

LatCrit VII: Coalitional Theory and Praxis: Social Justice Movements and
LatCrit Community
Progressive Pedagogy: Challenging Master Narratives with Racial and Ethnic
Curricular and Faculty Diversity

***271 THE STORY OF "TOWARDS ASIAN AMERICAN JURISPRUDENCE" AND ITS
IMPLICATIONS FOR LATINAS/OS IN AMERICAN LAW SCHOOLS**

John Hayakawa Török [\[FNd1\]](#)

History is important. You choose who you are by choosing which tradition you belong to. Aung San Suu Kyi seeks to call attention to what she sees as the best aspects of the national and cultural heritage and to identify herself with them. Such profound knowledge and such a deep sense of identity are an irresistible force in the political struggle. [\[FN1\]](#)

Introduction	271
I. The "Towards Asian American Jurisprudence" Campaign at Columbia Law School	272
A. Organizing "Towards Asian American Jurisprudence"	278
B. Ensuring the Future of Asian American Jurisprudence	286
II. Of Critical Race Theory, Scholarly Paradigms, and Movement Organizational Structures	290
III. A Note on Critics: of Farber and Sherry	302
Conclusion	307

Introduction

A Columbia law student campaign for faculty diversity established a new law school seminar. As a J.S.D. student, I participated in the law faculty hiring campaign in 1996-1997 and designed the Spring 1997 "Towards Asian American Jurisprudence" ("TAAJ") class at Columbia Law School. Our efforts to diversify the Columbia Law School faculty involved an alliance between the Asian Pacific American Law Student Association (APALSA) and the South Asian Law Students Association. (SALSA).

Section One of this article documents part of the campaign, including the creation of the first student-organized class. [\[FN2\]](#) The theoretical underpinnings of ***272** "Towards Asian American Jurisprudence" included Critical Race Theory's long engagement with postmodern and poststructural critique. Understanding TAAJ as both an intellectual project and an activist campaign requires discussing both the Sumi Cho and Robert Westley critique of, and the Farber and Sherry attack on, "postmodernism" in Critical Race Theory. [\[FN3\]](#)

In Section Two, I discuss and critique Cho and Westley's article. This section also historicizes the TAAJ class as an organizing project by putting it into the context of prior student of color race-conscious organizing projects in higher education. My account of the Critical Race Theory Workshop (CRTW), and the evolution of LatCrit from the CRTW, connects developments in student of color movement organizational structures to similar developments at the law professor of color level. It further contextualizes law student diversity organizing.

In Section Three, I dispute Farber and Sherry's account of Critical Race Theory. My account of CRTW in the preceding section should make it clear that their account is a distorted one. I contend that their book, fundamentally, is a modernist attack on postmodernism. I contest their claim to represent Asian American interests because their account of Asian American success is a stereotypical one. Moreover, I show that they fail to understand the very tradition--what they call the "Enlightenment tradition"--that they claim to protect. Finally, I argue that their work is an attack on critical legal theoretical scholarship and thus functions as ideological policing.

In the concluding section, I draw out the APALSA/SALSA [\[FN4\]](#) organizing model's implications for Latina/o law students and LatCrit, Inc. The article as a whole is intended to highlight the importance of and to advance law student of color racial subjectivity in advocating for faculty hiring and curricular inclusion.

I. The "Towards Asian American Jurisprudence" Campaign at Columbia Law School

The "Towards Asian American Jurisprudence" class grew out of the APALSA/SALSA faculty hiring campaign. It was the first "protest class" at an American law school by Asian Pacific Americans. [\[FN5\]](#)

As a political activist, dissident intellectual, and a participant in LatCrit, I take an anti-essentialist, race-conscious, anti-subordination stance. [\[FN6\]](#) LatCrit has ^{*273} developed the outsider perspective for a number of different reasons. [\[FN7\]](#) However, some other outsider/insider issues are in play here. As the author of this article and as an active participant in the campaign, I am subject and object, insider and outsider. [\[FN8\]](#) I take an outsider position to write as historian of the campaign, [\[FN9\]](#) and as an ethnographer of both the campaign and Asian American racialization. [\[FN10\]](#) Nonetheless, I am an Asian Pacific American law student. I participated in the student campaign. I experience Asian American racialization. Thus, I am also an insider. [\[FN11\]](#)

^{*274} Law students of color are simultaneously outsiders and privileged as insiders precisely because they are students of law. [\[FN12\]](#) This conflict highlights a larger issue respecting law student of color activism about jurisprudential inclusion in legal education. [\[FN13\]](#) While Columbia's Asian Pacific American law students are privileged insiders in American legal education, our physical presence in the law school does not mean that we are epistemologically included. We participate in an "epistemological privilege of the oppressed." [\[FN14\]](#) This privilege is the basis for outsider jurisprudence. [\[FN15\]](#) Outsider jurisprudential position is one of the foundations for Critical Race Theory, Queer Legal Theory, and Feminist Jurisprudence. It is also a foundation for LatCrit Theory. [\[FN16\]](#)

Progressive and student of color activists have claimed and must continue to claim outsider perspectives in organizing drives for diverse law faculty and curricular reform. [\[FN17\]](#) This is needed to assure jurisprudential inclusion. We in Columbia APALSA/SALSA did so in our organizing effort through including readings in Critical Race Theory in our curriculum. Our work occurred in the context of an ongoing local diversity movement, spearheaded by a Coalition on Legal Recruiting (CoLR). [\[FN18\]](#)

^{*275} I use "we" in this article to mean Columbia Asian Pacific American and South Asian law students. I use "us" and "our" to denote this group and also to situate myself within a legal [\[FN19\]](#) and scholarly community. [\[FN20\]](#) I also sometimes use "they" to denote groups of which I am a member. My multiple roles and the insider/outsider questions account for these shifts between the "I," "we," and "they" positions in my text.

Articulating a "we"--Asian Pacific Americans--creates a "they"--those who are not Asian Pacific Americans. [\[FN21\]](#) Exclusion is always an issue when groups articulate their identity. [\[FN22\]](#) Since Asian Pacific Americans are racially subordinated, they must understand racism to protect themselves from mistreatment and discrimination. [\[FN23\]](#) Members of subordinated racial groups need race-consciousness. *276 This refers not to state or federal governmental race-consciousness, as race-consciousness by government actors to remedy racial exclusion and discrimination is considered unconstitutional by five members of the Supreme Court in most cases and generally improper in liberal legalism. [\[FN24\]](#) The race-consciousness that we student organizers at Columbia sought to advance was of an internal nature. [\[FN25\]](#)

Asian Pacific Americans have been described as the "model minority." [\[FN26\]](#) Social scientists in the 1960s began to claim that certain Asian American groups have cultural characteristics that account for their educational achievement. Our cultural values, allegedly, predispose us to hard work and perseverance and to atypically high scores on standardized tests. [\[FN27\]](#) Further, some writers, ignoring the *277 scientific and cultural critiques of American testing, took the position that differences in average intelligence test results across racial groups may have had a genetic basis. This intelligence, supposedly, predicts for group success. These depictions are the norm in mass media portrayals of Asian Americans. [\[FN28\]](#)

Meritocratic fundamentalism--particularly the proposition that standardized test results and grade point averages truly measure merit--has been debunked by progressive legal scholars and social scientists. [\[FN29\]](#) The model minority myth has been debunked by progressive Asian American scholars, who show how it denies American racism and validates white supremacy. They argue that Asian Americans do not represent the Horatio Alger myth on an ethnic scale. [\[FN30\]](#) However, some Asian Americans accept the depiction, and thus accept its premise that other people of color should reinvent themselves to be like Asian Americans--hence the term "model minority." In addition, some claimed that race-based affirmative action policies were and are unfair to hard-working, high-scoring Asian American students, because other people with lower standardized test results were admitted to elite educational programs ahead of them. [\[FN31\]](#) Needless to say, these perceptions were exploited politically by the opponents of race-based affirmative action. [\[FN32\]](#)

When it comes to progressive social change respecting faculty hiring and jurisprudential inclusion for outsider groups in higher education, without struggle there is no progress. [\[FN33\]](#) Anti-racist struggle that fails to understand the intensity of *278 contemporary racial backlash politics will fail of its object. [\[FN34\]](#) Educating ourselves about the manipulation of our community by national forces that serve white supremacy is essential. These politics complicate any Asian American anti-subordination educational project. [\[FN35\]](#)

A. Organizing "Towards Asian American Jurisprudence"

The failure of critical scholars to take account of the historical and existential needs of minority peoples manifests itself in ideological paradigms and organizational practices antithetical to minority interests. [\[FN36\]](#)

The history of student activism at Columbia is long and storied. From anti-war protests in the 1960s to 1990s activism around faculty diversity, Columbia students have sought to change the world for the better. [\[FN37\]](#) 1996 was the year of California's Proposition 209, as well as the so-called Asian Campaign Finance Scandal. In Spring 1996, the Columbia campus ethnic studies movement culminated in a student hunger strike, mass protests, and building takeovers. [\[FN38\]](#) In this context, Asian Pacific American law

women helped to organize the Spring 1996 Women of Color and the Law Conference (WoCC) at Columbia Law School.

Asian Pacific American women's leadership was crucial to both WoCC and to the APALSA/SALSA campaign. Ava Hahn, WoCC Conference co-chair, suggested starting an Asian Americans and the Law class in Spring 1996. Other APA women organizers of the conference, including Lynda Hong, played key roles in the 1996-97 academic year. [\[FN39\]](#) The WoCC conference energized a leadership core **279* of APA women and created the space that made "Towards Asian American Jurisprudence" possible.

APALSA had been advocating for Asian American law teacher hiring for some years. However, the previous year's activism affected students, and the drive for faculty hiring moved to the forefront. Kenji Iida and Lynda Hong, the 1996-97 APALSA co-chairs, organized a meeting on October 30, 1996, for APALSA members interested in working on increasing Asian American numbers on the law faculty and securing an Asian Americans and the Law class. [\[FN40\]](#) About a dozen people attended. Most of the third-year women who had organized the WoCC the previous year were there. [\[FN41\]](#) Other meetings followed.

Several third-year students said that they wished they could have learned about Asian Americans in a law school class. I suggested that we organize a student-directed group independent study both to address this exclusion, and as a protest on the faculty hiring issue. The idea was not accepted, first, because designing and teaching it seemed daunting, and second, because we thought students would not want to learn from other students. We also did not know whether academic credit would be available. However, when we asked directly for a class in the Spring semester, the faculty curriculum and appointments committees said no. Thus, we came to consensus that the group independent study plan would be our next option. [\[FN42\]](#)

Our strategy was the use of rights assertion to curricular and racial representation. [\[FN43\]](#) We claimed the right to make ourselves the subjects and the object of our own legal educations. We claimed the right to have more Asian American law teachers. When we approached the relevant faculty committees, they raised a quality assurance concern. Bright Columbia law students, they said, would surely settle for nothing less than excellence in their teachers. We, they said, would be unsatisfied with mediocre teachers of Asian American Jurisprudence, and they asked **280* us to wait until they could find a teacher who met Columbia's high standards. Thus, they did not share our sense of urgency about the question of our jurisprudential inclusion. Their response did nothing for our graduating third-year students. [\[FN44\]](#) We refused to accept this rationalization for delay and decided to organize our own class.

In "Towards Asian American Jurisprudence," we sought both: (1) to increase the number of Asian American law teachers, and (2) the inclusion of Asian American curriculum. [\[FN45\]](#) Our two demands were connected: someone who did not identify as Asian American would be uninterested in teaching this area or in being a resource for students. If we used only race as a marker for the kind of teacher we wanted, we faced the possibility that the administration would use race to divide our community and choose someone who fit that "requirement," yet who would not be supportive of or a mentor for Asian American law students.

We learned that the new Dean, David Leebron, [\[FN46\]](#) had not understood Asian American student demands regarding faculty and curricular diversity, although APALSA had met with him the previous year on the issue. Consequently, Lynda Hong and Kenji Iida requested and secured meetings with the Dean. He empathized with APALSA's concerns. Janice Kam, an APALSA member and a past co-chair, organized delegations of

primarily first-year students to meet with as many of Columbia's about sixty-six law professors as we could to talk about both faculty hiring and curricular inclusion. We also wanted to learn whether there was any faculty support for our demands.

Meeting with all the faculty members allows law students of color in local diversity campaigns to assess their faculty's attitude to the inclusion of other teachers who look like the students themselves within their ranks. Taking first-year law students to the meetings serves two purposes: early politicization and building race-consciousness. It further allows student organizers, in a quasi-empirical manner, to gather intelligence about their faculty's racial ideology. In most law schools, deans are figureheads, and real power lies with the faculty as a whole. For this reason, local student organizers must assess their faculty's racial ideology for proper strategizing.

The support of and suggestions from progressive Columbia professors was invaluable. From them, we learned of past strategies and campaigns. For example, Professor Kimberlé Crenshaw provided us with the "protest class" strategy. In a lecture to the Critical Race Theory Reading Group at Columbia, she spoke about the 1981 Alternative Course at Harvard Law School. She called it "the first **281* institutionalized expression of Critical Race Theory." [\[FN47\]](#) This protest class was organized to boycott the Harvard administration's proposed substitute for Professor Derrick Bell's civil rights class after he left to become dean of the University of Oregon Law School. Bell had pioneered race-conscious legal scholarship in white legal academia. The substitute offered was a three-week mini-course on civil rights taught by Professors Jack Greenberg and Julius Chambers. Crenshaw, as a law student, organized the protest class. Harvard's Critical Legal Studies faculty sponsored it. [\[FN48\]](#)

After we decided to organize our class, Kenji Iida distributed an e-mail requesting suggestions about our class's substantive coverage. In their responses, APALSA members said they wanted to cover immigration exclusion, citizenship and naturalization issues, alien land laws, Japanese American internment, and the social construction of racial and other identities through legal discourse. [\[FN49\]](#)

The class itself was an organized protest about Asian American exclusion from law teaching and legal curriculum at Columbia Law School. As student organizer, I drew upon syllabi for courses taught by Professors Neil Gotanda, Mari Matsuda, Keith Aoki, and Jerry Kang. [\[FN50\]](#) I relied on a copy of Professor Brant Lee's student paper "Here All Along: A Reader for Asian American Legal History." [\[FN51\]](#) The student suggestions, the syllabi, and my background allowed me to complete the syllabus draft over a weekend. [\[FN52\]](#) It had four sections, an introduction, a section on histories, followed by one on identities, and a conclusion. [\[FN53\]](#) The syllabus I developed was emailed to APALSA members for comment and modified based on the comments we received.

As student organizers, Lynda and Kenji worked hard to generate interest in the group independent study among Asian Pacific American law students. When Professor Kendall Thomas, at my request, agreed to serve as the faculty sponsor, prospective class participants learned they could receive academic credit.

We began the class with sixteen participants on January 27, 1997. [\[FN54\]](#) About a dozen students from the law school attended throughout the semester. To enroll, **282* students were required to meet with Professor Thomas and agree upon a paper topic. As a student organizer, I attended class, secured the participants' commitments to facilitate particular class discussions, and made the materials available.

I explained our objectives on our first day: (1) to argue for faculty and curricular diversification; (2) to demonstrate that there was (a) demand for and (b) intellectual

validity to Asian Americans and the Law curriculum; (3) to allow participants to teach and learn as Asian Americans; and (4) to produce Asian American legal scholarship.

The class readings and discussion sought: (1) to ensure literacy about the law's role in our historical subordination, (2) to learn and teach about Asian American identities as women and men of diverse national origins, generations, class backgrounds, sexualities, political views, and religions, and (3) to enhance our race-consciousness.

While the student organizers agreed that racism against Asian Pacific Americans existed, not all Columbia Asian Pacific American law students shared that premise. [\[FN55\]](#) That Asian Pacific Americans were and are racially subordinated led to our focus on building race-consciousness, both within APALSA and in our development of curriculum for our class. [\[FN56\]](#)

Events from the late 1980s fostered race-consciousness among South Asian immigrant youth in the New York City region. I therefore sought to ensure that one of the two class organizers every year after the first year was South Asian. My prior political work, and local racial politics, informed my choice about class organizers. [\[FN57\]](#) Within "Towards Asian American Jurisprudence," the term "Asian American" was not intended to deny the need for separate consideration of the circumstances of each ethnic/national group or regional conglomeration. Thus, South Asians require **283* separate consideration not only from East Asians and Southeast Asians, but also in terms of ethnic/national categories (India, Pakistan, Bangladesh, Sri Lanka) and other identity categories. [\[FN58\]](#) I feared that the law school administration would foster, or exploit, an East/South Asian split as a divide and rule tactic. [\[FN59\]](#) By Spring 2000, Asian American Jurisprudence at Columbia was officially jointly sponsored by SALSA and APALSA.

Professor Sumi Cho, in her theory of white racial redemption, identifies the phenomena of "racial brokering" and "racial mascotting." Racial brokering is the pitting by whites of racial minorities against one another to help maintain white supremacy, while simultaneously redeeming whiteness by adopting an anti-racist posture. Adopting a racial mascot makes this posture possible. Racial mascotting is the promotion by whites of one racial minority group's perceived interests at the expense of the interests of another racial minority group. Thus, white conservatives adopt Asians as their racial mascots in their war against the policy that was designed to remedy racism: affirmative action. As a result, they present themselves as anti-racists, redeeming their whiteness even as they pursue racist policy ends. On the other hand, white liberals adopt African Americans as their racial mascots, supporting affirmative action remedies. Their whiteness is redeemed by this anti-racist stance, even though their position on Asian American admissions adversely affects another racial minority group. [\[FN60\]](#) The net effect, in both cases, is the maintenance of white supremacy by whites at the expense of a people of color group, with their whiteness redeemed through the appearance of anti-racism that their racial mascots provide. [\[FN61\]](#) Cho's theory illuminates the complexity of racial politics.

To address this complexity, I modeled the discussion component of "Towards Asian American Jurisprudence" upon the second-wave western feminist movement's consciousness-raising groups. [\[FN62\]](#) These women's groups involved **284* women talking with each other about their experiences to theorize male domination and patriarchy. [\[FN63\]](#) They provided mutual support and built critical consciousness to both theorize and challenge male supremacy. [\[FN64\]](#) We used this method to theorize and challenge white, male, and straight supremacy as experienced by Asian Pacific American law students.

To encourage student expression and risk-taking in the class, I opened with a poem, Marge Piercy's *To Be of Use*. [FN65] Class discussion began with the question, "Where are you from?" [FN66] I wrote the question, and the following words, on the blackboard before class: geography, culture, politics, [FN67] sexuality, religion, generation, and socioeconomic and educational background. I asked all class participants to answer the question in terms of the categories on the board. I started, and disclosed information about my ethnic, religious, sexuality, generation, gender, immigration, class, and biracial [FN68] background. This introduction, which moved from me to the rest of the members of the class, ensured full class participation. [FN69] In later *285 classes we rotated the role of class facilitator. In these ways, participant expression became the classroom norm. [FN70]

One stereotype of Asian Americans is that we are not expressive. [FN71] We centered Asian American self-expression to allow us to gather information to develop a shared understanding of Asian American experiences. [FN72] This focused discussion, in a dialogue about class participants' subjective experiences, helped build race-consciousness. [FN73] Reading historical and legal materials also helped to build such consciousness. [FN74] The readings framed our inward focus to the Asian American experience. As we developed our shared understanding of experiences and history over the semester, it allowed us to begin articulating claims for justice for Asian Pacific Americans. [FN75]

*286 B. Ensuring the Future of Asian American Jurisprudence

This is at bottom a fight to gain equal access to the power of the intelligentsia to construct knowledge, social meaning, ideology, and definitions of who "we" are. [FN76]

School administrators rely on the fact that student activism does not last. Law student movements are particularly transient because law students are in law school for only three years. Law school administrators know this. Without continuous consciousness-raising in our class, we feared our campaign would not be sustainable. A class participant said that our class was like an Asian American freedom school. Although the original organizers had not used the phrase, it describes our intent accurately. Our self-education about anti-Asian racism and its intersections with other forms of subordination, along with our direct advocacy for Asian American inclusion on Columbia's faculty, made for a layered educational experience. [FN77]

Kenji, Lynda, and the class participants considered our class a law school class from day one. Formally, however, "Towards Asian American Jurisprudence," later "Asian American Jurisprudence," was directed research in the form of a group independent study under faculty supervision. The hierarchy of law school teaching, generally, values classes and teachers based on a number of different criteria, such as tenure status of the professor, numbers of students enrolled, or whether or not it is a mainstream, black-letter law class. Professor Kendall Thomas, who is tenured at Columbia, sponsored the group independent study in both 1997 and 1998. Professor Keith Aoki of the University of Oregon Law School graded the papers as an adjunct in 1999. Professor Neil Gotanda of Western State College of Law taught the 2000, 2001, and 2002 seminars as an adjunct. Professor Frank Wu of Howard University Law School taught the 2002-2003 seminar as an adjunct. [FN78] Columbia has not yet named a full-time or tenured professor to help institutionalize the class. This clearly indicates its temporary status.

At the end of the Spring 1997 semester, I asked two second-year students, Farhad Karim and Anny Huang, to organize the 1998 class. Although there was an outstanding faculty appointment offer to Professor Kenji Yoshino, we assumed, as it turned out, correctly, that we might still be in the same position the following year. Ranjana

Natarajan and Andrew Yang, who participated in the class in its second year, were asked by Karim and Huang to organize the 1999 class. Natarajan and Yang, in turn, selected Shruti Rana and Joseph Yu to organize the Spring 2000 class. Rana and Yu selected Jayesh Rathod and Jennifer Haejoo Lee to organize the 2001 class. The student organizers of the first three class years were wholly responsible for the syllabi for their years. [\[FN79\]](#)

**287* This organizational structure has a purpose. Student organizers have a job. First, if no teacher is hired in any given year, they are responsible for finding a faculty sponsor, and organizing and teaching the class as directed research in the form of a group independent study. This would replicate the first classes. Second, they must mobilize APALSA/SALSA students every year until the campaign's political goals--curriculum and a permanent faculty hire to teach it--are achieved.

"Towards Asian American Jurisprudence" was my first time organizing a law curriculum. [\[FN80\]](#) It was also the first time for each of my successors as student organizers. For this core group, Asian American Jurisprudence combined the intensity of activism with student teaching in a way I believe was transformative. It allowed us simultaneously to develop curricular expertise and to bridge the "seemingly impossible gap between academics and activism." [\[FN81\]](#)

In Spring 1999 Asian American Jurisprudence was formally recognized as a law school seminar, effective the 1999-2000 academic year. [\[FN82\]](#) Asian American Jurisprudence was officially listed as a Columbia law school seminar for the first time in Spring 2000. [\[FN83\]](#) Further, in Spring 2000, New York University Law School APALSA organized a similar class. Hyeon-Ju Rho and Chan Park were the lead organizers there. [\[FN84\]](#) In 2002-2003, the class/seminar completed its seventh year at Columbia.

Non-Asian critical race theorists helped create Asian American Jurisprudence. At N.Y.U., the faculty sponsors included Professors Gerald Lopez, Paulette Caldwell, and Peggy Davis, and at Columbia, as noted, Professor Kendall Thomas. Without them, Asian American Jurisprudence at these two law schools would not have been possible. Given Asian American Jurisprudence's objective to develop race-consciousness among Asian Pacific American lawyers-to-be, I am confident that former class participants will work in coalition with others for social justice. [\[FN85\]](#)

In the 1996-97 academic year, Lynda and Kenji's predecessor as chair Janice Kam lead APALSA members to meet individually with Columbia Law School faculty members to ascertain if they supported Asian American law faculty hiring and Asian American curriculum. The lobbying visits continued during Bettina Yip and Maryanne Woo's tenure as APALSA chairs in the 1997-98 academic year. In Fall 1998, under John Rhee, Joseph Yu, and Enoch Liang's **288* leadership, members met individually with all members of the Columbia faculty appointments committee to lobby them. [\[FN86\]](#) In the 1999-2000 year, under Sylvaine Wong and Jennifer Lee, similar activity was planned with SALSA under Jayesh Rathod and Mehrin Masud. [\[FN87\]](#)

Direct advocacy by law students for curricular inclusion and faculty hires was a learning activity. It made Columbia Law School itself into an Asian Pacific American racial justice advocacy clinic and was integral to the educational project of "Towards Asian American Jurisprudence." In the organizing meetings, it was suggested that we seek institutional reform by actually asking for it. [\[FN88\]](#) This is the mode white liberals claim is effective and that they prefer for institutional change. White conservatives, on the other hand, believe that all is for the best in the best of all possible institutions, and thus, no change is necessary. In the Fall of 1996 the administration and faculty responded as I expected they would, by saying no to both the curriculum change or a rapid faculty hire to teach

the class for the next semester. This educated that generation of students on the limits of liberalism when it comes to racial justice at home. [\[FN89\]](#)

The gains achieved by the law student campaigns--adjunct professors at a couple of New York law schools [\[FN90\]](#)--easily could disappear. Given the student demand both for professors and for the classes to continue, law schools should hire permanent instructors for Asian Pacific American Jurisprudence. [\[FN91\]](#) The classes need to be institutionalized through permanent faculty hires. Many professors would have much to offer Columbia and N.Y.U. students. [\[FN92\]](#) Increased student activism at these schools may be needed to further these ends.

***289** The Columbia campaign also sought to promote Asian American legal curriculum and faculty hiring at law schools elsewhere. APALSA/SALSA began that work. Columbia APALSA organized a panel at the National Asian Pacific American Law Students Association ("NAPALSA") Conference in New York City in October 1998, to encourage other APALSAs to create their own Asian American Jurisprudence protest classes. In Spring 1999, we shared Asian American Jurisprudence syllabi and organizing strategies at an Asian American Law and Public Policy conference in Cambridge, Massachusetts, and at the inaugural national South Asian Law Students Association Conference in Washington, D.C. Columbia APALSA and SALSA thus sought to replicate the class elsewhere. [\[FN93\]](#)

Our national organizing effort was intended to increase demand for Asian American faculty hiring by encouraging Asian American student activism for Asian American curriculum and faculty at their law schools. [\[FN94\]](#) "Asian American law professor" remains an oxymoron at too many schools with a significant percentage of Asian Pacific American students. [\[FN95\]](#) This should not be. [\[FN96\]](#) By writing my story of "Towards Asian American Jurisprudence," I hope to inspire my law student readers to change their worlds. [\[FN97\]](#)

In conclusion, the Columbia student campaign accomplished its goal of securing Asian American law curriculum. It further secured the hiring of a founder of Critical Race Theory, Professor Neil Gotanda, as an adjunct for three years. [\[FN98\]](#) It has yet to accomplish the goal of the hiring of a permanent Asian Pacific American Jurisprudence instructor. [\[FN99\]](#) Since 1996, there have been no Asian Pacific American ***290** tenure-track or tenured law faculty hires at Columbia Law School. [\[FN100\]](#) After seven years, student insurgency seems to be the logical next step. That requires building a sustainable organization beyond the Asian American Jurisprudence class itself in coalition with other law school outsider groups. [\[FN101\]](#)

II. Of Critical Race Theory, Scholarly Paradigms, and Movement Organizational Structures

Since we can no longer assume any historical event, no matter how recent, to be common knowledge, I must treat events dating back only a few years as if they were a thousand years old . . . the struggle of man against power is the struggle of memory against forgetting.

-- Milan Kundera [\[FN102\]](#)

Professors Sumi Cho and Robert Westley, in *Critical Race Coalitions: Key Movements That Performed the Theory*, argue that during Critical Race Theory's (CRT) first decade, there was a paradigm shift in the method of critical race theory scholarship. [\[FN103\]](#) They associate this shift with a generational change in the participants in Critical Race

Theory Workshops (CRTW) and with the effects of changing fashions in American intellectual life in the early 1990s on that later generation. [\[FN104\]](#)

Cho and Westley identify the first CRT methodological paradigm for theorizing and scholarship as synergism. Synergism involves theorizing based on personal participation in race-conscious anti-subordination social movements. [\[FN105\]](#) *291 They identify the second CRT methodological paradigm as sublimationism. [\[FN106\]](#) They assert that the first wave of CRT theorizing and scholarship by first-generation race-crits was synergistic. [\[FN107\]](#) In the second wave, the dominant paradigm was anti-essentialist and sublimationist. [\[FN108\]](#) Sublimationism, Cho and Westley claim, is best characterized by the second-generation critical race theorists' (race-crits) over-emphasis on postmodern narratives and their denigration of activism. [\[FN109\]](#) During Critical Race Theory's second decade, Cho and Westley urge a "practical turn" and a return to synergism in a third wave of CRT scholarship. [\[FN110\]](#)

While acknowledging the scholarly contribution and theoretical brilliance of the first generation of critical race theorists (race-crits), Cho and Westley argue that the national law student diversity movement of 1988-90 helped create the conditions for some of these race-crits to be hired at the prestigious schools. [\[FN111\]](#) Further, they demonstrate that the national rate of minority law teacher hiring increased sharply during and after the student movement. [\[FN112\]](#) These claims I agree with. They also state that the space created by the movement allowed second-generation race-crits to distance themselves from political struggle, impoverishing their theorizing. [\[FN113\]](#) On this, I disagree with them. [\[FN114\]](#) Nonetheless, I further agree with them that institutional histories subjugate movement histories. [\[FN115\]](#) Moreover, I *292 agree with them that experiential knowledge based on personal participation in social movements is a key method for developing critical theory. I diverge from them, however, when they claim that it should be the preferred method in Critical Race Theory. [\[FN116\]](#)

I dispute one of Cho and Westley's central claims: that there was a "postmodern turn" in Critical Race Theory in the 1990s. [\[FN117\]](#) The methods of critical inquiry that have come to be known under the rubric "postmodernism" began to be used in American intellectual life as early as the 1960s. Leftist legal scholars adopted the methods in the 1970s and 1980s. Scholars in the Critical Legal Studies (CLS) movement elaborated a critique of law, legal institutions, and society using these methods, among others. The antecedents of Critical Race Theory include a group of legal scholars of color, who participated in, became organized within, and then in the mid-1980s began to contest the erasure of race in CLS. The CLS "race turn" followed the CLS "feminist turn." These methods of critical inquiry were part of CRT at the moment CRT named itself and developed its first organizational structure, the Critical Race Theory Workshop (CRTW). [\[FN118\]](#) "Postmodernism," thus, was present at the creation. [\[FN119\]](#)

I categorize the anti-apartheid, diversity, and critical race theory movements as race-conscious movements. They had a common ethic of both race-consciousness and anti-subordination. Cho and Westley's experiences as student leaders in the Berkeley anti-apartheid and diversity movements, [\[FN120\]](#) some historical data on race-conscious organizing at Boalt and Berkeley, [\[FN121\]](#) and a statistical analysis of minority law faculty hiring nationally before and after 1988-90 diversity movement, [\[FN122\]](#) ground their critique of CRT method. Cho & Westley mention some misreadings, presumably by some second-generation race-crits, of events in recent American racial movements. [\[FN123\]](#) To the extent that race-crits rely upon mainstream textual sources to write accounts of social movements, it is not surprising that their accounts are flawed. Mass media is part of the apparatus of ideological control in American society. [\[FN124\]](#)

*293 Cho and Westley forward synergistic theorizing. This method embraces engagement in social movements and builds theory through direct participation in political struggle. It is an "intersubjective" method because work in movements involves people talking with each other, building movement structures and organizations, analyzing situations and strategizing action together, assessing any success or failure, and then moving on to the next step. In essence, activism is conceptualized as a collective process of theorizing. [\[FN125\]](#) Sublimationist theorizers, Cho and Westley contend, deny the centrality of participation in political struggle to the task of building critical theory and are not personally engaged as participants in race-conscious movements. Further, they claim, sublimationists misunderstand, deny, or minimize the role that political contestation by race-conscious movements played in creating the actually existing racial order. [\[FN126\]](#) They associate sublimationist method with the second generation.

Cho and Westley describe and analyze organizational development and change in race-conscious organizing by students at Berkeley. This situates the synergistic theorizing they favor as founded upon and based on work in social movements. [\[FN127\]](#) As student activists, they developed a sophisticated awareness of, and tactics with which to address, the dynamics of white privilege and power in progressive social movements. [\[FN128\]](#) They acknowledge that the minority critique of Critical Legal Studies (CLS) [\[FN129\]](#) contributed to and supported their analysis of racial politics in the late 1980s. Examining this theoretical scholarship confirmed their understanding of racial power dynamics in progressive social movements. This understanding affected how they re-organized movement organizational structures, specifically the Boalt Coalition for a Diverse Faculty. [\[FN130\]](#)

The most valuable part of Cho and Westley's article, for our purposes, carefully describes organizational models and leadership issues in the race-conscious movements at Berkeley and Boalt. [\[FN131\]](#) The organizations can be categorized by whether they had individuals or organizations as members; whether they included only people of color (Black, Latina/o, APA, Native American), or not; and if they were not exclusively people of color, whether the organizational leadership structure *294 was designed to share power with people of color. Thus, Berkeley's 1969 Third World Strike, which established Ethnic Studies, was a people of color action. The Third World Liberation Front (TWLF), a coalition of people of color organizations, organized it. [\[FN132\]](#) Also at Berkeley, the United People of Color (UPC), which was active in the anti-apartheid movement, was an individual membership organization of people of color. [\[FN133\]](#) Boalt's United Law Students of Color (ULSC) was also an individual membership organization for people of color. [\[FN134\]](#) By contrast, at Berkeley, Cal-SERVE was a student organization coalition led by people of color organizations that included other outsider groups and that consistently ran winning slates for campus student government. [\[FN135\]](#) These organizational types are referred to as "people of color" (UPC, ULSC) and "race-plus coalition" (Cal-SERVE), respectively. The TWLF, by further contrast, was a "people of color coalition," as it had organizational membership by people of color groups. [\[FN136\]](#)

The organizational development from 1985 of the Boalt Coalition for a Diverse Faculty (BCDF) is particularly revealing. The BCDF was initially an individual membership organization open to all. After 1985, white domination led students of color to exit. [\[FN137\]](#) The United Law Students of Color (ULSC) organization, which was people of color, formed but soon disintegrated. [\[FN138\]](#) However, the ULSC's faculty hiring committee joined the BCDF and proposed a change to the organizational form from an individual membership organization to a race-plus coalition, and to incorporate the leadership changes necessary to reflect the organizational change. The change was voted upon and approved by the membership. The initial coalition leadership structure including representatives from the Black, Latina/o, Asian Pacific American, and Women's law student associations. Cho, Westley, and Renee Saucedo represented the Asian,

Black, and Latina/o student organizations, respectively. It was under this form of leadership that the BCDF mobilized first the Boalt student body and then the national law student diversity movement. [\[FN139\]](#)

Cho and Westley developed their theory of people of color leadership and its relation to white privilege and power in progressive movements in the course of their student activism. [\[FN140\]](#) Their choice to publish the story of their activist work, to analyze it, and to historicize it, [\[FN141\]](#) in a law review makes available the "subjugated knowledge" that activists depend upon for strategy and survival. This scholarly **295* contribution will help in the future development of other race-conscious, anti-subordination movements. In this respect, their work will be used in the same way that the minority critique issue was used by our generation of activists. [\[FN142\]](#)

To advance knowledge about student movement organizational structures, I add the following. At Columbia in Spring 1996, the Committee on Ethnic Studies and the Core Curriculum (CESCC) organized educational activities, a series of mass meetings, dozens of protests, a hunger strike, and building takeovers. Its "core" was an exclusive, individual membership, people of color organization. In recruiting new members, the core asked for and got commitments both to secrecy and to high-risk activism. Those recruited tended to be emerging leaders of people of color organizations. Since secrecy was a key principle, the core was an underground organization. CESCC's operations, however, were open to the broader student body. The core provided leadership for the student protest movement from the underground. Although core members later expressed dissatisfaction at the outcome and frustration with the institutional reform process, their protest activity was quite effective and did result in meaningful change. [\[FN143\]](#) When I arrived at Columbia Law School in Fall 1996, student awareness of this recent activism was high, and the political climate was progressive and energized.

As a political activist, I have long admired Cho and Westley's commitment and the victories they won. [\[FN144\]](#) As a critical race theorist, I believe their critique merits serious engagement by the CRT movement. Unfortunately the movement has not had organized expression as "Critical Race Theory" since the 1997 Yale Conference. [\[FN145\]](#)

**296* As noted, I dispute Cho and Westley's claim that in the 1990s there was an anti-essentialist "turn" in CRT method or a "second wave" in CRT scholarship. [\[FN146\]](#) What follows is my version of the experience, and my interpretation of it. [\[FN147\]](#) The Critical Race Theory Workshop (CRTW) was invitational, limited to around thirty-five people with race-conscious scholarly projects and who were willing to give and receive critique. [\[FN148\]](#) There was an application process. [\[FN149\]](#) It was a people of color organization. [\[FN150\]](#) The workshop provided support for developing critical legal scholarship, and to individual progressive people of color law teachers. [\[FN151\]](#)

I do not draw as sharp a generational distinction as to participants in CRT as Cho and Westley do. There was at least one first-generation participant who I believe showed up to every workshop from 1989 to 1997. [\[FN152\]](#) Many other first-generation participants came when they could. [\[FN153\]](#) What most characterized the workshops was the willingness of participants to learn from and teach each other, and their deep engagement in working collectively during the workshop to support **297* each others' scholarship and to theorize the world in order to change it. It was small enough that people could get to know each other. The intensity and duration of the workshops built trust among workshop participants. [\[FN154\]](#) The workshop always seemed friendly to a range of theoretical and scholarly approaches, with the idea that theory and scholarship served anti-subordination struggles at many sites. Part of that struggle was and is faculty hires and retention. The engagement with postmodernism itself was a skeptical, if continuous, one. [\[FN155\]](#) Whatever was useful would be used. Race was a focus, but

not the only one. [\[FN156\]](#) There was no prescription how participants were to use what they learned, whether in their scholarship, teaching, or in activism. I used what I learned principally in race-conscious activism in the "community," and as a law student activist as this article documents.

The Critical Race Theory Workshop also has an organizational legacy. Many workshop participants helped build the ongoing network of people of color legal scholarship conferences. These are annual people of color events at sites around the country. Perhaps most significant, later entrants to CRTW spearheaded the creation of the LatCrit Theory organization and movement. These are not minor contributions--building POC organization and a new legal intellectual movement.

LatCrit as an organization built upon the foundation of the Critical Race Theory Workshop. [\[FN157\]](#) By contrast to the CRTW, the LatCrit Theory Conference is an open conference. However, it apparently is structured to ensure that leadership comes from people of color. It thus has the race-plus coalition structure that Cho and Westley describe. It is therefore an available site for the synergistic theorizing method that Cho and Westley propose should occur. The organizational development of the workshop into the conference appears to parallel the earlier organizational development of Berkeley's and Boalt's student organizations from people of color organizations into race-plus coalitions. The stories of the *298 development from the workshop to the conference, as far as I know, have not yet been told. [\[FN158\]](#)

However, in neither the CRTW nor the LatCrit Conference was there a formal alliance of people of color groups in coalition. Rather, they were and are membership organizations of progressive people of color. However, LatCrit apparently has opened up membership and participation to all interested persons. LatCrit, it seems, emphasizes "collective political agency, synergistic theorizing, and intersubjective methodology." [\[FN159\]](#) It has become an annually created "political and counter-epistemic space" that "links theory with the lived experience of the subordinated and political resistance." Its theorizing is often "rooted in the history of community-based anti-subordination struggles." [\[FN160\]](#)

The LatCrit organizing project is worth supporting and fighting for. It is a race-conscious, leftist legal intellectual movement. Its openness is a boon because, at minimum, it allows for larger numbers and for building alliances across difference. However, the fact that LatCrit is an open conference also presents dangers. Like other progressive movements before it, it may be subjected to attacks, to infiltration, and to subversion. There is a long history of American political repression, and a significant relationship between the academy and the national security state. [\[FN161\]](#) LatCrit is further imperiled by a potential decline in the future numbers of Latina/o law professors should the Supreme Court decide that affirmative action in higher education is improper. [\[FN162\]](#) That is, unless all people of good will find ways to ensure Latinas/os access to educational opportunities.

Finally, Cho and Westley suggest that a practical turn in third-wave critical race theory emphasize "continuous diversity mobilizing through shared power and strategies for developing race-plus coalitions." This, they hope, will reclaim the *299 moral high ground for identity-based political organizing. [\[FN163\]](#) In their article, however, they also discuss the effect of the right's highly effective intervention, the discourse of political correctness, that became prevalent from October 1990. [\[FN164\]](#) I submit that diversity movements never lost the moral high ground. They were and are merely temporarily incapacitated by a hostile discursive re-framing constantly propounded by the right. As participants in CRT, a legal intellectual movement that is an heir to Critical Legal Studies, [\[FN165\]](#) we ought to appreciate the irony that the right used a method that might be called "trashing." [\[FN166\]](#)

I support Professor Chang's and Ms. Fuller's call for a discussion. [\[FN167\]](#) However, I do not think it should take the form of a debate on the place of anti-essentialism or any postmodern "turn" in CRT. Rather, it should be a discussion of the relationship of personal participation in race-conscious political struggle to theorizing, and what the critical race theory movement's position is on that relationship, if any. Moreover, because I fear we face the loss of Justice Powell's diversity rationale for affirmative action in higher education from his plurality opinion in the Bakke case, [\[FN168\]](#) in the Grutter case before the Supreme Court, [\[FN169\]](#) I suggest a further discussion. Perhaps, we might examine whether personal commitments to non-violent direct action are appropriate. [\[FN170\]](#) By its nature, this should be an internal discussion, not a public debate. The site for this might be a LatCrit conference. [\[FN171\]](#)

The national law student diversity movement reached its peak in 1988-90. [\[FN172\]](#) These were years of political contestation around the world. Myanmar and China's militaries put down pro-democracy movements in 1988 and 1989 in their respective countries. [\[FN173\]](#) In Czechoslovakia, East Germany, Poland, and Hungary, **300* pro-democracy movements secured the end of longstanding one-party rule in 1989. [\[FN174\]](#) The Berlin Wall fell, and dissident Vaclav Havel was elected President of Czechoslovakia in 1989 because of mass popular pro-democracy protest by citizens. [\[FN175\]](#) In South Africa, negotiations opened in 1989 led to the release of Nelson Mandela after twenty-seven years of imprisonment in 1990. [\[FN176\]](#) I see the American diversity movement of these years as our pro-democracy movement. The backlash discourse of political correctness suggests that the movement threatened American elites. [\[FN177\]](#)

In the 1980s, the critique of racial power and order in legal academia was raised both by race-crits in published scholarship and also sharply by student activists in the pro-democracy movement. The critique remains powerful. [\[FN178\]](#) The movements and the scholarship were synergistic and arose fairly simultaneously. [\[FN179\]](#) Race-crits as law teachers continue to teach and learn about racial order and power in critical race theory and other classes. Critical Race Theory has been institutionalized in some places. [\[FN180\]](#) Thus, racial critiques of and in legal academia--as well as of the broader society--continue.

I further submit that the movement for diversity in higher education is a continuation of the civil rights movement. [\[FN181\]](#) The diversity movement's goal is integration--a goal that no one would dispute was a focus of the civil rights movement. [\[FN182\]](#) Massive resistance, in a sense, has not ended. Its terrain merely **301* shifted in the 1990s to the realm of mass media and public culture. [\[FN183\]](#) Under these circumstances, the CRTW's engagement with postmodernism, poststructuralism, and so forth was consistent with its core mission: applying the tools of critical theory to the task of dismantling racial hierarchies in the United States. [\[FN184\]](#) Developing strategy in political work, and theory in scholarship, requires access to all the available tools. Multicultural democracy is a demand for both integration and shared power. [\[FN185\]](#) That is the world we in the American pro-democracy movement seek.

I brought what I had learned both in the critical race theory movement and as a community and student activist to the Columbia APALSA/SALSA campaign. This included a theory of racial power and order in American legal education. [\[FN186\]](#) However, the Columbia law students were already conscious and had set the goals of curricular change and faculty hiring before I arrived. The key political problem that emerged was ensuring a strong alliance between the South Asian and Asian Pacific American law students groups to support the campaign demands. The Columbia Law School racial order--the presence of a South Asian woman on the faculty [\[FN187\]](#)--meant that the law school administration could easily create a schism between the South Asian and Asian

Pacific American groups and thereby derail the student campaign. [\[FN188\]](#) This did not happen, probably because we secured our SALSA/APALSA organizational coalition.

The APALSA/SALSA campaign was based on a racial critique of Columbia Law School on Asian American curriculum and faculty hiring. It thus represents a continuation, and a further development, of the racial critique of legal academia strand of critical race theory. [\[FN189\]](#) "Towards Asian American Jurisprudence" [*302](#) as an organizing project also may provide an organizing model for law student activists in other law school outsider groups in law schools who seek jurisprudential inclusion. [\[FN190\]](#)

In sum, I agree with Cho and Westley that experiential knowledge based on personal participation in race-conscious anti-subordination movements is a proper method for developing Critical Race Theory, and thus, by extension, LatCrit Theory. I disagree with them that it should be the preferred method. [\[FN191\]](#) However, before I discuss the use of this method by Latina/o student activists, I must address some potential critics.

III. A Note on Critics: Of Farber and Sherry

Daniel Farber and Suzanna Sherry's *Beyond All Reason: The Radical Assault on Truth in American Law* is a curious polemic. [\[FN192\]](#) Farber and Sherry are sharply critical of "social constructionism" because it can be used to undermine certain fundamental concepts like "truth" and "objectivity." They claim that some critical race and feminist theorists use "social constructionism" to create a mode of legal thought that Farber and Sherry denominate "radical multiculturalism." [\[FN193\]](#) They contend that "radical multiculturalist" legal thought is a dangerous ideology. [\[FN194\]](#) They attack three aspects of this legal thought: (1) the critique of merit; [\[FN195\]](#) (2) legal storytelling; [\[FN196\]](#) and (3) a self-referential, closed discourse among radical multiculturalists that they say distorts intellectual and public discourse on race and [*303](#) equality. [\[FN197\]](#) They seek to eradicate of this mode of legal thought, while denying any desire to preclude the continued participation in legal academia of the legal scholars whose work they attack. [\[FN198\]](#)

The authors are white liberal constitutional law professors who see themselves as "advocates of equality." [\[FN199\]](#) They argue that the critique of merit is racist and anti-Semitic. [\[FN200\]](#) They argue that "radical multiculturalist" legal thought has anti-Semitic and racist implications. [\[FN201\]](#) They strongly oppose "social constructionist" critiques of "truth," "objective merit," "reason," "objective truth," and "the rule of law." [\[FN202\]](#) They suggest critiques of "Reason" and the "Enlightenment" tradition are anti-Semitic in effect and they position themselves as "defenders" of the tradition and "our Enlightenment heritage." [\[FN203\]](#)

Farber and Sherry deploy an image of Asian American success to argue that the critique of merit is racist as well as being anti-Semitic. [\[FN204\]](#) They use Asian Americans as their racial mascots [\[FN205\]](#) to support their claim about anti-Semitism in American legal education. [\[FN206\]](#) However, their account of Asian Americans is a flattened, stereotypical one. [\[FN207\]](#) They state that contemporary anti-Semitism manifests itself as rejection of Jewish success. [\[FN208\]](#) Asian Pacific Americans, however, are not well represented on the faculties of the elite university law schools. Thus, their Asian-Jewish analogy breaks down--there is no Asian American success to reject in the relevant context. Farber and Sherry thus are not advancing Asian Pacific American interests by using an Asian American stereotype to bolster their claim about the anti-Semitism in legal education that they perceive.

Farber and Sherry disclaim philosophical sophistication and clearly disdain continental philosophy. [\[FN209\]](#) They use reason and the Enlightenment as buzzwords. [*304](#) Their

manner of seeking to put certain critiques and methods out of bounds, by labeling them racist and anti-Semitic, promotes the eclipse of reason rather than reason. [\[FN210\]](#) To the extent they are attacking postmodernism through the avatar of "radical multiculturalism," [\[FN211\]](#) they have constructed a careful legal brief against part of a European and American intellectual tradition that they do not understand to defend another part of the intellectual tradition that they claim. [\[FN212\]](#)

Farber and Sherry are fearful of Derridean deconstruction. [\[FN213\]](#) The scope of their attack is broader, however, and encompasses the use of continental theory by people of color. [\[FN214\]](#) Their agenda is to police the use of critical theory and postmodern/poststructural methods by feminist, queer, and people of color legal theorists who are, like them, advocates of equality. [\[FN215\]](#) However, critical theory, postmodernism, and poststructuralism have become commonplace in U.S. university intellectual life in the last thirty years. [\[FN216\]](#) The universities are still standing. Institutional practices on hiring and promotion, and expectations about scholarly productivity, have been little affected by these critiques. I suspect the effects of these critiques on law schools, their employment practices, and on most legal knowledge production are and will be similar to what happened in the universities. [\[FN217\]](#) Thus, I submit that Farber and Sherry's fear of outsider legal scholars using the tools drawn from continental theory is significantly overdrawn.

***305** Nineteenth-century German idealist philosophers questioned reason and viewed the social world as a human construction. Franz Boas, who moved from Germany to the United States and founded the discipline of cultural anthropology, was deeply influenced by their thought. [\[FN218\]](#) Boas, having accepted the social construction thesis, liberalized American anthropology. He spearheaded the revolt against the scientific racism and challenged its premises using a method he promoted and developed--the careful study of different human societies through ethnography. [\[FN219\]](#)

Critical theorists highlighted the "dark side" of the Enlightenment after World War Two. Max Horkheimer and Theodor Adorno, two prominent members of the exiled Frankfurt School, sharply critiqued the Enlightenment and reason. They were interested, as German outsider intellectuals, in the relation of anti-Semitism to philosophy, knowledge production, and politics in the Enlightenment tradition. [\[FN220\]](#) The corollary to Farber and Sherry's claim that a so-called radical multiculturalist critique of the Enlightenment is anti-Semitic may be that Adorno and Horkheimer's critique is also anti-Semitic.

A race-conscious, anti-subordination stance and knowledge of Atlantic World history and political economy should lead one to skepticism of the Enlightenment, and its intellectual products. There were exclusions-- categories of people seen as less than human--who were made the object of racial "knowledge," but who were otherwise ignored in constructing the conversation that is "us." The philosophical developments that have been reified into the Enlightenment occurred concurrently with: the expansion of European colonial empires in Africa, Asia, and the Americas; the rise and development of the transatlantic slave trade and the system of racial slavery; the expropriation of indigenous lands and the extermination of indigenous peoples; and the development of scientific racism and other knowledge to provide ideological justification for the relations of domination and subordination that these projects all encompassed. These developments were related to the change over time from agrarian to mercantile to industrial capitalism. [\[FN221\]](#)

***306** The "truth" produced by a rational, scientific method, based on source material drawn from the imperial periphery by knowledge producers at the imperial core, is subject to critique. [\[FN222\]](#) Similarly, the knowledge produced by white knowledge producers about racial others in the lands now called the United States is subject to

critique. [\[FN223\]](#) The question of objectivity in scholarship is, as already noted, a complex one. This knowledge and truth was and is intertwined with law, since the business of law includes the maintenance of social order, including racial, imperial and other hierarchies. [\[FN224\]](#) Thus the law's racial knowledges can and should be studied. [\[FN225\]](#) There is nothing anti-Semitic about this intellectual inquiry, even if it renders the European Enlightenment suspect. [\[FN226\]](#) "Towards Asian American Jurisprudence" proposed a legal intellectual inquiry that centered the examination of race, racism and American law and culture from an Asian Pacific American standpoint. [\[FN227\]](#)

***307** Farber and Sherry seek to delegitimize the use of critical theory and postmodern/poststructural methods in legal scholarship. [\[FN228\]](#) Their attack focuses on critical race theory, critical feminist theory, and critical queer legal theory. [\[FN229\]](#) It inherently questions the place of critical scholarship, and thus of critical scholars of color, critical feminist and queer scholars, as well as the students in these categories, in legal intellectual life. [\[FN230\]](#) They deny any intent to limit the presence of, or the opportunities to participate in debate by, the left in legal academia. However, their work functions as ideological policing and to further marginalize critical scholars and their scholarship.

Conclusion

The Columbia APALSA/SALSA campaign's student protest class argued that there should be more Asian American professors at Columbia Law School, and that there should be a permanent place for Asian American Jurisprudence in the curriculum. I hope that our class will become a model for agitating for needed change by other outsider groups in law schools. [\[FN231\]](#)

Our Columbia experience also shows that liberal institutional reform strategies are useful, but limited. First, asking for what we wanted got us nowhere. Nonetheless, we did achieve a curricular reform by means of the protest class. There has been no permanent faculty hire, however. Clearly, the protest class as an institutional reform strategy for permanent faculty hiring has been unsuccessful. The logical conclusion, based on our experience, is that the most effective means to improve racial representation on the permanent faculty is disruptive student protest. [\[FN232\]](#) This is a radical institutional reform strategy. [\[FN233\]](#)

***308** Latina/o law students have been active in diversity movements. [\[FN234\]](#) Professor Michael Olivas, at considerable professional cost to himself, is well known for the "dirty dozen" list, designed to shame law schools into hiring Latina/o law professors. [\[FN235\]](#) Nonetheless, more student activism using both liberal and radical institutional reform strategies should make a difference.

The first question is whether Latinas/os and the Law curriculum is a political priority. [\[FN236\]](#) Today, racial backlash politics is eviscerating affirmative action in higher education, decimating Latina/o educational access at all levels, thereby reducing the pool of prospective law students and law teachers. [\[FN237\]](#) Under these circumstances, is Latina/o jurisprudential inclusion a sound objective? [\[FN238\]](#) I assume for the purposes of the following discussion that it is.

The second question is whether teaching Latina/o legal histories and identities is within LatCrit's non-profit organizational mission. The third is about mapping and involves three interrelated questions: which American law schools are the Latina/o law students in? [\[FN239\]](#) And, how many Latinas/os and the Law classes are there, and where are they taught? [\[FN240\]](#) Do the classes and the students overlap? If a national organizing project is adjudged appropriate, I suggest the following.

LatCrit, Inc. and Latina/o law students should determine whether the APALSA/SALSA organizing model makes sense. If so, it may serve as a blueprint for an organizing strategy. Next, LatCrit should develop a Latinas/os and the Law syllabus bank that Latina/o student organizers can access easily. [\[FN241\]](#) Further, LatCrit should identify teachers at law schools that have Latina/o student populations who would be willing to sponsor protest classes. This list should be available to all *309 LatCrit participants likely to be contacted by student organizers. Finally, Latina/o students should be encouraged to organize classes through national Latina/o law student organizations. [\[FN242\]](#)

Our Columbia experience indicates as follows. Organized student demand using this model will likely secure curriculum. Students will learn and teach each other about Latina/o histories and identities. Presenting their administrations with racial justice claims about Latina/o faculty hiring will itself be an education. The students will learn the limits of their law schools' rhetoric of inclusion. They will enter the profession with a better understanding of both the necessity for and the complexity of making racial justice claims. This will benefit American society as well as Latina/o communities. It will also perhaps turn more new Latina/o lawyers toward social justice and community service. [\[FN243\]](#)

If the objective is Latina/o faculty hires, however, the Columbia experience suggests that student insurgency--sit-ins, demonstrations, and the like--will be required. [\[FN244\]](#)

O, let America be America again –
The land that never has been yet –
And yet must be –
The land where every man is free. [\[FN245\]](#)

It is forty years since the 1963 March on Washington. [\[FN246\]](#) We have not yet reached the Promised Land. Some claim to believe that American society has achieved non-racist individualism, and that remedies for institutional and structural racism are now not needed. [\[FN247\]](#) All fair-minded Americans know that this is simply *310 wrong. [\[FN248\]](#)

The need to diversify the legal profession is not just a vague liberal ideal: it is an essential component of the administration of justice. The legal profession must not be the preserve of only one segment of our society. Instead, we must confront the reality that if we are to remain a government under law in a multicultural society, the concept of justice must be one that is shared by all our citizens.

-- Dean Herma Hill Kay, May 18, 1995. [\[FN249\]](#)

Footnotes:

[\[FNd1\]](#). J.S.D. candidate, Columbia Law School. J.D. 1991, City University of New York Law School. I thank Professors Kendall Thomas, Kimberlé Crenshaw, and Keith Aoki for making the student-organized Asian American Jurisprudence classes in 1997-99 possible. I further thank Professors Neil Gotanda and Frank Wu for teaching the 2000-2003 classes. Last, but not least, I thank my wonderful editor Alegría De La Cruz and her team.

[\[FN1\]](#). Francis Sejersted, Remarks on the occasion of the award to Myanmar's Aung San Suu Kyi of the Nobel Prize for Peace, Oslo (Dec. 10, 1991) in Aung San Suu Kyi, *Freedom From Fear* 231 (1995).

[\[FN2\]](#). Hyeseung Lynda Hong and Kenji Iida were co-chairs of the Columbia APALSA when we organized "Towards Asian American Jurisprudence." They were the leaders in

our common enterprise. I dedicate this article to Lynda Hong's memory. Her former boyfriend, Edmund Ko, was convicted of murder for her March 1998 killing. See *Ex-Boyfriend is Convicted of Murdering Columbia Student*, N.Y. Times, July 28, 2000, at B3. In their eulogies at Lynda's memorial, Dean David Leebron and Kenji Iida both highlighted her passionate advocacy in the faculty hiring campaign. With this article I memorialize a small, but important, part of her life. Columbia Law School and the Hong family have established a Hyeseung Lynda Hong Memorial Scholarship, "which will provide funds for a student, preferably a woman of Asian descent, who possesses intellectual vigor and a genuine love for the law." The Asian American Jurisprudence seminar is Lynda Hong's other legacy to Columbia Law School. Colum. L. School Rep. 41 (Autumn 1998). See APALSA's Kenji Iida Commemorates Lynda Hong's Legacy, Colum. U. L. School News 3 (Apr. 1998).

[FN3]. See Sumi Cho & Robert Westley, [Critical Race Coalitions: Key Movements that Performed the Theory](#), 33 U.C. Davis L. Rev. 1377, 1378-80 (2000); Daniel A. Farber & Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (1997).

[FN4]. In 1997, APALSA and SALSA came together around this issue, beginning with the co-sponsorship of three public lectures by Professors Sumi Cho and Keith Aoki, by Professors Maivãn Clech Lãm and Dinesh Khosla, and by Yuri Kochiyama. From 1998, one of the two student class organizers was always South Asian. By the Spring of 2000, the AAJ class itself was officially co-sponsored with SALSA.

[FN5]. Kenji Iida, *Creating "Towards Asian American Jurisprudence"* (unpublished manuscript, on file with Professor Kendall Thomas, Columbia Law School). See APALSA newsletters, available at www.columbia.edu/cu/apalsa/index2 (last visited Oct. 16, 2002).

[FN6]. For background reading on these terms and how they fit into the LatCrit movement, see generally *Critical Race Theory: The Key Writings that Formed the Movement* xxvi (Kimberlé Crenshaw et al. eds., 1995); *Critical Race Theory: The Cutting Edge* (Richard Delgado ed., 1995); *Critical Race Feminism: A Reader* (Adrien Katherine Wing ed., 1997). On the relation of LatCrit Theory to Critical Race Theory, see Stephanie L. Phillips, [The Convergence of the Critical Race Theory Workshop With LatCrit Theory: A History](#), 53 U. Miami L. Rev. 1247 (1999). See generally Eric K. Yamamoto, *Interracial Justice: Conflict and Reconciliation in Post-Civil Rights America* (1999).

[FN7]. See generally Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 Harv. Latino L. Rev. 1 (1997) (LatCrit I); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 Chicano-Latino L. Rev. 1 (1998) (LatCrit II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. Miami L. Rev. 575 (1999) (LatCrit III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. Davis L. Rev. 751 (2000) (LatCrit IV); Symposium, [Class in LatCrit: Theory and Praxis in a World of Economic Inequality](#), 78 Denv. U. L. Rev. 467 (2001) (LatCrit V); Symposium, *Latina/os and the Americas: Centering North-South Frameworks in LatCrit Theory and Praxis*, 54 Fla. L. Rev. 839 (2002) (LatCrit VI). See also Representing [Latina/o Communities: Critical Race Theory in Practice](#), 9 La Raza L. J. 1 (1996).

[FN8]. Insider/outsider and subject/object questions in relation to knowledge production are historically complex. See Henry Yu, *Thinking Orientals: Migration, Contact and Exoticism in Modern America* 125-48 (2001) (discussing outsiders (sociologists, anthropologists) investigating insiders (racial minorities, natives) using participant observation to write reports and ethnographies and produce knowledge). Historians

generally do not study their own times, and thus are outside the past that is the object of their study. See generally Marc Bloch, *The Historian's Craft* (1953); Edward H. Carr, *What is History?* (1961); W.E.B. DuBois, *The Propaganda of History*, in *Black Reconstruction in America, 1860-1880*, 711-29 (1985 ed.) (1935) (critiquing white supremacist "Columbia school" reconstruction historiography of Professors John W. Burgess and William A. Dunning); Lisa Lowe, *Writing and the Question of History*, in *Immigrant Acts: On Asian-American Cultural Politics* 97-127 (1996) [hereinafter *Immigrants*].

[FN9]. Here, the campaign is the object of study. Movement history is an established genre. Cho & Westley, *supra* note 3, at 1380-1401. See also Vincent Harding, *Hope and History: Why we Must Share the Story of the Movement* (1990); Ranajit Guha, *Elementary Aspects of the Peasant Insurgency in Colonial India* (1983).

[FN10]. Here, the campaign and APA racialization are the objects of study. Margaret H.R. Chon, *On the*

[FN11]. As an insider with a "particularist" commitment to fighting the subordination of Asian Americans, I might be critiqued for lacking objectivity. The universalism/particularism debate and its relationship to the idea of objectivity is a complex one. Peter Novick, *That Noble Dream: The "Objectivity Question" and the American Historical Profession*, at 469-72, 478, 492-94, 510, 521 (1988) (discussing the impact of black and feminist identified historians on the historical profession); cf. Alan D. Freeman, *Derrick Bell - Race and Class: The Dilemma of Liberal Reform* 90 *Yale L.J.* 1880, 1881 (1981) (book review) (Bell's work is "refreshingly insistent in its unabashed quest for racial justice" and is "unabashedly instrumental."). Claims of objectivity in liberal scholarship deserve rigid scrutiny. See Noam Chomsky, *Objectivity and Liberal Scholarship*, in *American Power and the New Mandarins* 23-158 (1967) [hereinafter *Mandarins*] (critiquing liberal scholarship in aid of U.S. Asia policy during American war in Vietnam); Chomsky, *The Responsibility of Intellectuals*, in *Mandarins* at 323-66 (critiquing, *inter alia*, anti-Asian racist attitudes and policy by U.S. government and its apologists on/in U.S. Asia policy). Historians have signaled their abandonment of traditional objectivist axioms. In 1971, one wrote:
all the historian may hope to do is to record a passing point of view as honestly and thoughtfully as he knows how: not to ... cut a slice out of the pie of Truth, but to suggest plausible interpretations to his time and indicate to others who come later how his own age mirrored itself in its past.
See *supra* Novick, at 598.

[FN12]. See Alice G. Abreu, [Lessons From LatCrit: Insiders and Outsiders, All at the Same Time](#), 53 *U. Miami L. Rev.* 787 (1999).

[FN13]. "Post-modern nationalism calls for multicultural movements in legal studies to reclaim their cultural heritage and experiences as different racial groups including African Americans, Asians, Latinas/os Native Americans, and other minorities." Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's end* 182 (1995); Gary Peller, [Notes Toward a Postmodern Nationalism](#) 1992 *U. Ill. L. Rev.* 1095.

[FN14]. Sara Lawrence-Lightfoot, *I've Known Rivers: Lives of Loss and Liberation* 635 (1994).

[FN15]. On epistemological inclusion and outsider jurisprudence, see Mari J. Matsuda, [Public Response to Racist Speech Considering the Victim's Story](#), 87 *Mich. L. Rev.* 2320, 2323-26 (1989); Mari J. Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground*, 11 *Harv. Women's L.J.* 1, n.2 (1988); but see Janet Radcliffe Edwards, *Why Feminist Epistemology Isn't (and the Implications for Feminist Jurisprudence)*, 1 *Legal Theory* 365 (1996) (stating there is no "feminist epistemology").

[FN16]. See generally Mari J. Matsuda, [When the First Quail Calls: Multiple Consciousness as Jurisprudential Method](#), 14 *Women's Rts. L. Rep.* 297 (1992); Ann Scales, [The Emergence of Feminist Jurisprudence](#), 95 *Yale L.J.* 1373 (1986); Pat Cain, [Feminist Jurisprudence: Grounding the Theories](#), 4 *Berkeley Women's L.J.* 191 (1989-1990); Susan H. Williams, [Feminist Legal Epistemology](#), 8 *Berkeley Women's L.J.* 63 (1993); Francisco Valdes, [Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of 'Sex,' 'Gender' and 'Sexual Orientation' in Euro-American Law and Society](#), 83 *Calif. L. Rev.* 1 (1995); Darren Hutchinson, [Out Yet Unseen: A Racial Critique of Gay and Lesbian Theory and Political Discourse](#), 29 *Conn. L. Rev.* 561, 565-67, 636-41 (1997); Darren Hutchinson, [Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics](#), 47 *Buffalo L. Rev.* 1, 7, 9-17 (1999); Peter Kwan, [Invention, Inversion and Intervention: The Oriental Woman in The World of Suzie Wong, M. Butterfly, and The Adventures of Priscilla, Queen of the Desert](#), 5 *Asian L.J.* 99, 138 (1998). Taking into account the historical repression of the American left, I would argue that Critical Legal Studies is an outsider jurisprudence. See generally Ellen W. Schrecker, *No Ivory Tower: McCarthyism in the Universities* (1986); Ellen W. Schrecker, *Many Are the Crimes: McCarthyism in America* (1998). CLS scholars were subjected to an ideological purge in the late 1980s. See Cho & Westley, *supra* note 3, at 1423.

[FN17]. Cho & Westley, *supra* note 3, at 1394-95.

[FN18]. This alliance of outsider groups--including OutLaws, Law Women, BLSA, LALSA, NALSA, SALSA and APALSA--was active for several years and may be still. The history of this movement remains to be written.

[FN19]. I am member of the National Asian Pacific American Bar Association ("NAPABA") and an awardee of a 1998 NAPABA Law Foundation Presidential Scholarship. NAPABA, formed in 1988, includes forty-five local Asian Pacific American ("APA") bar associations, and represents over 40,000 APA attorneys, law professors, judges, and other legal professionals. NAPABA promotes the interests of APA attorneys and the APA community on a nationwide level, and the exchange of information among its members and the broader legal community. NAPABA seeks to promote diversity in the legal profession and access to the legal system for all. See National Asian Pacific American Bar Association homepage, at <http://www.napaba.org> (last visited Nov. 18, 2002).

[FN20]. The annual Conferences of Asian Pacific American Law Faculty and the bi-annual Asian Pacific American Legal Scholarship Workshops are the organized expressions of this scholarly community. See www.law.pitt.edu/news/capalf.html (last visited Oct. 19, 2002).

[FN21]. Related to this, for any readers who might be threatened by the Asian American assertion of race-consciousness, I note that a lack of a positive white identity and racism are correlated. Whites who lack a positive white identity often feel threatened by the assertion or presence of racial consciousness by or in racial minority groups. Janet E. Helms, *Toward a Model of White Identity Development*, in *Black and White Racial Identity: Identity: Theory, Research and Practice* 49, 50 (Janet E. Helms ed., 1990).

[FN22]. Articulating an identity involves claiming or forming a category. Identities are more made than found. The "multiple categories through which we understand ourselves are sometimes implicated in complex ways with formation of categories through which others are constituted." Peter Kwan, [Jeffrey Dahmer and the Cosynthesis of Categories](#), 48 *Hastings L.J.* 1257, 1280 (1997). Thus, Orientalism offered a series of absolute differences according to which the Oriental could be understood as the negative of the European. [T]he Orient was created as the apparent exterior of the West ... what is outside is paradoxically what makes the West what it is, the excluded yet

integral part of its identity and power.

Timothy Mitchell, *Colonising Egypt* 166 (1991). The production of Orientalist knowledge promotes racist discourse about Asian Americans. See Chomsky, *The Responsibility of Intellectuals*, in *Mandarins*, supra note 11, at 323-66 (critiquing, inter alia, anti-Asian racist attitudes and policy by U.S. government and its apologists on/in U.S. Asia policy); Yu, supra note 8, at 125-33, 140-48, 159-60, 166-67 (discussing Chinese American and Japanese American Chicago-trained sociologists, whose white mentors constructed, and then trained them to study, a sociological "Oriental Problem"). Is there an Oriental problem in American law? If so, how was it made, and who made it? What is its scope, its structure? What is its function? See Edward W. Said, *Orientalism* (1978); see also Lowe, *Immigration, Citizenship, Racialization: Asian American Critique*, in *Immigrant*, supra note 8, at 1-36, 101-02 ("Orientalism was deployed to justify the use of brutal military force in the colonization of the Philippines; the war against Japan, culminating in the nuclear bombing of Hiroshima and Nagasaki; the war and partition in Korea, and the war in Vietnam. Orientalism also bears a crucial relationship to the history of Asian immigration, exclusion, and naturalization.").

[FN23]. See generally L. Ling-chi Wang, *Race, Class, Citizenship and Extraterritoriality: Asian Americans and the 1996 Campaign Finance Scandal*, in *Contemporary Asian America: A Multidisciplinary Reader* (Min Zhou & James V. Gatewood eds., 2000); Neil Gotanda, [Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee](#), 47 [UCLA L. Rev.](#) 1689 (2000); Wen Ho Lee & Helen Zia, *My Country Versus Me: The First-Hand Account by the Los Alamos Scientist Who Was Falsely Accused of Being a Spy* (2001); Frank Wu, *Yellow: Race in America Beyond Black and White* (2001); Vijay Prashad, *The Karma of Brown Folk* (2001); Helen Zia, *Asian American Dreams: The Emergence of an American People* (2001); U.S. Comm'n on Civil rights, *Civil Rights Issues Facing Asian Americans in the 1990s* (1992).

[FN24]. See e.g., [City of Richmond v. Croson](#), 488 U.S. 469 (1989) (holding state and local affirmative action programs in contracting that use racial and ethnic criteria subject to strict scrutiny), [Shaw v. Reno](#), 509 U.S. 630 (1993) (holding the use of racial criteria to create a majority-minority congressional legislative districts to advance racial minority congressional representation subject to strict scrutiny), [Adarand Constructors Inc. v. Peña](#), 515 U.S. 200 (1995) (holding federal affirmative action programs in contracting that use racial and ethnic criteria subject to strict scrutiny). Cf. Gary Peller, *Frontier of Legal Thought III: Race Consciousness*, 1990 [Duke L.J.](#) 758, 759-60; Gabriel Chin, Sumi Cho, Jerry Kang & Frank Wu, *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice--A Policy Analysis of Affirmative Action 11-12* (1996) [hereinafter *Justice*], available at www.sscnet.ucla.edu/aasc/policy (last visited Nov. 18, 2002). Like these authors, I support broad race-based affirmative action and governmental race-consciousness for remedial purposes.

[FN25]. There is "a positive ... and liberating role for race consciousness, as a source of community, culture and solidarity to build upon rather than transcend," internal to the racial minority community in question. Peller, supra note 24, at 761; Jayne Chong-Soo Lee, [Navigating the Topology of Race](#), 46 [Stan. L. Rev.](#) 747, 772 (1994) (reviewing Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture* (1992)) ("[S]ome communities of color have successfully reappropriated the categorizations [of race] and united around them. They have redeployed "race" as an affirmative category around which people have organized to assert the power of their group and its identity."); see also T. Alexander Aleinikoff, *A Case for Race Consciousness*, 91 [Colum. L. Rev.](#) 1060 (1991).

[FN26]. Mari Matsuda, [We Will Not Be Used](#), 1 [Asian. Pac. Am. L.J.](#) 79, 80 (1993); *Justice*, supra note 24, at 17-19; David Quan, *Asian Americans and the Law: Fighting the Myth of Success*, 38 [J. Legal Educ.](#) 619 (1988).

[FN27]. This conclusion was drawn from research conducted on Japanese and Chinese American populations, to the exclusion of other East, South East, or South Asian populations. Keith Osajima, *Asian Americans as the Model Minority: An Analysis of the Popular Press Image in the 1960s and the 1980s*, in *Reflections on Shattered Windows: Promises and Prospects for Asian American Studies* 165, 166 (Gary Y. Okihiro et al. eds., 1988); William Peterson, *Success Story, Japanese American Style*, *N.Y. Times Magazine*, Jan. 9, 1966; *Success of One Minority in the U.S.*, *U.S. News & World Rep.*, Dec. 26, 1966; Andrea Guerrero, *Silence at Boalt Hall: The Dismantling of Affirmative Action* 23 (2002). The corollary to the idea that a superior culture promotes educational achievement is that there is also deficient culture. Cultural deficiency theories are the basis for the "blaming the victim" discourse. The relation of culturalist explanations for group success or failure to racism is thus clear. The culturalist explanation for Asian American success reinscribes racial hierarchy, and should be rejected. We must understand the liberal institutional structures (academic disciplines) that produce racial knowledges about us. This knowledge is used to create both governmental and popular racist discourse. See supra notes 8, 11, 22 (discussing sociology, anthropology, and Asian Studies); see also Elazar Barkan, *The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States Between the World Wars* 67, 76-95 (1992) (discussing Columbia's Franz Boas and his students' influence on American anthropology); Novick, supra note 11, at 143-45, 284-85, 548-55 (discussing intellectual and political currents in American anthropology); John W. Dower, *War Without Mercy: Race and Power in the Pacific War* 118-36, 140-46, 336-40, nn.1-20 (1986) (discussing culture and personality school, the wartime Japanese national character study, and its effects). Boasian cultural anthropology, however, deserves credit for discrediting scientific racism. Thomas F. Gossett, *Race: The History of an Idea in America* 416 (1963).

[FN28]. Osajima, supra note 27; Richard J. Herrnstein & Charles Murray, *The Bell Curve: The Reshaping of American Life by Difference in Intelligence* (1994); but see Stephen J. Gould, *The Mismeasure of Man* 31, 34-36, 367-90 (rev. ed. 1996). A population geneticist, in his critique of Herrnstein, Murray, and their predecessors, states: "The biological concept of race is not tenable: race is a social construct produced by a nation's social and political history." Marcus W. Feldman, *The Meaning of Race: Genes, Environments and Affirmative Action*, 12 *Berkeley La Raza L.J.* 365, 366 (2001). It follows that racial group-based differences in average test scores have no biological basis.

[FN29]. See, e.g., Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 *Duke L.J.* 705, 707-12, 719-21 (1990) (addressing colorblind meritocratic fundamentalism and destabilizing attitudes about merit and race). For a discussion of cultural bias, racially-biased validating practices, and institutional racism in standardized testing, see William L. Kidder, *Affirmative Action in Higher Education: Recent Developments in Litigation, Admissions, and Diversity Research*, 12 *Berkeley La Raza L.J.* 173 (2001); Jay Rosner, *Disparate Outcomes By Design: University Admissions Tests*, 112 *Berkeley La Raza L.J.* 377, 379, 383-84 (2001); David M. White, *The Requirement of Race-Conscious Evaluation of LSAT Scores for Equitable Law School Admissions*, 12 *Berkeley La Raza L.J.* 399 (2001); see also Susan Sturm & Lani Guinier, 84 *Calif. L. Rev.* 953, 957 (1996) (criticizing reliance on standardized tests).

[FN30]. Justice, supra note 24, at 17-19; Natsu Tailor Saito, *Model Minority, Yellow Peril: Function of 'Foreignness' in the Construction of Asian Pacific American Legal Identity*, 4 *Asian L.J.* 71 (1997). It is a short step from "how smart they are" and "how hard they work" to "they are unfair competition"--from the model minority to the yellow peril.

[FN31]. Justice, supra note 24, at 23-24; White, supra note 29, at 421 ("Affirmative action is typically attacked as a preference for less qualified minority students."); Dana Y.

Takagi, *The Retreat from Race: Asian American Admissions and Racial Politics* (1992); *Choosing Sides: Ban by University of California Further Divides Asian Americans*, N.Y. Times, Mar. 31, 1996, § 4A, at 26. See generally Charles R. Lawrence III, [Two Views of the River: A Critique of the Liberal Defense of Affirmative Action](#), 101 *Colum. L. Rev.* 928 (2001).

[FN32]. See Guerrero, *supra* note 27, at 41-44, 61-62, 91, 170-71, 177-78; Kidder, *supra* note 29, at 214.

[FN33]. Professor Derrick Bell was an inspiration for Critical Race Theory. He has attributed his 1969 hiring to the Harvard Law School to student and outside demands and protests. In 1990, he went on a protest leave from teaching to support student demands for the hiring of one woman of color. He said, "I cannot continue to urge students to take risks for what they believe if I do not practice my own precepts." In 1992, he was fired. When, in 1998, Professor Lani Guinier was appointed, Bell noted "it is the Harvard Law School students who deserve credit for this appointment, and they can now celebrate this positive step." Fox Butterfield, *Harvard Law Professor Quits Until Black Woman is Named*, N.Y. Times, Apr. 24, 1990, at A1; Fox Butterfield, *Old Rights Campaigner Leads Harvard Battle*, N.Y. Times, May 21, 1990, at A18; *Harvard Law Notifies Bell of Dismissal for Absence*, N.Y. Times, July 1, 1992, at A19; Laura Kalman, *Indicting the Elite*, N.Y. Times, § 7, at 15 (book review); Derrick Bell, *At Last, Harvard Sees the Light*, N.Y. Times, Jan. 29, 1998, at A23. For background on racial exclusion in legal academia, see *Critical Race Theory: The Cutting Edge*, *supra* note 6, at 389-473.

[FN34]. An analogous point can be made about the hiring and curricular inclusion of women and sexual minorities in higher education, and the subsequent gender and sexual backlash politics. See *infra* notes 164, 177, 183 (discussing political correctness backlash discourse.)

[FN35]. What follows is my interpretation of recent events in American politics that affected Asian Americans. The racial scapegoating of Asian American democratic donors successfully deflected attention from the real scandal, which is the power of money in American politics, and is one instance of Asian American powerlessness in national politics. Wang, *supra* note 23. A second is the racially selective investigative targeting and later prosecution of Asian American nuclear scientist Wen Ho Lee. Lee & Zia, *supra* note 23. The former was a republican initiative, the latter democratic. A third example of powerlessness is the explicit legislative denial of a remedy to Asian American and Native Alaskan plaintiffs (who brought the case) that was granted to all others, when Congress acted to overturn the Supreme Court's decision in [Ward's Cove Packing Co. v. Atonio](#), 490 U.S. 642 (1989). Justice, *supra* note 24, at 40-41, n.124.

[FN36]. Jose A. Bracamonte, *Foreword: Minority Critiques of the Critical Legal Studies Movement*, 22 *Harv. C.R.-C.L. L. Rev.* 297, 298 (1987). This comment is directed to the administrators in the liberal institutions which people of color law students study.

[FN37]. James Miller, *Democracy Is in the Streets: From Port Huron to the Siege of Chicago* 290-92 (1994); Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* 306-09 (1987).

[FN38]. See *Columbia Students Begin Hunger Strike for Ethnic Studies*, N.Y. Times, Apr. 2, 1996, at B3; *Protesters at Columbia Signal Spring*, N.Y. Times, Apr. 15, 1996, at B1; *Columbia Defeats the P.C. Separatists*, N.Y. Times, Apr. 23, 1996, at A21; *Deal is Reached After Two Weeks of Fasting*, *Colum. Spectator*, Apr. 16, 1996, at 1, 3; Guerrero, *supra* note 27, at 98-99; Wang, *supra* note 23.

[FN39]. Iida, *supra* note 5. Columbia's Women of Color started organizing for the

conference in 1991. It is no surprise to me that it took so long to get off the ground. "Not being from Mars, I expect to find our legal institutions in sync with our political and economic institutions" Philip E. Areeda, *The Socratic Method*, 109 *Harv. L. Rev.* 911, 914 (1996). Heterosexual white male supremacy continues to be normative at elite law schools, as in most American political and economic institutions. On an earlier WoCC conference, see [Angela Y. Davis, *Women of Color at the Center: Selections from the Third National Conference on Women of Color and the Law*, 43 *Stan. L. Rev.* 1175 \(1991\).](#)

[FN40]. Email from Kenji Iida to Columbia Law School APALSA, Oct. 28, 1996 (on file with author).

[FN41]. They included Ava Hahn, WoCC conference co-chair; Janice Kam, former APALSA co-chair; Rita Hao, former Columbia Law Women President; and Lynda Hong, who was active in her first year in the Women of Color Coalition.

[FN42]. SALSA and APALSA members were invited to participate in the protest class. Once the class was officially recognized as a seminar by the law school, it was open to all students.

[FN43]. Patricia Williams, [Alchemical Notes: Reconstructing Ideals From Deconstructed Rights](#), 22 *Harv. C.R.-C.L. L. Rev.* 401, 404-05, 424 (1987); John O. Calmore, [Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World](#), 65 *S. Cal. L. Rev.* 2129, 2214 n.317 (1992) (The "wedge use of rights will generally challenge issues of legitimacy, probably in the sense Foucault characterized as dispersed and discontinuous offensives against official truths in the insurrection of subjugated knowledges.... This requires legal advocates, especially lawyers, to cross traditional boundaries where the practice of law primarily consists of the hermeneutic reproduction of that which already exists.... The theory-practice nexus is joined by adopting a litigation style that supplements a command of craft with an orientation of border crossing and fundamental criticism directed at challenging legitimation or simply mitigating ... pluralistic ignorance." (citations and internal quotation marks omitted)); Gerald Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992) (discussing radical lawyering); Natsu Saito Jenga, [Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity](#), 3 *Asian Pac. Am. L.J.* 81 (1995) (discussing race-conscious teaching). See also Cho & Westley, *supra* note 3, at 1407, 1409 (discussing subjugated knowledge).

[FN44]. Cf. *Critical Race Theory: The Key Writings that Formed the Movement*, *supra* note 6, at xx-xxi ("The liberal white administration responded to student protests ... by asserting that there were no qualified black scholars who merited Harvard's interest. Harvard's response was structured within two points around liberal race discourse which Critical Race Theory would ultimately contest. First, they asked why the students wouldn't prefer an excellent white professor over a mediocre black one--that is, at a conceptual level, they posited the particular liberal epistemology that associated colorblindness with merit. Second, the Harvard administration, skeptical about the pedagogical value of a course devoted to racial topics, asserted that no special course was needed when "those issues" were already covered in classes devoted to constitutional law and employment discrimination thus, to our minds, failing to comprehend the significance of Bell's projects."). Note the similarity of two elite white liberal law school administration responses, fifteen years apart, one respecting African American, and one respecting Asian American jurisprudential inclusion and faculty hiring.

[FN45]. See generally Robert S. Chang, [Toward An Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism and Narrative Space](#), 81 *Calif. L. Rev.* 1241 (1993); Minda, *supra* note 13, at 182-83.

[FN46]. Embracing the Challenge: New Dean Leebron on How to Make a Great School Even Greater, Columbia L. School Rep. 2 (Autumn 1996).

[FN47]. Critical Race Theory: The Key Writings that Formed the Movement, supra note 6, at xxi. Professor Crenshaw gave the lecture on September 11, 1996.

[FN48]. The course reading was Bell's Race, Racism and American Law treatise. Mari Matsuda, as a graduate law student, participated. The guest speakers included Professors Charles Lawrence, Linda Greene, Neil Gotanda, and Richard Delgado. Critical Race Theory: The Key Writings that Formed the Movement, supra note 6, at xx-xxi.

[FN49]. See Iida, supra note 5 (summarizing the email correspondence).

[FN50]. I am grateful for the support, encouragement, and information from the Asian American law professor list, <ylopearl>. I also had the materials for an Asian Americans and the Law class taught at Cornell Law School by Rockwell Chin, formerly of the New York City Commission on Human Rights.

[FN51]. He submitted the reader in 1990 to Professor Derrick Bell in the Civil Rights at the Crossroads class, and I received a copy from Bell in late 1992. Bell taught the class while seeking the appointment of a woman of color to the Harvard Law School faculty. See Laura Kalman, Indicting the Elite, N.Y. Times, Oct. 2, 1994, § 7, at 15, 16 (reviewing Derrick Bell, Confronting Authority: Reflections of An Ardent Protestor (1994)).

[FN52]. My background in Asian American Studies, race and the law, and critical race theory was extensive because of coursework in college and law school, a research fellowship, and my participation in the Critical Race Theory Workshops (CRTW) in the 1990s.

[FN53]. The 1998 and 1999 Asian American Jurisprudence syllabi are posted on the Columbia APALSA web-page, available at www.columbia.edu/cu/apalsa/index2 (last visited Nov. 18, 2002).

[FN54]. All 1997 class participants were co-founders of Asian American Jurisprudence at Columbia. Those present on the first day were: Geoff Mukae, Janice Kam, Kenji Iida, David Takeuchi, Beesham Seecharan, Farhad Karim, Ava Hahn, Rita Hao, Lily Lu, Hubie Yang, Donna Lee, and Judy Wong from the law school. In addition, Holly Manansala and Penny Bunyaviroch, who were involved in the Ethnic Studies protests at Columbia, were there. Nguyen Quan, an anthropology graduate student and Vietnamese court interpreter, and Andy Hsiao, a Village Voice senior editor who was at Columbia while on a Revson Fellowship, were also there. The participants who facilitated class were Lily Lu, Randy Kim, Janice Kam, Hubie Yang, Judy Wong, Beesham Seecharan, Farhad Karim, Anny Huang, Geoff Mukae, Kenji Iida, David Takeuchi, Donna Lee, Lynda Hong, and Rita Hao. My class phone list shows a total of twenty participants.

[FN55]. As already noted, some Asian Americans internalize model minority discourse and use it as a self-description. In part, this is because it makes them feel better in the face of cognitive dissonance created by racialized mistreatment. It is also in part because the discourse serves a dominant narrative that all Americans wish were, and some claim to believe is, true, that we in America already live in a non-racist society.

[FN56]. Lynda and Kenji's APALSA leadership roles reflected this orientation. I started working on Asian American race-consciousness in college. See *The Quarry: An Anthology of Writings by Students of Asian Origin and Descent 1* (Sabrina Susan Gee, JoLani Hironaka, Gillian Khoo, Kaweah Lemeshewsky, Lia Price & John Torok eds., 1987) ("We have the potential to be organized and unified by more than externally applied pressures

and stereotypes. We Japanese, Chinese, Korean, Filipino, Vietnamese and Asian Indian people, further defined by class, generation, gender, and sexual orientation, are the foundation of a rich community, a wealth of soul searching, a contentious dialogue, a political presence, an evolving sensibility that is not mainstream American, not hodge-podge Asian, but something uniquely Asian American." In 1988, I helped organize a NAPALSA conference held at Fordham Law School. See Conference: Asian Awakening: Representation and Consciousness (Oct. 28-30, 1988) (conference poster on file with author).

[FN57]. In 1988-89, I volunteered with Indian Youth Against Racism ("IYAR," later "YAR" for Youth Against Racism) as its only active non-South Asian member. IYAR formed to fight racist violence by a white supremacist gang called the "dot-busters" against Indian migrants to New Jersey. I joined IYAR partly because I knew about nineteenth-century anti-Chinese violence from a college Asian American history class. The anti-South Asian violence in 1988-89 reminded me of the late-nineteenth-century anti-Chinese violence, and required an immediate response through community organizing and public education. IYAR was committed to those strategies, and open to my participation. See generally Deborah N. Misir, *The Murder of Navroze Mody: Race, Violence, and the Search for Order*, 22:2 AMERASIA J. 55 (1996).

[FN58]. For example, states, regions, social class, gender, languages, sexualities, color hierarchy, and religions. This illustrates the complexity available within the race-based identity categories that we assert strategically in diversity campaigns. See generally Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 *Colum. Hum. Rts. L. Rev.* 47 (1997).

[FN59]. In 1999, Columbia class facilitator Shruti Rana was a panelist on South Asian legal identities at the first Asian Pacific American Legal Scholarship Workshop. One could read this alternatively as a call for a new movement in critical legal theory--Desi Jurisprudence. See ABCD (Laxmi Pictures, 1999) (New York Asian American International Film Festival Screening, Summer 2000) (ABCD is an abbreviation for American Born Confused Desi). See Prashad, *supra* note 23; A Part, Yet Apart: South Asians in Asian America (Lavina Dhingra Shankar & Rajini Srikanth eds., 1998); Satyagraha in America: The Political Culture of South Asian Americans 25:3 *Amerasia J.* (1999-2000) (Special Issue). South Asian students were active in the Boalt Hall diversity movements. Guerrero, *supra* note 27, at 116, 120-21, 124-25, 132, 140-44, 148.

[FN60]. There have been persistent questions about ceiling quotas against Asians in admissions to higher education. The neoconservative rearticulation of this was to focus on affirmative action as the problem. However, the anti-Asian ceiling quotas appear to have been designed to protect whites against "competitive" Asian candidates. Guerrero, *supra* note 27, at 36-42; Justice, *supra* note 24, at 23-24; Grace Tsuang, [Assuring Equal Access of Asian Americans to Highly Selective Universities](#), 98 *Yale L.J.* 659 (1989); Takagi, *supra* note 31. White liberals, it appears, were responsible for the anti-Asian ceiling quotas. They manipulated the definition of merit intending adverse effects on Asian admissions. Such "negative action" against Asians is illegal. Justice, *supra* note 24, at 24. From a race-conscious Asian-American standpoint, white liberals played a pivotal and damaging role in the manipulation of admissions standards to exclude members of a racialized minority group.

[FN61]. Sumi K. Cho, [Redeeming Whiteness in the Shadow of Internment: Earl Warren, Brown, and a Theory of Racial Redemption](#), 40 *B.C. L. Rev.* 73, 168- 70 (1998); Justice, *supra* note 24, at 26.

[FN62]. Elvia Arriola, Foreword: [March! 19 Chicano-Latino](#) *L. Rev.* 1, 12 n.37 (1998)

(introducing Symposium: Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, LatCrit II); Katharine T. Bartlett, [Feminist Legal Methods](#), 103 [Harv. L. Rev.](#) 829, 863-64 (1990) ("Consciousness-raising is an interactive and collaborative process of articulating one's experiences and making meaning of them with others who also articulate their experiences. Consciousness-raising is a method of trial and error. When revealing an experience to others, a participant in consciousness-raising does not know whether others will recognize it. The process values risk-taking and vulnerability over caution and detachment. Honesty is valued above consistency, teamwork over self-sufficiency, and personal narrative over abstract analysis. The goal is individual and collective empowerment, not personal attack or conquest."); but see Edwards, *supra* note 15, 393-400 (dismissing feminist jurisprudence).

[FN63]. Bartlett, *supra* note 62, at 863-66.

[FN64]. For critiques of essentialism in feminist theory, see Maivân Clech Lâm, *Feeling Foreign in Feminism*, 19 *Signs: Journal of Women in Culture and Society* 865 (1994); Chon, *supra* note 10, at 16; Angela P. Harris, [Race and Essentialism in Feminist Legal Theory](#), 42 *Stan. L. Rev.* 581 (1990).

[FN65]. Elizabeth Davis of the CUNY Law School Alumni Association told me that Marge Piercy's *To Be of Use* was a favorite poem of our Dean, the late Haywood Burns. Marge Piercy, *The Art of Blessing the Day* 73-74 (1999). I used this excerpt in the class:

I want to be with people who submerge in the task,
Who go into the fields to harvest and work in a row and pass the bags along,
Who stand in line and haul in their places,
Who are not parlor generals and field deserters but move in a common rhythm when the food must come in or the fire be put out.
The work of the world is common as mud.
Botched, it smears the hand, crumbles to dust.
But the thing worth doing well done has a shape that satisfies, clean and evident.
Greek amphoras for wine or oil, Hopi vases that held corn, are put in museums but you know they were made to be used.
The pitcher cries for water to carry and a person for work that is real.

[FN66]. Persons of Asian heritage in the United States are often asked this question. Underlying the question there is often, but not always, a racialized presumption of foreignness. Often, implicit in that presumption is a further question: "When are you going back?" Making the question into a class problem allowed us to start discussing our racialization.

[FN67]. Almost everyone in the group characterized themselves as leftist or liberal--perhaps because it was a self-selected group.

[FN68]. Some people have begun to articulate a biracial or multiracial identity politics. See, e.g., *No Passing Zone: The Artistic and Discursive Voices of Asian Descent Multiracials*, 23 *Amerasia J.* 1 (1997). I am skeptical about the multiracial identity project. See generally Tanya Kateri Hernandez, ["Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence](#), 57 *Md. L. Rev.* 97 (1998).

[FN69]. "[O]ne cannot talk about race in America without addressing the personal experience, feelings and values of class participants." Charles R. Lawrence, III, [The Word and the River: Pedagogy as Scholarship as Struggle](#) 65 *S. Cal. L. Rev.* 2231, 2241 (1992); Minda, *supra* note 13, at 185 ("Race is multivocal and must be understood within the intersections of power relations of a multicultural and racially diverse society.").

[FN70]. In his remarks as we went around the circle on the first day, Professor Kendall

Thomas made explicit the premises of our discussion-based course structure. See Philip Tajitsu Nash, *Creating Critical Consciousness: Paulo Freire and the Mechanics of Teaching Asian American Studies*, in *Reflections on Shattered Windows*, supra note 27, at 101; see also Derrick Bell, Tracy Higgins & Sung-Hee Suh, [Racial Reflections: Dialogues in the Direction of Liberation](#), 37 *UCLA L. Rev.* 1037 (1990).

[FN71]. Asian American Columbia law students examined why Asian Americans did not speak in law school classes. See Iida, supra note 5. See also Pat K. Chew, *Asian Americans: The "Reticent" Minority And Their Paradoxes*, 36 *Wm. & Mary L. Rev.* 42 (1994) (discussing the influence of the researcher's race on clinical research study results on Asian American non-assertiveness); Gary Y. Okihiro, *Margins and Mainstreams: Asians in American History and Culture* 143 (1994) (describing popular culture figure Charlie Chan as "gain[ing] membership within the American community, despite racism, through quiet, faithful servitude.").

[FN72]. Thus, we problematized the very category that we asserted--Asian American--on the first day of our self-education project in the "Towards Asian American Jurisprudence" class. A poststructuralist critique of the racial category framed our deconstruction of ourselves to ourselves. Adopting a racial category as an identity is a choice we make, a strategic essentialism, when we engage in a modernist project like fighting for racial inclusion. See Angela Harris, [Foreword: The Jurisprudence of Reconstruction](#), 82 *Cal. L. Rev.* 741, 772, 775, 784 (1994).

[FN73]. Throughout the class, students exposed racializing and orientaling discourses about Asian Americans, Asia, and Asians to the class's collective scrutiny.

[FN74]. See generally Gabriel J. Chin, [The Plessy Myth: Justice Harlan and the Chinese Cases](#), 82 *Iowa L. Rev.* 151 (1996); Gabriel J. Chin, [Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration](#), 46 *UCLA L. Rev.* 1 (1998); Neil Gotanda, [A Critique of "Our Constitution is Color Blind"](#) 44 *Stan. L. Rev.* 1 (1991); Neil Gotanda, ["Other Non-Whites" in American Legal History: A Review of "Justice at War, 85 Colum. L. Rev. 1186 \(1985\)"](#) (arguing that the racial association of other non-whites with foreignness began with the Chinese testimonial exclusion case, [People v. Hall](#), 4 *Cal 399 (1854)*); Leti Volpp, [American Mestizo: Filipinos and Anti-Miscegenation Laws in California](#), 33 *U.C. Davis L. Rev.* 795 (2000); Leti Volpp, 'Obnoxious To Their Very Nature': Asian Americans and Constitutional Citizenship, 5 *Citizenship Stud.* 57 (2001); Richard P. Cole & Gabriel J. Chin, [Emerging from the Margins of Historical Consciousness: Chinese Immigrants and the History of American Law](#), 17 *Law & Hist. Rev.* 325 (1999).

[FN75]. Cf. Richard Delgado, [The Inward Turn in Outsider Jurisprudence](#), 34 *Wm. & Mary L. Rev.* 741 (1993). The dialogue's effects included the development of a stronger leadership core for APALSA and increased Asian American law student activism. Iida, supra note 5. "It is not a sign of pathology within the community to have people who are different say they are different. It is a sign of cosmopolitan, postmodern nationalism." Alex M. Johnson, Jr., [The New Voice of Color](#), 100 *Yale L.J.* 2007, 2055 (1991).

[FN76]. Mari J. Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* 14 (1993).

[FN77]. I use "self" here in a collective sense: We Asian Pacific American law students educated ourselves as a group.

[FN78]. Professor Aoki was visiting at Boston College School of Law. Professor Gotanda was visiting at St. John's University Law School in Queens, New York, for the first two years, and then in California his third year. Professor Wu was visiting at Michigan. We are grateful to these professors for commuting to and participating in the class.

[FN79]. Professor Neil Gotanda worked with Shruti Rana, Joseph Yu, Jennifer Lee, and Jayesh Rathod on the 2001-02 syllabi. See generally Derrick Bell & Erin Edmonds, [Students as Teachers, Teachers as Learners](#), 91 *Mich. L. Rev.* 2025 (1993).

[FN80]. Donna Lee said one day in class that she would have taken it for reasons of racial solidarity alone. This statement of support illustrated how both the process of creating the class and the class itself built community.

[FN81]. Marisa Arrona, Alegría De La Cruz, César del Peral, [From Michigan to Cincinnati: Our Fate is in Their Hands](#), 13 *Berkeley La Raza L.J.* 103, 107 (2002); cf. Duncan Kennedy, Legal Education as Training for Hierarchy, in *The Politics of Law: A Progressive Critique* 38 (David Kairys ed., rev. ed. 1992). I sincerely hope that the other student organizers, leaders, and teachers will write and publish their own stories about the classes and campaigns at various schools. Iida's, supra note 5, is the first published account about Columbia.

[FN82]. Stephen Lee, Lynda Hong Murder Trial Slated to Begin, *Columbia Univ. L. School News* 1 (Feb. 2000).

[FN83]. See <http://www.law.columbia.edu/academicservices/sem00.html> (last visited Nov. 19, 2002).

[FN84]. Email from Jenie S. Oh, Feb. 16, 1999; email from Hyeon-Ju Rho, Aug. 24, 1999; email from Hyeon-Ju Rho, Jan. 19, 2000 (on file with author).

[FN85]. Race-consciousness, as we defined it, is an anti-subordination consciousness. It lends itself to coalition-oriented political identities. See Robert S. Chang, *Disoriented: Asian Americans, Law and the Nation State* 42, 126-30 (1999) (discussing political identities); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 4 *Asian Pac. Am. L.J.* 33 (1995).

[FN86]. John Rhee, *Faculty Recruiting*, 1:2 *APALSA QUARTERLY UPDATE*, at 1, 4, available on Columbia APALSA webpage, supra note 53.

[FN87]. These leaders and the class organizers mentioned earlier deserve recognition. Their intellect and dedication ensured the survival of Asian American Jurisprudence.

[FN88]. As already noted, talking to the faculty also allowed student organizers to assess the "temperature" of the faculty around issues of race. In 1999, the Columbia law faculty had sixty-five (65) male, and sixteen (16) female members, for a total of eighty-one (81) professors. Thirteen (13) of these were emeritus professors, all white men. There were eight (8) people of color professors: three Black women, three Black men, one South Asian woman, and one Latino. In this calculation, I included various professor ranks and categories, but excluded visiting and adjunct professors and lecturers. *Columbia Law School Faculty Directory, 1999-2000* 1-70 (1999). One of the Black women and the Latino were hired after 1996.

[FN89]. See Iida, supra note 5; "Struggle is a form of education." Melvin Chapman, Address at Miller Junior High School, Detroit, Michigan, (1961) in *My Soul Looks Back, 'Less I Forget': A Collection of Quotations By People Of Color* 388 (Dorothy Winbush Riley ed., 1991). As a student organizer--or perhaps a "clinical legal educator"--I too learned from this process.

[FN90]. Professor Gabriel J. Chin of the University of Cincinnati School of Law visited to teach the N.Y.U. class in 2001. There has apparently been no subsequent adjunct hire at

N.Y.U.

[FN91]. Both these New York schools have had around 10 percent Asian Pacific American student bodies for the last decade at least. See generally Grace Kang, *Asian Americans Surge Into Law, Tripling Their Ranks in a Decade* Wall St. J., July 29, 1992, at B2. New York City is the country's largest Asian Pacific American population center. See <http://www.census.gov/Press-Release/www/2002/cb02cn59.html> (last visited Nov. 25, 2002). Affirmative action hiring of Asian American law teachers does not occur in American law schools. Alfred Yen, [A Statistical Analysis of Asian Americans and Affirmative Action Hiring of Law School Faculty](#), 3 *Asian L.J.* 39 (1996).

[FN92]. Each year that the Columbia student leaders lobbied the administration on faculty hiring, the administrators asked them for lists of Asian American law professors. Every year, APALSA/SALSA compiled lists and gave them to the administration. This pattern suggests that students adopting a liberal institutional reform approach is ineffective as a means to secure racial representation on the faculty. The Association of American Law Schools publishes a *Directory of Law Teachers* annually, available at <http://www.acls.org/aalaws.htm> (last visited Nov. 18, 2002). Professor Frank Wu of the Howard University Law School maintains a list of Asian Americans in law teaching. Iida, *supra* note 5.

[FN93]. "Synergism refers generally to an interaction of agents and conditions that produce a combined effect that is greater than the sum of the individual effects." Cho & Westley, *supra* note 3, at 1405. Both at and beyond Columbia, the APALSA/SALSA campaign appears to have produced such a combined effect. This remains to be documented.

[FN94]. Professor Yen's finding that Asian Pacific Americans were not affirmative action targets in law faculty hiring spurred us to have an activist response. See Yen, *supra* note 91.

[FN95]. See *supra* note 91 and *infra* note 239. I am not making an argument here for racial proportional representation or parity. Law school faculties should, however, be able to do better than zero (or one) APA law teachers given the APA student numbers.

[FN96]. Asian American law faculty hiring should not, however, be limited only to those schools with substantial Asian American law student populations. The argument is merely that those schools serve their Asian American law students poorly if they do not provide them Asian American-identified law teachers. Further, Asian American professors experience barriers once they are hired. While the following data do not come from law schools they are suggestive. National EEOC data show that Asian American faculty have one of the lowest tenure rates of all minority groups--41% versus an overall tenure rate of 52%. Yvonne M. Lau, *Asian Americans on College Campuses: Profiles and Trends*, in III. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Civil Rights Issues Facing Asian Americans in the United States* 143 (May 1995).

[FN97]. Writing thus rejects the objectivist-empiricist critiques of what may be called the postmodern turn in American historiography. See generally Novick, *supra* note 11, at 415-629. Simply put, one critique states that hortatory history is not history. However, since American historiography long excluded the history of Asian migrants, and to a large extent still excludes it, to this Asian American writer, telling this story seems worthwhile. Novick raises questions about subordinated groups writing their own histories. Novick, *Every Group Its Own Historian*, *supra* note 11, at 469-521.

[FN98]. Gotanda, with Professors Stephanie Phillips and Kimberlé Crenshaw, organized the first Workshop on Critical Race Theory in 1989. *Critical Race Theory: The Key*

Writings that Formed the Movement, *supra* note 6, at xxvii.

[FN99]. I do not know whether our class prompted Asian American legal scholarly publication, another of our goals. I note here that at least two 1997 class participants did publish: Stephen Fan, Note, [Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants](#), 97 *Colum. L. Rev.* 1202 (1997) (Fan was an occasional unregistered class participant); Donna R. Lee, [Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions](#), 5 *Asian L.J.* 139 (1998). Further, Farhad Karim, a 1997 class participant and 1998 class co-organizer, was editor in chief of the Columbia Human Rights Law Review.

[FN100]. See Letter, John Hayakawa Török to Professor Jack Greenberg, March 9, 2001; Jack Greenberg to John Hayakawa Török, March 29, 2001 (discussing the appointment of Bill Lann Lee to Columbia Law School academic faculty) (on file with author). Professor Amy Chua visited in Fall 1999. *Colum. L. School Observer*, Sept. 1999, at 2. Were we naive to hope that one change we sought--Asian Pacific American permanent law faculty hires--could be achieved by means short of insurrection?

[FN101]. See Cho & Westley, *supra* note 3, at 1388-90, 1394, 1396, 1405, 1425 (describing Coalition for a Diverse Faculty and discussing coalitional organizing using "race-plus" structure).

[FN102]. Milan Kundera, *The Book of Laughter and Forgetting*, quoted in Sigmund Diamond, *Compromised Campus: The Collaboration of Universities with the Intelligence Community, 1945-1955*, 285 (1992).

[FN103]. Cho & Westley, *supra* note 3, at 1377. Some questions arose for me. Can individuals, organizations, coalitions, or movements perform theory? How exactly does one assess when a theory is being performed? What is a theoretical performance? What criteria are used to evaluate the performance? Is performance intersubjective? Does the performer modify the performance in light of changed conditions? Of audience reaction? Does the performer even seek to change conditions? Or is the performance an aesthetic experience? Social movements are about changing the social order. If a movement performs a theory, does it change either the theory or the movement? And does a movement's theoretical performance change the world? And can a movement's performance be aesthetic? See generally Robert S. Chang & Natasha Fuller, [Performing LatCrit](#), 33 *U.C. DAVIS L. REV.* 1277 (2000).

[FN104]. Cho & Westley, *supra* note 3, at 1414, 1421-23. Chang, Cho, Westley, and I are CRT contemporaries. The Cho/Westley critique is a critique of our generation. *Id.* at 1421. Although, as discussed later, I dispute the theoretical weight that Cho and Westley give to a CRT generational divide, I do not dispute the claim that there were generations as such. Further, I am not sure that there are "tensions" between generations to be reconciled. *Id.*

[FN105]. Cho & Westley, *supra* note 3, at 1409, 1410-13; see also Matsuda et al, *supra* note 76, at 10-11 ("Central to the methodology of critical race theory and liberationist pedagogy is an ongoing engagement in political practice.").

[FN106]. Cho & Westley, *supra* note 3, at 1413-16.

[FN107]. *Id.* at 1411, 1421.

[FN108]. *Id.* at 1413-14, 1416-19, 1421, 1423. Cho & Westley's critique is another iteration, perhaps, of a continuing praxis/theory debate among academic leftists, particularly after the New Left. See Paul Buhle, *Marxism in the USA* 221-57, 264-70

(1987) (discussing New Left activists who became academics); Russell Jacoby, *The Last Intellectuals: American Culture in the Age of Academe* (1987) (discussing public intellectuals); cf. Harold Cruse, *The Crisis of the Negro Intellectual: From its Origins to the Present* (1967) (discussing Black intellectuals).

[\[FN109\]](#). Cho & Westley, *supra* note 3, at 1411, 1413, 1419-20. Their claim is that second-generation race-crits are not, in the main, activists. *Id.* at 1425-26. Many activists disdain the academic left. Conversely, some leftist academics disdain activists. This always will be a conundrum for those of us who straddle both worlds. Cf. Mari J. Matsuda, [Looking to the Bottom: Critical Legal Studies and Reparations](#), 22 *Harv. C.R.-C.L. L. Rev.* 323, 325, 329, 350 (1987) (discussing POC/Gramscian "organic intellectuals" and CLS division in program between traditional left organizers and postmodern anarchists); Harlon Dalton, [The Clouded Prism](#), 22 *Harv. C.R.-C.L. L. Rev.* 435, 435-40 (1987) (framing CLS' relationship to POC in a theorist/practitioner metaphor).

[\[FN110\]](#). Cho & Westley, *supra* note 3 . at 1409, 1426.

[\[FN111\]](#). *Id.* at 1403-04. I suspect none of the first-generation race- crits would dispute this claim. Accord, *id.* at 1423, n 94. Not all the first-generation race-crits teach at the highly prestigious schools.

[\[FN112\]](#). *Id.* at 1399-1403.

[\[FN113\]](#). *Id.* at 1410, 1411, 1412-13, 1419, 1420, 1423, 1425-26. Sublimationism is stated as the negative of the method that Cho and Westley, rather than as a well-developed position or program on race-conscious legal intellectual work.

[\[FN114\]](#). It is my impression that many CRTW participants are locally active in community or public interest organizations as board members, volunteers, contributors. These include those that Cho and Westley may think of as part of the dominant culture of anti-essentialism. Cho & Westley, *supra* note 3, at 1413-14. I suspect, further, that most if not all CRTW participants accept the vocation and practice of "liberationist teaching. Matsuda et al, *supra* note 76, at 2. Cho and Westley propose that the intersubjective methodology for CRT in its "third wave [be] one that seeks to provide a research and theory arm to contest and open up structures of power for communities in struggle." Cho & Westley, *supra* note 3, at 1426. A formalized research/theory arm for CRT would require substantially more resources than were required for the organizing of the workshops themselves. Access to financial resources for that purpose was already always a struggle, I understand.

[\[FN115\]](#). Cho & Westley, *supra* note 3, at 1407, 1409. CRT, however, has not entirely sublimated its movement origins. See *Critical Race Theory: The Key Writings that Formed the Movement*, *supra* note 6, at xiii, xxi-xxii; Matsuda et al., *supra* note 76, at 3, 7. Cho and Westley acknowledge this. Cho & Westley, *supra* note 3, at 1379. The liberal institutional story is that change occurs through reasoned dialogue, when the subordinated make better arguments; or when the subordinated through hard work come to merit inclusion. As a race-conscious activist, like Cho and Westley, I do not find this story credible. *Id.* at 1380.

[\[FN116\]](#). CRT is necessarily collaborative, requiring information and insights gleaned from movements in order to formulate discursive strategies that must ultimately be tested in the context of actual struggle. The intersubjective nature of the CRT project reveals its political-theoretical essence. The moment that critical race theorizing loses its grounding in the political and the communal is the moment it ceases to be an antisubordinationist project. *Id.* at 1410. Race-conscious anti-subordination legal scholarship, as such, is

antidominance, given the dominant liberal paradigm of neutral, objective scholarly production. Further, I can imagine historical method, for example, contributing to CRT, as it did to CLS. Novick, *supra* note 11, at 557.

[\[FN117\]](#). Chang & Fuller, *supra* note 103, at 1291; Cho & Westley, *supra* note 3, at 1413-14.

[\[FN118\]](#). Critical Race Theory: The Key Writings that Formed the Movement, *supra* note 6, at xvi-xix, xxii-xxvii; Harris, *supra* note 72, at 745-50; Minda, *supra* note 13, at 2-5, 106-27, 167-85; Novick, *supra* note 11, at 523-24, 540- 70.

[\[FN119\]](#). In the founding workshop, the thirty-five participating law scholars "responded to a call to synthesize a theory, that "while grounded in critical theory, was responsive to the realities of racial politics in America." Critical Race Theory: The Key Writings that Formed the Movement, *supra* note 6, at xxvii; see also Matsuda et al., *supra* note 76, at 5.

[\[FN120\]](#). Cho & Westley, *supra* note 3, at 1384-87, 1392-97.

[\[FN121\]](#). *Id.* at 1381-97.

[\[FN122\]](#). *Id.* at 1399-1403.

[\[FN123\]](#). *Id.* at 1415-16, 1418, 1419-20.

[\[FN124\]](#). *Id.* at 1424; see, e.g., Stephen Carter, Foreword, in Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in American Democracy* vii-xiii (1994) (discussing "quota queen" media discourse). See generally Noam Chomsky, *Necessary Illusions: Thought Control in Democratic Societies* (1989); Edward S. Herman, *Manufacturing Consent: The Political Economy of Mass Media* (1988); Michael Parenti, *Inventing Reality: the Politics of Mass media* (1986). Cho and Westley's call for CRT participants to engage more in "intersubjective method" to ensure a more accurate portrayal of social movements may be reduced to either of two injunctions: "be an activist!" or "talk with the activists!"

[\[FN125\]](#). Cf. Matsuda et al., *supra* note 76, at 3 ("Critical race theory is grounded in the particulars of social reality that is defined by our experiences and the collective historical experience of our communities of origin. Critical race theorists embrace subjectivity of perspective and are avowedly political. Our work is pragmatic and utopian, as we seek to respond to the immediate needs of the subordinated and oppressed even as we imagine a different world and offer different values. It is work that involves both action and reflection. It is informed by active struggle and in turn informs that struggle.").

[\[FN126\]](#). See Cho & Westley, *supra* note 3, at 1416-17.

[\[FN127\]](#). *Id.* at 1409.

[\[FN128\]](#). *Id.* at 1386-87, 1394.

[\[FN129\]](#). The 1987 minority critique issue of the Harvard Civil Rights Civil Liberties Law Review, *supra* note 36, was published before the First Workshop on Critical Race Theory occurred in 1989. Harris, *supra* note 72, at 741.

[\[FN130\]](#). *Id.* at 1394-95. See *infra* notes 137-139 and accompanying text.

[\[FN131\]](#). My "subject position" of activist influences this evaluation. Cf. Chang & Fuller,

supra note 103, at 1289, n.61 (acknowledging their faith in antiessentialist theory).

[\[FN132\]](#). Cho & Westley, supra note 3, at 1381-83.

[\[FN133\]](#). Id. at 1385.

[\[FN134\]](#). Id. at 1392.

[\[FN135\]](#). Id. at 1385.

[\[FN136\]](#). Id. at 1383.

[\[FN137\]](#). Id. at 1394.

[\[FN138\]](#). Id. at 1392.

[\[FN139\]](#). Id. at 1392-96.

[\[FN140\]](#). Id. at 1385-87, 1404-05. It is this understanding of white power that grounds Cho's critique of the white left's attack on identity politics. Sumi Cho, *Essential Politics*, 2 Harv. Latino L. Rev. 433, 446-53 (1997).

[\[FN141\]](#). It is worth distinguishing between the intellectual operations of historicizing, and doing history, and making history. Historicizing is putting an event or a phenomenon in historical context. Doing history requires having the courage of one's conventions, or a provisional belief, that the method that History Departments are organized to teach has some validity. Finally, activists, by making change, make history. Gandhi, Mandela, and Castro started as a student activists and lawyers. See generally Mohandas K. Gandhi, *Autobiography: The Story of My Experiments with Truth* (1983); Nelson Mandela, *No Easy Walk to Freedom* (1965); Fidel Castro, *My Early Years* (1998), Peter G. Bourne, *Fidel: A Biography of Fidel Castro* (1986).

[\[FN142\]](#). Regarding my claim to be in the same activist generation as Cho and Westley, I offer this narrative: "The Story of a Confused Diversity Sit-In." There was a BCDF solidarity sit-in in the CUNY Law School Dean's office on April 6, 1989. At CUNY, students were aware of, but not engaged by, the Boalt Coalition for a Diverse Faculty's (BCDF) national day of protest on April 6, 1989. We had such a diverse faculty that hiring was not an issue in the same way for us. When I graduated I realized almost half of my teachers were black men, and the other almost half were white women. I had one Latina and one Latino professor, Professors Celina Romany and Luis DeGraffe. I had four white male and two women of color professors (including Professor Romany). However, in 1989 at CUNY we knew about the national day of action. My housemate Alejandro Beltran said we had to do something, and walked down the hallway to organize a sit-in. In about two minutes, we had maybe seven of us, Black, Latina/o, APA, women, and men. We proceeded to Dean Haywood Burns's office. He was a well-known human rights lawyer and the first African American dean of a law school in New York state. We knocked and announced the sit-in. He let us in. He invited us to sit with him in a circle on sofas and chairs in his office. He offered us coffee, etc., which we declined. I was nervous. On the wall behind his desk he had artwork, portraits of Chaney, Schwerner, and Goodman. I was nervous. We had barely formulated any demands while walking to his office, but people came up with various concerns and expressed them. He listened attentively, made a few comments, told us to put our concerns in writing so he could address them. He thanked us. Then we all shook hands and the sit-in ended. Fifteen minutes maximum. We never wrote up anything. In hindsight, I am amused and a little bemused by this protest, although I am glad to have taken part in a solidarity action with the Boalt students. In Spring 1990, Dean Haywood Burns, as former president of the National Lawyers Guild,

sponsored a national law student organizing conference for diversity activism that was held at CUNY. See Conference: "Unequal Treatment Under the Law": Racism, Sexism, Classism and Homophobia in U.S. Law Schools: A National Law Student Conference for Students, Activists, Faculty and Lawyers (Feb. 16-18, 1990) (conference materials on file with author).

[FN143]. Francis Engler, Organizational Structures in Student Social Movements: The Columbia Ethnic Studies Movement 16-18, 22-41 (Apr. 1997) (unpublished senior thesis, Yale) (on file with author). I thank Francis for permission to cite his thesis.

[FN144]. Cho's work and reputation preceded her.

[FN145]. Phillips, *supra* note 6, at 1248.

[FN146]. Cho & Westley, *supra* note 3, at 1426. They claim an anti-essentialist turn and suggest a practical turn. An assessment about any "turning" should be made by: reading all the scholarship published by all the participants over the nine years of CRTW; doing oral history interviews based on this reading, having read the relevant workshop plenary materials available to each individual interview subject; and reading each workshop's organizing ephemera from the organizers. I see more continuity than change in CRT. My description in this article, of course, is subject to the same critique as mine of Cho and Westley, as not adequately grounded in the published scholarship or in knowledge of the political work of CRTW participants.

[FN147]. Cf. Phillips, *supra* note 6, at 1248. (This is "my version of part of the history, as well as my interpretation of it ... [It is] my version of the evolution of the politics of the Workshop, [and not] nebulous pronouncements on the nebulous Critical Race Theory.") The 1989 CRTW was the moment when the Critical Race Theory Movement announced its existence to itself and perhaps to the world. Phillips, *id.* at 1248; Cho & Westley, *supra* note 3, at 1378 n.2. The unnamed movement was critiqued as it was developing CRTW, its first formal organizational structure. See Critical Race Theory: The Key Writings that Formed the Movement, *supra* note 6, at xxvi; Minda, *supra* note 13, at 175-77. The critique may have played a role in a decision to make the group invitational. A number of founding participants have written accounts of Critical Race Theory's origins and each historicizes those origins slightly differently. Along with Cho and Westley's account, this points to a need for a political and intellectual history of the Critical Race Theory Workshop. See generally Martin Jay, *The Dialectical Imagination: A History of the Frankfurt School and the Institute of Social Research, 1923-1950* (rev. ed. 1996); Laura Kalman, *Legal Realism at Yale, 1927-1960* (1986); Minda, *supra* note 13. Cho and Westley organized the most recent, Summer 1997 workshop. Professors Angela Harris and Harlon Dalton organized the Yale Critical Race Theory Conference in Fall 1997. Phillips, *supra* note 6, at 1248 n.2. Many CRTW participants were involved in the start-up of LatCrit Theory and a number of us, including the author, first attended at the 1998 LatCrit III conference. *Id.* at 1248.

[FN148]. I am a CRT insider, see *supra* note 104, writing an account of the workshops. Thus, my earlier discussion of subjectivity, objectivity, history, and ethnography applies here. See *supra* notes 8-11. The inquiries, "when and where did the critical race theory movement begin," and if it has ended, "where did it end," are historical ones.

[FN149]. Phillips, *supra* note 6, at 1249. When I entered, I was also asked by Professor Lisa Ikemoto to contribute to a plenary to help move CRTW beyond the white over black paradigm of race. See, *id.* at 1253.

[FN150]. The workshop's organizational form and recruitment techniques were similar to those of the later organized Columbia CESC. I experienced CRTW as a spiritual space, in

Anthony Cook's sense. Harris, *supra* note 72, at 782-83 (quoting Anthony Cook).

[FN151]. Most, but not all, participants were law teachers. Many, but not all, had deep prior engagement in social movements.

[FN152]. Cho and Westley call on first-generation race-crits to interact more with the second generation. Cho & Westley, *supra* note 3, at 1424. There are specific, political reasons, according to Phillips, for example for Crenshaw's non-attendance after the first workshops. Phillips, *supra* note 6, at 1250 n.8.

[FN153]. The authors do acknowledge the presence of these first-generation race-crits. Cho & Westley, *supra* note 3, at 1424.

[FN154]. Because different people of color groups experience racialization differently, we learned from each other in the workshop about racial hierarchies. This happened both through the presentation and critique of scholarly work, and through conversations between individuals and in groups. Once one had attended, the option to return was always available. At the end of each workshop, volunteers were sought to organize the next one. It was an annually created, to use Cho and Westley's language, counter-epistemic space that used intersubjective methodology. Collective political engagement was generally limited to the work of the workshop itself and the organizing of the workshop the following year. However, people supported each other's anti-subordination political work as well as their theorizing. But see Arriola, *supra* note 62 (discussing Society of American Law Teachers' San Francisco protest march against California's resegregation of public higher education).

[FN155]. This was because of a fear that what Cho and Westley call anti-essentialism unmodified, Cho & Westley, *supra* note 3, at 1416-17, might adversely affect race-conscious organizing, legal practice, or scholarship. The project was critical legal inquiry. The avoidance of political quietism, *id.* at 1418, through a sort of "modified" anti-essentialism was a premise. As it uses "postmodern" methods of critical inquiry to expose "racism within seemingly neutral concepts and institutions, however, CRT has not abandoned the fundamental political goal of civil rights scholarship: the liberation of people of color from racial subordination." Race-crits critique "from a perspective that places racial oppression at the center of analysis and privileges the racial subject." Harris, *supra* note 72, at 750.

[FN156]. On gender, see Phillips, *supra* note 6, at 1250 n.7. Phillips documents the long internal struggle over whether opposition to heterosexism and homophobia should be among the workshop's principles of unity. *Id.* at 1250-51, 1253. This was agreed upon. She notes the move beyond the white over black paradigm with the 1993 workshop. *Id.* at 1252-53. She further notes that the last workshop centered Native American or indigenist perspectives, and the centering of this discourse at the subsequent Yale conference. *Id.* at 1253-54.

[FN157]. Like CRT before it in CLS, Latina/o legal scholars participated in, became organized within, and in the mid-1990s began to contest the erasure of Latina/os in the CRT movement. See *supra* text accompanying note 118.

[FN158]. I have not been very active in LatCrit and have not read the entire corpus of literature. I am grateful to LatCrit, Inc., and Professors Valdes, Iglesias, and Kwan, for invitations to participate and conference subsidies in 1998 and 2002.

[FN159]. Cho & Westley, *supra* note 3, at 1427. LatCrit's collective political agency appears to be limited to building the LatCrit community of scholars and supporting and publishing LatCrit Theory, and thus is quite similar to CRT.

[FN160]. Cho & Westley, supra note 3, at 1426. This, conceivably, would make LatCrit third-wave CRT in Cho and Westley's scheme.

[FN161]. This is a free country. However, the state apparatus, through its police and intelligence agencies, has a tradition of policing the intellectual life and dissent of citizens and residents. In the twentieth century this included surveillance; blacklisting; and covert operations including disinformation and paramilitary components, within the United States. See Schrecker, No Ivory Tower, supra note 16; Frank J. Donner, *The Age Of Surveillance: The Aims and Methods of America's Political Intelligence System* (1981); Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (1987); David J. Garrow, *The FBI and Martin Luther King, Jr.: From "Solo" to Memphis* (1981); Kenneth O'Reilly, *The FBI's Secret File on Black America, 1960- 1972* (1989); Diamond, supra note 102; Rebecca Lowen, *Creating the Cold War University: The Transformation of Stanford* (1997); Angus MacKenzie, *Secrets: The CIA's War at Home* (1997); Ward Churchill & Jim Vander Wall, *The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement* (1988); *It Did Happen Here: Recollections of Political Repression in America* (Bud Schultz & Ruth Schultz eds., 1989).

Those who have it in their power to transact the business of the state in secret, have the state in their power. They lie in their ambushade constantly striking against the citizens ... It is the old story of those who seek after absolute rule ... Under the larva of the patriot the oppressor is concealed.

Baruch Spinoza, *Tractatus Politicus*, in Diamond, supra note 102, at 348 (citation omitted).

[FN162]. See generally Miguel A. Mendez & Leo P. Martinez, [Toward A Statistical Profile of Latina/os in the Legal Profession, 13 Berkeley La Raza L.J. 59 \(2002\)](#); Grutter v. Bollinger, No. 02-241, Oct. Term, 2002, United States Supreme Court.

[FN163]. Cho & Westley, supra note 3, at 1426. "Towards Asian American Jurisprudence" as an organizing project was designed produce continuous diversity mobilizing, but not within a race-plus coalition. Rather, it was a coalition between SALSA and APALSA. Like LatCrit, it was based on what Cho and Westley call "conscientious essentialism," id. at 1420, or what Peller in earlier work called "postmodern nationalism." Peller, supra note 13.

[FN164]. Cho & Westley, supra note 3, at 1396-97, 1412, 1414.

[FN165]. Phillips, supra note 6, at 1252; *Critical Race Theory: The Key Writings that Formed the Movement*, supra note 6, at xxii-xxvii; *Critical Race Theory: The Cutting Edge*, supra note 6, at xiv.

[FN166]. See Minda, supra note 13, at 111 (discussing trashing and 'trashing' of CLS through 'legal nihilism' discourse). Of course, to call these right-wing attacks trashing may dignify them overmuch. CLS trashing encompassed deconstruction and ideological criticism. Novick, supra note 11, at 557.

[FN167]. See Chang & Fuller, supra note 103, at 1289-92. Cf. Peter Gabel & Duncan Kennedy, [Roll Over Beethoven 36 Stan. L. Rev. 1 \(1984\)](#); Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987); Richard Delgado, *The Rodrigo Chronicles: Conversations About America and Race* (1995); Richard Delgado, *When Equality Ends: Stories About Race and Resistance* (1999) (presenting dialogues between fictional and thinly fictionalized characters).

[FN168]. Derrick Bell, *Race, Racism and American Law* 654-57 (3d. ed. 1992).

[FN169]. *Grutter v. Bollinger*, No. 02-241, Oct. Term, 2002, United States Supreme Court.

[FN170]. Martin Luther King, Jr., *Letter From The Birmingham Jail* (1993). Activist intellectuals know that "successful multiracial coalitions and movements that respond to daunting forces of oppression are as fragile and fleeting as they are deeply satisfying." Cho & Westley, *supra* note 3, at 1417. See also Chomsky, *On Resistance*, in *Mandarins*, *supra* note 11, at 367-85 (discussing non-violent direct action for an intelligentsia audience).

[FN171]. Is the LatCrit conference a safe space for an internal movement discussion? For the basis of my fear, see *supra* note 161.

[FN172]. In this paragraph I "historicize" the movement. See *supra* note 141.

[FN173]. Aung San Suu Kyi, *Letters From Burma* 123-34, 147-58, 167-69, 179- 81 (1997) (discussing the mass democracy movement suppressed with brutal military and police force); see also Aung San Suu Kyi, *The Voice of Hope* (1997); David Reynolds, *One World Divisible* 579-83 (2000) (discussing largest mass democracy movement in Chinese history suppressed first by military then by ideological discursive reframing; "Tiananmen" becomes synonymous with brutal government suppression).

[FN174]. J.M. Roberts, *Twentieth Century: The History of the World 1901- 2000*, 760-63 (1999); Martin Gilbert, *A History of the Twentieth Century: Volume Three: 1952-1999*, 673-75, 678-86 (1999).

[FN175]. Reynolds, *supra* note 173, at 558-59; Gilbert, *supra* note 174, at 697-98. Hungary also saw a former dissident be elected president. *Id.*

[FN176]. Gilbert, *supra* note 174, at 689-90; Nelson Mandela, *Long Walk To Freedom* (1994).

[FN177]. See Cho & Westley, *supra* note 3, at 1451. "They are profoundly critical of any effort to change the composition of the academic community or the content of intellectual discourse by giving attention to the race or gender of the potential participants." Matsuda, et al., *supra* note 76, at 14.

[FN178]. See generally Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. Pa. L. Rev.* 561 (1984); Richard Delgado, "The *Imperial Scholar*" Revisited: How to Marginalize Outsider Writing, Ten Years Later, 140 *U. Pa. L. Rev.* 1349 (1992); Kimberlé Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331 (1988) (although not focused on academia, critique of racial ideology directly relevant); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 *Harv. L. Rev.* 1745 (1989); Scott Brewer, *Choosing Sides in the Racial Critiques Debate*, 103 *Harv. L. Rev.* 1844 (1990); Colloquy, 103 *Harv. L. Rev.* 1844, 1844-86 (1990); (comments by Professors Scott Brewer, Milner S. Ball, Robin D. Barnes, Richard Delgado, and Leslie G. Espinoza).

[FN179]. Thus, I accept Cho and Westley's claim that the theory and the movement were synergistic. See Cho & Westley, *supra* note 3, at 1377-78.

[FN180]. See, e.g., *Critical Race Studies Concentration at UCLA Law School*, available at <http://www.law.ucla.edu/administration/publications/alumnimag2001/uclalaw2001pg68-77.pdf> (last visited Nov. 20, 2002). Well-known race-crits teach at many well-known schools. But, we are everywhere.

[FN181]. The civil rights movement was a pro-democracy movement. It sought equal citizenship for people of color in areas as central to the definition of a democracy as the right to vote. See Bell, *supra* note 168, at 176-203; David J. Garrow, *Bearing The Cross: Martin Luther King Jr. And The Southern Christian Leadership Conference* 161-63, 168, 189, 197, 216 (1986); see also Guinier, *supra* note 124, at 43-48 (discussing broader social democracy aspirations of civil rights movement).

[FN182]. But see "Racial integration [is] a great myth, which the ideologues of the system and the liberal establishment expound, but which they cannot deliver in reality." Harold Cruse, quoted in Manning Marable, *Race, Reform And Rebellion: The Second Reconstruction In Black America* 40 (1991). Cruse, who briefly joined the Communist Party after World War Two, is among the Black intellectual precursors to CRT because he adopted the position that "the fundamental conflicts within American society were not rooted in class but in ethnic conflicts." *Id.* at 254-55. Phillips notes that most of the organizers of the first two critical race theory workshops--including herself, Kim Crenshaw, Neil Gotanda, Mari Matsuda, and Richard Delgado--were leftists. These organizers adhered to a stance against all forms of oppression. Phillips, *supra* note 6, at 1248-49.

[FN183]. 1990s political correctness discourse in public culture is an example of this. As for legal educational institutions: some white professors (not at Columbia or CUNY, I hasten to add) used the phrases "politically correct" or "political correctness" in my presence. I did my work for those professors under a rebuttable presumption that I was operating in a racially hostile environment.

[FN184]. Phillips, *supra* note 6, at 1248. Media and cultural critique would seem to be particularly salient.

[FN185]. Guinier, *supra* note 124, at 71-156; Manning Marable, *Black America: Multicultural Democracy in the Age of Clarence Thomas*, David Duke, and the Los Angeles Uprisings, in Manning Marable, *Speaking Truth To Power: Essays On Race, Resistance And Radicalism* (1996).

[FN186]. *Critical Race Theory: The Key Writings that Formed the Movement*, *supra* note 6, at xx-xxii, xxix; Minda, *supra* note 13, at 179-81; *Critical Race Theory: The Cutting Edge*, *supra* note 6, at 389-473. Analogous theories concerning the gender and sexuality and class power and order are also relevant.

[FN187]. I have not had a conversation with Professor Subha Narasimhan. I thus have no information on her position on law faculty hires or on Asian American Jurisprudence as an intellectual project. The organizers never received any indication that she had done anything to harm the student campaign. Our fear was not so much about her possible position, but rather that her presence on the faculty might be used by her faculty colleagues to deligitimize our student campaign.

[FN188]. Lee, *supra* note 25, at 757-58, 779 (postmodern race-consciousness recognizes the need to analyze particular local racial orders and power configurations closely); Minda, *supra* note 13, at 184 ("Critical race scholars have reconceptualized race in a postmodern way, recognizing the importance of the racial context of a multicultural society in which group existence is partial, unstable, and in flux.").

[FN189]. See Delgado, *supra* note 178. See also Richard H. Chused, [The Hiring and Retention of Minorities and Women on American Law School Faculties](#), *137 U. Pa. L. Rev.* *537* (1988); Ass'n Am. L. Schools, *Perspectives On Diversity: AALS Special Comm'n on Meeting the Challenges of Diversity in and Academic Democracy* (1997).

[\[FN190\]](#). Chang and Fuller state that Cho and Westley understand anti-essentialist theory "to be antithetical to effective political organizing." Chang & Fuller, *supra* note 103, at 1292. As this article indicates, anti-essentialism and organizing are, for me, consistent.

[\[FN191\]](#). Perhaps it is symptomatic of CRT's maturation that we are having a Methodenstreit. Or perhaps not.

[\[FN192\]](#). Farber & Sherry, *supra* note 3. I note my bias here. I am a former employee of Professor Derrick Bell. Derrick Bell, *supra* note 168, at xxix; Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* xiii (1992). I am a former colleague of Professor Richard Delgado. He was affiliated with the Center for the Study of Ethnicity and Race in America at the University of Colorado at Boulder when I was a Rockefeller Humanities Fellow at the Center in 1992-93. Farber and Sherry use the legal thought of both Bell and Delgado to construct their concept of "radical multiculturalism." Farber and Sherry claim that part of Bell's legal thought is anti-Semitic. Farber & Sherry, *supra* note 3, at 4, 25-26, 44, 58-59, 166 n.10. I have one observation. The FBI used the allegation of Black anti-Semitism to discredit Black radicals in the 1960s as part of their broader effort to subvert and destroy the movement. O'Reilly, *supra* note 161, at 315- 20; see also Ward Churchill, "To Disrupt, Discredit and Destroy": The FBI's Secret War Against the Black Panther Party, in *Liberation, Imagination, and the Black Panther Party: A New Look at the Panthers and Their Legacy* 78-117 (Kathleen Cleaver & George Katsiaficas eds., 2001) (discussing police extra-judicial killings of Black Panther Party members). Farber and Sherry's choice of argument resonates with this history. Farber and Sherry further state that "radical multiculturalists" sometimes have a "paranoid mode of thought." Farber & Sherry, *supra* note 3, at 12, 133-37. There is a difference between paranoia and historical consciousness.

[\[FN193\]](#). "This motley group is united primarily by their rejection of the aspiration to universalism and objectivity that is the fruit of the European Enlightenment." Radical multiculturalism "includes a broad-based attack on the Enlightenment foundations of democracy." Farber & Sherry, *supra* note 3, at 5. Farber and Sherry invent a "battle between radical multiculturalism and the Enlightenment tradition." *Id.* at 141.

[\[FN194\]](#). *Id.*, at 8-9, 118-37.

[\[FN195\]](#). *Id.* at 52-71.

[\[FN196\]](#). *Id.* at 38-40, 88-94, 112-17.

[\[FN197\]](#). *Id.* at 72-117. This might be called their "reverse imperial scholar" thesis. Cf. Delgado, *supra* note 178.

[\[FN198\]](#). *Id.* at 4-5, 8, 13. Farber and Sherry focus on the legal thought of Derrick Bell, Richard Delgado, Patricia Williams, and to a lesser extent on Jerome Culp, Alex Johnson, and Mari Matsuda to construct their account of a "radical multiculturalist" strand of CRT. Although these are prominent critical race theorists, they are not the whole movement. Farber and Sherry's argument is useful, however, to the project of discrediting the CRT movement as a whole. Opponents will take their depiction of part to represent the whole. Moreover, Farber and Sherry claim that theirs is a representation of more than a part, that it fairly describes the dominant ideology within CRT. *Id.* at 13, 49, 118-37.

[\[FN199\]](#). *Id.* at 7, 8, 13, 50.

[\[FN200\]](#). *Id.* at 52-71.

[\[FN201\]](#). *Id.* at 5, 9-10, 138-40 (describing their project as a normative critique of the

ideology of radical multiculturalism, which has a fatally flawed conception of equality because of its racist and anti-Semitic implications).

[\[FN202\]](#). Id. at 6, 12, 36-37, 72, 96-98.

[\[FN203\]](#). Id. at 36, 48, 69-70. "Objectivity, reason, and universalism are, of course, the crown jewels of our Enlightenment heritage." Id. at 28. "Attacks on the Enlightenment, and on the norms and techniques of objective science, have long been associated with anti-Semitism and other prejudices." Id. at 70.

[\[FN204\]](#). Id. at 9-10, 56-58, 59-61.

[\[FN205\]](#). See supra text accompanying notes 60-61.

[\[FN206\]](#). Farber & Sherry, supra note 3, at 52-71.

[\[FN207\]](#). See supra text accompanying notes 26-32 (discussing model minority construct and stereotype); supra notes 35, 60 (discussing APA powerlessness in national politics and issue of ceiling quotas on APA admissions in higher education). See also Amado Cabezas, Larry H. Shinagawa & Gary Kawaguchi, *Income Differentials Between Asian Americans and White Americans in California, 1980*, in *Income and Status Differences Between White and Minority Americans: A Persistent Inequality* 181 (Sucheng Chan ed., 1990) (critiquing Asian American success discourse and finding that APAs are not economically successful).

[\[FN208\]](#). Farber & Sherry, supra note 3, at 9-10, 56-67.

[\[FN209\]](#). Farber & Sherry, supra note 3, at 7, 15, 22-24, 124, 140. Continental philosophy is one of the intellectual resources that critical race theorists draw upon. Many of us also draw upon the philosophical and theoretical work of intellectuals, legal and other, from Latin America, Asia, and Africa, and in indigenist movements, particularly those who participated in the decolonization movements. The use of these latter sources by race-crits seems to have wholly escaped Farber and Sherry's notice. Cf. Dower, supra note 27, at 178-80 (briefly comparing American and Japanese racisms, and noting the failure of western scholars to engage non-western knowledge).

[\[FN210\]](#). Farber and Sherry retell the story of a labor camp commandant's summary execution of Diana Reiter, an architectural engineer, in order to terrorize the other camp inmates into submitting to the regime of forced labor. They state: "In hell, it seems, all reality is socially constructed, and merit does not exist." Farber & Sherry, supra note 3, at 71. Farber and Sherry celebrate reason and are critical of rhetoric. Id. at 31, 113. This is a rhetorical use of a holocaust story to silence "social constructionists."

[\[FN211\]](#). Jerry Kang, [Cyber-race, 113 Harv. L. Rev. 1130, 1133-35 \(2000\)](#). Unlike Kang, who chose the avatar that was then attacked, Farber and Sherry invented their avatar of "radical multiculturalism" in order to attack postmodernism.

[\[FN212\]](#). Farber & Sherry, supra note 3, at 49 (discussing reason and the Enlightenment).

[\[FN213\]](#). Id. at 14-15, 64, 137. Deconstruction is one of the methods of critical inquiry included in American legal intellectual appropriations of continental philosophy. Analytical philosophy, sometimes known as "good English philosophy" in contrast to (continental) "bad French philosophy," is the dominant school in American higher education.

[\[FN214\]](#). See, e.g., id. at 22, 24, 98, 106 (Michel Foucault). Farber and Sherry really

mention only continental theorists Foucault and Jacques Derrida among the continental theorists that critical race theorists draw upon. They miss the philosophical sophistication that critical race theorists have brought to their work.

[FN215]. Their account of "social constructionism" is a flattened and deeply impoverished description of critical theory, to say nothing of continental philosophy. This is my interpretation. To this CRT insider, their "roadmap," *id.* at 49, as it relates to CRT is too distorted to be useful.

[FN216]. See, e.g., Peter L. Berger & Thomas Luckman, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (1966); Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972- 1977* (Colin Gordon ed., 1980); Postmodernism, Structuralism and Poststructuralism, in *Encyclopedia of Cultural Anthropology* 993-98, 1263-72 (David Levinson & Melvin Ember eds., 1996) Harris, *supra* note 72, at 771-74. See generally Novick, *supra* note 11.

[FN217]. As for the effects on legislation, judicial decisionmaking, and the like, they are likely to be limited, and not only because of the relative powerlessness of people of color. Critical theory is not known for its effectiveness in the public policy realm. To the extent it emphasizes negation, it does not seek to influence that realm.

[FN218]. *Encyclopedia of Cultural Anthropology*, *supra* note 216, at 994.

[FN219]. Gossett, *supra* note 28, at 416. See *supra* note 27 (discussing Boasian anthropology). The social construction thesis made possible the suspension of judgment about the morality of different practices in different human societies. It allowed the anthropologist to view his or her own judgments as culture-bound. It thus made possible cultural relativism, which is fundamental to ethnographic method.

[FN220]. See Theodor Adorno & Max Horkheimer, *Dialektik Der Aufklarung* (1947) ("Dialectic of the Enlightenment"); Max Horkheimer, *The Eclipse of Reason* (1947); Theodor Adorno, *Minima Moralia: Reflexionen Auf Dem Beschadigten Leben* (1951) ("Mimima Moralia: Reflections on a Wounded Life"). This work is discussed in Jay, *supra* note 147, at 232-33, 253-80. See also *id.* at 260 (distinguishing between subjective and objective reason).

[FN221]. Howard Zinn, *A People's History Of The United States* 1-38, 124-66 (1980); Michel Beaud, *A History Of Capitalism, 1500-1800* (1983); Eric Williams, *Capitalism And Slavery* (1966); Immanuel Wallerstein, *The Modern World System* (1974); Walter Rodney, *How Europe Underdeveloped Africa* 33-146 (rev. ed. 1981); Tzvetan Todorov, *The Conquest Of America* (1981); Francis Paul Prucha, *The Great Father: The United States Government And The American Indian* (rev. ed. 1984); Patricia Nelson Limerick, *The Legacy Of Conquest: The Unbroken Past Of The American West* (1987); Felix S. Cohen, *Handbook Of Federal Indian Law* (reprint ed. 1988); Ward Churchill, *Struggle For The Land: Indigenous Resistance To Genocide, Ecocide, And Expropriation In Contemporary North America* (1993); A. Leon Higginbotham, Jr., *In The Matter Of Color: Race And The American Legal Process: The Colonial Period* (1978); Mary Frances Berry, *Black Resistance, White Law: A History Of Constitutional Racism In American Law* (rev. ed. 1994); Bell, *supra* note 168; William Stanton, *The Leopard's Spots: Scientific Attitudes Toward Race In America, 1815-1859* (1960); Thomas F. Gossett, *Race: The History Of An Idea In America* (1963); Gould, *supra* note 28.

[FN222]. See *supra* notes 10, 22, 27 (discussing anthropology and sociology); *Tensions Of Empire: Colonial Cultures In A Bourgeois World* (Frederick Cooper & Ann Laura Stoler eds., 1997); *Cultures Of United States Imperialism* (Amy Kaplan & Donald E. Pease eds., 1993); Said, *supra* note 22; Edward W. Said, *Culture and Imperialism* (1993); Selected

Subaltern Studies (Ranjit Guha & Gayatri Spivak eds., 1989); Tayyab Mahmud, [Colonialism and Modern Conceptions of Race: A Preliminary Inquiry](#), 53 *U. Miami L. Rev.* 1219 (1999). The not so implicit ideology, which was racial, in these structures of knowledge production was that "enlightened" Europeans know, and all the "dark" others are known. On the relation, in the Vietnam war era, of American liberal knowledge production to Asia and Asians, see *supra* notes 11, 22. Radical critics were policed. In 1967, the Committee of Concerned Asian Scholars (CCAS) formed to critique mainstream scholarly production that supported American war policy. They began publishing the *Bulletin of Concerned Asian Scholars*. The CCAS face political repression, including a false murder accusation against a member, and a false allegation that they planned to bomb book stalls at the 1970 Association of Asian Studies conference. *Encyclopedia Of The American Left* 73, 130-31 (Mari Jo Buhle, Paul Buhle & Dan Georgakas eds., 1998).

[FN223]. Robert A. Williams, Jr., *The American Indian In Western Legal Thought: The Discourses Of Conquest* (1990); Gossett, *supra* note 221; Stanton, *supra* note 221; Gould, *supra* note 28; YU, *supra* note 8. See generally David Theo Goldberg, *Anatomy Of Racism* (1990); David Theo Goldberg, *Racist Culture: Philosophy And Politics Of Meaning* (1993).

[FN224]. Relating to law, legality, and empire: is race relevant to the following stories? It is a reasonable inference, based on the available evidence, that President Dwight D. Eisenhower ordered the death of the Congo's Patrice Lumumba in 1960. President Richard Nixon, and Secretary of State Henry Kissinger, may have ordered the death of General René Schneider in 1970 to destabilize Chile. They sought to facilitate General Augusto Pinochet's coup against democratically elected President Salvador Allende. John Ranelagh, *The Agency: The Rise And Decline Of The CIA* 336-41, 514-19 (1986). Five hundred and four (504) primarily women, children, and elderly men were killed in the 1968 "My Lai" massacre by American soldiers in Vietnam. See generally Seymour M. Hersh, *Cover-Up: The Army's Secret Investigation of the Massacre at My Lai* (1972). Should these historical events have any bearing on "our" understanding of the rule of law? Were categories of people somehow excluded in these instances? If so, what remedy? Is this a project that liberals who celebrate the rule of law in the United States engage with? Or have they forgotten? See Kundera, *supra* note 102 ("The struggle of man against power is the struggle of memory against forgetting."). See also *Liberation, Imagination, and the Black Panther Party*, *supra* note 192 (discussing extra-judicial killings of Black Panthers in the United States). These stories are useful for raising questions about the nature and function of law in American liberal democracy.

[FN225]. Cf. Heinrich Krieger, *Das Rassenrecht In Den Vereinigten Staaten* (1936) ("Race Law n the United States"). This book, by a German legal scholar, is an early-twentieth-century example of how the United States exported "race law."

[FN226]. An Orientalism critique of the Enlightenment might suggest that the Enlightenment's excluded others--Africans, Latina/os, Asians, indigenous peoples generally--were constitutive of the Enlightenment's power and identity. See *supra* note 22 (discussing Orientalism).

[FN227]. But see *supra* note 72 (discussing deconstructing Asian American category). My postmodern premises, combined with my work, in organizing "Towards Asian American Jurisprudence" and in writing this article to advance racial subjectivity, might provide a partial response to the question whether it is wise politics for advocates of equality to engage in what Farber and Sherry might call a "radical multiculturalist" project. Farber & Sherry, *supra* note 3, at 50.

[FN228]. Their attack recapitulates the earlier attack on the postmodernism in CLS using the discourse of legal nihilism. However, Farber and Sherry also fear the positive program

of some CRT participants. They criticize the effort by Matsuda, Lawrence, Crenshaw, and Delgado to protect students of color from race- and gender-based hostile environments on white university campuses. The Matsuda group developed this new First Amendment jurisprudence based on, and because of, the experiences of discrimination that students of color were reporting to them. Farber and Sherry engage the arguments in a highly decontextualized manner. Farber & Sherry, *id.* at 11, 42-46, 123; Matsuda, et al., *supra* note 76. This implies a catch-22 situation for critical legal theorists: if you take the position that critique is all there is, you are a legal nihilist; if you develop a positive program that includes jurisprudential innovation, you are destroying the Enlightenment tradition.

[FN229]. While critical of "deconstruction," Farber and Sherry support the "reconstructive" scholarship of "Lani Guinier and Gerald Torres in critical race theory, Margaret Radin and Martha Minow in feminist legal theory, Dan Ortiz and Janet Halley in gaylegal studies, and Robert Gordon and Morton Horwitz in CLS among "many others." *Id.* at 141. "The choice between modernism and postmodernism is an impossible one. The task is to live in the tension itself: to continually rebuild modernism in light of postmodernist critique. This is the task of what Mari Matsuda calls a jurisprudence of reconstruction." Harris, *supra* note 72, at 744.

[FN230]. Farber & Sherry, *supra* note 3, at 13-14.

[FN231]. See generally Kennedy, *supra* note 29, at 717-21 (political and cultural case for large-scale affirmative action).

[FN232]. Cho & Westley, *supra* note 3, at 1400-01, 1404 (charts and text on effect of 1989 national diversity protest movement's national effect on minority faculty hiring) ("As critical race scholars, we should be wary of histories of our inclusion that perpetuate the myth of institutional openness to racial justice.").

[FN233]. I draw a sharper distinction here between the protest class as a liberal strategy, and, let us say, a sit-in as a radical strategy for the purpose of argument than is perhaps completely called for. The protest class itself may be viewed as radical by many.

[FN234]. See Guerrero, *supra* note 27, at 52-53, 75-79, 82-83, 86-88, 121-24, 128-32, 139-46, 149-50; see also Marisa Arrona, Alegría De La Cruz, César del Peral, *supra* note 81.

[FN235]. Lawrence, *supra* note 31, at 966-67; Cho & Westley, *supra* note 3, at 1399 n.50, 1402 n.58; see, e.g., The Latino Group: Yale Law Admits Too Few Hispanics, available at <http://www.yaledailynews.com/article.asp?AID=9389> (last visited Oct. 19, 2002).

[FN236]. For an article discussing this question, see Francisco Valdes, [Barely at the Margins: Race and Ethnicity in Legal Education--A Curricular Study With LatCritical Commentary](#), 13 *Berkeley La Raza L.J.* 119.

[FN237]. See Mendez & Martinez, *supra* note 162, at 75-85 (on Latina/o law teacher and law student numbers and educational access issues relevant to reaching population parity in legal education).

[FN238]. Outsider jurisprudence is in part about understanding what is happening, why what is happening is happening, how best to fight it, and the relation of all this to law, from the outsider group's standpoint. It is useful to do this politico-legal intellectual work in student-organized law school classes. Outsider group law students can, and should, make themselves the subjects and the object of their own legal educations.

[FN239]. I am no market fundamentalist. However, in 1996 I did quick market research on the potential demand for Asian Pacific American Jurisprudence. I assumed that Asian Pacific Americans would be the principal consumers. Based on 1994 data, Asian Pacific Islanders (APIs) represented about 5.8 percent of all law students (6987 out of 119,864). Harvard, Yale, Columbia, N.Y.U., and Chicago had 171 (10.4%), 66 (10.3%), 127 (12.1%), 123 (9.5%), and 46 (8.5%) API students respectively in 1994. Law School Admissions Council, *Official Guide To U.S. Law Schools 22-29* (1996) ("Official Guide"). The 1995 J.D. enrollment in A.B.A.-approved schools was 129,318, of which 7719, or 6%, were APIs. Conversation with Richard White, Association of American Law Schools Statistician, Nov. 13, 1996, drawing on data in American Bar Association Section On Legal Education And Admission To The Bar, *A Review Of Legal Education In The United States* (Fall 1995). These data also were used to support a National Asian Pacific American Bar Association resolution at the November 1996 national convention favoring affirmative action hiring of Asian Pacific American law teachers. I thank Linda SooHoo of Skadden Arps, then of NAPABA's national board, for taking the matter up.

[FN240]. This is the market research component of the organizing project.

[FN241]. As noted earlier, Columbia APALSA/SALSA did this by posting syllabi on the web. LatCrit, Inc. might consider putting curricular material on line in downloadable form.

[FN242]. I am thinking here about English-language law schools within the lands now called the United States. "Towards Asian American Jurisprudence" was conceptualized within that frame. Expanding the frame, one can imagine a transnational Latina/o Jurisprudence project in Spanish-language law schools throughout the Americas. Student insurgency by students in parts of Latin America (as in parts of Asia and Africa), however, can present higher risks to their lives, liberty, and bodies than the risks faced by students in the United States. What would, for example, a LatCrit educational project in and on Colombia look like?

[FN243]. By contrast, Asian Americans are less likely than whites and other people of color to work in public interest law. *Why Most APA Lawyers Go Corporate*, Asian Week, Apr. 22, 1999, at 18. I believe ignorance of our history makes public interest law and public service seem unnecessary to many of us. See generally Rockwell Chin, *Long Struggle For Justice: Asian Pacific Americans Have Played A Key Role in This Country's Civil Rights Struggles: Their Fight is Not Yet Over*, 85 Am. Bar Ass'n J. 66 (Nov. 1999); Laura Kingsley Hong, *Advocacy For Justice*, 85 Am. Bar Ass'n J. 72 (Nov. 1999). I am happy that several Columbia class participants are serving Asian Pacific American and other communities around the country through organizing and as public interest lawyers.

[FN244]. See generally Cho & Westley, *supra* note 3.

[FN245]. Langston Hughes, *Let America Be America Again*, quoted in Harding, *supra* note 9, at 181 (Harding asks whether, had Hughes written later, he might not have used the word "man," *id.* at 182).

[FN246]. Martin Luther King, Jr., *I Have A Dream* viii (1993).

[FN247]. See Center for Individual Rights, available at <http://www.cir-usa.org> (last visited Oct. 31, 2002). I fear for my country if this group succeeds in its agenda. See generally James Baldwin, *The Fire Next Time* (1963); Martin Luther King, Jr. *Where Do We Go From Here: Chaos Or Community* (1967); see also Lawrence, *supra* note 31, at 955 ("So long as [liberal] university faculties remain indifferent to the continuing legacy of their own past discriminatory practices or the ways in which current admissions policies unjustifiably reinforce contemporary racial discrimination, they need not face up

to their own active participation in the maintenance of racial and class privilege."); Matsuda Et Al., supra note 76, at 14 ("The struggle against institutional, structural, and culturally ingrained unconscious racism and the movement toward a fully multicultural, postcolonial university is central to the work of the liberationist teacher.").

[FN248]. Asian Pacific Americans should not allow ourselves to be used as spear-carriers for white supremacy. Mari Matsuda, *We Will Not Be Used*, 1 *As. Am. & Pac. Islands L. J.* 79 (1993); Chalmers Johnson, *Blowback: The Costs And Consequences Of American Empire* ix-xviii (2000) (discussing being an unwitting spear-carrier for empire); William C. Kidder, [Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts](#), 7 *Asian L. J.* 29 (2000).

[FN249]. Guerrero, supra note 27, at 80.