Mississippi, were responsible for the bombings and lynchings by the Klan, because they had the power to put a stop to them, we and our colleagues are responsible for the crime that is done by the resegregation of our law schools, and that simple truth must be told.<sup>16</sup>

These are truths that have been lost and forgotten amid the revisionist rhetoric of "color blindness" and "racial preferences." When our colleagues accuse us of "being polemical and lacking balance" or engaging in "identity politics" and "vulgar racial essentialism" or being "radical nihilists" when today's political climate calls for pragmatism and compromise, or when they attack our scholarship as "unanalytic," "unsophisticated," "untruthful," "Beyond All Reason," and even "anti-Semitic,"<sup>17</sup> we must know that these are words designed not just to discredit and defame but to intimidate and pressure us to self-censor. I am worried that our enemies have achieved some success in this project, that too often we seek the safety of abstract theory and avoid the narratives that implicate our colleagues. I do not mean in saying this that we should not be doing erudite meta-theory and complex deconstruction. Nor is this a call to abandon the openness, empathy, and reconciliation that have been such an important part of our work. But we must also speak the simple and radical truths of white supremacy and patriarchy and class oppression and heterosexism, even when we know we will pay a price for speaking them.

## Speaking to Our Own

Critical Race Theory was born as part of the resistance to retrenchment, and it is not surprising that we and our work have been subject to relentless attack throughout the past ten years. We know the colleagues who have established careers and gained name

recognition by critical-race-bashing. More important, impugning our ideas and silencing our message is central to the ideological war that is being waged by the right. Most of us live and work in a largely white world, and our work is paid for and judged by a white audience. Powerful white folks and their non-white allies, such as Ward Connolly and Justice Clarence Thomas, have the power to make and enforce law, and it is natural that, as lawyers and law professors, we so often find ourselves speaking to them first and foremost: responding to attacks, seeking to influence legislation, writing articles for white tenure committees, lecturing and writing in venues where few in our audience are colored or poor. This is often important work. Much of it is the hand-to-hand combat that Roger Wilkins spoke of. But I want to suggest that in these times of backlash and retrenchment, it is especially important that we find ways to speak to and with the folks from our own communities.

There are several reasons for this. I want to mention four and save for another time a discussion of each. The first is that our lack of control of or access to mainstream media has forced us into a reactive posture. In a recent column in *The Nation*, Patricia Williams described the frustration and futility of defending against the stream of caricature of Critical Race Theory in such places as the *Wall Street Journal* and the *New Republic*:

They take a fluidly left-leaning group and depict it as an idiotically “separatist” right wing monolith. This “why did you beat your wife” strategy means that real debate of issues posed by a serious, responsible left is eternally circumvented as we sacrifice precious time to the kind of simple-minded but necessary refutation that only sets you up for more: I am not a neo-Nazi! I can so tell the difference between fantasy and fact! And of course, some of my best friends are white. . . .

Critical Race Theory is treated as a conceptual ghetto filled with dangerous low-income scholarship unworthy of reading, never mind careful reading. From there, it is easy to believe whatever misquoted, misconstrued blather is said to stream from the mouths of those . . . anti-intellectual thugs with “blood” on their Singular Mind—theirs being, of course, the True Black Mind that fabricates faster than Madame Defarge could knit.<sup>18</sup>

What makes Patricia Williams’s piece most poignant is that it is an exercise in the very futility she describes. Moreover, our rejoinder to these libelous falsehoods can never adequately redress the injuries they inflict. Precious souls such as Patricia Williams should not be subjected to the personal assault and abuse that goes with participating in this anything-but-intellectual debate.

The second reason to spend less time talking to white folks and more to our folks is that the latter conversations are important to our own continuing education. We learned the best of our theory in conversations with our own communities and within the context of activism with those communities. The remarkable chapters in this volume are evidence that this continues to be so.

Third, there is much teaching to be done in communities of color, both the teaching of the skills that are denied our children in the public schools (each of us should find a young person to tutor) and the teaching of politics—helping young Black people put the lie of their inferiority outside of them, helping men of color understand how patriarchy harms them as well as their sisters, teaching colored professionals the importance of coming out of the closet as beneficiaries of affirmative action.

And fourth, we would not be here but for the ideologically informed struggles of the communities from which we come, and we will not be here for long if the folks in those communities do not know that they belong here and that they must fight for our inclusion and theirs. George C. Wolfe, who produced *The Colored Museum* and *Bring in ’Da Noise*,

*Bring in 'Da Funk* sees as one of his central missions building new audiences among young Black people. He is setting aside large groups of tickets for Black schools and marketing deep discounted tickets on cable TV's Black Entertainment Television (BET) and in the hip-hop magazine *Vibe*. Wolfe says: "You are building an audience, because audiences are mostly old and white, and that perception is a fact. And when they die, there is a possibility that audiences could die."<sup>19</sup>

## Creating Homeplace

bell hooks, a keynote speaker at that Critical Legal Studies Conference ten years ago, has said: "Home, however fragile and tenuous (the slave hut, the wooden shack), had a radical dimension. Despite the brutal reality of racial apartheid, of domination, one's homeplace was the site where one could freely confront the issue of humanization, where one could resist."<sup>20</sup>

In hard times, it is especially important to create homeplaces: safe places among trusted friends to seek refuge and dress the wounds of battle and places for hard conversations, where differences can be aired and strategy mapped, where we can struggle with and affirm one another. As we have increased our numbers, it has become more difficult for Critical Race Theory meetings to be a homeplace for us all. From the beginning, we have also been about coalition-building. That wondrous musical/political voice Bernice Reagon Johnson has said of coalition: "Coalition work is not done in your home. Coalition work is done in the streets. It is some of the most dangerous work you can do. And you shouldn't look for comfort."<sup>21</sup>

Critical Race Theory has always lived with this tension. Folks have come seeking refuge from hostile workplaces, and often they have encountered the unsafety of coalition-building. We have struggled to teach one another about the intersections that gender and race and heterosexism make and to confront our own internalization and participation in those subordinations. Some of us have said, "I am marginalized or made invisible or even dehumanized by this discussion." And we have not always heard them. Inevitably, I will hear gossip about some falling-out or a faction forming, but I take this news of Critical Race conflict as evidence of growing pains. I am reassured that we are alive and not unlike other families. I also believe it is not necessarily a bad thing that, as we grow in number, we form smaller, more intimate groups of younger and older Lat-Crits and queer-race-Crits and Midatlantic-women-of-color-Crits, homeplaces within a collective too large now to be a homeplace itself. I think this is good because some wonderful work is produced in these smaller groups and because I do not experience them as excluding or divisive. Many of us move freely among them and identify with more than one.<sup>22</sup>

## Defining Boundaries

There is another tension that has been with us always. This is the tension between our desire to create a community of kinship and safe harbor for all people of color who self-identify as progressive and our need to define our politics with sufficient clarity to make that politics meaningful and functional. In hard times, I think it is more important than ever to define clearly who we are and what we stand for. I am not talking about the silly debate over whether certain individuals have been, or should be, barred from attending

Critical Race Theory workshops. I am not advocating the adoption of a party platform or the recitation of an apostles' creed. I believe that our work suffers when we are not prepared to engage in serious criticism of ourselves and of one another. But in a time in which we are misrepresented and caricatured by our enemies, when there are people of color who are misogynist, homophobic, or anti-other but still call themselves progressive racemen, we must be clear about what we stand for. We must know who is us and who is them. For me, an important starting point in this project of self-definition is our commitment to the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression. The end of racial oppression requires fundamental social transformation, not just adjustments within established hierarchies, and those who would claim Critical Race Theory without a commitment to challenging hierarchy and subordination in all its many intersecting forms should not find community with us.

## Starting Small

What do we do when there is no mass movement, when the river of liberation is not pulling us along in a rushing torrent but only moving in its deep streams? I have been thinking about those who went before us, earlier generations of radical teachers who kept the flames of freedom alive in hard times. There is a poster on my office wall at home with a picture of the brothers of the Niagara movement, all in fancy hats. When I look at that picture, I am always struck by what a small group they were. I think of Ida Wells mounting an anti-lynching campaign, at first almost single-handedly. Spike Lee interviews Andrew Young in his movie *Four Little Girls*, a retrospective documentary about the infamous Easter Sunday bombing of the Sixteenth Street Church in Birmingham, Alabama. Young reflects on the massive Civil Rights Movement that rose up in that city, so long known for the brutality of its racism. He says, "Everybody always thinks of the movement as hundreds and thousands of people marching and going to jail, but when we first came to Birmingham, we'd have ten or twelve people show up for a march."<sup>23</sup> In hard times, we must continue to be activists. In hard times, it is important and necessary and good to start small.

We cannot teach about liberation without actively engaging in its politics. As Paulo Freire has said, "There is no true word that is not at the same time praxis."<sup>24</sup> Many among us are doing this important work. Julie Su is helping immigrant garment workers in Los Angeles sweatshops to fight the big names of American fashion and learning from them what it means to fight.<sup>25</sup> Gerald Torres is quietly working behind the scenes to mount a political fight-back against the Fifth Circuit's *Hopwood* decision. Kendall Thomas is putting together cross-racial coalitions in New York to fight homophobia. Sumi Cho, Margaret Montoya, Margalynn Armstrong, and Angela Harris are meeting with student and community activists at Boalt to organize an action campaign and march against the resegregation of the University of California. I have named just a few of you. Surely there is no need to despair, because there is still a movement as long as we continue to act up.

## Remembering That We Are Gorgeous

One morning about a month ago, Mari Matsuda walked into her office. Scrolling across the screen of her computer in three-inch-high letters were the words, "Professor Matsuda



Is the Bomb.” Was this a threat or a not-so-funny practical joke? Had some member of a hate group found a way to write this message on her computer? Thinking it was better to be safe than sorry, Mari called the associate dean, and the dean called security. It was the security guard, a young brother, who said, “Professor Matsuda, I think someone is trying to pay you a compliment.”

Mari tells this story on herself, laughing in good-humored self-deprecation at how out of touch she is with youth culture. Her very hip Afro-Asian research assistant, Ms. Susan Epps, had put the message on the screen, and she does think her professor is “the bomb.” For me this story is not just an artifact of the generation gap. It is a reminder that in hard times it is important to remember that we are “the bomb,” or “bad,” as we first-generation critical race theorists used to say when we were young. Each of you is “the bomb,” and collectively we are a nuclear explosion of beauty.

Why am I here? Mainly because this is the smartest, best-looking, sweetest bunch of people in law teaching. Judge Richard Posner says you are bad role models for minority youth, that you reinforce all the pejorative stereotypes of colored folks.<sup>26</sup> But if he’s right that white folks will think that all colored folks look and act like you, that’s just fine with me. I want Kimi and Pauli to grow up to be just like you.

Derrick Bell says that racism is permanent. One thing is for certain: None of us will live long enough to know whether he is right. So we’re in this fight for the long haul, and Derrick is certainly right when he says we struggle because that is what gives life meaning, that is what gives us joy.<sup>27</sup> I for one am glad I’m in this struggle with all of you.

## Notes

1. Charles R. Lawrence III, “The Id, the Ego, and Equal Protection,” *Stanford Law Review* 39 (1987): 317.
2. For a discussion of the history of Critical Race Theory and its relationship to the critical legal studies movement, see Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberlé W. Crenshaw, *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder, Colo.: Westview Press, 1993); Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, eds., *Critical Race Theory: The Key Writings That Formed the Movement* (New York: New Press, 1995); Jose A. Bracamonte, “Foreword—Minority Critique of the Critical Legal Studies Movement,” *Harvard Civil Rights—Civil Liberties Law Review* 22 (1987): 297.
3. Charles R. Lawrence III, “The Word and the River: Pedagogy as Scholarship as Struggle,” *Southern California Law Review* 65 (1992): 2231.
4. Harlon Dalton, “The Clouded Prism,” *Harvard Civil Rights—Civil Liberties Law Review* 22 (1987): 435.
5. Vincent Harding, *There Is a River: The Black Struggle for Freedom in America* (San Diego: HarBac, 1981), xviii–xix. Harding uses the river as metaphor in writing the history of Black radicalism in America. He says of his chosen metaphor: “I wanted and needed to write . . . a narrative, analytical, and celebrative history of the freedom struggle of black people in this country, beginning before there was a country. I was especially concerned to try to convey its long, continuous movement, flowing like a river, sometimes powerful, tumultuous, and roiling with life; at other times meandering and turgid, covered with the ice and snow of seemingly endless winters . . . the river of black struggle is people, but it is also hope, the movement, the transformative power that humans create and that creates them, us, and makes them, us, new persons.”
6. C. B. King was one of the small army of civil-rights attorneys in the deep South. At the height of the Civil Rights Movement, he was the only African American attorney within an eighty-mile radius of Albany, Georgia. A brilliant lawyer and orator, King rode the circuit of back-country courthouses in southwestern Georgia representing the young freedom fighters of the Student Nonviolent Coordinating Committee (SNCC) and the Southern Christian Leadership Conference (SCLC) and the local folk who rose up in a

mass movement around them. An outstanding figure in his own right, he was also a mentor to an impressive corps of young civil-rights attorneys, including Dennis Roberts, Paul Harris, and Robert Cover.

7. Mary Helen Washington, "Disturbing the Peace: What Happens to American Studies If You Put African American Studies at the Center? Presidential Address to the American Studies Association," *American Quarterly*, sec. 50.1 (October 29, 1997), 1–2.

8. *Sweatt v. Painter*, 339 U.S. 629 (1950), holding that a Black law-school candidate had to be admitted to the University of Texas Law School, despite the existence of a local Black law school, because the latter was not equal to the University of Texas in faculty, resources, or reputation, among other criteria. I name *Sweatt* as the beginning of this progressive doctrinal march because it contained the revolutionary seeds of *Brown v. Board of Education of Topeka*, 347 U.S., 483 (1954). In finding that a segregated law school for Negroes could not provide them with equal educational opportunities, the Supreme Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school," thus recognizing the intangible injuries of stigma and racial isolation that became the foundation of *Brown* and the 1964 Civil Rights Act. *Griggs v. Duke Power Company*, 401 U.S. 424 (1970), holding that the Civil Rights Act prohibits an employer from requiring certain tests, such as a high-school diploma, when such tests are not significantly related to job performance, when the tests disqualify Blacks at much higher rates than whites, and when whites previously had received such jobs by preference to the point of excluding Blacks. I name *Griggs v. Duke Power Company* as the high point of this progressive doctrinal movement because it was *Griggs* that required a justification of ostensible neutral practices that produced racially discriminatory results. In *Griggs*, the court momentarily transformed antidiscrimination law by shifting the emphasis on bad intent to one on consequences, thus adopting what Alan Freeman called the "victim perspective"—that there is no equality until the conditions associated with slavery and segregation have changed: Alan David Freeman, "Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," *Minnesota Law Review* 62 (1978): 1049.

9. Professor Kimberlé Crenshaw discusses the politics and legal ideology that characterized the retrenchment of the post-Civil Rights era in "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law" *Harvard Law Review* 101 (1998): 1331. For a discussion of Critical Race Theory's historical, intellectual, and political origins, see Matsuda et al., *Words That Wound*, 1–15, and Crenshaw et al., *Key Writings*, xiii–xxxii.

10. *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). For a discussion of the history of the politics of backlash against remedial racial remedies and affirmative action that culminated in the *Bakke* case, and of the politics of resistance to that backlash, see Charles R. Lawrence III and Mari J. Matsuda, *We Won't Go Back: Making the Case for Affirmative Action* (Boston: Houghton Mifflin, 1997). See also Joel Dreyfuss and Charles R. Lawrence III, *The Bakke Case: The Politics of Inequality* (New York: HarBac, 1979).

11. *City of Richmond v. J. A. Croson*, 488 U.S. 469 (1989), striking down Richmond's plan requiring prime contractors awarded city construction contracts to subcontract at least 30 percent of the dollar amount to one or more minority enterprises; *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), holding that a federal program designed to provide highway contracts to disadvantaged business enterprises must withstand strict scrutiny; *Hopwood v. University of Texas*, 78 F. 3d 932 (5th Cir.), cert. denied, 116 S. Ct. 2581, holding that the goal of achieving a diverse student body is not a compelling interest justifying racially preferential admission policies. California's Proposition 187 prevents illegal aliens from receiving social services, health-care services, and public education. *League of United Latin Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Calif. 1997), held that portions of Proposition 187 were pre-empted by federal laws regulating immigration. Thus, the portions of the proposition that required state officials to verify an immigrant's status, notify authorities that he may be here unlawfully, and publicly report his immigrant-status information were struck down. California's Proposition 209 prohibits the use of affirmative action in public employment, public education, and public contracting. In *Coalition for Economic Equity v. Wilson*, 110 F. 2d 1431 (9th Cir. 1998), the court affirmed and upheld Proposition 209, holding that it did not deny citizens equal protection.

12. See, for example, Jeffrey Rosen, "The Bloods and the Crits: O. J. Simpson, Critical Race Theory, the Law, and the Triumph of Color in America," *New Republic*, December 9, 1996, 27; Richard A. Posner, "The Skin Trade" (book review), *New Republic*, October 13, 1997, 40; Daniel A. Farber and Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (New York: Oxford University Press, 1997).

13. See, for example, the chapters by Sumi Cho and Robert Westley, Catharine A. MacKinnon, Mari Matsuda, Francisco Valdes, and Eric Yamamoto and Julie Su in this volume.

14. Lawrence and Matsuda, *We Won't Go Back*.

15. The LSAT remains the primary determinant of admission at Boalt and UCLA, and the primary cause of the exclusion of African American and Latino students. The failure of these faculties, and almost all others, to abandon this heavy reliance on the LSAT has little to do with their confidence in its infallibility as an accurate predictor of performance in law school, much less the profession. Rather, it is evidence that they are more concerned about preserving their ranking in the *U.S. News and World Report* pecking order and the privilege that hides in the myth of meritocracy than they are with racial justice. For a discussion of how the liberal defense of affirmative action fails to challenge the manner in which traditional standards of merit perpetuate race and class privilege and ignores substantive defenses of affirmative action that articulate the need to remedy past and ongoing discrimination, see Charles R. Lawrence III, "Two Views of the River: A Critique of the Liberal Defense of Affirmative Action," *Columbia Law Review* 101 (2001): 928.

16. Martin Luther King chastised white religious leaders who stood silent while Blacks' homes and churches were bombed and then called his campaign of nonviolent direct action "extreme" and counseled compromise with and acceptance of segregation. Dr. King wrote, "I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizens 'Councilor' or the Ku Klux Klanner, but the white moderate who is more devoted to 'order' than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice": Martin Luther King, Jr., "Letter from Birmingham City Jail," in *Eyes on the Prize: Civil Rights Reader*, ed. Clayborne Carson et al. (New York: Penguin Books, 1991), 153, 156.

17. Posner, "Skin Trade," uses the following words and phrases to describe critical race theorists and their ideas: "identity politics," "paranoid," "rational fringe and lunatic core," "goofy," "irresponsible," "childish," "loony Afrocentrism," "disgrace to legal education," "extremism," and "hysteria." Rosen, "Bloods and the Crits," has employed phrases such as "vulgar racial essentialism" and accused critical race theorists of being polemical and lacking balance. Farber and Sherry, *Beyond All Reason*, 52–71, devote an entire chapter to the alleged "anti-Semitism" of critical race theorists.

18. Patricia J. Williams, "De Jure, De Facto, De Media . . . ; Diary of a Mad Law Professor," *New Republic*, June 2, 1997, 10.

19. Jacqueline Trescott, "'Da Noise' of a Full House: National Tour Strives to Reach Diverse Audience," *Washington Post*, November 9, 1997, G1.

20. bell hooks, *Yearning: Race, Gender, and Cultural Politics* (Boston: South End Press, 1990), 42.

21. Bernice Reagon Johnson, "Coalition Politics: Turning the Century," in *Home Girls: A Black Feminist Anthology*, ed. Barbara Smith, 1st ed. (New York: Kitchen Table–Women of Color Press, 1983), 356, 359.

22. See the chapter by Francisco Valdes in this volume.

23. Spike Lee, *Four Little Girls* (New York: HBO Home Video, 1998), audiovisual (40 Acres and a Mule Fireworks, 1997).

24. Paulo Freire, *Pedagogy of the Oppressed* (New York: Continuum, 1982), 75.

25. See the chapter by Julie A. Su and Eric K. Yamamoto in this volume.

26. Posner, "Skin Trade": "The ironic consequence is that the critical race theorists are poor role models. Instead of exemplifying in their careers the potential of members of their groups for respected achievement in the world outside the ghetto of complaint—the kind of exemplification that we find in the career of Colin Powell—critical race theorists teach by example that the role of a member of a minority group is to be paid a comfortable salary to write childish stories about how awful it is to be a member of such a group."

27. See generally Derrick A. Bell, Jr., *Faces to the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992).

## INTRODUCTION

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# Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millennium

*Francisco Valdes, Jerome McCristal Culp,  
and Angela P. Harris*

THE EMERGENCE of Critical Race Theory (CRT) in the legal academy of the United States during the late 1980s has had a galvanizing effect not only within the narrow world of legal academia, but also on the public discourse on race more generally. In part, this impact has been due to what CRT has to say. CRT, like critical legal studies (CLS) before it, rejects the basic premises of American legal liberalism.

Critical race theorists have not placed their faith in neutral procedures and the substantive doctrines of formal equality; rather, critical race theorists assert that both the procedures and the substance of American law, including American antidiscrimination law, are structured to maintain white privilege. Neutrality and objectivity are not just unattainable ideals; they are harmful fictions that obscure the normative supremacy of whiteness in American law and society. Ten or so years ago, critical race theorists set out to expose and dismantle this social and

legal status quo from an explicitly race-conscious and critical “outsider” perspective. Since then, as this anthology attests, our work collectively has accomplished both much and not nearly enough.

Today, at the opening of the millennium, CRT continues to reject at least three entrenched, mainstream beliefs about racial injustice. The first belief—and still the most powerful despite more than a decade of challenge from critical scholars—is that “blindness” to race will eliminate racism. This belief, in turn, stems from the deep-rooted individualism that leads most American scholars and lawmakers, even liberal ones, to abhor all forms of group-based identity. Critical race theorists have challenged this belief, asserting instead that self-conscious racial identities can be—and have been—the source of individual fulfillment, collective strength, and incisive policymaking.

The second popular belief about racial injustice that CRT challenges is that racism

is a matter of individuals, not systems. The goal of antidiscrimination law, as understood historically and currently by courts, was to search for perpetrators and victims: perpetrators could be identified through “bad” acts and intentions, while victims were (only) those who could meet shifting, and increasingly elusive, burdens of proof. Instead, critical race theorists have located racism and its everyday operation in the very structures within which the guilty and the innocent were to be identified: not individual “bad-apple” police officers, but the criminal justice system; not bigoted school-board members, but the structures of segregation and wealth transmission. In its first decade, CRT described and critiqued not a world of bad actors, wronged victims, and innocent bystanders, but a world in which all of us are more or less complicit in sociolegal webs of domination and subordination.

The third popular belief about racial injustice that CRT challenges is that one can fight racism without paying attention to sexism, homophobia, economic exploitation, and other forms of oppression or injustice. From the beginning, CRT has been dedicated to antiracist social transformation through an antistatist analysis that would be “intersectional” or “multidimensional,” taking into account the complex layers of individual and group identity that help to construct social and legal positions. As CRT developed, scholars began to see “race” itself as the product of other social forces—for example as the product of heteropatriarchy in a post-industrial, post-colonial, capitalist society—or, as in the United States, in a Euro-American heteropatriarchy.<sup>1</sup>

These three oppositional stances—an insistence on progressive race consciousness, on systemic analysis of the structures of subordination, and on multi-intersectional or multidimensional critiques of power relations—also are embraced and

advanced by the works collected here. Today, as in earlier times, these tenets and their articulation give to CRT much of its discursive edge and transformative potential. However, subjecting the concept of “race” itself to critical scrutiny—while maintaining political and intellectual commitments to antiracist color-consciousness—has created another set of tensions within which critical race theorists struggle.

During the first decade, one key manifestation of this struggle has been “antiessentialism.” The crux of this “problem” can be simply stated: We are all antiessentialists now. For instance, it now has become almost *de rigeur* for feminists, critical race theorists, and queer theorists to use antiessentialism to argue that the traditional categories of race, class, and sexuality, and the identity warriors within those categories, are defined in ways that exclude or subordinate the voices of the non-privileged, in turn reproducing historic injustices that skew antistatist analysis and antiracist politics. This antiessentialist critique began as the product of a leftist commitment to antistatist crossed with postmodern, post-structuralist, and post-colonial analysis,<sup>2</sup> but the antiessentialist bandwagon now prominently includes individuals on the political right. In a supremely ironic co-optation, conservatives have learned to argue that right-leaning non-whites are victims of essentialists on the left who equate a “voice of color” with progressive politics.

For example, conservatives could—and did—support Clarence Thomas’s nomination to the Supreme Court for antiessentialist reasons. His supporters claimed that Thomas’s black identity could be used to deessentialize the political image of black people, and argued that Thomas’s opponents had an essentialist agenda in assuming that any “true” black justice would be liberal, much less progressive. Using antiessentialist

arguments, conservatives and backslashers also fiercely continue to contest the principle that racial “diversity” in higher education should be treated as a kind of proxy for diversity of viewpoints and experiences, taking exception to any correlation of color to social experience and, hence, to social understanding, viewpoint, or conscience. In this colorblind scheme, racial-ethnic diversity can mean nothing because race cannot be essentialized—that is, used as a rough barometer of experience and, perhaps, outlook. To believe that any “voice of color” can or does exist is, in this reactive view, the rank-est essentialism.<sup>3</sup> As these examples indicate, it now has become possible to interject an antiessentialist argument in just about any setting. Yet it remains hard to be clear about what this means, or should mean, as a matter of principle because “antiessentialism” is not one concept but many.<sup>4</sup>

Indeed, “antiessentialism” has become a kind of theoretical *Rashomon*, meaning different things to everyone and often different things to individuals at the same time. This multiplicity of meanings sometimes has created an appearance of consensus that masks actual disagreement, and can inhibit clarity of critical thought and the substantive exchange of ideas or priorities. At other points, this *Rashomon* effect simply means that antiessentialism has, or may, become a convenient club with which anyone can be beaten over the head. Not only has it become a mainstream means of bashing progressive theories and politics generally, but it can also sow confusion, uncertainty, and hesitation within critical race discourse about foundational commitments to identity-conscious analysis. Antiessentialism can be, and perhaps has become, a way of not only co-opting CRT externally but also of distracting us internally from the bottom line: antisubordinationist social transformation.

The struggle over antiessentialism underscores CRT’s need for a well-grounded and

capacious theory of subordination. If antiessentialism has no necessary political implications—or limits—then it is theories of subordination that must do the work of locating and combating injustice. At the same time, all struggles based on identity must acknowledge that identities always are deeply contested, even as they also are socially constructed. The trick is to forge a potent theory *and* praxis through a critical and self-critical melding of identity-conscious analysis, antiessentialist politics, and antisubordination principles.

The chapters in this volume both reflect CRT’s continuing critique of structural racism and colorblind individualism and mark new theoretical forays into identity, antiessentialism, and subordination, which ideally will help further to pluralize and globalize CRT and enhance its law and policymaking impact. This collection of original writings brings together a range of critical race “generations” in one body of work through a careful blending of varied contributions by established critical race scholars and up-and-coming younger scholars. It represents a conscious effort to assemble a rich balance of topics, identities and methodologies that fairly represents the state, and likely trajectories, of critical race theorizing as the first decade gives way to the second. Toward this end, the volume is divided into three major sections that engage and link CRT’s past, present, and future: “Histories,” “Crossroads,” and “Directions.”

For a small band of scholars whose ideas are set out in multisyllabic words and who travel with armies of footnotes, CRT has had, as noted at the outset, an extraordinary impact on popular as well as on legal discourse. Yet most of the media attention given CRT has been negative, as Kimberlé Crenshaw’s contribution to this volume notes. In part, CRT has hit a nerve because of the way it has confronted and rejected

the central myths of American legal culture and race relations. Critical race theorists demand not only simple legal reform but also actual social transformation; the prize has become social, economic, and political equity, not formal equality.

In part, however, CRT has inspired such intemperate public reaction because of who critical race theorists were and are. As Crenshaw explains, the architects of CRT were and are a new breed in the legal academy: young faculty, mostly African American, Asian American, and Latino/a with progressive politics, who were and are appalled and angry at the racial backlash politics of the century's twilight and who remain ready, able, and willing to challenge the sweep of retrenchment throughout the nation. This new breed has not only challenged the structural status quo of law and society, but of necessity also has changed the monochromatic complexion and cozy arrangements of law schools from coast to coast. Thus, CRT's challenge to historic arrangements, liberal curatives, and backlash politics has addressed not only the practices of far-away courts and mighty corporations but also the very make-up of our own profession.

Hitting closest to home, CRT challenges not only the premises and practices that disperse power throughout society but also those that disempower people of color in law school and in law practice—including, specifically, the premises and practices that structure the legal professorate of the United States. These challenges not only have implicated complacent understandings of “standards” and “scholarship”; they have also disturbed structurally racist approaches to appointments and admissions criteria, to teaching and pedagogy, and to curricular reform and updating. In this sense, critical race theorists not only have theorized and critiqued the dynamics and effects of white privilege. We have also practiced in the workplace the insights and imperatives that

our first decade of work collectively has yielded. In this first decade, *applied* CRT oftentimes has amounted to hand-to-hand combat in and for the corridors of academic power in the United States.

As the practitioners of CRT increase in number, in ethnic, gender, and sexual diversity, and as they continue to speak their perceived heresies in a “voice of color,” they—we—increasingly are likely to be regarded as a threat by the traditional guardians of economic and social power, both within and beyond the legal professions. Not surprisingly, this volume reflects this larger and ongoing public struggle over knowledge—its production and its dissemination. This book, then, is a testament to the battles waged, both won and lost, in the decade-long struggle to establish, through critical legal scholarship, a race-conscious structural prescription for antiracist policy and social transformation from an explicitly non-white perspective.

Despite the doubts, sneers, and attacks, CRT has not only survived but is also flourishing as it enters its second decade. Critical race feminists, critical race queers, and Latino/a critical theorists (LatCrits) have added sexual oppression, transnationality, culture, language, immigration, and social status to our original understanding of racism and class stratification as central to racial injustice. While foregrounding a race-conscious-identity perspective, these diverse outsider scholars continue to deepen and broaden CRT's substantive reach, excavating doctrinal and social domains that range from “traditional” areas to more recent explorations of religion and spirituality, transitions to democracy, the means of mass communication, and other sociolegal terrain.<sup>5</sup> CRT's battles not only have tested and proved our immediate or short-term capacity for discourse and community; they also have contributed to longer-term resistance struggles and to historic aspirations of liberation.

Institutionally, CRT also has begun to have a profound impact on legal education: law-school courses on race, ethnicity, culture, and the law have risen both in number and in quality during the past ten years or so.<sup>6</sup> Not coincidentally, the professorate of color also has grown substantially during this time, as Sumi Cho and Robert Westley note in their joint chapter. In this way, a new generation of law students—perhaps especially those of color—have been intellectually engaged and newly politicized by their interrogation of critical race theorists’ writings, even as those writings proliferate from year to year. Indeed, the work of pioneers such as Patricia Williams and Derrick Bell increasingly is being read by students as undergraduates, before they reach the law schools. And as Julie Su and Eric Yamamoto suggest, legal practice itself may be on the brink of profound changes as CRT’s insights reach into the practicing bar. At the same time, CRT is crossing both national and disciplinary boundaries, as scholars from other disciplines and countries begin more and more actively to engage our accumulated record. The chapters in this book thus display both the enduring utility of CRT’s earliest interventions and the movement’s remarkable progress and present-day vitality.

But these chapters also point to the work that remains to be done. These chapters remind us not only of hard-won gains but also of their constant fragility—especially in times of culture war and backlash lawmaking. These chapters not only contain insight and inspiration. They also provide a salutary reminder of our pending challenges, human limitations, and substantive commitments. They show how far we have come, but they also demand that we ensure, collectively, that the first decade will not be the best. In our view, the works collected here effectively serve as a rebuttal to the determined skeptics of the first decade.

Rather than become distracted or disheartened by the attacks of critical race detractors, this book shows that generations of scholars and activists have kept busy advancing CRT’s original agenda and extending its antisubordination reach and insights. By featuring the previously unpublished work of newer scholars and activists, as well as key contributions from “first-generation” authors, this book helps to consolidate CRT’s vigor and status in critical legal theory while providing a new teaching resource that allows faculty around the country—and beyond—to share these exciting developments directly and in a timely way with today’s students, whether in law or in other disciplines. To capture this remarkable sense of progress, we have sought to craft a collection of essays and other contributions that both showcases and contextualizes the remarkable expansion and evolution of CRT during its first decade. With this volume, we aim to both share and celebrate the past and present of this vibrant jurisprudential movement while also anticipating, and seeking to help secure, the future and its challenges.

## Notes

1. See Francisco Valdes, “Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins,” *Yale Journal of Law and Humanities* 8 (1996): 161, describing some of the sex/gender and sexual-orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia–heteropatriarchy—that still prevails in Euro-American societies, including the United States, today. This effort to conceptualize and name the multi-intersectional architecture and operation of subordination represents a lively strain within outsider jurisprudence. See, for example, e. christi cunningham, “The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases,” *University of Connecticut Law Review* 30 (1998): 441, on wholism; Berta E. Hernández-Truyol,



"Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement," *Columbia Human Rights Law Review* 25 (1991): 369, on multidimensionality; Darren Lenard Hutchinson, "Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse," *Connecticut Law Review* 29 (1997): 561, on multidimensionality; Peter Kwan, "Jeffrey Dahmer and the Cosynthesis of Categories," *Hastings Law Journal* 48 (1997): 1257, on cosynthesis; Francisco Valdes, "Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities," *Southern California Review of Law and Women's Studies* 5 (1995): 25, on interconnectivity.

2. See generally Angela P. Harris, "Foreword—The Jurisprudence of Reconstruction," *California Law Review* 82 (1994): 741, introducing the first symposium devoted specifically to CRT in an American law review.

3. Whether a "voice of color" exists has been made controversial by the reactions to CRT's early interventions in legal scholarship. See, for example, Randall L. Kennedy, "Racial Critiques of Legal Academia," *Harvard Law Review* 102 (1989): 17456; Colloquy, "Responses to Randall Kennedy's Racial

Critiques of Legal Academia," *Harvard Law Review* 103 (1990): 1884. See also Jerome McCristal Culp, Jr., "Autobiography and Legal Scholarship: Finding the Me in the Legal Academy," *Virginia Law Review* 77 (1991): 539; Alex M. Johnson, Jr., "Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship," *Iowa Law Review* 79 (1994): 803.

4. See Katherine T. Bartlett and Angela P. Harris, *Gender and Law: Theory, Doctrine, Commentary* (New York: Aspen Press, 1998): 1007–9.

5. One reflection of this diversity can be found in the myriad approaches taken to the capitalization of words such as "black" and "white" in this volume. We have retained the authors' original capitalization in deference to the many theories of antiracist rhetoric that these practices represent.

6. The gains, though impressive, are limited. For a current study focused on Latina/o-oriented law courses, see Francisco Valdes, "Barely at the Margins: Looking for Latinas/os in the Law School Curriculum—A Survey with LatCritical Commentary," *University of Oregon Law Review* 80 (2001) (forthcoming).