

Copyright (c) 1997 Harvard Latino Law Review

Harvard Latino Law Review

Fall, 1997

**LENGTH:** 5114 words

**PANEL: MULTIPLICITIES AND INTERSECTIONALITIES: EXPLORING LATCRIT DIVERSITIES: Essential Politics \***

\* I feel very privileged to be here and I am thankful not only to Frank Valdes, Gloria Sandrino, and Laura Padilla, who organized the conference, but also to the larger Latina/o community, to which I owe a great debt in terms of my own scholarly and political development. In movement politics, I am fortunate to have learned so much from my fellow travelers in the anti-apartheid struggle and various diversity movements from the UC Berkeley campus, especially from the mujeres, including Cecilia Zapata, Magdalena Avila, Patricia Vattuone, Estella Mejia, Ana Martinez, Evangeline Ordaz, Ana Loya, and Renee Saucedo to name only a few. Since the conference, it has been my pleasure to work with and learn from Margaret Montoya, Lisa Iglesias, Frank Valdes, and Elvia Arriola through the Society of American Law Teachers Action Campaign.

Sumi K. Cho \*\*

**BIO:**

\*\* (c) 1997 Sumi Cho. Assistant Professor, DePaul University College of Law J.D., 1990, and Ph.D., 1992, University of California at Berkeley. I would like to thank the DePaul law library staff for their responsive resourcefulness, Eric Yamamoto and Gerald Lopez for their encouragement on this project, my colleagues Gil Gott and Jane Rutherford for their comments, and my article editor, Nathaniel Mendell, for his proficiency.

**SUMMARY:** ... At this launching of LatCrit, I would like to open up discussion regarding the cynicism, or loss of faith, that may have crept into some corners of the existing critical race project. ... At the 1995 Critical Networks conference on "Class and Identity Politics," after having sat through the admittedly provocative as well as inaccurate attack on critical race theory and "identity politics" by the critic in question, Kim Crenshaw (a prominent race crit) responded in kind with her own provocative interpretation of political interests behind the critique: that perhaps the trashing of identity politics by the white Left is derived from a sense of displacement and anxiety of where white Left men belong in contemporary movements. ... The political correctness campaign, buoyed by the mainstream media, released pent up racial frustrations shared by some on the Left and Right that the empire would ever dare strike back and succeed! It is obvious to many of us who had to confront insecure, and therefore reactionary members of the white male Left (who are often more formidable in their opposition than conservatives) at the site of these struggles that this critique was the upshot of their inability and unwillingness to accept people of color -- and the full diversity of people of color -- in leadership positions, or to accept the fact that organizing issues and methods had irretrievably changed. ...

[\*433] At this launching of LatCrit, I would like to open up discussion regarding the cynicism, or loss of faith, that may have crept into some corners of the existing critical race project. Possibly for reasons of personal anomie, careerism, or intellectual disengagement, I fear that we have stopped thinking at a primary level about the political impact that critical race theory as a movement should be having. Instead of an unflinching commitment to intellectual activism, theoretically informed political resistance, and guiding ideals and principles of social justice, I sense instead a demobilizing fear of "essentialism" n1 and a fetishization of the array [\*434] of post-isms placed before us like a theoretical smorgasbord at a feast prepared by elite intellectuals whose political commitments lie who-knows-where. It is my hope that LatCrit will avoid the temptations of this *faux* feast.

To be sure, anti-essentialist thought and practice may too serve the ends of social justice, as I will describe below. However, the types of anti-practice which may also be underwritten by the fear of essentialism need to be exposed and challenged. If our postmodern sensibility leads us to a dead end of de-collectivized particularism, with a complete loss of vision for coalitional solidarity and audacious racial politics, then the usefulness of that kind of postmodernism needs to be rethought.

In essence, I suggest that we subject our work, as critical race theorists, to a kind of political impact determination. Of course, I mean this in a figurative sense, but I am quite serious about the need for caution and accountability in what we are putting out under the critical race rubric. We should be wary of theoretical "interventions" which rob us as a movement of vision, of potential, and of our commitment to grounded resistance and transformative projects. With this in mind, I would like to share two quite palpable fantasies I have been having of late.

One vision I have is of a very broad-based massive cultural resistance organized by critical legal scholars of color, directed at the courts and at the illegitimate exercise of racial supremacy by the judiciary. n2 I have a vision of a very strong, vocal and articulate [\*435] critical movement that forwards a theory and a practice that challenges the judiciary's departure from good faith reasoning n3 and its cynical instrumentalization of racial egalitarianism n4 in the [\*436] maintenance of sheer white supremacy. n5

[\*437] Because of this departure, I believe that we are morally justified and compelled to address this ideologically driven set of developments in the Supreme Court and the federal courts. It is necessary for us as legal scholars to challenge the cultural hegemony n6 of which the legitimacy of the judiciary is a part, not simply in our own communities but in larger society as well. I do not think that we have done that, or to the extent that we have done that, it is only through the more traditional litigation strategies that Gerald Lopez discussed yesterday. Actually, we have been very ineffective at foregrounding the political nature of that struggle. I found it very interesting when Gerald mentioned that the legal organizations were taking the lead in the political organizing against the California Civil Rights Initiative and were grossly deficient in doing so. Lawyers are often not used to community organizing and are hesitant to bite the institutional hand that may feed them from the bench or the state capitol. Nevertheless, I do think that there is a possibility for us as progressive law professors of color to be able to work on such a project. We have to remember that there is precedent for this type of activation -- when the *Bakke* case came before the Supreme Court, so did 10,000 supporters of affirmative action including sizable numbers of students, intellectuals and [\*438] scholars. n7

What would such an effort look like if it were to happen today? I envision such a gathering as encompassing and operating at the very level of tension that has been discussed in the talks presented at this LatCrit conference. That means that people of color would be at the forefront of this movement; there would be openly gay and lesbian marchers, perhaps wearing t-shirts, like the "Politically Erect" one that Professor Frank Valdes wore at the conference. Women would be well-represented. We would hear speakers whose first language was not English. We would hear not just the cadence of an expensive, Ivy League education but also the rhythm and style of people from working-class neighborhoods and families as well. That is what my fantasy entails in terms of what such an event would look and sound like, and of what it would represent.

The power that this type of mobilization has had historically in terms of community organizing is striking. For example, the PBS series on the Chicano Civil Rights Movement features an episode depicting Cesar Chavez being brought to trial in the middle of his hunger strike. n8 There was a strong community mobilization that greeted Chavez at the steps of the courthouse to support him and to send a message to those conducting business inside that courtroom. This morally informed act of community resistance and support did impact the judge who was hearing the case, as he would later acknowledge. n9 Aside from having a substantive impact on the law or on that judge, what the mobilization did for community formation is even more important -- that is, it marked the political activation of a subordinated group in culturally confronting the legal exercise [\*439] of supremacy. n10 From then on, that courthouse was farmworker territory like it had never been before.

My second fantasy must be prefaced by the following question: If anti-subordination doctrine is so central to critical race theory, then why is it that, and what does it mean if, it has no application [\*440] in our own house? Specifically, if we allow violence against Latinas to occur in the legal academy without resistance or even comment, then why do we even bother to talk the talk of antisubordination? n11 We are outraged legitimately when we see violence occurring against nameless Latinos, such as the Latina and the Latino in the highly publicized beating in Riverside County. n12 [\*441] But there has not been similar outrage and community resistance when it happens to people whose faces and names we do know, fellow academics who have attended this very conference. My second fantasy would thus involve a radical restructuring of power relationships in the legal academy that would render such violence unthinkable in our presence. We, as scholars of color, would respond to the big and "little murders" which occur daily at law schools across the country. We would also take seriously the challenge of changing the predominant culture at these institutions to diminish the possibility of such violence, or *at the very least*, to facilitate articulation of the injuries that we and our colleagues must endure as a condition of our participation in "white" legal academe.

What is it about legal academia and even critical race theory that prevents us from even coming forward with injustice claims? What is it about the contemporary social structure of accumulation n13 that essentially prevents this type of discussion from happening?

I suppose we can search for an answer in the topics discussed at this LatCrit conference. As Professor Elvia Arriola has suggested, we "house the oppressor" in ourselves, thinking that "there but for [\*442] the grace of God go I" -- so much so that we are scared to death that deep down maybe we do not deserve to be here. That leads us to suspect that maybe others of us do not deserve to be here. n14 If we speak out on behalf of the allegedly undeserving, then those in power may soon discover that we ourselves do not deserve our place in legal academia. n15

That is actually in some ways a sympathetic and a generous assessment of what might be going on. Internalized oppression does not necessarily implicate us, as a class of intellectuals. There are other explanations for the silence of scholars of color rooted in the [\*443] theoretical and scholarly projects that we select that explains why our projects lead to this type of non-discussion. As Angela Harris explained in her recent work, *The Jurisprudence of Reconstruction*, n16 both the postmodernist tendency to acknowledge the *diversity* within our group and the *indeterminacy* of the social constructedness of the group conflict with the reconstructivist role of the anti-subordination project and the particular need for *solidarity* and a sense of *unity* in order to confront oppression. n17

Postmodern insights are important and actually necessary in order to embrace the full diversity of our community. n18 But if we [\*444] step back and look at ourselves from a more sociological viewpoint, we also have to acknowledge that the theoretical production of antipractice that Harris writes about is completely in keeping with the system of subordination in a post-civil rights era. n19 Civil rights movements called attention to segregation, and law schools responded by desegregating. However, they have also absorbed this challenge by rewarding the detached careerism that has traditionally defined the role of the professional intelligentsia.

Of course, our consent to our own oppression is paradoxical because we are decidedly and expressly anti-subordinationists in our theoretical writings. Yet we consent to our own oppression through the diminution of anti-subordination practice. The way in which we now routinely problematize collective resistance as essentialistic, colonizing, or oppressive, is profoundly disturbing.

We must be vigilant as to the role of academic institutions and careerism in maintaining power relations, effected through political, economic, and social conditioning. n20 How? In many ways through [\*445] the race for theory, as Barbara Christian put it, n21 a critique which should not be construed as unworthy anti-intellectualism, but rather as a laying bare of deracinated intellectualism. n22 The pursuit of [\*446] disengaged theory, the desire to play with the big boys and in some cases the big girls, suppresses public discourse about racial and other forms of oppression. As leading philosopher and African American Studies professor Cornel West said, both bourgeois modernism and Foucauldian postmodernism keeps intellectuals safely away from political change. n23

I will have to save for another day my more specific critique of the ways in which the capitulation to subordination is occurring now in critical race theory through vehicles such as postmodernism, post-structuralism, and post-colonialism. I will devote the remainder of this essay to explaining two basic objections I have to the latest post-ism to find its way into critical race theory -- post identityism. I will also offer a qualified and partial embrace of one aspect of post identity thought.

First, the notion of "post-identity politics" as either a descriptor or normative ethic that implicitly restates the essentialist critique ignores the historicity of the term "identity politics." As LatCrits and critical race scholars, we must acknowledge the context of the identity politics critique before participating in it. The term has been popularized by some members of the white Left and seized upon by the white Right. Such white Left criticism of politically engaged racial actors, perhaps epitomized by Todd Gitlin's bitter nostalgia, n24 [\*447] essentially lays the blame at the feet of "identity politics" for destroying his progressive movement defined by the great, straight, white male Sixties. n25 Compare, for example, Gitlin's description of the 1960s universalistic movements (of which he was a part) with his description of 1980s identity politics: More grandly, in a revival of Enlightenment universalism, Students for a Democratic Society's Port Huron Statement spoke self-consciously in the name of all humanity. The [\*448] universal solvent for particular differences would be the principle of . . . participatory democracy. . . . n26

The proliferation of identity politics leads to a turning inward, a grim and hermetic bravado which takes the ideological form of paranoid, jargon-clotted, postmodernist groupthink, cult celebrations of victimization and stylized marginality. n27 Gitlin and his followers bemoan that "the Left is dead . . . where did all the good ol' days

go?" This refrain refuses to take any responsibility for the exclusion of people of color, women, gays and lesbians among others, n28 from the substantive analysis and political leadership of much of the Great White Sixties, and thus well illustrates why that Sixties' notion of the primacy of white, middle-class, heterosexual male political actualization is indeed dead. n29

In law, this refusal to acknowledge past mistakes and the [\*449] willingness instead to attack new, more inclusive movements as "not radical" enough, is perhaps best illustrated by the bizarre and now comical tantrum that was thrown by an established white, male critical legal studies scholar known for his "seminal" scholarship critiquing civil rights. n30

At the 1995 Critical Networks conference on "Class and Identity Politics," after having sat through the admittedly provocative as well as inaccurate attack on critical race theory and "identity politics" by the critic in question, Kim Crenshaw (a prominent race crit) responded in kind with her own provocative interpretation of political interests behind the critique: that perhaps the trashing of identity politics by the white Left is derived from a sense of displacement and anxiety of where white Left men belong in contemporary movements. n31 Her response was not only fair in light of the bitter provocations and "take no prisoners" stance the CLS speaker had adopted toward "identity politics" in his talk, but was also demanded by the intellectual moment that presented itself at a conference devoted to these issues. n32

The gauntlet had clearly been thrown down.

And when Crenshaw picked it up, this major critical legal scholar attempted to subvert her response by storming out of the room in protest and slamming the heavy lecture hall door. Unfortunately for him, the door was equipped with a hydraulic arm, so he exited with an anti-climactic whimper rather than a bang. In light of such behavior by a leader among the white male Left, I find it oddly ironic that people of color, women, and gays and lesbians are often accused of excesses in their pursuit of "identity politics."

These criticisms of "identity politics" by some members of the white male Left were seized upon by the white male Right in a [\*450] backlash mode after the "political correctness" salvos were fired at the diversity movements and race-based political contestations of the late 1980s and early 1990s, n33 which had demanded minority faculty hiring, multicultural graduation requirements, gay and lesbian studies, and ethnic studies. n34 Thus, the two pejorative terms -- "identity politics" and "political correctness" -- have been embraced by some on the Left and on the Right, n35 but certainly not in the name of a more inclusive politics and theory.

The political correctness campaign, buoyed by the mainstream media, n36 released pent up racial frustrations shared by some on the [\*451] Left and Right that the empire would ever dare strike back and succeed! n37 It is obvious to many of us who had to confront insecure, and therefore reactionary members of the white male Left (who are often more formidable in their opposition than conservatives) at the site of these struggles that this critique was the upshot of their inability and unwillingness to accept people of color -- and the full diversity of people of color -- in leadership positions, or to accept the fact that organizing issues and methods had irretrievably changed. n38

[\*452] A second problem with post-politics theorizing is that, ironically, it essentializes all past and present identity politics at the lowest common denominator. This results in an unfair caricaturing of identity politics and plays into the worst reactionary conceptions of what race politics are. Those who have been involved in racial political struggle know that there is actually a wide spectrum of "identity politics." Racial politics, for example, ranges from crude nationalism, with its reassertion of patriarchal and heterosexual domination as a coercive nation-building strategy within a free market economy, n39 to a radical progressive racial politics embodying what Eric Yamamoto refers to as a substantive commitment to interracial justice. n40 Such a commitment to interracial justice encompasses a procedural commitment to deep democratic [\*453] inclusion, combined with a spiritual striving, as Angela Harris suggests, to eliminate moral and ethical performative contradictions in the pursuit of political liberation. n41 To broadly capture all race politics under the decidedly pejorative label of identity politics serves to create a base, essentialized understanding of community politics which may reveal as much about the personal positionality of the theorist as the object of criticism. In that sense, I think we have to be very careful how we assess this odd conceptual pairing -- identity politics -- again being careful to submit our musing to the political impact determination described above.

One version of the identity politics critique does raise an important question in terms of our romanticizing of race politics. One might ask, why has the anti-essentialist movement so resonated within critical race theory, especially among some junior race crits? I think there may be a generational divide that in part has to do with the moment at which each of us became intellectualized and politicized. That divide for senior/junior race crits breaks down in

terms of the changing face of education. Senior race crits became educated and politicized in the exuberance of the Sixties (or recent wake of the Sixties) and the attendant race theorizing from internal colonial theory to bourgeois racial nationalism. In contrast, junior race crits came into the academy during an era of Reaganism, post-structuralism, deconstruction, and postmodernism -- during a politically pessimistic, post-Watergate era. n42

Due in part to that generational divide, a troubling problem of pervasive heterosexism has arisen, perhaps more troubling to junior race crits, than to senior race crits. n43 The continuous rearing of the [\*454] ugly head of homophobia in gatherings of alleged race crits is something of which many junior race crits want no part. n44 The junior race crits may come to identify this straight supremacy (correctly or incorrectly) with identity politics. I believe the anti-essentialist theorizing from this particular context of resisting straight supremacy is coming from a very good place, even though I differ with the apolitical end results and conclusions produced through such an approach generally.

The force of the unstated but widespread anti-gay norm among many senior race crits as well as some junior race crits may derive at least in part from an ideological ranking of oppression. As well, there may be a relative acceptance of a gender critique, for example, because of the interest convergences n45 that straight men of color have with feminist projects. In other words, there is a material and cultural dimension to their learning of anti-sexist behavior -- a [\*455] material and cultural dimension that does not exist in the context of a critique of heterosexism. This interest convergence failure works to drive junior race crits away from identity politics. It is in this moment, as Angela Harris correctly observes, that we have to give up our romantic notions of racial community. n46 While Angela Harris' analysis applies in this case, I feel compelled to ask whether critical legal academia's (including Lat Crits') overall understanding of racial politics and racial community must be pegged to the lowest common denominator, in this case that defined by heterocentric nationalism?

I think that leaves us facing the following question: where do we go today in order to have a much fuller notion of what race politics means, or for that matter, lesbigay politics, feminist politics, or -- in terms of the space that we are creating here -- LatCrit politics? What does that mean substantively, strategically, and procedurally? To begin with, we must consciously and deliberately bring to the fore and prioritize a new leadership from among those of us who are multiply marginalized n47 -- even within our own communities -- in order to help us arrive at the answer.

#### FOOTNOTE-1:

n1 Essentialism adopts the view that all members of a group are alike and share a common "essence". See FEMINIST LEGAL THEORY: FOUNDATIONS 335 (D. Kelly Weisberg ed., 1993) (articulating the central assumptions of gender essentialism as, first, that "the meaning of gender identity and the experience of sexism are similar for all women," and second, that "any differences between women are less significant than the traits women share in common." *Id.* See also Angela Harris, *Race and Essentialism in Feminist Legal Theory*, [42 STAN. L. REV. 581, 588 \(1990\)](#) (describing gender essentialism as "the notion that there is a monolithic 'women's experience' that can be described independent of other facets of experience like race, class, and sexual orientation" and an analogous racial essentialism as "the belief that there is a monolithic 'Black experience' or 'Chicano experience.'").

n2 The Supreme Court's recent affirmative action jurisprudence increases the level of judicial scrutiny of affirmative action programs, even those mandated by the federal government, thereby making such race-conscious remedies even more difficult to sustain. [Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 \(1995\)](#). Accordingly, such decisions perpetuate and maintain existing power imbalances in society, which are reflected in the fact that although white men make up 48% of the college educated workforce, they hold more than 90% of the top jobs in news media, 90% of the officer positions in U.S. corporations, 85% of tenured college professorships and 80% of executive positions in advertising, marketing and public relations. *Affirmative Action Still Needed to Keep the Workplace Fair*, 7:12 MINORITY MARKETS ALERT, Dec. 1, 1995. The effects of this judicial reterenchment are being felt at Texas universities and in California where a panel of the 9th Circuit has lifted a district court's injunction against Proposition 209. *Fewer minorities going to UT Law School*, UPI, May 21, 1997, available in LEXIS, Nexis Library, UPI File (reporting the precipitous drop in law school enrollments for African Americans and Latinos/as); *As NAACP Meets, Rights Leaders Focus on Minority Enrollments*, SACRAMENTO BEE, July 13, 1997, at A6 (noting how minority enrollments and

University of Texas and University of California at Berkeley law schools have "virtually disappeared" since the *Hopwood* decision and the passage of Proposition 209.) For the lifting of the preliminary injunction against Proposition 209, see [Coalition for Economic Equality v. Wilson](#), [122 F.3d 692 \(9th Cir. 1997\)](#). See also [122 F.3d 718 \(9th Cir. 1997\)](#) (denying motions for stay of mandate).

n3 Read, for example, the Supreme Court's recent affirmative action decision in *Adarand Constructors v. Peña*, in which the majority refuses to acknowledge its equation of racial classifications that are meant to subordinate a group (such as Jim Crow laws under segregation) with racial classifications meant to uplift a group from subordination (such as affirmative action programs): According to Justice Stevens, our view of consistency 'equates remedial preferences with invidious discrimination,' and ignores the difference between 'an engine of oppression' and an effort 'to foster equality in society,' or more colorfully, 'between a 'No Trespassing' sign and a welcome mat.' It does nothing of the kind. The principle of consistency simply means that whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection. [Adarand Constructors, Inc. v. Peña](#), [115 S. Ct. 2097, 2114 \(1995\)](#).

n4 In *Adarand*, the history of Japanese American internment is used by the Court to justify strict scrutiny for even benign racial classifications, in order to prevent a repeat of such an event. [115 S. Ct. at 2106](#). See Gabriel Chin, et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice*, ASIAN PAC. AM. L.J. (forthcoming 1997) (in footnote 53, the authors observe that "the Court made prominent use of the Japanese American internment in explaining why strict scrutiny was necessary to review even benign race-conscious remedies. It is only a slight oversimplification to describe the Court's argument as, 'Because we interned the Japanese Americans, we must get rid of affirmative action.'"). See also Reggie Oh & Frank Wu, *The Evolution of Race in the Law: The Supreme Court Moves From Approving Internment of Japanese Americans to Disapproving Affirmative Action for African Americans*, [1 MICH. J. RACE & L. 165 \(1996\)](#). There are at least two logical problems with this argument: first, the Court would be hard-pressed to explain how the internment order constituted a benign classification, thereby raising the problem of weak analogy between the internment order and affirmative action programs; second, even if today's strict scrutiny standards had been applied in the *Korematsu* case, military necessity would likely have constituted a "compelling governmental interest" that would pass constitutional muster. [Korematsu v. United States](#), [323 U.S. 214 \(1944\)](#). Clearly, the mistake in the *Korematsu* decision was not which level of scrutiny to apply, but the unwillingness of the Court to look past the overt racism behind the military's decision to intern 120,000 Japanese Americans, which was in evidence as pointed out in Justice Jackson's dissenting opinion. See Eric Yamamoto, *Korematsu Revisited: Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review -- Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1 (1986).

n5 I define "white supremacy" as a set of reinforcing and synergistic beliefs and institutional practices and policies consistent with superiority based on white racial identity, or inferiorization of non-white racial identity, and reflected in societal group power relations. See Sumi Cho, *Multiple Consciousness and the Diversity Dilemma*, [68 U. COLO. L. REV. 1035, 1036 n.5 \(1997\)](#). Cf. GEORGE N. FREDRICKSON, *WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY* xi (1981) (defining white supremacy as "the attitudes, ideologies, and policies associated with the rise of blatant forms of white or European dominance over 'nonwhite' populations" -- a domination achieved by making race or color a qualification for equal participation in civil society); Frank Lee Ansely, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, [74 CORNELL L. REV. 993, 1024 \(1989\)](#) (referring to white supremacy as a "political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings"). For further discussion of white supremacy, see Evelyn Hu De-Hart, *Affirmative Action -- Some Concluding Thoughts*, [68 U. COLO. L. REV. 1209 \(1997\)](#), Margaret Montoya, *Of "Subtle Prejudices," White Supremacy, and Affirmative Action: A Reply to Paul Butler*, [68 U. COLO. L. REV. 891 \(1997\)](#), and Paul Butler, *Affirmative Action and the Criminal Law*, [68 U. COLO. L. REV. 841 \(1997\)](#).

n6 Anthony Cook succinctly states Antonio Gramsci's conceptualization of "hegemony" as "the 'spontaneous' consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group." Anthony Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, in CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED A MOVEMENT 90 (Kimberle Crenshaw et al. eds., 1995) [hereinafter CRITICAL RACE THEORY].

n7 See Lawrence Feinberg, *Demonstration on Bakke Suit*, WASH. POST, April 15, 1978 at C1. Estimates of crowd size varied; the U.S. Capitol Police counted 10,000, the U.S. Park Police counted 15,000, and march organizers set the number at 50,000. See also JOEL DREYFUSS & CHARLES LAWRENCE, THE BAKKE CASE: THE POLITICS OF INEQUALITY 204 (1979).

n8 *Chicano! History of the Mexican-American Civil Rights Movement, Part II: "The Struggle in the Fields,"* (PBS television broadcast, Apr. 12, 1996).

n9 *Id.*

n10 This understanding of the relationship between law and subordinated communities is far different from the civil rights litigation model. In the civil rights model, a community is mobilized in order to reform existing laws, with success measured as the substantive change in law. Other legal scholars engaged in poverty law, critical race theory, and environmental justice see law and lawyers as resources through which communities may become politically empowered, with success measured by the level of "community formation" and development of political consciousness for long-term struggle against subordination. See generally GERALD LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S LAWYER VISION OF PROGRESSIVE LAW PRACTICE (1992) (forwarding group education and self-determination as central to rebellious poverty lawyering: "The evolution increasingly apparent in today's rebellious idea of practice finds lawyers working with groups mobilizing for social change through self-help and lay lawyering methods. . . What links these lawyers to subordinated people and other allies is a double commitment. They all regard every form of group work as important to mobilization, and they consider educational aims as central to every form of mobilization."). *Id.* at 76-77. See also Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, in CRITICAL RACE THEORY *supra* note 6, at 5, 17 ("It is essential that lawyers "lawyer" and not attempt to lead clients and class. . . Litigation can and should serve lawyer and client as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support."); Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992) (arguing that community empowerment is the ultimate goal of environmental justice lawyering: "Solutions to poor peoples' environmental problems should be found by the victims of those problems, not by environmental lawyers. This stance is in opposition to traditional environmental lawyering, which has relied on an implicitly paternalistic model of the lawyer as the expert, imposing her ideas on the rest of us."). Cole nevertheless does envision a role for progressive lawyers to play: "By practicing law in a way that empowers people, that encourages the formation and strengthening of client groups, and that sees legal tactics in the context of broader strategies, attorneys can be part of the movement for environmental justice." *Id.* at 654.

n11 See Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and Multiplicities of Self*, [2 HARV. LATINO L. REV. 397 \(1997\)](#). Hopefully, the standing ovation that Elvia Arriola received for her talk is evidence of an emerging movement that will "walk the walk" of anti-subordination.

n12 On Monday, April 1, 1996, Riverside County sheriff's deputies violently beat two suspected "illegal immigrants" in South El Monte who appeared to offer no resistance to the deputies. The beating, caught on videotape by a local LA television crew and aired internationally, culminated the deputies' 80-mile, highspeed pursuit of a pick-up truck. Los Angeles Times reporters Eric Nalnic and Edward Boyer described the events:

The videotape shows 18 of the passengers and the driver bolting from the truck and dashing for cover in a nearby nursery as the patrol cars roll up . . .

Two of the people in the truck had remained with the vehicle -- a female passenger in the front seat who apparently was unable to open the door, and a man who clambered out of the back of the truck to help her get free.

It was then, the videotape shows, that the beatings began.

One deputy started clubbing the man about the back and shoulders with a baton. The beating continued as the man fell, face down to the ground.

When the woman got out of the cab, the deputy hit her twice in the back with his baton and then pulled her to the ground by her hair. One other deputy struck her once with a baton.

Neither the woman nor the man appeared to offer resistance or make any attempt to get away.

Eric Malnic & Edward J. Boyer, *Deputies' Clubbing of Two Suspects Taped*, L.A. TIMES, Apr. 2, 1996, at A1.

The next morning, Latinos decried the "institutional violence against the Latino community" outside the Federal Building in downtown Los Angeles. Abigail Goldman et al., *Beatings Spur U.S. Investigation and a National Debate*, L.A. TIMES, Apr. 3, 1996, at A1.

The two beating victims most prominently featured in the videotape were eventually identified as Enrique Funes Flores and Alicia Sotero Vasquez, although previous conflicting newspaper reports identified the woman alternatively as Leticia Gonzalez. See Jim Newton & Eric Slater, *Deputies in Beating May Have Violated Policies*, L.A. TIMES, Apr. 6, 1996, at A1 (identifying victims as Enrique Funes Flores and Alicia Sotero Vasquez); Goldman et al., *supra* (identifying the victims as Enrique Funes and Leticia Gonzalez).

n13 Radical economists refer to the set of mutually reinforcing social and economic institutions as "the social structure of accumulation," or "SSA". See John Miller & Chris Tilly, *The U.S. Economy: Post-Prosperity Capitalism?*, 23 CROSSROADS 1, 2 (July/Aug. 1992) ("Successful accumulation requires a set of mutually reinforcing institutions -- rules of the economic game, implicit and explicit agreements, and the organizations that carry them out, including government agencies, business groupings, and popular organizations."). *Id.* See also David M. Gordon et al., *Power, Accumulation, and Crisis: The Rise and Demise of the Postwar Social Structure of Accumulation*, in RADICAL POLITICAL ECONOMY: EXPLORATIONS IN ALTERNATIVE ECONOMIC ANALYSIS 226 (Victor D. Lippit ed., 1996).

n14 Paolo Freire discusses another psychological dimension to denial mechanisms by recounting a story:

A group in a New York ghetto was presented a coded situation showing a big pile of garbage on a street corner -- the very same street where the group was meeting. One of the participants said at once, "I see a street in Africa or Latin America." "And why not in New York?" asked the teacher. "Because we are the United States and that can't happen here." Beyond a doubt this man and some of his comrades who agreed with him were retreating from a reality so offensive to them that even to acknowledge that reality was threatening. For an alienated person, conditioned by a culture of achievement and personal success, to recognize his own situation as objectively unfavorable seems to hinder his own possibilities of success.

PAOLO FREIRE, *PEDAGOGY OF THE OPPRESSED* 156 (1990).

n15 Frantz Fanon was one of the earliest writers to theorize internalized oppression:

Having witnessed the liquidation of its systems of reference, the collapse of its cultural patterns, the native can only recognize with the occupant that "God is not on his side." The oppressor, through the inclusive and frightening character of his authority, manages to impose on the native new ways of seeing, and in particular a pejorative judgment with respect to his original forms of existing . . .

Having judged, condemned, abandoned his cultural forms, his language, his food habits, his sexual behavior, his way of sitting down, of resting of laughing, of enjoying himself, the oppressed *flings himself* upon the imposed culture with the desperation of a drowning man.

Frantz Fanon, *Racism and Culture*, in TOWARD THE AFRICAN REVOLUTION 31, 38-9 (1967).

n16 See Angela Harris, *Foreword: The Jurisprudence of Reconstruction*, [82 CAL. L. REV. 741, 754 \(1994\)](#) (exploring the tension between Critical Legal Studies methods that Critical Race Theory adopted, including deconstruction, postmodernism and anti-essentialism).

n17 [Id. at 754](#) ("The narratives of modernism [including the modernist narratives of Critical Race Theory] and of postmodernism are at war with one another, not simply in terms of the strategies they use or the conclusions they reach, but also in the way they see the world. . . . As the debates over racial essentialism within CRT and the value of legal "storytelling" illustrate, when these postmodernist and modernist narratives clash, postmodernist skepticism threatens to undermine the modernist narratives completely."). Freire goes on to note that: To present this radical demand for the objective transformation of reality, to combat subjectivist immobility which would divert the recognition of oppression into patient waiting for oppression to disappear by itself, is not to dismiss the role of subjectivity in the struggle to change structures. On the contrary, one cannot conceive of objectivity without subjectivity. Neither can exist without the other, nor can they be dichotomized. The separation of objectivity from subjectivity, the denial of the latter when analyzing reality or acting upon it, is objectivism. On the other hand, the denial of objectivity in analysis or action, resulting in a subjectivism which leads to solipsistic positions, denies action itself by denying objective reality. Neither objectivism nor subjectivism, nor yet psychologism is propounded here, but rather subjectivity and objectivity in constant dialectical relationship. FREIRE, *supra* note 14, at 35:

n18 See Dorinne Kondo, *Poststructuralist Theory as Political Necessity*, in *Thinking Theory in Asian American Studies*, 21 AMERASIA 95 (Michael Omi & Dana Takagi eds., 1995) (arguing that post-structuralist politics "gives one the tools to theorize this multiplicity of subject positions and to problematize privilege and exclusion, while realizing their inevitability").

n19 Three scholars give content to this oft-used, seldom-defined term prevalent in critical race theorizing: At the risk of oversimplification, the current post-civil rights era in America might thus be generally characterized by a reconceptualizing of the role of rights litigation as part of, rather than as the pinnacle of, political strategies for social structural change; the movement away from principal reliance on narrow judicial remedies toward the additional use of courts as forums for the development and expression of counternarratives and for the promotion of local empowerment and community control. . . . Eric Yamamoto et al., *Courts and Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue*, [16 U. HAW. L. REV. 1, 27 \(1994\)](#).

n20 Cornel West observes how the economic base that private and public universities enjoy allows academe to become the "caretaker of nearly all intellectual talent in American society." Because of this patronage, West argues, "even the critiques of dominant paradigms in the Academy are academic ones; that is, they reposition viewpoints and figures within the context of professional politics inside the Academy rather than create linkages between struggles inside and outside of the Academy." In short, scholars of color simultaneously legitimate academe while they empty radical critiques of political substance. CORNEL WEST, RACE MATTERS 63 (1994).

n21 In a 1989 article entitled *The Race for Theory*, Barbara Christian, an African American Studies scholar of Black women's literature issued a compelling critique of the academic chic of deconstruction that swept critical literary theory in the 1980s as hegemonic: . . . I feel that the new emphasis on literary critical theory is as hegemonic as the world which it attacks. I see the language it creates as one which mystifies rather than clarifies our condition, making it possible for a few people who know that particular language to control the critical scene -- that language surfaced, interestingly enough, just when the literature of peoples of color, of black women of Latin Americans, of Africans began to move the "the center."

. . . . Because I am a curious person, however, I postponed readings of black women writers I was working on and read some of the prophets of this new literary orientation. These writers did announce their dissatisfaction with some of the cornerstone ideas of their own tradition . . . . But in their attempt to change the orientation of Western scholarship, they, as usual, concentrated on themselves and were not the slightest interested in the worlds they had ignored or controlled. Again I was supposed to know *them*, while they were not at all interested in knowing *me*. Instead they sought to "deconstruct" the

tradition to which they belonged even as they used the same forms, style, language of that tradition, forms which necessarily embody its values.

. . . Increasingly, as *their way, their terms, their approaches* remained central and became the means by which one defined literary critics, many of my own peers who had previously been concentrating on dealing with the other side of the equation, the reclamation and discussion of past and *present* third world literatures, were diverted into continually discussing the new literary theory. Barbara Christian, *The Race for Theory*, in *MAKING FACE, MAKING SOUL: HACIENDO CARAS* 335, 338-40 (Gloria Anzaldua ed., 1990).

n22 It is a sad commentary on the state of critical theory that many literary theorists to whom Christian was writing merely dismissed her critiques as "anti-intellectual" in public and as ignorant in private. As a graduate student on Professor Christian's home campus at the time of her article's publication and its subsequent reception, I can personally attest to the "anti-intellectual" construction of Professor Christian -- in my opinion, a bad faith, cowardly, ad hominem attack that rarely surfaced publicly in a way to which she might have been able to respond.

It was a Latina, Gloria Anzaldua, who stepped forward to counter this attack by including Christian's work as the lead article in the "Doing Theory" section of her anthology, *MAKING FACE, MAKING SOUL: HACIENDO CARAS*, *supra* note 21, on creative and critical perspectives of feminists of color.

n23 See Cornel West, *The Dilemma of the Black Intellectual*, in *KEEPING FAITH: PHILOSOPHY AND RACE IN AMERICA* 67, 82 (1993).

n24 See generally TODD GITLIN, *THE TWILIGHT OF COMMON DREAMS: WHY AMERICA IS WRACKED BY CULTURE WARS* (1995) [hereinafter GITLIN, *CULTURE WARS*]. See also Todd Gitlin, *The Left, Lost in the Politics of Identity*, *HARPER'S MAG.*, September, 1993, at 16 [hereinafter Gitlin, *Politics of Identity*]. ("But what began in the late 1960s as an assertion of dignity by various groups, a remedy for exclusion and denigration and a demand by the voiceless for representation, has developed its own habits and methods of silencing.") Michael Omi and Howard Winant coined the term, "nostalgic universalism" to describe Gitlin's one-man cottage industry extolling New Left virtues and decrying identity politics. Michael Omi & Howard Winant, *Response to Stanley Aronowitz*, 23 *SOCIALIST REV.* 5, 128 (1994) (suggesting that Gitlin's "dream of restoration" of the Enlightenment and Marxist Left projects is "hopelessly outdated" "nostalgic universalism.").

n25 For a sampling of this early form of "identity politics," see TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* (1993) (recalling his participation in Students for a Democratic Society).

Gitlin is emblematic of the what I would refer to as the "displaced white Left" -- those whose attacks on new social movements bespeak the threat they perceive to their own formerly secure leadership position in the Left. See also Jim Sleeper, *On Common Ground*, *NEW DEMOCRAT*, July/Aug., 1993, at 25 (arguing that "America must be defended against new 'identity politics' that makes race, ethnicity, gender and sexual orientation the primary lenses through which people view themselves and society."); Michael Tomasky, *Identity Politics in New York City: The Tawdry Mosaic*, *NATION*, June 21, 1993, at 860 (lamenting the collapse of local coalition politics because progressive New Yorkers "speak only in the coded language of identity politics and entreaties to oppressed subgroups"). I do not mean to suggest, however, that the white Left is entirely dominated by displaced white Leftists. See e.g., Stanley Aronowitz, *The Situation of the Left*, 23 *SOCIALIST REV.* 5, 49 (1994) (arguing that "it is not accurate to characterize the emergence of identity politics as . . . a symptom of postmodernist fragmentation; it was the result of overdue developments of necessarily autonomous movements.").

n26 Todd Gitlin, *The Rise of Identity Politics*, *DISSENT*, Spring 1993, at 175 [hereinafter Gitlin, *Identity Politics*].

n27 Todd Gitlin, *From Universality to Difference: Notes on the Fragmentation of the Idea of the Left*, *CONTENTION*, Winter 1993, at 21.

n28 *But see* Stanley Aronowitz, *supra* note 25, at 48 (acknowledging that "sexist and homophobic insensitivity, third worldism and economism" "led many to return to the trenches to build movements based on identity oppression"). "Who can doubt," Aronowitz admitted, "that this collective decision was justified both by the urgency of the oppression and by the indifference of Left establishments?" *Id.* For a

discussion of the exclusion and marginalization of women from the New Left, see SARA EVANS, *PERSONAL POLITICS* (1976) (tracing women's dissatisfaction with Students for a Democratic Society that led to the formation of the women's movement).

n29 Not only does Gitlin fail to accept full responsibility for the "fragmentation" of the Left along identity group lines, he then blames gays and lesbians, women, and people of color for political regression: "the break-up of ideas of a whole Left throws the contest to the Right." Gitlin, *CULTURE WARS*, *supra* note 24, at 103. Compare Gitlin's analysis with that of Stanley Aranowitz, *supra* note 25 at 48 (arguing that despite right wing backlash, movements based on identity oppression "managed to save many of the gains of the previous decade.").

n30 I have been advised that it would be best not to divulge the identity of this scholar at this time.

n31 Kimberle Crenshaw, Remarks at *Politics of Class and the Construction of Identity: A Crit Network Conference* (May 10, 1995) (conference program on file with the *Harvard Latino Law Review*).

n32 *Id.*

n33 As the concepts of identity politics and political correctness are linked, it is instructive to review the origins of political correctness. According to Todd Gitlin, political correctness has existed at least since the 1930s as a Stalinist relic. It was embraced in the 1960s by the New Left, evincing a "smug rigidity" of the movement. When it reappeared in the 1970s, it either conveyed the same smug rigidity or a certain "ironic distance," or "self-mockery." By the 1980s, the term was mostly used tongue-in-cheek. In the fall/winter of 1990-91, however, a media frenzy was set in motion by New York Times writer, Richard Bernstein in an article entitled, *The Rising Hegemony of the Politically Correct*. A cover story by NEWSWEEK magazine, entitled, *Thought Police* quickly followed, as did stories in U.S. NEWS & WORLD REPORT, TIME, and THE ATLANTIC. GITLIN, *CULTURE WARS*, *supra* note 24, at 167-169.

n34 See Sheila Foster, *Difference and Equality: A Critical Assessment of the Concept of "Diversity,"* [1993 WIS. L. REV. 105, 108-109](#) (observing how diversity movements on campuses nationwide urge faculties to hire more minorities and women, increase multicultural requirements, award scholarships on the basis of race). See also, DINESH D'SOUZA, *ILLIBERAL EDUCATION* (1991) (lamenting the rise of campus movements in the late 1980s that urged affirmative action faculty hiring and student admission, ethnic studies requirements, hate speech codes, gay and lesbian studies, etc.).

n35 D'SOUZA, *supra* note 35, at xvi (documenting the "defections of prominent intellectual figures and media from the progressive camp" to the anti-"political correctness" bandwagon).

n36 To illustrate the homologous development and proliferation of the popular backlash concept of political correctness and its less popular academic counterpart, "identity politics," compare the number of NEXIS citations in newspapers and magazines between 1987 and 1996:

Number of citations in NEXIS "arcnews/curnews":

	"Political correctness"	"Identity politics"
1987	7	0
1988	7	3
1989	16	4
1990	70	4
1991	1532	3
1992	2673	39
1993	5219	111
1994	7081	174
1995	5323	293
1996	5824	392

I argue that the term "identity politics" is derivative of the term "political correctness," whose popularity exploded in the Fall of 1990, after an influential New York Times article. *See supra* note 34 and accompanying text. The response of displaced white Left academics such as Gitlin lagged two years behind, but nonetheless was consistent with the critique of racial politics and the valorization of nostalgic universalism.

n37 The fear of a more multicultural academe is reflected in Nathan Glazer's recent book, in which he observes remarkable changes in the American public schools due to the "multicultural explosion." *Id.*

n38 In one of his various essays advocating nostalgic universalism, Gitlin seems to be troubled by the concept of self-determination by people of color: And the civil rights movement, initially framed in universalist terms, could unify the Left only until legal segregation was defeated in 1964-65. Once integration and voting rights had been secured, at least on paper, the alliance between liberals and radicals, integrationists and separatists, was strained to the breaking point. *Blacks began to insist on black leadership*, even sometimes exclusively black membership in the movement. One grouping after another demanded the recognition of its difference. Difference came to be felt more acutely than commonality. Gitlin, *Politics of Identity*, *supra* note 24, at 19 (emphasis added).

n39 Manning Marable acknowledges various strands of Black nationalism, for example: "Nationalists of every kind, from the nihilistic 'cultural nationalists' or 'black fascists' . . . to the socialist-oriented nationalists on the Left, to Black Capitalists, rapidly created institutions and groups which influenced electoral politics." MANNING MARABLE, *RACE, REFORM, AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945-1990*, at 108 (2d ed. 1991).

n40 Eric Yamamoto is at the forefront of theorizing a "critical race praxis" as "essential politics." Because he emphasizes the concept of "interracial justice" and "constrained racial group agency," he provides us with the theoretical foundation and moral imperative to *act*, rather than merely to *critique* others with increasing sophistication and skepticism from the safe sidelines of academe: "Interracial justice involves a recognition of situated group power and therefore constrained yet meaningful group agency and corresponding responsibility in the construction of racial identities and interracial conflicts." Eric K. Yamamoto, *Rethinking Alliances: Agency Responsibility and Interracial Justice*, 3 ASIAN PAC. AM. L.J. (1996). *See also* Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, [95 MICH. L. REV. 821 \(1997\)](#).

n41 Angela Harris, *supra* note 16, at 784.

n42 I will not belabor the careerist point made earlier, except to say that this personal history may also be why junior race crits might be more susceptible to "cashing in" on critical race theory now that it is an established, even fashionable, endeavor, as opposed to an incipient, insurgent project engaged in at the risk of one's own professional well-being.

n43 Because junior crits have come of age during the era of postmodernism and the development of gay and lesbian studies as an academic field, second wave crits may be more comfortable with lesbigay theory and exploring issues of sex and sexuality. However, I do not mean to diminish senior crits who have taken on a leadership role to confront straight supremacy within their own ranks and in their scholarly/political projects. *See, e.g.*, Testimony of Professor Jerome Culp at 1402, *Exams II* (Dist. Ct. Op), *Evans v. Romer*, No. CIV.A.98-CV-7223, 1993 WL 518586 (Colo. Dist. Ct. Dec. 14, 1993); AIDS AND THE LAW (Harlon L.

Dalton et al. eds., 1987); Margaret M. Russell, *Lesbian, Gay and Bisexual Rights and "The Civil Rights Agenda,"* 1 AFR-AM. L. & POL'Y REP. 33 (1994); Kendall Thomas, *The Eclipse of Reason: A Rhetorical Reading of Bowers v. Hardwick,* [79 VA. L. REV. 1805 \(1993\)](#).

n44 Perhaps the hetero-centric dilemma is best illustrated through the annual and now ritualistic "violence" against gay and lesbian race crits in recent years at the summer workshop, ironically occurring and recurring in this carefully constructed, safe space.

n45 Derrick Bell originated the term "interest convergence" to refer to the principle that racial remedies are extended to redress injuries suffered by Blacks only when, if granted, such remedies "will secure, advance, or at least not harm societal interests deemed important by middle and upper class whites." Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma,* 93 HARV. L. REV. 518, 523 (1980). I extrapolate a more generalized meaning of interest convergence -- i.e., progressive social change occurs more readily when dominant interests sense some material or cultural benefit.

n46 Angela Harris, *supra* note 17, at 784.

n47 See Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations,* 22 HARV. C.R.-C.L. L. REV. 323, 360 (1987) (suggesting that critical scholars adopt methods embracing "intuition, guided by reason" and "tested against the lives of real people" at the bottom in order to generate theory). I echo Matsuda's sentiments and add that our multiple consciousness be shaped by those "at the bottom" who are organizing collective resistance.