

Celebrating Critical Race Theory at 20

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The year 2009 marks the twentieth anniversary of the first Critical Race Theory (CRT) workshop. On July 8, 1989, more than twenty scholars “who were interested in defining and elaborating on the lived reality of race, and who were open to the aspiration of developing theory” gathered together at a workshop in Madison, Wisconsin.¹ The 1989 workshop, which was spearheaded by Kimberlé Crenshaw and organized by her, Neil Gotanda, and Stephanie Phillips, also included as its participants Anita Allen, Taunya Banks, Derrick Bell, Kevin Brown, Paulette Caldwell, John Calmore, Harlon Dalton, Richard Delgado, Linda Greene, Trina Grillo, Isabelle Gunning, Angela Harris, Mari Matsuda, Teresa Miller, Philip T. Nash, Elizabeth

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1. Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or “A Foot in the Closing Door,”* 49 UCLA L. REV. 1343, 1360–61 (2002); Athena Mutua, *The Rise, Development, and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329, 329–30 (2006) (noting that Professor Kimberlé Crenshaw coined the phrase “Critical Race Theory,” giving the field of scholarship a name).

Patterson, Benita Ramsey, Robert Suggs, Kendall Thomas, and Patricia Williams.²

In 2008, a committee of relatively junior scholars, including Mario Barnes, Jennifer Chacón, Rose Cuison Villazor, Kaaryn Gustafson, Melissa Murray, Camille Nelson, Catherine Smith, and me, Angela Onwuachi-Willig, as its chair, sought to renew and reinvigorate the discussion started by the pioneering scholars who attended the first workshop in 1989. We planned and organized a conference/workshop entitled “CRT 20: Honoring Our Past, Charting Our Future” to celebrate the twentieth anniversary of these scholars’ first historic meeting during the weekend of April 2–4, 2009.³

Our reasons for planning a celebration of the first CRT workshop were vast and varied. The first CRT workshop resulted in the continued growth of an intellectual movement that has made significant contributions to the American and international legal academies.⁴ The impact of CRT on legal scholarship, law professors, practicing attorneys, law students, and the members of the public whose lives and experiences CRT works to address has been tremendous.⁵ Each one of us has our own stories, both as individuals and as parts of collectives, about CRT’s influence in our lives. One of the large influences of CRT has been its demonstration of how scholars can use narrative experiences to reflect upon and challenge legal conditions.⁶ Given this CRT tradition, it is only natural that I provide my own personal narrative, which reveals one small portion of CRT’s impact.

2. Crenshaw, *supra* note 1, at 1361 n.19.

3. We cannot take full credit for the event. One of the original workshop attendees, Professor Angela Harris of the U.C. Berkeley School of Law, suggested the gathering to us.

4. See Mutua, *supra* note 1, at 333–41 (describing CRT as “[o]ne of the most significant developments in law on issues of race and ethnicity in the last twenty years”); see also Kevin R. Johnson, *Roll Over Beethoven: A Critical Examination of Writings About Race*, 82 TEX. L. REV. 717, 719–34 (2004) (defending the new directions of CRT as it continues to grow).

5. For example, in 2008, the *Connecticut Law Review* dedicated an entire symposium issue to analyzing the impact of just one foundational article in CRT: Charles R. Lawrence III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987). Article contributors on this topic included Professors Devon Carbado, Gowri Ramachandran, Natasha Martin, Mari Matsuda, Catherine Smith, noted civil-rights attorney, Eva Patterson, and Professor Charles Lawrence himself, to name a few. See, e.g., Catherine Smith, *Unconscious Bias and “Outsider” Interest Convergence*, 40 CONN. L. REV. 1077 (2008). Additionally, in April of 2008, students at Yale Law School organized a conference that was specifically designed to “consider the development of the field [of CRT], the extent of its impact on legal practice, and its future frontiers.” Yale Law School, *Frontiers in Social Justice Lawyering: Critical Race Revisited*, <http://islandia.law.yale.edu/crt/> (last visited July 14, 2009).

6. See Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1630 (1997) (“Critical theorists tell stories, both ‘real’ and ‘fictional.’ Arguably, the most significant impact of critical theory has been the reformation of legal analytical practices through the use of stories.”); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803, 830–51 (1994) (contending that narrative can powerfully explicate legal issues); George A. Martínez, *Philosophical Considerations and the Use of Narrative in Law*, 30 RUTGERS L.J. 683, 683 (1999) (arguing that narrative is a useful “way to

For me, CRT was a lifeline in law school. In fact, but for CRT, I may have never become a lawyer. Although I came to CRT as part of the second generation (arguably the third⁷) during law school, I had no idea what the scholarly field was when I began to study law in 1994. To be honest, I had no real idea what it meant to be a lawyer. I knew one lawyer in my life—a black municipal-law attorney, who was a friend of one of my high-school history teachers and who hired me and another black student to observe his practice one summer. Despite that one experience, my view of an attorney before I went to law school was that of a civil-rights attorney, namely Thurgood Marshall.⁸ Also, because an undergraduate professor had encouraged me to become a college professor and then suggested that I at least consider becoming a law professor when I decided to become a lawyer, I also went to law school with the image of a law professor in mind. For these reasons, I imagined myself at the beginning of law school as either a future civil-rights attorney or law professor.

During law school, I would learn that there were many more possible avenues for practicing attorneys, including minority attorneys. Yet, it was not these possibilities, but instead CRT, that would continue to keep me in law school. During my first few days of law school, I felt so alienated, alone, and, according to some, too preoccupied with justice and change that I began to wonder if there was a place for me in the law. It was not until I met a group of 2Ls who were part of a CRT Reading Group that I truly began to see law as a potential professional home for me. It was these 2Ls who introduced me to Professor Derrick Bell's⁹ *The Space Traders*,¹⁰ a fictional tale about the

introduce a perspective that is not represented in mainstream legal discourse"); see also Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941 (2005) (using "personal stories as a method of challenging the harmful identity constructions contained within the formal legal narratives of two criminal cases").

7. Some would argue that there are three generations of CRT scholars, with the first generation consisting of scholars such as Professor Derrick Bell, who were providing critical analyses of the intersection between race, law, society, and power before the field received its official name.

8. Thurgood Marshall, the great-grandson of a slave, became the first black Supreme Court Justice in 1967. BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT* 47 (1979). Along with his mentor Charles Hamilton Houston, the former Dean of Howard University School of Law (where Marshall graduated first in his class), Marshall developed a strategy for eliminating segregation in educational institutions. In 1954, the efforts of Marshall and Houston resulted in the landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), which declared state-mandated segregation of public schools unconstitutional. By the time Marshall was appointed to the Supreme Court, he had won twenty-nine of the thirty-two cases he argued before the Court. Mark Tushnet, *Lawyer Thurgood Marshall*, 44 STAN. L. REV. 1277, 1277 (1992).

9. Professor Derrick Bell was the first black person to become a tenured professor at Harvard Law School. He is consistently noted as one of the founders of CRT and is widely recognized for his protest against, and refusal to return to, Harvard Law School during the 1980s because of its failure to hire a woman of color. This protest ultimately resulted in the termination of Professor Bell's job at Harvard Law School. Tracy E. Higgins, *Derrick Bell's Radical*

government's decision to accept an offer from aliens to trade all Blacks¹¹ in return for the following:

gold, to bail out the almost bankrupt federal, state, and local governments; special chemicals capable of unpolluting the environment, which was becoming daily more toxic, and restoring it to the pristine state it had been before Western explorers set foot on it; and a totally safe nuclear engine and fuel, to relieve the nation's all-but-depleted supply of fossil fuel.¹²

The Space Traders spoke to my experience as a black woman in the United States, and it helped fill a void of silence about race that seemed to be never-ending during my time in law school. The reading group's discussion of *The Space Traders* nourished my soul, and I began to think, "There just may be a place for me in the law yet." The CRT Reading Group and its members continued to nourish me throughout my time in law school. Eventually, the group spun into the formation of the *Michigan Journal of Race and Law*, which has since produced six law professors of color from its founding group, all engaged in scholarship about race and law.¹³

CRT continued to play a prominent role in my career after law school. As a law clerk, CRT sharpened my analysis, especially of employment-discrimination cases with concepts such as intersectionality¹⁴ and anti-

Realism, 61 *FORDHAM L. REV.* 683, 683 n.2 (1992); Gregory Scott Parks, *Toward a Critical Race Realism*, 17 *CORNELL J.L. & PUB. POL'Y* 683, 704 (2008); Adrien Katherine Wing, *Derrick Bell: Tolling in Protest*, 12 *HARV. BLACKLETTER L.J.* 161, 162 (1995).

10. DERRICK BELL, *The Space Traders*, in *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 158 (1992).

11. I capitalize the words *Black* and *White* when used as nouns to describe racialized groups. I do not capitalize these terms when used as adjectives. Also, I prefer to use the term *Blacks* to the term *African-Americans* because the term *Blacks* is more inclusive. Additionally, "[i]t is more convenient to invoke the terminological differentiation between black and white than say, between *African-American* and *Northern European-American*, which would be necessary to maintain semantic symmetry between the two typologies." Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 *U. ILL. L. REV.* 1043, 1044 n.4.

12. BELL, *supra* note 10, at 159–60.

13. These professors are (1) Jeannine Bell, Indiana University Maurer School of Law—Bloomington; (2) Guy-Uriel Charles, Duke University School of Law; (3) Matthew Fletcher, Michigan State University School of Law; (4) Luis Fuentes-Rohwer, Indiana University School of Law—Bloomington; (5) Emily Houh, University of Cincinnati College of Law; and (6) Angela Onwuachi-Willig, The University of Iowa College of Law.

14. As Professor Crenshaw once noted, "[i]ntersectionality generally functions as a metaphor for capturing the different dimensions of race and gender as they converge in the lives of women of color." Kimberlé Williams Crenshaw, Professor of Law, UCLA School of Law, Panel Presentation on Cultural Battery, in 25 *U. TOL. L. REV.* 891, 892 (1995); see also Devon W. Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 *YALE L.J.* 1757, 1775 (2003) (book review) (asserting that intersectionality is a "concept that conveys at least the following two ideas: (1) that our identities are intersectional—that is, raced, gendered, sexually oriented, etc.—and (2) that our vulnerability to discrimination is a function of our specific intersectional identities"). For a general discussion regarding the theory of intersectionality, see

essentialism,¹⁵ and it heightened my understanding of the role of stereotypes and unconscious bias in search-and-seizure and excessive-force cases. It also influenced my practice as a management-side, employment associate, where I learned much about the importance of stories, including those people on the “other side”—the plaintiffs—and where I learned even more about my own privilege as an attorney. Additionally, on a personal level, CRT provided a framework in which I could better understand the daily microaggressions¹⁶ that I experienced as the only racial minority (or one of very few) in corporate environments and the pressures of working one’s identity¹⁷ that come with those environments.

Just as *The Space Traders* and other CRT articles had filled a hole in the law for me as a law student and later as an attorney, the participants in the first CRT workshop in 1989 filled a void of silence about race in legal academia by creating a space where scholars could give voice to, read, and engage critical scholarship that touched upon the meaning of race, racism, and the law to people of color in the United States and the world. Not only did these pioneers give voice to the voiceless, but they did so by making discursive moves, such as elevating and explicating narrative as a tool for justice and undertaking theory production and engagement. In many ways, to use a phrase from the late writer and activist Audre Lorde, these CRT scholars dismantled the master’s house with the use of his own tools.¹⁸

generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (analyzing how separate racial- and gender-subordination theories could not fully address discrimination against black women).

15. Anti-essentialism fights against the notion that there is “a unitary, ‘essential’ . . . experience [that] can be isolated and described independently of [gender,] race, class, sexual orientation, and other realities of experience” for any identity group, such as women. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990); see also Emily M.S. Houh, *Toward Praxis*, 39 U.C. DAVIS L. REV. 905, 924–28 (2006) (defining both intersectionality and anti-essentialism).

16. See Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559, 1560 (1989) (defining microaggressions as “incessant, often gratuitous and subtle offenses”).

17. Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1262–63 (2000) (describing how women and people of color attempt to alter their racial identities in order to prevent discrimination and preempt stereotyping in the workplace). Their claim is that “the social meaning of, for example, a black person’s racial identity is a function of the way in which that person performs (presents) her blackness” such that Blacks can choose to accept or reject societal expectations of behaving “conventionally”—that is, in accordance with predominant stereotypes. Carbado & Gulati, *supra* note 14, at 1771–72.

18. AUDRE LORDE, *The Master’s Tools Will Never Dismantle the Master’s House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 110, 112 (1984) (attacking the underlying racism in the feminist movement, much like CRT attacks the underlying racism in legal scholarship, legal academia, and law itself).

Although the research and writing of these scholars first entered legal and academic discourse in the areas of civil-rights and constitutional law,¹⁹ the work of CRT's pioneers forever changed all areas of legal scholarship, from education to criminal procedure to immigration to international human rights to tax law. Indeed, CRT gave birth to other progressive, anti-subordination movements, such as Latina/o Critical Theory.²⁰ Over time, the contributions of these pioneers and other CRT scholars became mainstays in legal literature. For example, CRT has influenced my field of employment discrimination enormously. Professor Crenshaw's theory of intersectionality has provided the foundation for understanding discrimination at the intersections of identity categories, such as race and sex.²¹ And, Professor Charles Lawrence's work on unconscious bias has helped us develop a deeper understanding of disparate-impact theory as a tool of anti-discrimination law.²²

For more than twenty years, the work of CRT scholars has offered indispensable guidance to any person who has sought to use his or her scholarly voice to fight the silence about the interaction of race, racism, and the law. The importance and need for voices in CRT persists even after the election of the nation's first black president, Barack Obama. As we enter a new era—what some have identified as a post-racial era, where silence about race is being promoted as the only appropriate response to injustice, we need to hear these voices again and anew, and we need to return to CRT origin stories and examine where CRT is headed as a movement, and as a tool, for justice. The articles in this issue provide a start for us in performing these important tasks.

For example, in his article *Liberal McCarthyism and the Origins of Critical Race Theory*,²³ Professor Richard Delgado explores competing stories of CRT's origins. In particular, he focuses on what he refers to as the Harvard story, the Berkeley story, and the Los Angeles story. Additionally, he highlights the underexplored story of a series of tenure denials of radical, mostly white Marxist and socialist professors in the late 1960s and early 1970s, arguing:

[that this] wave of what [he] call[s] liberal McCarthyism occurred because America's guardians foresaw the arrival of growing numbers of black and Latino applicants knocking at the doors of

19. See Crenshaw, *supra* note 1, at 1344–61 (describing the academic focus of early CRT scholars).

20. See generally Berta Hernandez-Truyol, Angela Harris, & Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169 (2006) (detailing the creation and development of LatCrit theory).

21. See *supra* note 14 and accompanying text.

22. See *supra* note 5 and accompanying text.

23. Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505 (2009).

America's leading colleges and universities. . . . [applicants who were] poised to become the nation's first large generation of black and brown schoolteachers, social workers, mayors, college professors, lawyers, executives, and doctors.²⁴

Delgado then draws the link between these tenure removals and the rise of Critical Legal Studies and CRT, adding yet another origin story to CRT's history. As Delgado states, this "examination of our beginnings and the stories we tell about them . . . yield insight into our current condition as well as the forces that may shape us in the years ahead."²⁵

Then, as if hearing the call from Delgado, Professors Alfieri, Johnson, and Cho all provide their insights into the current condition of race and racism in our society and what lay ahead for us as lawyers involved in the anti-subordination project. For instance, in his article *Jim Crow Ethics and the Defense of the Jena Six*,²⁶ Professor Alfieri raises important points about how CRT can be utilized as a tool for justice. In so doing, he applies central tenets about identity performance and the social construction of certain identities to highlight troubling questions about the use and function of race within the professional norms, practice traditions, and ethics rules of the criminal-justice system. To do so, he situates his analyses within the context of the 2006 prosecution and defense of the Jena Six in LaSalle Parish, Louisiana and examines the norms of practice under de jure and de facto conditions of racial segregation, a set of norms that he calls "Jim Crow legal ethics."

Professor Johnson also heeds Delgado's call to respond to contemporary and future issues in CRT. In his article *The Re-Emergence of Race as a Biological Category: The Societal Implications—Reaffirmation of Race*,²⁷ Johnson explores the comeback of medical researchers and practitioners' study of race as a purely biological concept—which stands in stark contrast to CRT and other social-science scholars' understanding of race as a social construct. Johnson challenges us to question the propriety of such a return to the study of race as purely biological, and he argues that "the ideal and practical resolution to this debate is to focus on ethnicity, rather than race, in biomedical research."²⁸

Finally, in her article *Post-Racialism*,²⁹ Professor Sumi Cho warns against the dangers posed to movements for racial equality by a growing conversation and invocation of "post-racialism." She describes post-racialism

24. *Id.* at 1508–09.

25. *Id.* at 1506.

26. Anthony Alfieri, *Jim Crow Ethics and the Defense of the Jena Six*, 94 IOWA L. REV. 1651 (2009).

27. Alex M. Johnson, Jr., *The Re-Emergence of Race as a Biological Category: The Societal Implications—Reaffirmation of Race*, 94 IOWA L. REV. 1547 (2009).

28. *Id.* at 1556.

29. Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589 (2009).

as “the ‘race card’ of whites, deployed with obligatory reference to Barack Obama’s presidency in an effort to trump the moral high ground held by survivors of racial discrimination in a country with centuries of racial injustice and inequality.”³⁰ With an insightful analysis, Cho speaks to the next generation of CRT scholars, noting the different challenges that they may face in their efforts to tear down racial hierarchies and asserting what today’s “post-racial” pushes for equality will require from them. She writes:

Heightening the contradictions between the rhetoric and reality of rights and demanding redistribution and structural transformation has been central to Critical Race Theory’s first two decades. . . . Activist-scholars committed to Critical Race Theory in the future must persevere and thrive, by grounding their work in an unflinching, rigorous, and always-deepening racial critique that situates racial oppression and resistance thereto within the context of material conditions and allied social forces. . . .

The next generation of race crits would also do well to see the transformative critical-race project through Wallerstein’s imperative of building social movements among the understrata of those historically left out. Although this imperative may cause some initial discomfort among professionals in academe; I have no doubt, based on Critical Race Theory’s track record, that many will respond sincerely and effectively to reject the “politics of respectability” in legal academic circles that dictate an illusory divide or distancing between scholar and community, and to work towards empowering communities that have yet to embrace the “Audacity of Hope.”³¹

Really, what the CRT Speaker Series and CRT 20 itself taught us—the generation after its founders and those thereafter—is that we are both the children of CRT and its progenitors. The fact is that, while the founders’ movement shaped us as scholars, teachers, and activists, we now are helping to shape the movement by continuing to produce work that challenges the racial status quo. The CRT Speaker Series and the CRT 20 conference/workshop are proof of the constitutive relationship between the original organizers and us. At The University of Iowa College of Law, we celebrated what the founding participants in the CRT movement gave us, but we also evinced our role in continuing the project. By doing so, perhaps, we are not only solving real problems but helping to sustain the next generation of CRT scholars.

Now, let’s get back to charting the future.

30. *Id.* at 1593.

31. *Id.* at 1648–49.