INTRODUCTION

THIS volume offers a representative, though by no means exhaustive, compilation of the growing body of legal scholarship known as Critical Race Theory (CRT). As we conceive it, Critical Race Theory embraces a movement of left scholars, most of them scholars of color, situated in law schools, whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole. In assembling and editing these essays, we have tried both to provide a sense of the intellectual genesis of this project and to map the main methodological directions that Critical Race Theory has taken since its inception. Toward these ends, the essays in the first few parts are arranged roughly in the chronological order of their publication. The remaining parts, however, are devoted to the most important methodological strands of Critical Race Theory today. We have chosen to present the substance of the original essays rather than small portions of a greater number of works, in the interest of providing the reader with texts that retain as much of their complexity, context, and nuance as possible.

As these writings demonstrate, there is no canonical set of doctrines or methodologies to which we all subscribe. Although Critical Race scholarship differs in object, argument, accent, and emphasis, it is nevertheless unified by two common interests. The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure and professed ideals such as "the rule of law" and "equal protection." The second is a desire not merely to understand the vexed bond between law and racial power but to *change* it. The essays gathered here thus share an ethical commitment to human liberation—even if we reject conventional notions of what such a conception means, and though we often disagree, even among ourselves, over its specific direction.

This ethical aspiration finds its most obvious concrete expression in the pursuit of engaged, even adversarial, scholarship. The writings in this collaboration may be read as contributions to what Edward Said has called "antithetical knowledge," the development of counter-accounts of social reality by subversive and subaltern elements of the reigning order. Critical Race Theory—like the Critical Legal Studies movement with which we are often allied—rejects the prevailing orthodoxy that scholarship should be or could be "neutral" and "objective." We believe that legal scholarship about race in America can never be written from a distance of detachment or with an attitude of objectivity. To the extent that racial power is exercised legally and ideologically, legal scholarship about race is an important site for the construction of that power, and thus is always a factor, if "only" ideologically, in the economy of racial power itself. To use a phrase from the existentialist tradition, there is "no exit"—no scholarly perch outside the social dynamics of racial power from which merely to observe and analyze. Scholarship—the formal production, identification, and organization of what will be called "knowledge"—is inevitably political. Each of the texts in this volume seeks in its own way not simply to explicate but also to intervene in the ideological contestation of race in America, and to create new, oppositionist accounts of race.

The aspect of our work which most markedly distinguishes it from conventional liberal and conservative legal scholarship about race and inequality is a deep dissatisfaction with traditional civil rights discourse. As several of the authors in this collection demonstrate, the reigning contemporary American ideologies about race were built in the sixties and seventies around an implicit social compact. This compact held that racial power and racial justice would be understood in very particular ways. Racial justice was embraced in the American mainstream in terms that excluded radical or fundamental challenges to status quo institutional practices in American society by treating the exercise of racial power as rare and aberrational rather than as systemic and ingrained. The construction of "racism" from what Alan Freeman terms the "perpetrator perspective" restrictively conceived racism as an intentional, albeit irrational, deviation by a conscious wrongdoer from otherwise neutral, rational, and just ways of distributing jobs, power, prestige, and wealth. The adoption of this perspective allowed a broad cultural mainstream both explicitly to acknowledge the fact of racism and, simultaneously, to insist on its irregular occurrence and limited significance. As Freeman concludes, liberal race reform thus served to legitimize the basic myths of American meritocracy.

In Gary Peller's depiction, this mainstream civil rights discourse on "race relations" was constructed in this way partly as a defense against the more radical ideologies of racial liberation presented by the Black Nationalist and Black Consciousness movements of the sixties and early seventies, and their less visible but intellectually subversive scholarly presentations by people such as James Turner, now a teacher in black studies at Cornell. In the construction of "racism" as the irrational and backward bias of believing that someone's race is important, the American cultural mainstream neatly linked the black left to the white racist right: according to this quickly coalesced consensus, because race-consciousness characterized both white supremacists and black nationalists, it followed that both were racists. The resulting "center" of cultural common sense thus rested on the exclusion of virtually the entire domain of progressive thinking about race within colored communities. With its explicit embrace of race-consciousness, Critical Race Theory aims to reexamine the terms by which race and racism have been negotiated in American consciousness, and to recover and revitalize the radical tradition of race-consciousness among African-Americans and other peoples of color—a tradition that was discarded when integration, assimilation and the ideal of color-blindness became the official norms of racial enlightenment.

The image of a "traditional civil rights discourse" refers to the constellation of ideas about racial power and social transformation that were constructed partly by, and partly as a defense against, the mass mobilization of social energy and popular imagination in the civil rights movements of the late fifties and sixties. To those who participated in the civil rights movements firsthand—say, as part of the street and body politics engaged in by Reverend Martin Luther King, Jr.'s cadres in town after town across the South—the fact that they were part of a deeply subversive movement of mass resistance and social transformation was obvious. Our opposition to traditional civil rights discourse is neither a criticism of the civil rights movement nor an attempt to diminish its significance. On the contrary, as Anthony Cook's radical reading of King's theology and social theory makes explicit, we draw much of our inspiration and sense of direction from that courageous, brilliantly conceived, spiritually inspired, and ultimately transformative mass action.

Of course, colored people made important social gains through civil rights reform, as did American society generally: in fact, but for the civil rights movements' victories against racial exclusion, this volume and the Critical Race Theory movement generally could not have been taught at mainstream law schools. The law's incorporation of what several authors here call "formal equality" (the prohibition against explicit racial exclusion, like "whites only" signs) marks a decidedly progressive moment in U.S. political and social history. However, the fact

that civil rights advocates met with some success in the nation's courts and legislatures ought not obscure the central role the American legal order played in the deradicalization of racial liberation movements. Along with the suppression of explicit white racism (the widely celebrated aim of civil rights reform), the dominant legal conception of racism as a discrete and identifiable act of "prejudice based on skin color" placed virtually the entire range of everyday social practices in America—social practices developed and maintained throughout the period of formal American apartheid—beyond the scope of critical examination or legal remediation.

The affirmative action debate, which is discussed in several essays in this volume, provides a vivid example of what we mean. From its inception, mainstream legal thinking in the U.S. has been characterized by a curiously constricted understanding of race and power. Within this cramped conception of racial domination, the evil of racism exists when—and only when—one can point to specific, discrete acts of racial discrimination, which is in turn narrowly defined as decision-making based on the irrational and irrelevant attribute of race. Given this essentially negative, indeed, dismissive view of racial identity and its social meanings, it was not surprising that mainstream legal thought came to embrace the ideal of "color-blindness" as the dominant moral compass of social enlightenment about race. Mainstream legal argument regarding "race relations" typically defended its position by appropriating Dr. King's injunction that a person should be judged "by the content of his character rather than the color of his skin" and wedding it to the regnant ideologies of equal opportunity and American meritocracy. Faced with this state of affairs, liberal proponents of affirmative action in legal and policy arenas—who had just successfully won the formal adoption of basic antidiscrimination norms—soon found themselves in a completely defensive ideological posture. Affirmative action requires the use of race as a socially significant category of perception and representation, but the deepest elements of mainstream civil rights ideology had come to identify such race-consciousness as racism itself. Indeed, the problem here was not simply political and strategic: the predominant legal representation of racism as the mere recognition of race matched the "personal" views of many liberals themselves, creating for them a contradiction in their hearts as well as their words.

Liberal antidiscrimination proponents proposed various ways to reconcile this contradiction: they characterized affirmative action as a merely "exceptional" remedy for past injustice, a temporary tool to be used only until equal opportunity is achieved or a default mechanism for reaching discrimination that could not be proved directly. Separate but related liberal defenses of affirmative action hold that its beneficiaries have suffered from "deprived" backgrounds that require limited special consideration in the otherwise fully rational and unbiased competition for social goods, or that affirmative action promotes social "diversity," a value which in the liberal vision is independent of, perhaps even at odds with, equality of opportunity or meritocracy.

The poverty of the liberal imagination is belied by the very fact that liberal theories of affirmative action are framed in such defensive terms, and so clearly shaped by the felt need to justify this perceived departure from purportedly objective findings of "merit" (or the lack thereof). These apologetic strategies testify to the deeper ways civil rights reformism has helped to legitimize the very social practices—in employment offices and admissions departments—that were originally targeted for reform. By constructing "discrimination" as a deviation from otherwise legitimate selection processes, liberal race rhetoric affirms the underlying ideology of just desserts, even as it reluctantly tolerates limited exceptions to meritocratic mythology. Despite their disagreements about affirmative action, liberals and conservatives who embrace dominant civil rights discourse treat the category of merit itself as neutral and impersonal, outside of social power and unconnected to systems of racial privilege. Rather than engaging in a broad-scale inquiry into why jobs, wealth, education, and power are distributed as they are, mainstream civil rights discourse

suggests that once the irrational biases of race-consciousness are eradicated, everyone will be treated fairly, as equal competitors in a regime of equal opportunity.

What we find most amazing about this ideological structure in retrospect is how very little actual social change was imagined to be required by "the civil rights revolution." One might have expected a huge controversy over the dramatic social transformation necessary to eradicate the regime of American apartheid. By and large, however, the very same whites who administered explicit policies of segregation and racial domination kept their jobs as decision makers in employment offices of companies, admissions offices of schools, lending offices of banks, and so on. In institution after institution, progressive reformers found themselves struggling over the implementation of integrationist policy with the former administrators of segregation who soon regrouped as an old guard "concerned" over the deterioration of "standards."

The continuity of institutional authority between the segregationist and civil rights regimes is only part of the story. Even more dramatic, the same criteria for defining "qualifications" and "merit" used during the period of explicit racial exclusion continued to be used, so long as they were not directly "racial." Racism was identified only with the outright formal exclusion of people of color; it was simply assumed that the whole rest of the culture, and the de facto segregation of schools, work places, and neighborhoods, would remain the same. The sheer taken-for-grantedness of this way of thinking would pose a formidable and practically insurmountable obstacle. Having rejected race-consciousness in toto, there was no conceptual basis from which to identify the cultural and ethnic character of mainstream American institutions; they were thus deemed to be racially and culturally neutral. As a consequence, the deeply transformative potential of the civil rights movement's interrogation of racial power was successfully aborted as a piece of mainstream American ideology.

Within the predominantly white law school culture where most of the authors represented in this volume spend professional time, the law's "embrace" of civil rights in the Warren Court era is proclaimed as the very hallmark of justice under the rule of law. In our view, the "legislation" of the civil rights movement and its "integration" into the mainstream commonsense assumptions in the late sixties and early seventies were premised on a tragically narrow and conservative picture of the goals of racial justice and the domains of racial power. In the balance of this introduction, we describe as matters both of institutional politics and intellectual inquiry how we have come to these kinds of conclusions.

In his essay on the Angelo Herndon case, Kendall Thomas describes and pursues a central project of Critical Race scholarship: the use of critical historical method to show that the contemporary structure of civil rights rhetoric is not the natural or inevitable meaning of racial justice but, instead, a collection of strategies and discourses born of and deployed in particular political, cultural, and institutional conflicts and negotiations. Our goal here is similar. We hope to situate the strategies and discourses of Critical Race Theory within the broader intellectual and social currents from which we write, as well as within the specific work place and institutional positions where we are located and from which we struggle.

The emergence of Critical Race Theory in the eighties, we believe, marks an important point in the history of racial politics in the legal academy and, we hope, in the broader conversation about race and racism in the nation as a whole. As we experienced it, mostly as law students or beginning law professors, the boundaries of "acceptable" race discourse had become suddenly narrowed, in the years from the late sixties to the late seventies and early eighties, both in legal institutions and in American culture more generally. In the law schools we attended, there were definite liberal and conservative camps of scholars and students. While the debate in which these camps engaged were clearly important—for example, how the law should define and identify illegal racial

power—the reigning discourse seemed, at least to us, ideologically impoverished and technocratic.

In constitutional law, for example, it was well settled that government-sanctioned racial discrimination was prohibited, and that legally enforced segregation constituted such discrimination. That victory was secured in *Brown v. Board of Education* and its progeny. In the language of the Fourteenth Amendment, race is a "suspect classification" which demands judicial strict scrutiny. "Race relations" thus represent an exception to the general deference that mainstream constitutional theory accords democratically elected institutions. Racial classifications violate the equal protection clause unless they both serve a compelling governmental interest and further, are no broader than necessary to achieve that goal. Within the conceptual boundaries of these legal doctrines, mainstream scholars debated whether discrimination should be defined only as intentional government action . . . or whether the tort-like "de facto" test should be used when government actions had predictable, racially skewed results . . . or whether the racial categories implicit in affirmative action policy should be legally equivalent to those used to burden people of color and therefore also be subject to strict scrutiny . . . and then whether remedying past social discrimination was a sufficiently compelling and determinate goal to survive strict scrutiny . . . and so on.

In all these debates we identified, of course, with the liberals against the intent requirement established in *Washington v. Davis,* the affirmative action limitations of *Bakke* (and later *Croson*), the curtailment of the "state action" doctrine resulting in the limitation of sites where constitutional antidiscrimination norms would apply, and so on. Yet the whole discourse seemed to assume away the fundamental problem of racial subordination whose examination was at the center of the work so many of us had spent our college years pursuing in Afro-American studies departments, community mobilizations, student activism, and the like.

The fact that affirmative action was seen as such a "dilemma" or a "necessary evil" was one symptom of the ultimately conservative character of even "liberal" mainstream race discourse. More generally, though, liberals and conservatives seemed to see the issues of race and law from within the same structure of analysis—namely, a policy that legal rationality could identify and eradicate the biases of race-consciousness in social decision-making. Liberals and conservatives as a general matter differed over the degree to which racial bias was a fact of American life: liberals argued that bias was widespread where conservatives insisted it was not; liberals supported a disparate effects test for identifying discrimination, where conservatives advocated a more restricted intent requirement; liberals wanted an expanded state action requirement, whereas conservatives wanted a narrow one. The respective visions of the two factions differed only in scope: they defined and constructed "racism" the same way, as the opposite of color-blindness.

In any event, however compelling the liberal vision of achieving racial justice through legal reform overseen by a sympathetic judiciary may have been in the sixties and early seventies, the breakdown of the national consensus for the use of law as an instrument for racial redistribution rendered the vision far less capable of appearing even merely pragmatic. By the late seventies, traditional civil rights lawyers found themselves fighting, and losing, rearguard attacks on the limited victories they had only just achieved in the prior decade, particularly with respect to affirmative action and legal requirements for the kinds of evidence required to prove illicit discrimination. An increasingly conservative judiciary made it clear that the age of ever expanding progressive law reform was over.

At the same time that these events were unfolding, a predominantly white left emerged on the law school scene in the late seventies, a development which played a central role in the genesis of Critical Race Theory. Organized by a collection of neo-Marxist intellectuals, former New Left activists, ex-counter-culturalists, and other varieties of oppositionists in law schools, the Conference on Critical Legal Studies estab-

lished itself as a network of openly leftist law teachers, students, and practitioners committed to exposing and challenging the ways American law served to legitimize an oppressive social order. Like the later experience of Critical Race writers vis-à-vis race scholarship, "crits" found themselves frustrated with the presuppositions of the conventional scholarly legal discourse: they opposed not only conservative legal work but also the dominant liberal varieties. Crits contended that liberal and conservative legal scholarship operated in the narrow ideological channel within which law was understood as qualitatively different from politics. The faith of liberal lawyers in the gradual reform of American law through the victory of the superior rationality of progressive ideas depended on a belief in the central ideological myth of the law/politics distinction, namely, that legal institutions employ a rational, apolitical, and neutral discourse with which to mediate the exercise of social power. This, in essence, is the role of law as understood by liberal political theory. Yet politics was embedded in the very doctrinal categories with which law organized and represented social reality. Thus the deeply political character of law was obscured in one way by the obsession of mainstream legal scholarship with technical discussions about standing, jurisdiction and procedure; and the political character of judicial decision-making was denied in another way through the reigning assumptions that legal decision-making was—or could be—determined by preexisting legal rules, standards, and policies, all of which were applied according to professional craft standards encapsulated in the idea of "reasoned elaboration." Law was, in the conventional wisdom, distinguished from politics because politics was open-ended, subjective, discretionary, and ideological, whereas law was determinate, objective, bounded, and neutral.

This conception of law as rational, apolitical, and technical operated as an institutional regulative principle, defining what was legitimate and illegitimate to pursue in legal scholarship, and symbolically defining the professional, businesslike culture of day-to-day life in mainstream law schools. This generally centrist legal culture characterized the entire post-war period in legal education, with virtually no organized dissent. Its intellectual and ideological premises had not been seriously challenged since the Legal Realist movement of the twenties and thirties—a body of scholarship that mainstream scholars ritually honored for the critique of the "formalism" of turn-of-the-century legal discourse but marginalized as having "gone too far" in its critique of the very possibility of a rule of law. Writing during the so-called liberty of contract period (characterized by the Supreme Court's invalidation of labor reform legislation on the grounds that it violated the "liberty" of workers and owners to contract with each other over terms of employment) the legal realists set out to show that the purportedly neutral and objective legal interpretation of the period was really based on politics, on what Oliver Wendell Holmes called the "hidden and often inarticulate judgments of social policy."

The crits unearthed much of the Legal Realist work that mainstream legal scholars had ignored for decades, and they found the intellectual and theoretical basis for launching a full-scale critique of the role of law in helping to rationalize an unjust social order. While the Realist critique of American law's pretensions to neutrality and rationality was geared to ward the right-wing libertarianism of an "Old Order" of jurists, crits redirected it at the depoliticized and technocratic assumptions of legal education and scholarship in the seventies. Moreover, in the sixties tradition from which many of them had come, they extended the intellectual and ideological conflict they engendered to the law school culture to which it was linked.

By the late seventies, Critical Legal Studies existed in a swirl of formative energy, cultural insurgency, and organizing momentum: It had established itself as a politically, philosophically, and methodologically eclectic but intellectually sophisticated and ideologically left movement in legal academia, and its conferences had begun to attract hundreds of progressive law teachers, students, and lawyers; even mainstream law reviews were featuring critical work that reinterpreted whole doctrinal areas of law from an explicitly ideological motivation. Moreover, in

viewing law schools as work-places, and thus as organizing sites for political resistance, "CLSers" actively recruited students and left-leaning law teachers from around the country to engage in the construction of left legal scholarship and law school transformation. CLS quickly became the organizing hub for a huge burst of left legal scholarly production and for various oppositional political challenges in law school institutional life. Several left scholars of color identified with the movement, and, most important for the eventual genesis of Critical Race Theory a few years later, CLS succeeded in at least one aspect of its frontal assault on the depoliticized character of legal education. By the late seventies, explicitly right-wing legal scholarship had developed its own critique of the conventional assumptions, just as the national mood turned to the right with the election of Ronald Reagan. The law school as an institution was, by then, an obvious site for ideological contestation as the apolitical pretensions of the "nonideological" center began to disintegrate.

Critical Race Theory emerged in the interstices of this political and institutional dynamic. Critical Race Theory thus represents an attempt to inhabit and expand the space between two very different intellectual and ideological formations. Critical Race Theory sought to stage a simultaneous encounter with the exhausted vision of reformist civil rights scholarship, on the one hand, and the emergent critique of left legal scholarship on the other. Critical Race Theory's engagement with the discourse of civil rights reform stemmed directly from our lived experience as students and teachers in the nation's law schools. We both saw and suffered the concrete consequences that followed from liberal legal thinkers' failure to address the constrictive role that racial ideology plays in the composition and culture of American institutions, including the American law school. Our engagement with progressive-left legal academics stemmed from our sense that their focus on legal ideology, legal scholarship and the politics of the American law school provided a language and a practice for viewing the institutions in which we studied and worked both as sites of and targets for our developing critique of law, racism, and social power.

In identifying the liberal civil rights tradition and the Critical Legal Studies movement as key factors in the emergence of Critical Race Theory, we do not mean to offer an oversimplified genealogy in which Critical Race Theory appears as a simple hybrid of the two. We view liberal civil rights scholarship and the work of the critical legal theorists not so much as rudimentary components of Critical Race Theory, but as elements in the conditions of its possibility. In short, we intend to evoke a particular atmosphere in which progressive scholars of color struggled to piece together an intellectual identity and a political practice that would take the form both of a left intervention into race discourse and a race intervention into left discourse. To better capture the dynamics of these trajectories, we now turn to two key institutional events in the development of Critical Race Theory as a movement. The first is the student protest, boycott, and organization of an alternative course on race and law at Harvard Law School in 1981—an event that highlights the significance of Derrick Bell and the Critical Legal Studies movement to the ultimate development of Critical Race Theory, and symbolizes Critical Race Theory's oppositional posture vis-à-vis the liberal mainstream. The second is the 1987 Critical Legal Studies National Conference on silence and race, which marked the genesis of an intellectually distinctive critical account of race on terms set forth by race-conscious scholars of color, and the terms of contestation and coalition with CLS.

As Richard Delgado states in "The Imperial Scholar," quite bluntly, the study of civil rights and antidiscrimination law in the mainstream law schools in which we found ourselves in the eighties was dominated by a group consisting almost entirely of white male constitutional law professors. Derrick Bell was one of the few exceptions; he went to Harvard after a distinguished record as a litigator in the civil rights movement, becoming one of only two African-American professors on the large Harvard faculty. In his course and book *Race, and Racism*

and American Law, Bell developed and taught legal doctrine from a race-conscious viewpoint. Implicitly repudiating the reigning idea of the color-blindness of law, pedagogy, and scholarship, he used racial politics rather than the formal structure of legal doctrine as the organizing concept for scholarly study.

It is important to understand the centrality of Bell's coursebook and his opposition to the traditional liberal approach to racism for the eventual development of the Critical Race Theory movement. A symbol of his influence is his inclusion as the first page of his book of a photograph of Thomas Smith and John Carlos accepting their Olympic trophies at the 1968 Mexico City Summer Games. In the foreground are balding white men in suits, apparently Olympic officials of some kind; rising behind them are Smith and Carlos, standing on the raised platforms in sleek warmup suits, at the height of their competitive achievement. In one hand, the victorious athletes hold their gold and silver medals; Smith and Carlos defiantly hold their other hand over their heads in the clinched fist of the Black Power salute. This symbolic action, staged during the playing of the National Anthem, spawned an enormous controversy in the United States; patriots charged that Smith and Carlos embarrassed the country and privileged their racial identity over their more important identity as Americans.

To those of us who were then law students and beginning law teachers, Bell's inclusion of the Smith-Carlos photograph as a visual introduction to his law school casebook suggested a link between his work and the Black Power movements that most of us "really" identified with, whose political insights and aspirations went far beyond what could be articulated in the reigning language of the legal profession and the legal studies we were pursuing. Although we could not then fully articulate the nature and basis of this connection, we were able to recognize that Derrick Bell's position within legal study bore a family resemblance to the oppositional stance that Smith and Carlos had taken in Mexico City. Just as Carlos and Smith participated on behalf of their nation in the Olympic competition, Bell had chosen to enter the arena of American legal scholarship instead of eschewing it and taking the path of total separation. Similarly, just as Carlos and Smith refused to allow American nationalism to subsume their racial identity, Bell insisted on placing race at the center of his intellectual inquiry rather than marginalizing it as a subclassification under the formal rubric of this or that legal doctrine. In a subtle way, Bell's position within the legal academy—an arena that defined itself within the conventional legal discourse as neutral to race—was akin to putting up his fist in the black power salute.

As his articles in the first part of this volume demonstrate, Bell provided some of the earliest theoretical alternatives to the dominant civil rights vision we have described. In the face of the hegemony of racial integration as the ideal of reform in the seventies, he argued in "Serving Two Masters," the essay that opens this collection, that the exclusive focus on the goal of school integration responded to the ideals of elite liberal public interest lawyers rather than to the actual interests of black communities and children. In "The Interest-Convergence Dilemma," Bell sketched a full-scale structural theory to account for the ebb and flow of civil rights reform in America, according to the political machinations of whites themselves.

In 1980, Bell left Harvard to become dean of the University of Oregon Law School and one of the first African-Americans to head a mainstream American law school. Student activists, particularly students of color, demanded that Harvard hire a teacher of color to replace him and to teach his courses in constitutional law and minority issues. The liberal white Harvard administration responded to student protests, demonstrations, rallies and sit-ins—including a takeover of the Dean's office—by asserting that there were no qualified black scholars who merited Harvard's interest. Harvard's response was structured around two points produced from within 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 associ-

ated color-blindness with intellectual 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. Instead, Jack Greenberg and Julius Chambers, both important and distinguished civil rights litigators, were hired to teach a three-week mini-course on civil rights litigation.

It was in the midst of this kind of institutional struggle, played out in one form or another at mainstream law schools around the country, that many of us now writing in the Critical Race Theory genre began to elaborate what we took to be the limitations of traditional race analysis and argument. After all, in a context such as Harvard, administrators saw themselves as racially enlightened: they were liberals who were against racial discrimination—indeed, Harvard wanted to honor a heroic litigator of the school desegregation era with a visiting professorship. Clearly, the cool, technocratic and business-like culture of mainstream law schools was hostile at all points to raw "prejudice"—these were not institutions in which a hardcore, "Bull Conner" type racist would receive a warm welcome. Although those of us who were agitating for hiring teachers of color knew we didn't accept the kinds of justifications the Harvard administrators offered, we also knew that we lacked an adequate critical vocabulary for articulating exactly what we found wrong in their arguments. It was out of this intellectual void that the impetus for a new conceptual approach to race and law was based. Our critique of ideas like "color-blindness," "formal legal equality," and "integrationism" are linked to their institutional manifestations as a rhetoric of power in the schools we attended and the work-places we now occupy.

In the local Harvard confrontation, student organizers decided to boycott the mini-course offered by the administration and organized instead "The Alternative Course," a student-led continuation of Bell's course which focused on American law through the prism of race. Taught by scholars of color from other schools who were each asked to speak about topics loosely organized to trace the chapters of Bell's *Race, Racism and American Law* book, the course simultaneously provided the means to develop a framework to understand law and racial power and to contest Harvard's deployment of meritocratic mythology as an instance of that very power.

The Alternative Course was in many ways the first institutionalized expression of Critical Race Theory. With the aid of outside funding and sympathetic Harvard teachers (many of them white crits who provided encouragement, strategic advice, and independent study credit to enable students to attend the classes) the course brought together a critical mass of scholars and students, and focused on the need to develop an alternative account of racial power and its relation to law and antidiscrimination reform. Among the guest speakers were Charles Lawrence, Linda Greene, Neil Gotanda, and Richard Delgado, all of whom were already in law teaching. Mari Matsuda, then a graduate law student, was a participant in the Alternative Course, and Kimberlé Crenshaw one of its main organizers.

The Alternative Course is a useful point to mark the genesis of Critical Race Theory for many reasons. First, it was one of the earliest attempts to bring scholars of color together to address the law's treatment of race from a self-consciously critical perspective. There had been some race-conscious organizing in law schools in the preceding years. For example, within the Association of American Law Schools, (AALS) the professional association of law teachers, a minority section had been established which Ralph Smith of the University of Pennsylvania and Denise Carty-Bennia of Northeastern University used as a vehicle for intellectual development. However, the AALS group neither provided a basis for sustained dialogue, nor openly identified itself within the profession as intellectually oppositional and politically left-progressive. Recognizing these inherent institutional limitations, legal academics of color created an informal network of support for law students

and teachers of color, whose existence was enormously important in developing a critical mass of law teachers of color. These were efforts, though, that carried no direct implications for scholarship and theory.

Second, the Alternative Course exemplified another important feature of the Critical Race Theory movement, namely, the view—shared with the Critical Legal Studies movement—that it is politically meaningful to contest the terrain and terms of dominant legal discourse. In one sense, the importance of mainstream law school discourse to Critical Race Theorists flows from the view that power is implicated in, say, the privileging of certain topics and viewpoints as worthy of being curricular entries at mainstream law schools. The idea here, in essence, is that knowledge and politics are inevitably intertwined. As an influential site for indoctrination and propagation, the ideology of law schools helps in turn to shape and give substance to the broader legal and social ideologies about race and legitimacy. In another sense, the focus on the law school and legal scholarship as a terrain worth contesting is based on a view of law schools in left terms as work-places in which we find ourselves as part of a productive enterprise, the "production of knowledge." This perspective helps to explain an important difference with earlier conceptions of race reform, which looked to law schools and other legal institutions as places to gather tools to deploy in political struggles that occurred "out there" in the South, the ghetto, or some other place besides law schools or courtrooms themselves. Against this view, we take racial power to be at stake across the social plane—not merely in the places where people of color are concentrated but also in the institutions where their position is normalized and given legitimation. The Alternative Course reflected—as well as helped to create—the sense that it was meaningful to build an oppositional community of left scholars of color within the mainstream legal academy.

Finally, the Alternative Course embodied one of the key markers of Critical Race Theory—the way in which our intellectual trajectories are rooted in a dissatisfaction with and opposition to liberal mainstream discourses about race such as those presented by the Harvard administration.

We turn now to the Critical Legal Studies conferences of the mid-eighties and the general engagement with the white left in and outside of the legal academy both of which were crucial in the development of the Critical Race Theory project. If the Alternative Course symbolizes the trajectory of Critical Race Theory as a left intervention in conventional race discourse, then the Critical Legal Studies Conferences during the mid-eighties can be equally useful in situating Critical Race Theory as a race-conscious intervention on the left.

At its inception in the late 70s, Critical Legal Studies (CLS) was basically a white and largely male academic organization. By the mid-eighties, there was a small cadre of scholars of color who frequented CLS conferences and summer camps. Most were generally conversant with Critical Legal Theory and sympathetic to the progressive sensibilities of Critical Legal Studies as a whole. Unlike the law school mainstream, this cadre was far from deterred by CLS critique of liberal legalism. While many in the legal community were, to put it mildly, deeply disturbed by the CLS assault against such ideological mainstays as the rule of the law, to scholars of color who drew on a history of colored communities' struggle against formal and institutional racism, the crits' contention that law was neither apolitical, neutral, nor determinate hardly seemed controversial. Indeed, we believed that this critical perspective formed the basic building blocks of any serious attempt to understand the relationship between law and white supremacy. However, while the emerging "race crits" shared this starting position with CLS, significant differences between us became increasingly apparent during a series of conferences in the mid-eighties.

Our discussions during the conferences revealed that while we shared with crits the belief that legal consciousness functioned to legitimize social power in the United States, race crits also understood that race and racism likewise functioned as central pillars of hegemonic power. Because CLS scholars had not, by and large, developed and incorporated a critique of

racial power into their analysis, their practices, politics and theories regarding race tended to be unsatisfying and sometimes indistinguishable from those of the dominant institutions they were otherwise contesting. As race moved from the margins to the center of discourse within Critical Legal Studies—or, as some would say, Critical Legal Studies took the race turn—institutional and theoretical disjunctures between critical legal studies and the emerging scholarship on race eventually manifested themselves as central themes within Critical Race Theory.

One of the most significant institutional manifestations of CLS's underdeveloped critique of racial power occurred during the 1986 CLS conference. The 1986 conference, organized by a group of women who worked in feminist legal theory, marked the zenith of the feminist turn within CLS. Having placed feminism and its critique of patriarchy squarely within the discourse of and about CLS, the "fem-crit" conference organizers asked scholars of color to facilitate several concurrently held discussions about race. Drawing on a central CLS tenet that power is not, ultimately, "out there," but in the very institutions and relationships that shape our lives, the handful of scholars of color attending this conference designed the workshop to uncover and discuss various dimensions of racial power as manifested within Critical Legal Studies. Though the practice of uncovering and contesting power within law school institutions was a standard feature of CLS politics, the attempt to situate this practice within CLS as a "white" institution drew a surprisingly defensive response. The pitched and heated exchange that erupted in response to our query, "what is it about the whiteness of CLS that discourages participation by people of color?" revealed that CLS's hip, cutting edge irreverence toward establishment practices could easily disintegrate into handwringing hysteria when brought back "home." Of course, not all crits were resistant to this dialogue and it is only fair to point out that those who did find the query to be unnecessarily adversarial probably held a good faith belief that CLS marked a sphere of activity completely distinct from both law schools and society at large. Since "we" were joined as allies rather than adversaries within the law school arena, crits troubled by our workshop no doubt believed that critical energies would be best directed at tearing down institutional practices at our workplace rather than bringing these disruptive interventions "home." But feminists had already problematized the conceptualization of "home" that seemed to ground this view, revealing such spaces to be a site of hierarchy and power as well. Moreover, as the race crits experienced it, despite some points of convergence, some of the racial dynamics of CLS as an institution were not entirely distinct from the law school cultures "we" had set out to transform.

Another point of conflict and difference between white crits and scholars of color revolved around the widely debated critique of rights. According to other scholars of color at the 1987 conference, another dimension of the failure of CLS to reflect the lived experience of people of color could be glimpsed in the CLS critique of rights. Crits tended to view the idea of legal "rights" as one of the ways that law helps to legitimize the social world by representing it as rationally mediated by the rule of law. Crits also saw legal rights—like those against racial discrimination—as indeterminate and capable of contradictory meanings, and as embodying an alienated way of thinking about social relations.

Crits of color agreed to varying degrees with some dimensions of the critique—for instance, that rights discourse was indeterminate. Yet we sharply differed with critics over the normative implications of this observation. To the emerging race crits, rights discourse held a social and transformative value in the context of racial subordination that transcended the narrower question of whether reliance on rights could alone bring about any determinate results. Race crits realized that the very notion of a subordinate people exercising rights was an important dimension of Black empowerment during the civil rights movement, significant not simply because of the occasional legal victories that were garnered, but because of the transformative dimension of African-Americans re-imag-

ining themselves as full, rights-bearing citizens within the American political imagination. We wanted to acknowledge the centrality of rights discourse even as we recognized that the use of rights language was not without risks. The debate that ensued in light of this different orientation engendered an important CRT theme: the absolute centrality of history and context in any attempt to theorize the relationship between race and legal discourse.

A third ideological difference emerged in a series of critiques of early attempts by scholars of color to articulate how law reflects and produces racial power. Most of these critiques were articulated at the next 1987 CLS conference, "The Sounds of Silence," sponsored by Los Angeles area law schools. Although the terms of the debate were not fully clear, and at the time, there were few key words or concepts on which our analysis could then focus, we have come to articulate the central criticism by crits to be that of "racialism". By racialism, we refer to theoretical accounts of racial power that explain legal and political decisions which are adverse to people of color as mere reflections of underlying white interest. To phrase this critical model in more contemporary terms, we might say that racialism is to power what essentialism is to identity—a narrow, and frequently unsatisfying theory in which complex phenomena are reduced to and presented as a simple reflection of some underlying "facts." Specifically, the "sin" of racialism is that it presumes that racial interests or racial identity exists somewhere outside of or prior to law and is merely reflected in subsequent legal decisions adverse to nonwhites.

Such an approach struck crits as far too instrumental to be a useful account of race and power. During the eighties, crits had been debating the issue of "instrumentalist" and "irrationalist" accounts of law; most agreed with the problematic character of what came to be called "vulgar Marxism." Briefly stated, in traditional Marxist analysis, law appears as merely an instrument of class interests that are rooted outside of law in some "concrete social reality." In sum, law is merely an "ideological reflection" of some class interest rooted elsewhere. Many critics—echoing the late sixties New Left—sought to distinguish themselves from these "instrumentalist" accounts on the grounds that they embodied a constricted view of the range and sites of the production of social power, and hence of politics. By defining class in terms of one's position in the material production process, and viewing law and all other "superstructural" phenomena as merely reflections of interests rooted in social class identification, vulgar Marxism, crits argued, ignored the ways that law and other merely "superstructural" arenas helped to constitute the very interests that law was supposed merely to reflect. Crits such as Freeman, Duncan Kennedy, and Karl Klare (to name a few) developed non-instrumentalist accounts of law and its relationship to power that focused on legal discourse as a crucial site for the production of ideology and the perpetuation of social power. First, Critical Legal theorists developed a genealogical account of the relationship between law and social interests. Noting the degree, for example, to which political struggles in the U.S. are conducted in the language and logic of the law, crits argued that social interests, and the weight they are accorded, do not exist in advance of or outside the law, but depend on legal institutions and ideology for both their content and form. Second, the crits provided a detailed inventory of the ideological practices by which the legal order actively seeks to persuade those who are subject to it that the law's uneven distribution of social power is nonetheless "just." Third, in their account of legal consciousness, critical legal theorists demonstrated the precise mechanisms by which legal institutions and ideology obscure and thus legitimize their productive, constitutive social role. The crits argued that the law does not passively adjudicate questions of social power; rather, the law is an active instance of the very power politics it purports to avoid and stand above. In brief, the crits revealed in often dizzying detail the cunning complexity of legal texts which traditional Marxists simply dismissed as "capitalist ideology."

One consequence of this particular intellectual genealogy is that in their engagement with orthodox and scientistic forms of Marxist

thought on the left, CLS scholars had already developed a critique of the kinds of instrumentalist analyses that were presented in the language of race. To critics of racialism, prevailing theorizations of race and law seemed to represent law as an instrumental reflection of racial interests in much the same way that vulgar Marxists saw the legal arena as reflecting class interests. Just as the white left had learned, by the eighties, that a one-dimensional class account was too simplistic for legal analysis, they interpreted racialist accounts as analogous to class reductionism.

To be sure, some of the foundational essays of CRT could be vulnerable to such a critique, particularly when read apart from the context and conditions of their production. Yet, when read as interventions against a liberal legalist tradition that viewed law as an apolitical mediator of racial conflict, it becomes clear that by articulating a structural relationship between law and white supremacy, these essays dislodged an entrenched pattern of viewing racial outcomes as merely the random consequences of aracial legal processes. These early essays thus constituted a critical first step in identifying the operation of racial power within discursive traditions that had been widely accepted as neutral and apolitical. By legitimizing the use of race as a theoretical fulcrum and focus in legal scholarship, so-called racialist accounts of racism and the law grounded the subsequent development of Critical Race Theory in much the same way that Marxism's introduction of class structure and struggle into classical political economy grounded subsequent critiques of social hierarchy and power.

At the same time, the critique of racialism did help clarify what was "critical" about our race project. As we noted earlier, their dissatisfaction with the narrow instrumentalist view of law had moved CLS scholars to elaborate a theory of the constitutive form of legal ideology. The crits challenged the understanding of social and political interests that instrumentalist portrayals of law had viewed as simply given. The crits' more dynamic and dialectical model revealed the constitutive force of law, the ways legal institutions constructed the very social interests and relations that cruder instrumentalist accounts of law thought it merely regulated and ratified. For our purposes, the chief theoretical advantage of this anatomy of the constitutive dimensions of law was that it made it possible to argue that the legal system is not simply or mainly a biased referee of social and political conflict whose origins and effects occur elsewhere. On this account, the law is shown to be thoroughly involved in constructing the rules of the game, in selecting the eligible players, and in choosing the field on which the game must be played.

Drawing on these premises, we began to think of our project as uncovering how law was a constitutive element of race itself: in other words, how law *constructed* race. Racial power, in our view, was not simply—or even primarily—a product of biased decision-making on the part of judges, but instead, the sum total of the pervasive ways in which law shapes and is shaped by ""race relations" across the social plane. Laws produced racial power not simply through narrowing the scope of, say, of anti-discrimination remedies, nor through racially-biased decision-making, but instead, through myriad legal rules, many of them having nothing to do with rules against discrimination, that continued to reproduce the structures and practices of racial domination. In short, we accepted the crit emphasis on how law produces and is the product of social power and we cross-cut this theme with an effort to understand this dynamic in the context of race and racism. With such an analysis in hand, critical race theory allows us to better understand how racial power can be produced even from within a liberal discourse that is relatively autonomous from organized vectors of racial power.

If the foregoing critique clarified at least one dimension of our project that grew from a shared theoretical investment with CLS, it also revealed subtle, but crucial theoretical divergences between CLS and CRT. Despite the sophistication of the crits' understanding of how law constituted social interests and legal identity, they were, for the most part, unable to transpose these insights into an analysis of racial power and law. Our point here is not that the

crits committed the typical Marxist error of subsuming race under class. Rather, our dissatisfaction with CLS stemmed from its failure to come to terms with the particularity of race, and with the specifically racial character of "social interests" in the racialized state. For some, their lack of critical thinking about race was a reflection of intellectual interest. With respect to other crits, however, our divergence produced a much sharper conflict. While we were straining to strengthen our understanding of racial power, it appeared to us that some crits were deploying racialist critiques from a position on race that was close if not identical to the liberalism we were otherwise joined in opposing. To be sure, these crits positioned themselves in a discourse far removed from liberalism—a certain postmodern critique of identity. Yet the upshot of their position seemed to be the same: an abiding skepticism, if not outright disdain, toward any theoretical or political project organized around the concept of race. Where classical liberalism argued that race was irrelevant to public policy, these crits argued that race simply didn't exist. The position is one that we have come to call "vulgar anti-essentialism." By this we seek to capture the claims made by some critical theorists that since racial categories are not "real" or "natural" but instead socially constructed, it is theoretical and politically absurd to center race as a category of analysis or as a basis for political action. This suggested to us that underlying at least some of the critiques from the left was not simply a question about the *way* we represented racial power, but instead, a more fundamental attack on the very possibility of our project. In short, this position constituted an attack on "color-consciousness" which differed from the conservative assault only in its rhetorical politics.

Many of us did, of course, accept the more complicated notions of power and identity implicated by both the anti-instrumentalist and anti-essentialist positions. Yet in our view, neither was inconsistent with the project of mapping the domain of law and racial power. It was obvious to many of us that although race was, to use the term, socially constructed (the idea of biological race is "false"), race was nonetheless "real" in the sense that there is a material dimension and weight to the experience of being "raced" in American society, a materiality that in significant ways has been produced and sustained by law. Thus, we understood our project as an effort to construct a race-conscious and at the same time anti-essentialist account of the processes by which law participates in "race-ing" American society.

Perhaps prophetically, the conference was also occasioned by a prototype of an assault launched against critical race theory from a position firmly situated within the very paradigm we sought to criticize. The highlight of the 1987 conference was a plenary in which numerous scholars of color articulated how institutional practices and intellectual paradigms functioned to silence insurgent voices of people of color. Responding to the critique, another scholar of color shared with the audience his impression that the absence of much of minority scholarship was attributable to its poor quality, and to the lack of productivity of minority scholars. Scholars of color were urged to stop complaining and simply to write. Of course, the discussion that followed was animated. But more important than what was said was what was assumed—namely, that the arena of academic discourse was functionally open to any scholar of merit who sought to enter it. Yet the very point that the speakers were trying to reveal (perhaps too subtly, in retrospect) was that the notions of merit that were so glibly employed to determine access and status within the intellectual arena were themselves repositories of racial power. This exchange, and the subsequent incarnation of this conflict in the pages of the *Harvard Law Review*—provides one of the clearest points of demarcation between critical and liberal race discourses.

The 1986 and 1987 CLS conferences thus marked significant points of alignment and departure, and should be considered the final step in the preliminary development of CRT as a distinctively progressive critique of legal discourse on race. As a political and intellectual matter, the upshot of this engagement with CLS can best be characterized as "coalition." We see CLS and CRT as aligned—in radical

left opposition to mainstream legal discourse. But CRT is also different from CLS—our focus on race means that we have addressed quite different concerns, with distinct methodologies and traditions that we honor.

We have argued that the institutional and ideological antecedents of CRT can be usefully grounded in two historical sites: the Harvard boycott, and the CLS conferences of the mid-eighties. These roughly parallel the duality of CRT as both a progressive intervention in race discourse and a race intervention on the left. Yet, while we have identified these moments and will trace the trajectory of these themes into the writings that appear in this volume, it would be remiss for us to leave the impression that CRT subsequently developed as a disembodied, abstracted, and autonomous intellectual formation. In the first place, we believe that this image of scholarship is simply false—intellectual work is always situated, reflective to varying degrees of the cultural, historical, and institutional conditions of its production. Second and most importantly, this view of scholarship obscures the shared difficulties that insurgent scholars must negotiate and the importance of developing collective strategies to write about racial power from within the institutions central to its reproduction. A thorough mapping of Critical Race Theory, then, must include a discussion of the role of community-building among the intellectuals who are associated with it, particularly in light of the challenging conditions under which insurgent scholarship is produced.

During the mid-eighties, many of us met in smaller groups, before and after larger law school conferences and conventions, first at the fringes of and then as a caucus within Critical Legal Studies meetings, and so on. Shared experiences at the margins of liberal institutional policies and critical legal studies provided some basis for a collective identity. Yet the process of recognizing ourselves as a group with a distinct intellectual project was gradual. Our ad hoc meetings prior to and during various conferences provided an occasional opportunity to discuss our views; however, the key formative event was the founding of the Critical Race Theory workshop. Principally organized by Kimberlé Crenshaw, Neil Gotanda, and Stephanie Phillips, the workshop drew together thirty five law scholars who responded to a call to synthesize a theory that, while grounded in critical theory, was responsive to the realities of racial politics in America. Indeed, the organizers coined the term "Critical Race Theory" to make it clear that our work locates itself in intersection of critical theory and race, racism and the law. To be sure, while we have emphasized throughout the liberal and critical poles against which Critical Race Theory developed, in experience, such dialectical relations produce less of a sharp break, and more of a creative and contestatory engagement with both traditions. This is true not only of the content of Critical Race Theory, but is true as well of the workshop's participants. Indeed, both liberal race theorists and critical legal theorists have been deeply engaged in critical race discourse. For example, among the range of scholars who were attracted to the workshop and who contributed to the development of Critical Race Theory were scholars who had written squarely within the liberal paradigm. The workshop itself was underwritten by a grant provided by David Trubek, a founding member of the Critical Legal Studies Conference and a law professor at the University of Wisconsin, Madison. Finally, as this volume attests, we consider the work of members of CLS conference to represent a crucial contribution to the Critical Race Theory literature.

In the opening pages of this introduction, we argued that Critical Race Theory does not simply seek to understand the complex condominia of law, racial ideology, and political power. We believe that our work can provide a useful theoretical vocabulary for the practice of progressive racial politics in contemporary America. The need for an oppositional vision of racial justice becomes particularly acute in light of the Supreme Court's radical movement toward a jurisprudence which not only accepts but affirms the current racial regime.

As this volume goes to press, the U.S. Su-

preme Court has issued a series of decisions which effectively repeal the ideological "settlement" struck during the civil rights era. In *Adarand Constructors* v. *Pena,* the Supreme Court extended its 1989 decision in *City of Richmond* v. *J.A. Croson* to categorically require strict judicial scrutiny whenever government, at any level, considers race in its decisionmaking process. In the last few years, the Supreme Court had all but foreclosed the adoption of race-conscious responses to racial inequity by state and local governments. In a cramped conception of the scope of national power under the Fourteenth Amendment, the *Adarand* Court has pressed further and formally forbidden even the federal government from taking race explicitly into account in addressing societal-wide discrimination. In *Missouri* v. *Jenkins,* the Supreme Court held that racially-concentrated public schools could no longer be deemed presumptively unconstitutional, even in the presence of a history of formal segregation. As to any continuing racial segregation in these schools, the *Jenkins* opinion concluded that the courts could not address the problem of racial concentration if it could plausibly be said that a public school district was making a "good faith" effort to achieve desegregation "to the extent practicable". The court has thus effectively mandated the withdrawal of the federal judiciary from continued involvement in the effort to achieve racial desegregation in the nation's public schools. Finally, in *Miller* v. *Johnson,* the Supreme Court retreated from its longstanding enforcement of the historic Voting Rights Act, erecting rigid new barriers to the federal government's effort to increase the participation and representation of racial minorities in the political process.

Reading these decisions, one cannot help but notice the degree to which they deploy traditional liberal racial principles. The current Court has effectively conscripted liberal theories of race and racism to wage a conservative attack on governmental efforts to address the persistence of societal-wide racial discrimination. This harsh reality confirms the need for a critical theory of racial power and an image of racial justice which reject classical liberal visions of race as well as conservative visions of equal citizenship.

We believe that core concepts from Critical Race Theory can be productively used to expose the irreducibly political character of the current Court's general hostility toward policies which would take race into account in redressing historic and contemporary patterns of racial discrimination. We might, for example, draw on Critical Race Theory's deconstruction of color-blindness to show that the current Supreme Court's expressed hostility toward race-consciousness must be deemed a form of race-consciousness in and of itself. As Neil Gotanda has cogently argued, one cannot heed the newly installed constitutional rule that forbids race-conscious approaches to racial discrimination without always first taking race into account. Similarly, Critical Race Theory helps us understand how race-consciousness implicitly informs the current Court's paradoxical insistence that the norm of color-blindness requires a voting rights regime which effectively deprives racial minorities of political advantages that are accorded to other organized social interests.

Critical Race Theory indicates how and why the contemporary "jurisprudence of color-blindness" is not only the expression of a particular color-consciousness, but the product of a deeply politicized choice. The current Court would have us believe that these decisions are the product of an ineluctable legal logic. Critical Race Theory tells us rather that the Court's rulings with respect to race may more plausibly be deemed a result of a tactical political choice among competing doctrinal possibilities, any one of which could have been legally defensible. The appeal to color-blindness can thus be said to serve as part of an ideological strategy by which the current Court obscures its active role in sustaining hierarchies of racial power. We believe that Critical Race Theory offers a valuable conceptual compass for mapping the doctrinal mystifications which the current Court has developed to camouflage its conservative agenda.

The preceding discussion has focused on the possible uses to which Critical Race Theory might be put in understanding and intervening

in the politics of racial jurisprudence. However, since discussions about race and rights in the U.S. have always overrun the narrow institutional confines of the law, we want to conclude this introduction to Critical Race Theory by suggesting some of the implications our work as legal scholars holds for broader national conversations about racial politics. In our history of the development of Critical Race Theory, we have highlighted the ways in which our work is a record of our engagement with what we saw as limitations of liberal, leftist and racialist accounts of racial power in law. The similar limitations of recent liberal defenses of affirmative action, left-liberal discourses on globalization, and racialist responses to post-civil rights retrenchment suggest that Critical Race Theory may provide new and much needed ways to think about (and challenge) the contemporary politics of racial domination.

We turn first to the vexed question of liberal discourse in the current national disputations regarding affirmative action. Earlier in this introduction we noted how the liberal defense of affirmative action has been stymied from its inception by a decidedly ambivalent attitude toward the matters of race and racial power. To be sure, liberals are generally willing to concede that racism continues to be an ""obvious and boring fact" of American life (as the liberal pundit Michael Kinsley rather remarkably put it in a recent article). What liberal proponents of affirmative action seem unwilling to do is to move toward a direct critique of the hidden racial dimensions of the meritocratic mythology that their conservative opponents have so deftly used to control the terms of the current debate.

This ambivalence toward race-consciousness is best understood as a symptom of liberalism's continued investment in meritocratic ideology and its unacknowledged resistance to reaching any deep understanding of the myriad ways racism continues to limit the realization of goals such as equal opportunity. This liberal ambivalence is particularly manifested in today's debates, particularly about affirmative action. But it is also reflected in the lukewarm liberal defense of the Great Society programs of the 1960s and other policies which were adopted to address contradictions between American ideals and historical realities. Like the Harvard Law School administration's response to the demand for a course focused on race and the law, the liberal position reflects an abiding uncertainty about the value of such projects, and a lingering, wistful sense that if we could just agree to abandon race-consciousness, racism and racial power would somehow recede from the American political imagination.

Critical Race Theory is instructive here in that it uncovers the ongoing dynamics of racialized power, and its embeddedness in practices and values which have been shorn of any explicit, formal manifestations of racism. Critical Race Theory thus provides a basis for understanding affirmative action as something other than "racial preference" (a notion whose implicit premise is that affirmative action represents a deviation from an otherwise non-racial neutrality). Critical Race Theory understands that, claims to the contrary notwithstanding, distributions of power and resources which were racially determined before the advent of affirmative action would continue to be so if affirmative action is abandoned. Our critiques of racial power reveal how certain conceptions of merit function not as a neutral basis for distributing resources and opportunity, but rather as a repository of hidden, race-specific preferences for those who have the power to determine the meaning and consequences of "merit." We have shown that the putatively neutral baseline from which affirmative action is said to represent a deviation is in fact a mechanism for perpetuating the distribution of rights, privileges, and opportunity established under a regime of uncontested white supremacy. Critical Race Theory recognizes accordingly that a return to that so-called neutral baseline would mean a return to an unjust system of racial power. Finally, Critical Race Theory fully comprehends that the aim of affirmative action is to create enough exceptions to white privilege to make the mythology of equal opportunity seem at least plausible. In fact, a defense of affirmative action premised upon CRT rather than liberal ambivalence would neither apologize for affirmative action nor assume it to be a fully adequate

political response to the persistence of white supremacy. Rather, Critical Race Theory supports affirmative action as a limited approach which has achieved a meaningful, if modest measure of racial justice.

A second discussion to which we believe Critical Race Theory might bring a useful perspective is liberal and left debate in the U.S. over the proliferation of economic, political, social relations across national borders which has come to be known as globalization. Like Critical Legal Studies in the mid-1980s, the left-liberal approach to globalization has yet to generate an adequate account of the connections between racial power and political economy in the New World Order. Instead, generalized references to the "North" and "South" figure as a metaphorical substitute for serious and sustained attention to the racial and ethnic character of the massive distributive transformations that globalization has set in motion. Abstract allusions to "rich" and "poor" nations simply fail to yield an adequate vocabulary for analyzing the precise processes that produce globalized racial stratification. As the Nigerian scholar Claude Ake has argued, globalization enacts a "hierarchization of the world" and the "crystallizing of a domination". While that domination may be essentially *constituted* by economic power, it is essentially *legitimized* by racial power or, to use Ake's term, by ideologies of "political ethnicity." Critical Race Theory would thus focus on the degree to which the effects of globalization in the (so-called) Third World demand analysis as an instance of what Arjun Makhijani calls "economic apartheid."

This general indifference to questions of racial ideology and power also informs liberal and left efforts to explain the political significance of global economic processes within the U.S. For the most part, liberal and left analysis of this question has focused on the impact of globalization on U.S. class structure and politics. To the extent these debates *do* consider the role of race in the age of globalization, they do so only in the context of conversations about the "cultural pathologies" of the "underclass" (in liberal circles), or (on the left) in terms of a "class" of subordinated racial groups whose vulnerable economic position is the product of past, but not current, dynamics of racial power. The particularities of race and its persistent presence as an explicit rationalization of structural stratification in the current economy seem hardly to warrant discussion. One would think that the racial composition of the communities which have been chosen to bear the sharp edge of economic dislocation is altogether irrelevant. However, even a cursory review of current national discourses about public education, unemployment, education, immigration and welfare reform (to take a few examples) demonstrates the degree to which questions of race and racial ideology stand at the very center of today's debates. These developments defy explanation in terms of liberal accounts of poverty and social equality, on the one hand, or leftist formulations about the historical class relations between labor and capital, on the other.

A CRT-grounded response to these developments would intersect contemporary critical discourses concerning the domestic social transformations wrought by globalization and critical theories of race and power to better understand the "racial economy" of this transition. This CRT-informed investigation of the "South in the North" would examine the way a certain brand of racial politics has been mobilized to buffer the massive upward distribution of resources and opportunity within the United States, or explore the way racial ideologies have been used to justify relatively open border policies toward our Northern neighbors, even as we close off our borders to those from the South. Just as Critical Race Theory introduced racial ideology as a necessary component of hegemony in the wake of the Critical Legal Studies emphasis on legal consciousness, so too must contemporary social theory fully incorporate notions of racial power as a way of understanding (and contesting) changing economic relations.

A third and final aspect of contemporary politics on which Critical Race Theory might be brought to bear is the struggle within communities of color over the future direction of anti-racist politics. The difficulties critical race scholars faced in attempting to push the analysis of law and racial politics beyond the narrow

boundaries of racialism may all be seen at work in contemporary political debates among people of color. The emergence of powerful voices of racialism is particularly evident within the African American community, in which contemporary racial crisis is frequently represented as a reflection of unmediated white power. Although the message of racialist politics speaks to a broad range of disaffected African-Americans, it is also the source of debilitating contradictions within black political life. Indeed, as a mode of political analysis and action, racialism has ironically facilitated ideological attacks on black America that are now simplistically represented as coming from "out there"—that is, from outside the African-American community.

To take one example, racialists rightly identify the right-wing decisions of the current Supreme Court as part of the panoply of assaults directed against black Americans. What they all too often fail to note is that this same racialist politics helped secure the radical right's crucial fifth vote on the Supreme Court, in the person of Clarence Thomas. At the time of his nomination, Thomas had left little doubt about his political commitments. Despite a clearly manifested ideological agenda from which one could fully predict his role in consolidating the conservative wing of the Supreme Court, Thomas was nonetheless able to garner crucial support across the spectrum of African-American political formations. Narrow notions of racial solidarity led African-Americans to rally behind a figure who, though black, had been and would continue to be an eager participant in the evisceration of the post-civil rights coalition.

Another dimension of the racialism that led black Americans to support the Thomas nomination was deeply gendered in its determination. The erroneous view that racial interests would be advanced by the appointment of *any African-American to the Supreme Court* was compounded by a misguided racialist belief that questions of gender power were irrelevant (if not antagonistic) to the interests of the "larger" black American community. During our earlier discussion of racialism, we argued that one of the chief problems with the racialist account of social power and struggle lies in the tendency to "essentialize" the racial communities with which it represents the social world. In black racialist circles, the felt necessity to articulate a stable vision of group identity and interest has underwritten a "representational politics" in which the experience of one segment of black America is taken to be representative of black experience *tout court.* As a result, black racialism yields a flat, fixed image of racial identity, experience and interest, which fails to capture the complex, constantly changing realities of racial domination in the contemporary U.S.

The concrete implications of this crude essentialism became painfully apparent in the subordinating gender politics to which black racialist support for the Thomas nomination gave rise. As Kimberlé Crenshaw has argued, the black racialist account proffers a vision of racism which portrays racial power primarily through its impact on African-American males. Because it is unwilling or unable to apprehend the ways in which racial identities are lived within and through gendered identities, racial essentialism renders the particular experiences of black females invisible. Black racialist politics thus effectively denies the struggle against racialized gender oppression a place on its anti-racist agenda. A final recent example will suffice to show how black America continues to be held hostage to racialism's essentialist politics. Although much of the rhetoric supporting a proposed "Million Man March" is grounded in the need for a black American response to Supreme Court decisions, the March's proponents not only fail to problematize the racialist politics that installed Clarence Thomas, but effectively reproduce those politics by promoting gender exclusivity, with its concomitant subordination of the irreducibly gendered dimensions of black women's racial oppression.

Because there is no currently viable alternative to an ambivalent liberal vision of race, on the one hand, and an inadequate vision of racialism, on the other, many progressive voices in the black community tend to gravitate toward the racialist view. For all its faults, racialism at least acknowledges the persistence of racism (albeit in an essentialist and exclusionary way).

Without a counter vision of race that does not fall into the nebulous world of liberal ambivalence and apology, the dangers of racialist politics for communities of color will continue to go unheeded, even in light of the deep contradictions that such politics produces.

Historians of American racial politics may rightly remember the final years of the twentieth century as the "Age of Repudiation." All the evidence suggests that the 1990s mark the rejection of the always fragile civil rights consensus and the renunciation of by federal, state and city authorities (indeed, of the American people themselves) that government not only can but must play an active role in identifying and eradicating racial injustice. The ideological offensive against civil rights reform (not to mention deeper social change) has consolidated what we have called a new common sense regarding race and racism in the United States. Although the new racial common sense defies both reason and contemporary reality, this fact has not deterred makers of public policy and public opinion in the post-reform era from using it to justify their indifference or outright hostility toward those who continue to struggle for racial justice and multicultural democracy in the United States. In the 1980s, the architects of the new racial common sense provided an ideological foundation for dismantling many of the key reforms and programs adopted during the civil rights period. In the 1990s, the apologists for racial reaction have deepened and extended their attack to include the very principle of racial antidiscrimination. Emboldened by the successes of the 1980s, right-wing legal academics such as Richard A. Epstein now openly decry laws forbidding racial discrimination on the grounds that they are economically inefficient and morally indefensible. And in a deliberate distortion of the 1954 *Brown* decision, Supreme Court Justice Clarence Thomas has cynically described the *Brown* court's historically-based claim that racial segregation was "inherently" unequal as itself an example of white racism. The power of new racial common sense may be seen, too, in the felt necessity of Democratic President Bill Clinton to qualify his already compromised defense of affirmative action with a neo-liberal nod toward the "angry white males" who, against all the evidence, have positioned themselves as the chief "victims" of contemporary racial politics.

The task of *Critical Race Theory* is to remind its readers how deeply issues of racial ideology and power continue to matter in American life. Questioning regnant visions of racial meaning and racial power, critical race theorists seek to fashion a set of tools for thinking about race that avoids the traps of racial thinking. Critical Race Theory understands that racial power is produced by and experienced within numerous vectors of social life. Critical Race Theory recognizes, too, that political interventions which overlook the multiple ways in which people of color are situated (and resituated) as communities, subcommunities, and individuals will do little to promote effective resistance to, and counter-mobilization against, today's newly empowered right. It is our hope that the writings collected here will prove to be a useful critical compass for negotiating the treacherous terrain of American racial politics in the coming century.