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Essay

Beyond the Best Black: The Making of a Critical Race Theorist at Yale Law School

LUKE CHARLES HARRIS

In Kimberlé Williams Crenshaw's lead article in this Commentary Issue she contends that critical insights on race often develop out of institutional struggles over the terms upon which racial politics are engaged and normalized. My pathway to Critical Race Theory (CRT) confirms this idea. Thus, this comment traces the making of a critical race theorist at Yale through the contested discourses around race, meritocracy and affirmative action. These discourses not only shaped my experiences while I was at Yale, they also influenced my thoughts on these matters throughout my career as I transitioned from private practice back to life in the academy. Accordingly, in this Essay, I hope to uncover how the debates about affirmative action—debates that I understood to be about whether a guy like me had a legitimate place at Yale as both a J.D. and an LL.M student—helped me to understand the ways in which patterns of racial power were rationalized and naturalized in elite academic settings and by extension, throughout society at large. To accomplish this goal, I will borrow aspects of Crenshaw's theory of frame misalignment so as to reframe the terms of this debate.
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Beyond the Best Black: The Making of a Critical Race Theorist at Yale Law School

LUKE CHARLES HARRIS*

I. INTRODUCTION

I remember when I discovered that somewhere a name had been invented for the work that I did. The year was 1989 and I was still celebrating my intellectual emancipation from corporate law by my weekly ritual of reading every journal that related to race in the United States I could get my hands on. I remember to this day coming across Jon Wiener’s article, Law Profs Fight the Power, in the Nation Magazine. I quickly devoured the article about a new brand of law school intellectus, a group that I learned called its discipline “Critical Race Theory (CRT).” The stark import of the revelation of this group was only eclipsed for me by the fact that if I was reading this article it meant that others around the country were also reading it as well; and that a new and potentially transformative intellectual movement in the legal academy was on the horizon.

Suddenly I was brought into contact with the work of Kimberlé Williams Crenshaw, Charles Lawrence, Mari Matsuda, Pat Williams, and a host of others. I had been aware of the work of Derrick Bell and Richard Delgado since I was a law student at Yale in the early to mid-1970s, but I had no idea that a full-fledged intellectual movement focused on race in the United States had emerged in the legal academy. Suddenly I was no longer alone in the wilderness thinking about issues of law, race, and power. There was a community of scholars I could identify with. I had people, a posse one might say, even though they did not know they had me. I had never been to a CRT workshop or conference, but I could relate to them in a deep and intimate way because they were probing the same concerns that had captured my imagination as a law student at Yale.

Out of what appeared to be nowhere I now had discovered a professional identity. When I finally had the opportunity to explore the origin of the CRT movement, I found that the struggles over faculty

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recruitment and curriculum that had given rise to insurgency at Harvard echoed the very same struggles at Yale Law that had prompted me to explore issues of race, power and equal citizenship throughout my career. While at Harvard in the 1980s the issues revolved around the diversification of the curriculum and minority faculty hiring, at Yale in the 1970s the issues revolved around minority admissions. The response at both institutions was a push back rooted in a putatively universal conception of meritocracy.

Crenshaw’s Harvard story tracks fairly closely the unfolding of the story that I tell herein about Yale, yet with some key differences that I will explore below. 2 Our stories are, of course, generationally distinct. The ten-year gap in our stories perhaps explains the different objects of our struggles: student diversity usually preceded the struggles over curriculum and faculty, although one doesn’t always lead to the other. Moreover, our stories are about two major law schools that differ in terms of their size and insularity. The rarified atmosphere of Yale Law School, perhaps exacerbated by its intimacy, created the allure of having been designated for the best of the best, even if for many African Americans membership in this community came with significant costs.

Interestingly, our stories also diverge in terms of the distinct institutional histories with regard to radical law projects at Harvard and Yale. Harvard was for a time the site of a hotbed of radical legal thinking that never quite flourished at Yale. 3 By this, however, I do not mean to suggest that the mere presence of radical thinkers alone led to the development of CRT, as might be inferred from other narratives about its origins that link its emergence to the purging of left-wing scholars at Yale who found homes in other academic institutions. 4 Instead I am suggesting, as Crenshaw argues, that the institutionalization of Harvard’s radical projects throughout the 1980s created a kind of staging ground for CRT that many of us at Yale were never exposed to.

It should be noted that the generational difference here meant that the critical tools we had available to “read” the institutional rhetorics that justified racial exclusion were more limited for us at Yale in the 1970s than those available to our Harvard counterparts in the 1980s. Crenshaw notes that by the 1980s a whole generation of students were matriculating into law schools having been exposed to ethnic studies and student formations that refocused the energies of earlier generations from segregation to the

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In this context, after the 1960s the dismantling of segregation had receded as the primary objective of civil rights protest, and institutional forms of racial power became the focal point of the first wave of student activism.

Crenshaw’s generation benefitted from the institutionalization of some of these victories in the form of special study programs, organizations, and other university-based and community opportunities, all of which facilitated the development of loosely shared discourses on the contemporary forms of racial exclusion. This latter point, in fact, leads to my own take on one of the hypotheses posed by Crenshaw’s lead article. Crenshaw argues that while critical sensibilities about racial power had been generated and circulated throughout the academy in various forms during the twentieth century, it was the institutionalized opportunities for confronting and integrating these sensibilities into the legal academy that led to sustained efforts to self-consciously reshape legal education.

This shift from a vision of minority admissions rooted in elite discretion and social responsibility on the part of the Yale faculty to a vision grounded in a reformist discourse forged in civil rights advocacy and a critique of unwarranted forms of racial exclusion articulated by activist Black students in the late 1960s. This shift brought the backroom debates among Yale faculty firmly into

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5 Crenshaw, supra note 2, at 1265–66.
6 See, e.g., id. at 1288 (discussing the various CRT conferences that sprung up in the mid-1980s).
7 Id. at 1260.
the public square and with it the limited notions of merit and desert that framed both the conservative and liberal perspectives on affirmative action. Front and center in these debates was a generation of students of color—mainly Black students—who grappled with the contradictory messages delivered by an institution that had long practiced a form of liberalism that permitted certain departures from the traditional conception of academic meritocracy in the law school setting so long as the terms of these departures never challenged the overall appropriateness of those criteria.8

This discourse not only shaped my experiences while I was at Yale earning a J.D. and an LL.M, it also influenced my thoughts on these matters throughout my career as I moved from private practice back to life in the academy. In this response essay, I hope to uncover how the debates about affirmative action—debates that I heard and that I fully understood to be about whether a Black student like me actually belonged at Yale—helped me to comprehend the ways in which patterns of racial power were rationalized and naturalized in elite academic settings and by extension, throughout society at large. To accomplish this goal, I will borrow aspects of Crenshaw’s theory of frame misalignment—that is to say, her analysis of why it is important to reframe the misframing of key questions of law, politics, and institutional practices when they serve to distort the nature of the public discourse under consideration.9

As a student who was not likely to wind up at Yale, someone who moved from the bottom of society to the so-called top, over time I would become keenly aware of the ways that my own presence at Yale was framed. I was struck that my presence was not a reminder of the unnatural and political nature of race and class stratification in American society; and that instead it was seen as a reaffirmation of the basic fairness—and benevolence—of the American social order. That the presence of others like me—markedly different in terms of class privilege, access, and cultural capital—was the cause of soul-wrenching debates about who really belonged at Yale confirmed my general outsider’s stance that something was amiss in this environment. The contradictions between the myths of equal opportunity and the racial realities created a kind of theater of the absurd. In so doing, it provided people like myself with some distance from which to view the racial stereotypes that had distorted the picture of who and what in fact the Black students actually symbolized at Yale in the immediate aftermath of the Civil Rights Movement.

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9 Crenshaw, supra note 2, at 1259.
II. GOD AND SOUL AT YALE: AFFIRMATIVE ACTION AS AMERICAN NOBLISSE OBLIGE

Yale, Harvard, and a few other outstanding academic institutions were not, even in the darkest ages of segregation, completely organized as white-only arenas. While they were hardly innocent as to the production of knowledge that reflected and shored up the American racial status quo, at the same time, unlike their Southern or lower tier counterparts in other regions of the country, they sometimes provided avenues for a small number of Blacks to gain entry into a professional arena reserved for the tiniest fraction of even white America. Many of these students were quietly admitted under differential criteria long before the term affirmative action or the social revolts of the sixties had emerged.10

Indeed, Yale Law School had employed the use of an affirmative action-like program for Black students since 1948.11 Its policy had been to admit any Black student who in its judgment “was qualified in the sense that he or she could successfully complete the three years required to obtain a degree.”12 Although that turned out to be no more than six students in any given year, it was still a significantly larger number of Black students than were admitted by the vast majority of Yale’s peer institutions at the time.13 Moreover, the fruits of this experiment had been bountiful: numerous Black alumni had, “upon entering the profession, speedily demonstrated professional accomplishments of a high order.”14

In her history of Yale Law School, Professor Laura Kalman describes Yale’s departure from the use of the traditional indicia of merit as reflecting the faculty’s collective orientation toward standardized measures, and, in particular, their

[doubts about] the predictive value of the LSAT and college grades for all “whose childhood and family background are remote from the experiences and aspirations of (primarily white) middle class America . . . . (L)ong before such skepticism was fashionable,” the faculty had given “less weight to the LSAT and the rest of the standardized academic white apparatus in assessing black applicants.”15

The results of this alternative conception of meritocracy were staggeringly effective. Between 1948 and 1965, Yale admitted, among

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10 See generally KALMAN, supra note 3; Fleming & Pollak, supra note 8.
11 See generally KALMAN, supra note 3; Fleming & Pollack, supra note 8.
12 KALMAN, supra note 3, at 103 (internal quotation marks omitted).
14 KALMAN, supra note 3, at 117 (quoting Louis Pollak).
15 Id. at 100.
others, A. Leon Higginbotham, Jr., (for whom I would later serve as a law clerk), Marian Wright Edelman, Eleanor Holmes Norton, and Haywood Burns, all of whom would go on to have distinguished careers.16

This quiet practice of minority admissions embodied an orientation, however, that was something quite distinct from the way Black students and other civil rights advocates would come to frame affirmative action in the late 1960s and throughout the 1970s. The hallmark of the earlier forms of differential admissions was discretion, expert judgment, and to some extent, a hint of noblesse oblige. In ways that presaged the eventual demise of affirmative action in Bakke, this idea of finding the diamonds in the rough was not animated by notions of social justice writ large, as in efforts, for instance, to dismantle a racially stratified social order.17 In fact, some saw affirmative action as an effort to shore up the social order by creating a small Black elite that would emerge as leaders in their own communities.18 Whatever the underlying motivation, it was inevitable that the admission of such small numbers of Blacks would eventually be regarded as nothing more than mere tokenism.

It should come as no surprise, then, that this vision of affirmative action would later give way to hotly contested ideological struggles when the number of Black matriculants to Yale significantly increased in the late 1960s.19 Student activists in this cohort framed admission to the law school in terms of basic civil rights perhaps without recognizing that this approach directly challenged the framework of expert discretion that had underscored the faculty’s earlier admissions practices.20 While both perspectives in some sense justified departures from the standard entry criteria (which were themselves changing from generation to generation),21

16 Higginbotham was the seventh African American Article III judge appointed in the United States, and the first African American judge on the United States District Court for the Eastern District of Pennsylvania. Appointed by President Carter, he later served as Chief Judge of the Third Circuit Court of Appeals from 1990 to 1991. Higginbotham was also a distinguished scholar and he taught at both the University of Pennsylvania and the Harvard Law Schools. Marian Wright Edelman founded and is the president of the Children’s Defense Fund. About Us, CHILDREN’S DEFENSE FUND, http://www.childrensdefense.org/about-us/leadership-staff/marian-wright-edelman/ (last visited Apr. 15, 2011). Congresswoman Eleanor Holmes Norton is currently serving her eleventh term as Congresswoman for the District of Columbia. And Hayward Burns is the former Dean of the City University of New York Law School at Queens College and was a long-time Civil Rights advocate who worked with Martin Luther King, Jr. He represented the black radical Angela Davis against charges of kidnapping and murder, and coordinated the defense for inmates indicted in the Attica prison riot. Tragically, he was killed in a 1996 automobile accident in Cape Town, South Africa while attending a conference on democracy and international law.
17 See KALMAN, supra note 3, at 101 (describing how Howard Law School accused Yale of “cherry-picking” those Black students “interested in studying law”).
18 Id. at 101–02.
19 Id. at 103.
20 See id. (characterizing prospective minority law student applicants as those who would not be admissible under “traditional criteria”).
21 The LSAT was actually a relatively new standard introduced in 1947. See William P. Lapiana, Rita and Joseph Solomon Prof. NY Law School, Keynote Address at the 1998 LSAC Annual Meeting:
the student perspective differed dramatically from the faculty perspective in that it was premised on a constitutional right.\textsuperscript{22}

This right was forged in an idea of what it meant to be free of unfair and discriminatory academic barriers in the admissions process to the law school. The ultimate fairness of the mainstream criteria, however, had never really been fully interrogated by the Yale faculty, even though it had chosen to depart from the use of those criteria in the case of the beneficiaries of affirmative action.\textsuperscript{23} Thus, while subject to a limited critique, those criteria—LSAT scores and GPAs—unfortunately continued to be the gold standard for all those who were admitted to the law school.\textsuperscript{24}

This idea of meritocracy would have serious consequences for Blacks and other nontraditional students as their numbers increased in the late 1960s through the mid-1970s.\textsuperscript{25} But, its potency to the faculty could have been anticipated. As Kalman noted, academics “who attributed their careers to [traditional understandings of] meritocracy remained devoted to it and understandably remained unconscious of its and (their own) blind spots.”\textsuperscript{26} Down the road these blind spots would distort faculty perceptions of affirmative action. The failure to fully re-conceptualize the role of the standardized criteria would eventually contribute to the sense that Yale’s expanded outreach program had resulted in the “preferential treatment” of Blacks and others who had gained admission as beneficiaries of affirmative action.\textsuperscript{27}


It is important to recognize that as American apartheid was in the process of being formally dismantled in the 1950s and 1960s, Yale Law School was on the side of racial progress. Its faculty supported the nonviolent Civil Rights Movement and embraced the hope that the courts, and especially the Supreme Court, could promote effective social change.\textsuperscript{28} On campus, however, in the late sixties the faculty’s faith in the law was

\textsuperscript{22}See Kalman, supra note 3, at 102 (citing Ronald Dworkin’s view that law school admissions should not be based on “merit”—an inherently obscure term).

\textsuperscript{23}Id. at 102–03 (noting that the assumption that the LSAT was culturally biased could not be tested due to insufficient collection of data).

\textsuperscript{24}See, e.g., id. at 118–19 (describing how at Yale, the law school part of the measure of “academic competence” used a combined weighted GPA and LSAT score).


\textsuperscript{26}Kalman, supra note 3, at 201.

\textsuperscript{27}See infra Part VII.

\textsuperscript{28}Kalman, supra note 3, at 104.
often not matched by a high level of satisfaction—on the part of students—with the ways in which they were being trained to become lawyers. Many students were dissatisfied with the law school experience. They found the use of the Socratic method "more stifling than liberating" and they wanted to become equal partners in governing the school. The faculty, however, would resist these demands. Simply put, "professors who had applauded student activism aimed at the opponents of civil rights disliked becoming its target."

Then shortly after President Lyndon Baines Johnson signed the Voting Rights Act in 1965, the Watts urban rebellion exploded into the American consciousness. Its impact was enormous and it filtered all the way into the corridors of the Yale Law School. As Kalman describes, "[i]nspired by the social unrest around them, a vision of democracy and citizenship, and a sense of their school’s historic importance as an innovator in legal education, Yale students of the late sixties branded law professors hierarchical, accused them of racism and sexism, and disrupted law school life."

Black students such as Otis J. Cochran, the head of the Black Law Student Union, called for an increase in minority admissions and pushed for the hiring of Black professors, a multicultural curriculum, and a student lounge/office space that was their own. Some faculty received the demands as a threat. Cochran remembers hearing that Robert Bork "likened BLSU members to the Gestapo." He could not understand, however, how he and eleven other "scared-ass students [could] be compared to the Gestapo." He suspected, however, that what the faculty actually feared was their message.

Whether out of fear, guilt, or responsibility, Yale publicized the expansion of its race-conscious admissions program "at a crucial period in the history of affirmative action." In the wake of the assassinations of Robert F. Kennedy and Dr. Martin Luther King, Jr., and in the midst of the massive social unrest of this period Yale stepped forward. A young University of Chicago professor Owen Fiss recalled "that academic lawyers everywhere followed Yale’s experiment."

The question remained, however, how would that experiment be perceived, and how would its purpose be articulated?

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29 Id. at 72 (quoting Robert Stevens).
30 Id. at 80.
32 KALMAN, supra note 3, at 6.
33 Id. at 111. It is crucial to understand that up to this point Yale Law School still lacked a single Black professor on its faculty.
34 Id. at 112.
35 Id. (quoting Otis J. Cochran).
36 Id. at 118.
37 Id.
IV. ENTERING YALE LAW SCHOOL: STAGE LEFT

I was one of the “beneficiaries” of Yale’s expanded affirmative action program. I knew from the beginning that I was an unlikely matriculate to Yale—I was Black and I had not grown up being told that I was marked for success. If anything I was told just the opposite: that I should keep my head down and my expectations low. Perhaps that is why once I got to Yale I was struck by the implications of what it meant to be considered one of the so-called best Blacks admitted through its racially targeted program.38

I soon sensed that something was wrong with the way in which minority admissions programs were framed, and that this something was not just a problem with the framing of its critics. It was a problem as well for those who were affirmative action’s advocates—a problem rooted in an unwarranted assumption that such programs were inherently preferential in nature. This sensibility no doubt related to what it meant for me to confront the idea that a system of preference had been put into place for Blacks to gain entry to the law school. It was as though the presence of so-called disadvantaged minority students naturalized the rights of others to be there as well as the conditions of segregation out of which we had come.

No doubt my outsider status illuminated my perspective on these matters. While I was not alone in this regard, it is perhaps fair to say that I was a somewhat unusual Black student at Yale in the early 1970s. I was the product of a broken home, I had been raised on Welfare, and I was a graduate of a dysfunctional public school system in an urban community where I was considered to be too academically inept to take a full load of college prep classes. Born in 1950 at the tail end of American apartheid,39 my career prospects for the future looked dim. Brown40 and its progeny had not yet been realized, and the educational opportunities ahead of me appeared to be meager at best.

My first five years in public school had taken place in a segregated four room school-house in Merchantville, New Jersey that served “colored” children from kindergarten through sixth grade. Four teachers—including one who also served as the school’s principal—were charged with the responsibility of providing a basic education for us in a school that had few human or material resources. This sort of separate and decidedly

39 While Jim Crow in the United States is normally not referred to as a system of formal apartheid, the effect of legal segregation in the United States was to create an apartheid regime. See ROBERT J. COTTROL, RAYMOND T. DIAMOND & LELAND B. WARE, BROWN V. BOARD OF EDUCATION: CASTE, CULTURE, AND THE CONSTITUTION 34, 49 (2003) (discussion of the rise of the Jim Crow era and segregation, characterizing the fight against Jim Crow laws as a fight against apartheid).
unequal educational experience had theoretically been repudiated by a unanimous Supreme Court in Brown in 1954, the year before I had entered kindergarten. But, like school districts across America, the one in my hometown recognized that the Supreme Court’s mandate of “all deliberate speed” meant that it would not be compelled to vindicate the constitutional rights of the children in my neighborhood any time soon.

By the time I was in junior in high school, my family had moved to Camden, New Jersey—one of the poorest urban communities in the United States. In Camden, I experienced an “integrated” education in an underfunded inner city public school system. Like most of the Black and Brown children in the city, in my youth I was placed on the vocational track. Guidance counselors who looked like me saw in me the same limited opportunities that I had imagined for myself. Rather than encouraging us to “be all that you can be,” they steered legions of young Blacks like me away from college preparatory classes and a professional career. At the time, even to me, this seemed to make sense. As far as I knew, no one in my family had ever gone to college.

Thus, coming out of high school, I was hardly considered to be a candidate for “the best and the brightest” pool out of which Yale Law School would recruit. Yet four years later, I would be seated in that rarified atmosphere, excited to embark upon an extraordinary intellectual journey that would present me with unexpected lessons.

V. YALE OPENS ITS DOORS A BIT WIDER

Born at the tail end of the Jim Crow era, my life was framed by that reality. The neighborhoods I had grown up in, the elementary and secondary schools I had attended, and the opportunities that were available to me had all been shaped or misshaped by segregation. I knew by the time I matriculated to Yale that I was lucky to have gotten out of Camden, that an extraordinary set of unlikely circumstances had made it possible for me to have been in the queue when Yale expanded the scope of its affirmative action policy. A myriad of factors paved the way of my own trajectory from the experience of segregation and poverty to Yale, including: the hard work of a loving great Aunt who nurtured me to adulthood, the constructive interventions of a devoted and positive mentor outside of my high school setting, the targeted race-conscious admissions policies that were developed in the late 1960s across the United States, and the impact of the Civil Rights and Black Power Movements on my

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41 Id. at 494 (finding separate educational facilities to be inherently unequal in part because “the policy of separating the races is usually interpreted as denoting the inferiority of the negro group”).


sense of self esteem and who I thought I could become in American society. This set of circumstances empowered me with the desire, the self-confidence and the willpower to completely turn my life around.

I also realized that what was special about my own story was not the product of anything truly exceptional on my part. I was, to be sure, the first to go to college in my family, but clearly that was not because I was the most talented person in my entire family line. In fact, I knew that I could not make a strong claim to have been the smartest, or the best and brightest student in any row of students I had shared a class with in any of the schools I had attended growing up. I was just extremely lucky to have been positioned to benefit from the crack in the door that Yale provided. For me to have gone through that door convinced of my singular right to be there would have required me to reject everything I knew about all of my friends and family members who were not so fortunate.

I knew that there was a certain arbitrariness about who could walk through this door, and that the long shadow of unjust deserts from the era of segregation not only cast doubt on the legitimacy of the exclusion of all those who “but for the grace of god goes me” people, it also raised serious questions about those on the inside of elite institutions like Yale reared on the other side of the race and class divide. Since I knew full well that the exclusion of millions of people like me was an extension of the consequences of segregation, if not its very logic, I was similarly ill disposed toward the legitimacy of the traditional institutional terms of inclusion. I could hardly think that the many unwarranted obstacles that served to unfairly exclude people of color from the opportunities that I was able to take advantage of were unjust while, at the same time, being convinced that those who lived inside the Emerald City had a natural right to be there.

Having a natural “denaturalizing” orientation toward Yale, I assumed, perhaps naively, that Yale’s outreach to people like me was a reflection of its own efforts to rethink its practices and customs in the aftermath of Jim Crow. Yale’s attention to race struck me as nothing more than a reasonable path forward given the fact that race clearly mattered in complicated and important ways. After all, patterns of racial exclusion had been structured into the very fabric of our society in systematic ways for centuries so as to exclude people of color from positions of power and authority across all aspects of life in the United States. So, in my view, major American institutions would have to develop the tools to dismantle this process. The thought that taking account of race would be viewed as bias itself, as a departure from some myth of merit, did not jive with my own life story. I had seen too many arbitrary obstacles along the way to Yale—from a tracking system in the public schools that disproportionately seemed to target, Black, Brown and working class students to a Welfare system that barely enabled one to secure life’s basic necessities.
Thus, by the time I arrived at Yale, my life’s trajectory had caused me to have a strong set of expectations about what it would mean to take seriously the lived experiences of people of color in the aftermath of American apartheid. I would soon discover, however, that quite to the contrary Yale’s faculty had assumed that it would only need to make marginal changes in this new era. Rather than envisioning major social reform as an imperative and a constitutional right, Yale faculty tended to think that it could find its diamonds in the rough without a major reconceptualization of its vision of meritocracy.

VI. ON BEING THE OBJECT OF THE DEBATE

By the early 1970s, Yale’s experiment with an expanded affirmative action program was up and running at full speed. Like most students, I was completely unaware of how my entrance and subsequent presence would be cast at Yale. Nor was I aware that the drama unfolding there in light of its minority admissions programs had been written and set in motion long before I would dare to whisper the idea that I might attend Yale even to myself.

Once at Yale, not surprisingly, I encountered an exceptional array of students in an extremely cosmopolitan educational setting—including many young people who would in the long run become prominent figures on the American landscape. Witness, for instance, Yale Law School Professor Steven Carter, the author of Reflections of an Affirmative Action Baby;^{44} Supreme Court Justices Samuel Alito and Clarence Thomas; Lani Guinier, the first tenured woman of color at the Harvard Law School; and Catherine MacKinnon, who would go on to become a major feminist legal theorist.

Yale opened doors for all of us. Yet, at the same time, there was something clearly amiss; a threat was in the air, a hint or a whisper perhaps that minority admissions came at a cost, the precise contours of which were initially a challenge to decipher. But what the faculty thought, more often than not, would filter down to us in one way or another. Like the great Motown singer Marvin Gaye used to sing in the late sixties, “[we] heard it through the grapevine.”

VII. THE IDEOLOGICAL CONTOURS OF THE AFFIRMATIVE ACTION DEBATE AT YALE IN THE POST-CIVIL RIGHTS ERA

When Yale expanded its affirmative action program in the aftermath of student protests, reservations and outright objections came to the fore within its own faculty almost immediately.^{45} Core members of the “faculty

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^{44} CARTER, supra note 38, at 15.
^{45} KALMAN, supra note 3, at 119.
remained convinced that equality and meritocracy conflicted.\textsuperscript{46} Mischaracterizations and open opposition to affirmative action were articulated across a wide array of ideological perspectives on the faculty. Alexander Bickel and Louis Pollak represented the two poles on this continuum.\textsuperscript{47}

Some faculty members, such as Bickel, felt that Yale was already doing everything in its power to admit Black students. Bickel argued that Yale was “making ‘the most vigorous efforts to find Negro applicants who met our qualifications, rather generously construed in their favor’ and he opposed affirmative action programs.”\textsuperscript{48} He was against what he understood as “reverse discrimination” and quotas that “rewarded the intellectually inferior and [that] brought in students who could not keep up with the majority.”\textsuperscript{49} Indeed, Bickel’s misconceptions about affirmative action—rooted in false parallels—“awakened memories of the quotas Ivy League schools had used to restrict the number of Jewish students” in an earlier era.\textsuperscript{50}

The gold standard—that is to say the traditional indices of merit—served as the universal measure by which Bickel determined who belonged at Yale, and who did not. He was concerned that a limited pool of “qualified” candidates would make it impossible for Yale to significantly increase its Black student population now that other major law schools were also in the market looking for them. He deplored the idea that Yale would utilize what he saw as “double standards.”\textsuperscript{51}

Interestingly enough, there is no record that Bickel opposed the smaller scale minority admissions program that had been developed in 1948. But, as the number of Black students increased, and their politics appeared to grow more “radical,” he became a vocal opponent of these policies. Perhaps this is a testament to the sense that the faculty was no longer fully in control of the admissions process, and the reality that this new generation of students was less timid than their predecessors and had entered the law school with a sense that they had a right to be there. One wonders if the ambivalence and hostility that fueled the debate among the faculty on this issue, at least in part, reflected these concerns. After all, there was little or no reason to believe that the minority students who attended Yale under its expanded program had actually entered the law school under a set of differential criteria that made them more likely to fail than their earlier counterparts.

\textsuperscript{46} Id. at 201.
\textsuperscript{47} Id. at 113 (describing Bickel’s views); see also id. at 102; Fleming & Pollak, supra note 10, at 50–52 (articulating Pollak’s views).
\textsuperscript{48} KALMAN, supra note 3, at 106 (quoting Alexander Bickel).
\textsuperscript{49} Id. at 101.
\textsuperscript{50} Id.
\textsuperscript{51} Id. at 115.
Lost entirely in Bickel’s analysis was any interrogation of the limited utility of the traditional admissions criteria or any recognition of the meaning of the great success of the Black alumni at Yale from 1948 to 1965—a group whom Kalman suggests had, “upon entering the profession, speedily demonstrated professional accomplishments of a high order.” Based on the performance of the prior generation, one might have thought that Bickel’s fears would have been put to rest. It appears, however, that this was not the case. The power and influence of the traditional conception of meritocracy seemed to outweigh the limits of its usefulness—even in an academic environment wherein the faculty had exhibited the unusual foresight to already have successfully diverged from the rigid use of those measures for over a quarter of a century. Indeed, Yale faculty across an array of ideological perspectives would harbor such concerns.

Professor Harry Wellington, who would later become Dean of the law school shared the same reservations, and was worried that Yale was “taking people who are . . . unqualified.” Clyde Summers, a liberal labor law scholar, argued in published work and in personal conversations with students, that race-based affirmative action programs were “an unreal solution to a real problem.” His solution was to send the students of color to the good local or regional schools where they could compete with white students who were at their same level.

Professor Louis Pollak, on the other hand, was a vigorous and enthusiastic liberal supporter of affirmative action both on campus and in print. In an exchange of letters that was subsequently published in the Public Interest he firmly objected to the critique of affirmative action offered by Judge Macklin Fleming, a member of the law school’s executive committee. Judge Fleming had “queried [Yale Law’s] abandonment of an objective system of merit based on intellectual aptitude (painstakingly evolved over a period of decades).” He had an undying faith—even if there was little or no evidence to support it—in the universality of the traditional admissions criteria that was not offset by Yale’s history of prior success with race conscious affirmative action programs.

Professor Pollak, on the other hand, knew better. He acknowledged that history and argued that “the country must [continue to] train more African Americans for leadership positions and [that] lawyers were [key]
Pollak had a strong sense that [the law] was a profession that had, in one way or another, managed to freeze blacks out, and that now was the time when [the legal profession, perhaps more than any other slice of responsible American life, had to help bring about a real restructuring of where blacks stood in society.]

Yet even Pollak’s support was tarnished by a distinct form of liberal paternalism. Thus, in defending affirmative action, he actually conceded that, as a general rule, its beneficiaries were not the equals of their white student counterparts. Indeed, for that reason, he argued that “if the number of [Black] students with prior educational deficiencies is a minor fraction of the total student body,’ the learning environment would not suffer.”

Rather than questioning the objectivity of the traditional criteria, Pollak implied that black students were in fact academically weaker than their white counterparts, even as he passionately defended Yale’s program. Embedded in such defenses of affirmative action is the moral ambiguity that surrounds a defense of it that does not squarely confront the limits of the so-called standardized criteria. Indeed, instead of offering such a critique, Pollak left a huge cloud hovering over the heads of affirmative action’s beneficiaries based on a set of academic qualifications developed during the era of American apartheid that were not designed to decipher the capabilities of the members of subordinated groups. At the end of the day, we were left to wonder what liberals like Pollak actually meant when they acknowledged the bias of the traditional criteria on the one hand, while contending, on the other hand, that the

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57 Id. at 117.
58 Id. at 102 (internal quotation marks omitted).
59 Id. at 117.
60 Id. at 117–18.
61 Id.; see also Harris et al., Brief, supra note 25, at 9 (“[H]eavy reliance on standardized aptitude test scores constitute built-in racial preferences for White applicants.”); Luke Harris & Uma Narayan, Affirmative Action and the Myth of Preferential Treatment: A Transformative Critique of the Terms of the Affirmative Action Debate, 11 HARV. BLACKLETTER L.J. 1, 24 (1994) [hereinafter Harris & Narayan, Affirmative Action] (“Moreover, many of the criteria that are unquestioningly taken to be important impartial indicators of peoples’ competencies, merit, and potential, such as test scores, not only fail to be precise measurements of these qualities, but systematically stigmatize these individuals within institutions in which these tests function as important criteria of admission.”); Luke Harris & Uma Narayan, Affirmative Action as Equalizing Opportunity: Challenging the Myth of Preferential Treatment, in ETHICS IN PRACTICE: AN ANTHOLOGY, BLACKWELL PHILOSOPHY ANTHOLOGIES (Hugh LaFollette ed. 1997) [hereinafter Harris & Narayan, Equalizing Opportunity] (discussing the unsupported belief that affirmative action policies deviated from the standards of merit and only benefited minority and female applicants); Claude M. Steele, Thin Ice: Stereotype Threat and Black College Students, ATLANTIC, Aug. 1999, at 44 (“[R]acial and gender stereotypes, floating and abstract though they might seem, can affect concrete things like grades, test scores, and academic identity.”).
“Law School had bent its admissions standards in the case of blacks.”

Needless to say, the attitudes of the Yale faculty foreshadowed the character of the law school experience for Black students. In fact, faculty attitudes and not our actual level of performance sometimes colored the way some of us viewed ourselves. Thus, in the midst of an uncommonly rich academic setting there were potential landmines that could turn the law school experience into an emotionally and academically troubling one for Black students. These landmines were embedded in disparate places. They were sometimes reflected in the attitudes of students of color who had internalized a negative self-image in part as a function of the mixed messages they got from the faculty. At other times, they could come in the form of a threat, such as when the BLSU challenged the law school to increase the number of its Black students. At one point, we were told that if we went public with our critique of Yale’s minority admissions program, Yale might release our overall GPAs and LSAT scores. The suggestion was that even though our scores made us the best Blacks, this information would reveal to the world that we were, in fact, inferior to the best whites. Contestations might be subtle, but they were often corrosive. Sometimes they were between students and faculty members, and sometimes between Black students themselves. When and where these landmines might be set off was often impossible to discern. But, then, higher education has always presented people of color with bewildering obstacles beyond the ordinary ones that everyone else has to face. No generation of Black students in the United States has ever been able to circumnavigate academia without being under assault in one way or another. In this case, the assault related to what it means to pursue the quest for postgraduate education while a national debate unfolds about your capacity to do so—a debate fueled, in part, by respected members of your own faculty—some of whom are actually advocates for affirmative action. How was one to fit comfortably into this environment?

Fitting in at Yale might have been much easier to accomplish if the faculty had embraced Otis J. Cochran’s basic insight on what the presence of Black students meant at the time. Speaking on behalf of the Black Law Student Union, he argued as follows:

The BLSU object[s] to the “colonial benevolence” of [the idea] that “high-risk” black students were compromising academic quality: “We assume that Yale’s admission policy with respect to Blacks is not a ‘benign’ double standard at all, but a hard-headed and correct assessment of the loss that the Law School will suffer if it allows a culturally biased test . . .

\[\text{62 KALMAN, supra note 3, at 201 (internal quotation marks omitted).}\]
[to determine who does and who does not get admitted].

Instead, however, Black students continued to be assessed on the basis of a gold standard that had proven to be fools gold in the past. It turned out that we were at the center of a debate about the idea of meritocracy in contemporary America, but only as objects. We would play little or no role in defining the terms of a dialogue at Yale Law School about our competence. To be sure, it was very much a debate about Black students, but the terms of it were almost entirely shaped by the faculty.

At its core, it was a debate between whites who ranged in political perspective from conservative to liberal. It was a debate over the moral and constitutional viability of affirmative action wherein the antagonists disagreed about whether or not the programs were lawful but shared a sense that, at least as a general rule, Blacks were not fully the equals of their white counterparts. In this way, the terms of the debate reflected the inadequacies of the liberal defense of affirmative action—a defense without an institutional/structural analysis that served to promote a kind of racialized hierarchy to the extent that it failed to adequately dislodge the belief that departing from the use of the traditional admissions criteria for Blacks and other people of color was necessarily a form of “preferential treatment.”

It was a debate that symbolized the breakdown of a liberal consensus on the faculty on the question of race-based affirmative action programs. In this sense, it was a debate about who ought to successfully gain admission to a kind of gentlemen’s club as a function of the discretion of the Yale faculty. Paternalism, social utilitarian goals, and concerns about the lingering effects of past discrimination energized the discussion. And, therein lay the problem. The debate embraced a form of elite management on the part of the law school faculty in response to a limited conception of the objectives of affirmative action. Moreover, for the most part, it was not framed in the language of constitutional rights; and even when it was these rights were supposedly forged in the context of the support of what were perceived to be racial preferences.

Something was missing. Simply put, there was no foundational constitutional right at stake for the beneficiaries of affirmative action at the center of this discourse. It was more a question of noblesse oblige on the part of the faculty. Questions about institutional discrimination within the law school were not open for serious discussion. At the time, this struck me as a misguided approach. I felt that the debate needed to be reframed; and that one needed to develop a wholly unapologetic case for affirmative action.

What was the problem? Regrettably, the debate was, in essence, a

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63 Id.
dialogue between two broadly characterizable positions with respect to the idea of an academic and professional meritocracy. On one side, critics described affirmative action as a form of "reverse discrimination" that bestowed "undeserved preferences" on its beneficiaries. On the other side, advocates continued to describe the policy as a form of "preferential treatment," but argued that these preferences were justified, either as "compensation" or on grounds of "social utility"—most importantly with regard to the idea of diversity. At the time, hardly anyone questioned the assumption that affirmative action involved the bestowal of preferences, or challenged the belief that it marked a sudden deviation from an admissions process that, until its advent, operated fairly with respect to all concerned.

VIII. THE COSTS OF AN ARTIFICIALLY NARROW SET OF TERMS FOR THE AFFIRMATIVE ACTION DEBATE

As a student at Yale it seemed to me that a specter of rejection and moral and constitutional ambivalence haunted the affirmative action discourse. I felt compelled to uproot and transcend the terms of this dialogue because it seemed to me to fail to capture the lived experiences that actually informed why affirmative action policies had come into existence in the first place. Furthermore, one could on occasion see the disconcerting consequences of the limits of this debate on campus. The mischaracterizations, confusion, and uncertainty surrounding these policies left some students of color at a loss for how to handle their presence in the law school in a healthy way. Indeed, a few felt the need to prove themselves in ways that I always believed were inappropriate so as to demonstrate to themselves and to others that they truly belonged at Yale.

Justice Clarence Thomas was a prototypical example of this phenomenon. In his autobiography, My Grandfather's Son, Justice Thomas says that he was offended by talk about how they let him into Yale. He goes on to say, however, that he felt "[y]ou had to prove yourself everyday because the presumption was that you were dumb. And did not deserve to be there on merit. . . . Every time you walked into a classroom . . . it was like having a monkey jump on your back from the gothic arches."

Thomas's response to having internalized, at least to a certain extent, the mixed messages he had received from the law school faculty was to overcompensate. Thus, he took a course with Professor Boris Bitker simply because Bitker had a reputation for failing Black students who

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64 See, e.g., Lisa H. Newton, Reverse Discrimination as Unjustified, 83 ETHICS 308 (1987).
65 For a defense of racial preferences as important to the incorporation of diverse viewpoints in our institutions, see CARTER, supra note 38.
deserved to fail; and Thomas wanted to show that he had no reservations about his capacity to do high quality work. I did not then, nor do I now support such actions. At no point while I was at Yale did I think that one should take to heart the inappropriate insinuations about the limited capacities of minority students; or that one should literally embrace the suggestion that the beneficiaries of affirmative action engage in super extraordinary efforts in order to persuade those who hold such stigmatizing views that we are brilliantly meritorious and competent after all.

The latter suggestion, however, has been made by other distinguished Yale Law School graduates besides Justice Thomas. Stephen Carter, for example, in Reflections of an Affirmative Action Baby, argued the following:

A more immediate solution is for those students who are admitted as a consequence of affirmative action, while on the college campus and while in professional school and while pursuing their careers—in short, for the rest of their professional lives—is to bend to their work with an energy that will leave competitors and detractors alike gasping in admiration.

The idea here is that an exceptional work ethic will somehow serve to undermine the negative stereotypes that sometimes surround minority students and professionals. I have serious doubts about that however. I do not believe that simply working extremely hard is likely to convince those who hold stereotypical views about people of color to abandon them. After all, even in the era of chattel slavery—when African Americans were compelled to work under the most difficult and arduous of circumstances without pay—they were stereotyped as lazy.

Still, it may well be perfectly understandable why some people of color would follow the path of overcompensation carved out by Carter and Justice Thomas. But their path was never the only one available. For instance, it was clear to me at the time that the solution to the stigma problem was to fight accusations of inferiority with the truth, through clarification and re-description, with the hope that people of good will—who are open to another perspective—will recognize the problems with such ascriptions. But, this was certainly not clear to all of us when we were students. In this light, it is undoubtedly fair to say that attitudes like those of Carter and Justice Thomas played a significant role in actually inspiring me to push back against the narrow framing of the liberal defense

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68 THOMAS, supra note 66, at 75.
69 CARTER, supra note 38, at 86.
70 FAYE Z. BELGRAVE & KEVIN W. ALLISON, AFRICAN AMERICAN PSYCHOLOGY: FROM AFRICA TO AMERICA, 455 (2010).
of affirmative action. After all, I could see that one of the difficulties with this perspective was that it not only failed to address the need displayed by such people to overcompensate for their presumed shortcomings, it actually served to reinforce it.

IX. SHIFTING THE TERMS OF THE DEBATE

In my final year at Yale Law, I enrolled in the LL.M. program to work with Professors Myres S. McDougal and Michael Reisman to begin to develop an alternative perspective on affirmative action.\(^7\) I focused on exploring the meaning of equal citizenship in post-Jim Crow America. My principle goal was to clarify the terms of the affirmative action debate, and, in so doing, to develop a much more robust defense of affirmative action policies. I sought to construct an analysis that was deeply informed by the institutional and structural considerations that, in fact, had made affirmative action necessary. Although I did not realize it at the time, this work would ultimately serve as my pathway to CRT. For embedded in CRT was a rich understanding of what it meant to fully dismantle continuing forms of institutional racism—such as the use of biased standardized tests in the United States—that were, more often than not, ignored by the advocates of the liberal defense of affirmative action.\(^2\)

I left Yale a year later with the strong desire to one day have the time to work on developing a constitutional jurisprudence of race relations that was as nuanced in its features as the contemporary contours of institutional racism. After a couple of years spent as a Fulbright Scholar in England studying British race relations and a federal court of appeals clerkship with Judge A. Leon Higginbotham, Jr., I followed most of my classmates into corporate law practice. But my interest in revisiting these issues—so starkly raised at Yale—never fully abated. Thus, after just a few years, I left Wall Street and entered Princeton’s Ph.D. program in Politics to grapple with these concerns head on.

I wanted to think outside the box, to interrogate the use of differential


\(^2\) This assessment of the rationales developed to defend affirmative action was first articulated in two essays that I co-wrote with Uma Narayan. See Harris & Narayan, Affirmative Action, supra note 61; Harris & Narayan, Equalizing Opportunity, supra note 61. Both of these articles offer a critique of the compensation and diversity rationales used to defend affirmative action by its advocates, and they focus our attention on “here and now” problems of institutional discrimination. Simply put, they present affirmative action as an equal opportunity measure. Charles Lawrence makes essentially the same arguments in the context of his critique of what he calls the liberal defense of affirmative action. See generally Charles Lawrence, Two Views of the River: A Critique of the Liberal Defense of Affirmative Action, 101 COLUM. L. REV. 928 (2001).
criteria in the context of minority admissions programs, and to develop what I had come to call an anti-preference perspective. I nurtured this idea in my dissertation and spelled out its implication in concrete detail in my first several publications. At the center of these essays was a critique of contemporary conceptions of meritocracy which assume that the appropriate way to use standardized testing in post-apartheid America is to act, at least to a certain extent, as though all Americans are similarly situated, and to not fully account for the marked differences in our backgrounds when assessing the results of the tests. In this arena, genuine equality is linked to treating people who are dissimilarly situated, more or less, the same.

I had canvassed the literature on standardized tests and learned that they were relatively poor predictors of future performance even with respect to their limited objective, which was to predict the variance of the first year grades of college and professional students. Moreover, I had found that, nonetheless, the traditional indices were used as if they actually reflected a person’s overall intelligence and could predict an individual’s long-term success in academic institutions and professional life.

I also knew that there was ample evidence that such tests did not predict equally well for men and women, and that that they could serve to discriminate against people of color as well as working class white Americans. Hence, I questioned the idea of a putatively universal conception of meritocracy in institutional settings in which the performance that the test was supposed to predict was already culturally preferred. In this case, it was already preferred for those who were imagined to ideally embody the appropriate student profiles for Yale Law, rather than calculated to embrace a vision of qualifications and meritocracy designed to assess the vast potential of the members of formerly racially subordinated groups—groups whose members had been unfairly excluded from the law school for countless generations. Modest efforts to offset such preferences seemed perfectly defensible to me. Moreover, it seemed absolutely absurd to call efforts to offset such preferences “preferences” for the so-called beneficiaries of affirmative action.

As Gary Peller has insightfully remarked:

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75 Id. at 22.

76 Id.
Here, the category of "merit" represented the universal, impersonal side of the integrationist perception... [There was] the idea that the category of merit itself was neutral, impersonal, and somehow developed outside the economy of social power—with its significant currency of race, class, and gender—that marks American social life.77

This, of course, made absolutely no sense to me. In the alternative, I constructed an anti-preference principle that could be used to distinguish what it means to discriminate against someone from what it means to promote equality by offsetting built-in biases in the ways in which American institutions distribute resources and goods. Toward this end, I argued as follows:

[A]ffirmative action is not a matter of affording "preferential treatment" to its beneficiaries, but instead an attempt to offer them a greater equality of opportunity in a social context marked by pervasive inequalities, one in which many institutional practices work to impede a fair assessment of the capabilities of those who are working class, women, or people of color.78

My objective was to dramatically reframe the terms of the affirmative action debate. To do so, I sought to move away from justifications for these policies that focus simply on past harms and future goals. Instead, I targeted here and now problems of institutional discrimination. In laying out a detailed defense of affirmative action I observed as follows:

Affirmative action policies do not offer compensation for an entire history of racism and sexism, or even for all of their continuing manifestations and effects. Rather, they seek to counter some of the continuing effects of a historical experience that impedes equal opportunity today. While the compensation rationale suggests the metaphor of providing crutches for individuals damaged by racism and sexism to

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78 Harris & Narayan, Affirmative Action, supra note 61, at 4. “The problem is far more complicated than is captured by the common perspective that working-class people, women and minorities have generally not had equal advantages and opportunities to acquire qualifications that are on par with those of their better-off, white male counterparts, and so we should compensate them by awarding them preferences even though they are less well qualified. Their qualifications, in fact, tend to be under-valued and under-appraised in many institutional contexts. Moreover, many of the criteria that are unquestioningly taken to be important impartial indicators of people’s competencies, merit and potential, such as test scores, not only fail to be precise measurements of these qualities, but systematically stigmatize these individuals within institutions in which these tests function as important criteria of admission.” Id. at 24.
help them cross the road, the equal opportunity rationale suggests a different and more appropriate metaphor: clearing away obstacles that lie in peoples’ paths as a result of their class, race, or gender, so that they can get across the road on their own. As George Eliot put it, “It is astonishing what a different result one gets by changing the metaphor.”

The changing of the metaphor in this case symbolized the transformation of the terms of the debate. The focus of our concern would shift from a story about damaged individuals to a story about damaged institutions; and we would come to understand that we must learn to distinguish the difference between reverse discrimination and a process of rational differentiation that represents nothing more than the removal of unwarranted obstacles that some Americans face that others do not.

Over the past fifteen years, other legal theorists have begun to explore these same concerns. Lani Quinier is critiquing what she calls the testocracy; Charles Lawrence has interrogated the liberal defense of affirmative action; Jerry Kang has written about the importance of focusing on here and now problems of institutional discrimination; Devon Carbado and Cheryl Harris have explored what it means to reconceptualize and rethink the idea of preferential treatment in the context of the admissions process; Kimberly West-Faulcon has written perceptively about the unjustifiable adverse impact of standardized tests on people of color; and Kimberlé Crenshaw has explored what it would mean to reframe the affirmative action debate as a discourse grounded in a constitutional right to be free of institutional forms of discrimination. I expect, that in the next few years the frame misalignment that surrounds and seriously distorts the affirmative action debate will slowly disappear as we learn to rethink the meaning of equality in the post-Civil Rights Era.

As for me, I am working on a book manuscript called *Up from Segregation: Notes from a Child of Apartheid*, which is my attempt to create what Crenshaw calls a counter-narrative to the liberal story about meritocracy, race and affirmative action. In so doing, I hope to play a role in regrounding this discourse in the soil of social reality, that is to say in the actual lived experiences of the beneficiaries of affirmative action. In this vein, through public education tools developed by The African

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79 Id. at 18 (internal citation omitted).
American Policy Forum (AAPF)—the social justice think tank that I co-founded with Crenshaw in 1996—I have worked to develop, promote, and infuse a complex and common sense defense of affirmative action into the public discourse surrounding these policies. Indeed, in this light, AAPF’s animated track metaphor, *The Unequal Opportunity Race*,\(^8\) has helped many people to focus upon and recognize the barriers that people of color face that are a product of past and contemporary policies and practices that benefit whites at the expense of the members of certain racial minority groups. Assessing these institutional and structural barriers represents one huge step towards a new understanding of the significance of affirmative action policies.

X. CONCLUSION

My romance with the CRT movement was sparked by the tools it enabled me to develop to interrogate the shortcomings of the affirmative action debate in the United States. Toward this end, CRT has been exceedingly helpful. It has exposed me to new ways of thinking because it recognized the value in contesting racial power when it was entrenched in ideological rationales that framed Blacks and other people of color as measurably unworthy. In the process, I discovered that the liberal defense of affirmative action, rooted in theories of compensation and diversity, actually failed to promote an understanding of the here and now problems of institutional discrimination that account for why we continue to need race-conscious social justice initiatives such as affirmative action.

Not surprisingly, then, as I moved from a critique of the discourse on affirmative action at the Yale Law School in the 1970s to intervene in the broader public debate, I found myself more and more in conversation with CRT. It was the light at the end of a tunnel that for too long had gone unseen, but that now illuminates new realities. Seniority systems, racial profiling, tracking in elementary and secondary schools—like traditional conceptions of meritocracy in institutions of higher education—could all be viewed through a prism of institutional/structural forms of racism within this perspective; and, consequently, one could reimagine and reframe questions of equality in modern America.

As a result, in my own work I have been able to move away from superficial conceptions of equality rooted in notions of reverse and benign discrimination to focus on more significant concerns. For instance, why are we more concerned with the diminished overrepresentation of whites in key sectors of society than we are with the persistent underrepresentation of people of color in almost all of spheres of life where power and

authority are exercised in meaningful ways in postapartheid America. In this sense, CRT has introduced me to truly innovative ways of conceptualizing equality and racial justice.

But, there is more. CRT is now finding a home not only in the lives of an entirely new generation of young scholars, but also in the lives of a brand new generation of undergraduate students—like the ones that I teach at Vassar College—who are now able to confront and examine its remarkable insights on law, race and racism in classrooms in colleges and universities across the country. Simply put, CRT’s legacy is still in the making. And, for this, we should all be eternally grateful since much work remains to be done before we can comfortably claim to have eliminated all of the ways in which systemic forms of racial subordination are deeply interwoven into the social fabric of American society, not to mention an extraordinary array of nations across the face of the globe.