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This Is Not a Drill: The War Against Antiracist Teaching in America

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This Is Not A Drill: The War Against Antiracist Teaching in America

Kimberlé Williams Crenshaw

ABSTRACT

On January 5, 2022, Professor Kimberlé Williams Crenshaw received the 2021 Triennial Award for Lifetime Service to Legal Education and the Legal Profession from the Association of American Law Schools (AALS). In this modified acceptance speech delivered at the 2022 AALS Awards Ceremony, she reflects on the path that brought her to this moment and the crisis over antiracist and social justice education that is unfolding today. Arguing that the legal academy bears a collective responsibility to fight back against the silencing of antiracist frameworks, she calls on legal educational institutions to confront their historical agnosticism toward racial subordination and to defend the freedom to teach and learn Critical Race Theory against the concerted efforts to undo its legacy.

AUTHOR

Distinguished Professor of Law and Promise Institute Chair in Human Rights, UCLA School of Law. Isidor and Seville Sulzbacher Professor of Law, Columbia Law School. Co-founder and Executive Director of the African American Policy Forum. For being in conversation during this time I thank, Sumi Cho, Luke Harris, Janai Nelson, Ann Thomas, Cheryl Harris, and Devon Carbado. I am grateful to Alanna Kane, the Staff of the African American Policy Forum, and colleagues of AAPF's Critical Race Theory Summer School for their assistance in preparing this speech for publication.



Let us be reminded that before there is a final solution, there must be a first solution, a second one, even a third. The move toward a final solution is not a jump. It takes one step, then another, then another. Something, perhaps, like this:

- (1) Construct an internal enemy, as both focus and diversion.*
- (2) Isolate and demonize that enemy by unleashing and protecting the utterance of overt and coded name-calling and verbal abuse. Employ ad hominem attacks as legitimate charges against that enemy.*
- (3) Enlist and create sources and distributors of information who are willing to reinforce the demonizing process because it is profitable, because it grants power and because it works.*
- (4) Palisade all art forms; monitor, discredit or expel those that challenge or destabilize processes of demonization and deification.*
- (5) Subvert and malign all representatives of and sympathizers with this constructed enemy.*
- (6) Solicit, from among the enemy, collaborators who agree with and can sanitize the dispossession process.*
- (7) Pathologize the enemy in scholarly and popular mediums; recycle, for example, scientific racism and the myths of racial superiority in order to naturalize the pathology.*
- (8) Criminalize the enemy. Then prepare, budget for and rationalize the building of holding arenas for the enemy—especially its males and absolutely its children.*
- (9) Reward mindlessness and apathy with monumentalized entertainments and with little pleasures, tiny seductions, a few minutes on television, a few lines in the press, a little pseudo-success, the illusion of power and influence, a little fun, a little style, a little consequence.*
- (10) Maintain, at all costs, silence.*

-Toni Morrison¹

I want to pay tribute to the recipients of the Triennial Award who preceded me: Norman Dorsen, Guido Calabresi, Derrick Bell, Herma Hill

1. Toni Morrison, *Racism and Fascism*, 64 *J. Negro Educ.* 384 (1995) (noting the symbiotic reproduction of racism and “its succubus twin” fascism).

Kay, and Michael A. Olivas.² I am humbled to be among such influential figures who have done so much to produce critical advances in legal education. Congratulations to all of this year's award winners. I am honored to share this special moment with all of you.

It is an understatement to say that I was stunned by the news that my colleagues had designated me the 2022 Triennial Awardee. The better word would be shocked. Having spent the last several months rallying against the full-scale disinformation campaign against Critical Race Theory (CRT)³,

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2. In 2006, the Association of American Law Schools (AALS) established the AALS Award for Lifetime Service to Legal Education and the Law, an award presented every three years. The award was designed to formally recognize lifetime service to legal education by a faculty member or retired faculty member at an AALS member school. I thank Angela Onwuachi-Willig and all of the colleagues who contributed to my nomination. See *Nominations for the 2021 AALS Triennial Award for Lifetime Service to Legal Education and the Law*, ASS'N AM. L. SCHS., <https://www.aals.org/about/publications/newsletters/aals-news-spring-2021/triennial-award-nominations> [<https://perma.cc/VP4S-3R2Y>] (last visited Mar. 4, 2022). See Barbra Elenbaas, *Kimberlé Crenshaw, Architect of Critical Race Theory, Awarded Highest AALS Honor*, ASS'N AM. L. SCHS., <https://www.aals.org/about/publications/newsletters/aals-news-fall-2021/kimberle-crenshaw-triennial> [<https://perma.cc/8WWM-Q3R8>] (last visited Mar. 4, 2022).
 3. The term “critical race theory” is not mysterious, sinister, or anti-American. It is easily explainable, descriptively accurate, and fully consistent with the essential democratic aims of fostering racial and social equality. In reality, the “critical race” dimension of CRT holds that there is no natural explanation for contemporary patterns of racial inequality, and that race is a social construction. The “theory” part of CRT signals that the project looks beyond the important but limited scope of bringing lawsuits. Instead, Critical Race Theorists look at the wider ways that racism works in order to better understand why seemingly “race-neutral” and “colorblind” rules underwrite systemic inequalities. These definitions, though, are irrelevant to detractors. Their aims are to stigmatize CRT as needlessly “divisive” and racially inflammatory—and thereby to continue stoking resistance to antiracism and to public institutions that embody these values. See Betsy DeVos (@BetsyDeVos), TWITTER (Nov. 12, 2021, 9:08 AM), <https://twitter.com/BetsyDeVos/status/1459206396315115521> [<https://perma.cc/C2CQ-5TLH>]. For an exhaustive list of sources to learn more about the backlash against CRT, see *Tracking the Organized Attacks on Racial and Gender Justice*, AFR. AM. POL'Y F., <https://www.aapf.org/truthbetold-media> [<https://perma.cc/695X-ABDB>] (last visited Mar. 6, 2022).

intersectionality,⁴ and a host of social justice texts and frameworks,⁵ most of the breaking news associated with the kind of work that I have done for over thirty years has been anything but pleasant. The pronounced backlash against

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4. Intersectionality, which emerged from Critical Race Theory, is a contestatory prism that reveals the complex, cumulative way in which multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect, especially in the experiences of marginalized groups. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989) (coining the term intersectionality to illustrate how dominant conceptions of discrimination—and their doctrinal manifestations—obstruct race and gender-based remediation).
5. For the last year, the African American Policy Forum (AAPF) has been documenting, organizing, and strategizing to respond to the moral panic over Critical Race Theory through our #TruthBeTold campaign. See *Welcome to the #TruthBeTold Campaign*, AFRICAN AM. POL'Y F., <https://www.aapf.org/truthbetold> [<https://perma.cc/2GLA-PFHM>] (last visited Mar. 4, 2022). Since 2020, AAPF has sounded the alarm that these attacks against CRT are not actually attacks on CRT at all, but rather, attacks on our shared history, progress, and freedom, and all for political expediency:

After unprecedented global protests for racial justice that followed the killings of George Floyd and Breonna Taylor, right-wing groups across America instigated and intensified well-funded, orchestrated disinformation campaigns against critical race theory, intersectionality, and other forms of racial and gender justice discourse. Starting with Donald Trump's Equity Gag Order banning federal agencies, contractors, and grant recipients from conducting trainings and programs that address systemic racism and sexism, this campaign has now morphed into a full-on war against racial and gender justice itself.

Since its rescission at the federal level, the Equity Gag Order has since metastasized at the state and local level. Under the Trojan horse of opposing an invented caricature of “critical race theory,” at least sixteen states (AL, AR, AZ, FL, GA, IA, ID, MT, ND, NH, OK, SC, TN, TX, UT, VA) have fully passed racial and gender equity prohibitions while at least 15 others are actively considering them. In addition, similar copycat bills have been introduced by Republicans in Congress.

Across the country, this moral panic over what and how we learn about history has led to teachers being fired and courses canceled. Parents have been deceived, tensions have been stoked, and over a half century of efforts to amend the misleading narratives about our history are being reversed. If you marched last year for George Floyd and Breonna Taylor, if your eyes were opened by what you have seen and learned about race and racism in our society, if you have witnessed the value of anti-racist education in your own and in your children's lives, then don't be confused by the lies.

Id.; see also Rachel Hatzipanagos, *What the Founders of Critical Race Theory Have to Say About the Conservative Attacks*, WASH. POST (July 22, 2021, 6:00 AM), <https://www.washingtonpost.com/nation/2021/07/22/critical-race-theory-founders> [<https://perma.cc/6MTL-ZLNQ>]; see also Kimberlé Crenshaw, *The Panic Over Critical Race Theory is an Attempt to Whitewash U.S. History*, WASH. POST (July 2, 2021, 10:04 AM), https://www.washingtonpost.com/outlook/critical-race-theory-history/2021/07/02/e90bc94a-da75-11eb-9bbb-37c30dcf9363_story.html [<https://perma.cc/C8PG-WJK>].

antiracist ideas that has taken hold since the racial reckoning of 2020 has hijacked Critical Race Theory as its principal vehicle. The crackdown on CRT has graphically illustrated how rapidly basic norms can evaporate in the face of organized aggression and tepid responses. That such a backlash could come so swiftly on the heels of a once-in-a-generation mobilization⁶ for racial justice is a reminder of the cyclical dimensions of race, reform, and retrenchment.⁷ In the face of this concerted disinformation campaign, I accept this recognition on behalf of an entire community of scholars as an affirmation of the value of this work and the academic freedom that we have enjoyed to pursue it.

With this recognition, I am left with an overwhelming sense of gratitude to so many people who helped me exist as fully embodied as possible in a profession that for most of its existence, was not trained to look at someone like me and think, “law professor.”⁸ I want to express gratitude to those who

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6. In response to the uprisings of 2020, the panic over CRT is an attempt to whitewash U.S. history and to cut off necessary classroom discussion of racial justice and reconciliation taking place in Tulsa, Minneapolis, Louisville, Atlanta, Chicago, and other communities across the country inspired by and responsive to #BlackLivesMatter and #SayHerName. See Kimberlé Crenshaw, *The Panic Over Critical Race Theory is an Attempt to Whitewash U.S. History*, WASH. POST (July 2, 2021, 10:04 AM), https://www.washingtonpost.com/outlook/critical-race-theory-history/2021/07/02/e90bc94a-da75-11eb-9bbb-37c30dcf9363_story.html [<https://perma.cc/DLW6-N8SD>].
 7. See Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); see also KK Ottesen, *An Architect of Critical Race Theory: ‘We Cannot Allow All of the Lessons From the Civil Rights Movement Forward to be Packed Up and Put Away for Storage’*, WASH. POST (Jan. 19, 2022, 7:00 AM), https://www.washingtonpost.com/lifestyle/magazine/an-architect-of-critical-race-theory-we-cannot-allow-all-of-the-lessons-from-the-civil-rights-movement-forward-to-be-packed-up-and-put-away-for-storage/2022/01/14/24bb31de-627e-11ec-a7e8-3a8455b71fad_story.html [<https://perma.cc/F6NM-FBJX>] (“The entire point [of *Race, Reform and Retrenchment*] was to anticipate that reform would inevitably reproduce retrenchment and backlash. That has been the history of progress around race in the United States: Modest reform creates tremendous backlash. And sometimes the backlash is more enduring than the reform.”). Consider that a little over a decade of Reconstruction was followed by seven decades of white supremacy, racial tyranny, and terror. See *Black History, Black Freedom, and Black Love: The Redeemer Constitution* (Masterclass 2022, Episode 11) (offering the real story of how the promise of the Fourteenth Amendment was thwarted by white supremacists and how the Redeemer Constitution’s legacy continues today).
 8. Black women have historically been shut out of the legal academy. See Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441, 446 tbl.1, 448 (2015) (noting that nearly three-fourths of all law professors are white, 62 percent of all law professors are men, and almost half of all legal academics are white men) (internal citation omitted); see also Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364 (2021); see also Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 BERKELEY

took a chance and provided me passage into this profession, notwithstanding my clear intention to write, think, and teach outside the box.⁹

Because opportunity and timeliness are not always in step, these occasions call upon us to reflect as much as to celebrate. I remain ever mindful that doors were opened for me that could not be pried open for the generations of those before me—the many fierce and brilliant thinkers for whom time ran out while waiting for those opportunities to come. That the late, great Pauli Murray,¹⁰ a progenitor of constitutional thinking about race and gender that is foundational to equality jurisprudence to this day, was not placed before us in law school classrooms was an incalculable loss to my generation of law students and to the legal scholars who've come in our wake.¹¹ Because the long reach of past exclusion shapes the future, I sit in this

WOMEN'S L.J. 46 (1990). *But see*, Karen Sloan, 'It's the Moment for This': An Unprecedented Number of Black Women Are Leading Law Schools, LAW.COM (May 13, 2021, 2:55 PM), <https://www.law.com/2021/05/13/its-the-moment-for-this-an-unprecedented-number-of-black-women-are-leading-law-schools> [<https://perma.cc/4H2F-PRTY>].

9. For this, I acknowledge the late Shirley Abrahamson of the Wisconsin Supreme Court; Deans Susan Westerberg Prager, Carole Goldberg, Barbara Black, Lance Liebman, and numerous colleagues and mentors including Denise Carty-Bennia, Duncan Kennedy, and Mary Jo Frug. I must give special thanks also to law students whose advocacy undergirded the recruitment of faculty of color from the 1970s onward.
10. For an exploration of the life and legacy of lawyer, activist, author, and educator Pauli Murray, who coined the term Jane Crow and whose legal arguments laid the groundwork for racial and gender equality, see MY NAME IS PAULI MURRAY (Amazon Studios 2021) and see PAULI MURRAY, SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE (1987) (explaining how she first became conscious of the twin evil of discriminatory sex bias, Jane Crow, when she studied at Howard University Law School); *see also* PAULI MURRAY, PROUD SHOES: THE STORY OF AN AMERICAN FAMILY, at xiv (Beacon Hill Press 1999).
11. Pauli Murray should be a household name, but she was denied full recognition within the U.S. legal establishment during her lifetime because of her race and gender. *See* Philippa Strum, *Pauli Murray's Indelible Mark on the Fight for Equal Rights*, ACLU (June 24, 2020), <https://www.aclu.org/issues/womens-rights/pauli-murrays-indelible-mark-fight-equal-rights> [<https://perma.cc/7QKJ-LNF3>] (describing how Murray was rejected from the University of North Carolina because of her race and denied from Harvard Law School because of her gender); *see also* Irin Carmon (@irin), TWITTER (Jan. 26, 2022, 1:19 PM), <https://twitter.com/irin/status/1486448684879708160> [<https://perma.cc/XF9Y-C7YR>] (advocating in a letter to President Nixon for her nomination to fill Justice Black's seat on the Supreme Court, "I am a Negro woman 60 years old . . . My application is to forestall the popular misconception that no qualified women applied or are available."). Murray was the only woman in her class at Howard University Law School, and her thesis, *Should the Civil Rights Cases and Plessy v. Ferguson Be Overruled?*, proposed a way to use the Thirteenth and Fourteenth Amendments to overturn *Plessy v. Ferguson's*, 163 U.S. 537 (1896), separate-but-equal doctrine. *See* PAULI MURRAY, SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE 255 (1987) (noting that Thurgood Marshall borrowed from Murray's legal framework when arguing *Brown v. Board of Education*, 347 U.S. 483 (1954), before the Supreme Court). Recognizing

joyful moment with a mental asterisk by my name to hold the memory of Pauli Murray and other trailblazing scholars who are unnamed, unknown, and unsung.

Lifetime achievement is not a singular or individual narrative, but a reflection of history and collective action, of timing and opportunity. I came into law teaching in the midst of a tremendous growth in teaching positions, and at the same time, during a rapid downshift in legal reformism.¹² Both of these circumstances shaped my career. The growth in teaching jobs in the legal academy widened possibilities that had never before been realistic for folks like me to become law professors. At the same time, our cohort witnessed the doctrinal unraveling of the civil rights movement's forward

how many of her ideas were dismissed, Murray noted: "What I say very often is that I've lived to see my lost causes found." Melena Ryzik, *Pauli Murray Should Be a Household Name. A New Film Shows Why.*, N.Y. TIMES (Sept. 15, 2021), <https://www.nytimes.com/2021/09/15/movies/pauli-murray-documentary.html> [<https://perma.cc/U8BZ-WQMS>]. Justice Thurgood Marshall hailed Murray's book, *States' Laws on Race and Color*, which detailed Jim Crow state-sponsored segregation laws, as the bible of the civil rights movement. See PAULI MURRAY, *STATES' LAWS ON RACE AND COLOR* (1951); see also PAULI MURRAY, *SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE* 289 (1987).

Murray also pioneered sex equality strategies which laid the foundation for extending constitutional protections to women and which were later adopted by Ruth Bader Ginsburg in *Reed v. Reed*, 404 U.S. 71 (1971). See, e.g., Pauli Murray, *A Proposal to Reexamine the Applicability of the Fourteenth Amendment to State Laws and Practices Which Discriminate on the Basis of Sex Per Se*, in HOW AND WHY WAS FEMINIST LEGAL STRATEGY TRANSFORMED, 1960-1973? Doc. 3 (Serena Mayeri ed., 2007), <https://documents.alexanderstreet.com/d/1000681163> [<https://perma.cc/FUU3-49XT>]; see also Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965) (authoring the first comprehensive treatment of sex discrimination in an American law review and arguing that both Title VII of the 1964 Civil Rights Act and the Fourteenth Amendment should be interpreted to prohibit discrimination against women by both private employers and the government); see also Olivia B. Waxman, *In Previously Unseen Interview, Ruth Bader Ginsburg Shares How Legal Pioneer Pauli Murray Shaped Her Work on Sex Discrimination*, TIME (Oct. 16, 2020, 5:54 PM), <https://time.com/5896410/ruth-bader-ginsburg-pauli-murray> [<https://perma.cc/S6NK-8CHY>]. For more on the legal legacies of Pauli Murray, see generally Michele Goodwin, *Lessons in Race and Racism in the Legal Academy: Notes on Pauli Murray*, 73 RUTGERS U.L. REV. 913 (2021); see also Paul L. Edenfield, *American Heartbreak: The Life of Pauli Murray*, 27 LEGAL STUD. F. 733 (2003); see also Glenda Gilmore, *Before Brown: Pauli Murray and the Desegregation of Higher Education*, 6 RUTGERS RACE & L. REV. 247 (2004).

12. Critical Race Theory emerged from efforts to bring Critical Legal Studies, a project of a largely white and male group of progressive intellectuals who had an insurgent presence in American law schools in the 1980s, into conversation with antiracist legal reformism. See Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1288-89 (2011); see also Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1519, 1541 (1991).

momentum. Our observations and critical engagement of the drama unfolding before our eyes eventually gave rise to what we now call Critical Race Theory.¹³

Neither of these historic factors alone would have made much of a difference had we occupied this space standing alone. Our project was nurtured within a vibrant community of scholars committed to examining the interface between the lives we led and the legal logics that shaped them. In fact, I regard much of what appears in law reviews under my name¹⁴ as concepts conceived, articulated, debated, and amended with others in the many villages I have called home.

The interface between “home” and “the law” has long shaped my orientation toward legal education. In my very first home—the home of

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13. Put simply, I describe Critical Race Theory as a prism for understanding why racial inequalities are so enduring. When coining the term, our intellectual commitments were:

[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.” [And second, to express] a desire not merely to understand the vexed bond between law and racial power but to *change* it.

Kimberlé Crenshaw, Neil Gotanda, Gary Peller, & Kendall Thomas, *Introduction, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xiii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995). For further introductions to CRT, see generally RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2001); see also Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329 (2006); see also Devon W. Carbado, *Critical What What?*, 43 CONN. L. REV. 1593 (2011).

14. See generally, Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); see also Kimberlé Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT’L BLACK L.J. 1 (1988); see also Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); see also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); see also Kimberlé Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. CAL. L. REV. 1467 (1992); see also Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or ‘A Foot in the Closing Door’*, 49 UCLA L. REV. 1343 (2002); see also Kimberlé W. Crenshaw, *Framing Affirmative Action*, 105 MICH. L. REV. FIRST IMPRESSIONS 123 (2006); see also Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253 (2011); see also Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012); see also Kimberlé W. Crenshaw, *We Still Have Not Learned From Anita Hill’s Testimony*, 26 UCLA WOMEN’S L.J. 17 (2019).

Marian Williams and Walter C. Crenshaw—photos of Thurgood Marshall and a lithograph of the Black Reconstruction era Congressmen held a place of honor on our living room walls along with Dr. Martin Luther King Jr. and John F. Kennedy. Here perhaps is the foundation of a curious but abiding contradiction that would become a constant for most of my career.¹⁵ In that house, we held lawyers in the highest regard as professionals who could mobilize law to fight against racial injustice. We believed in and valued the power of law to recognize and uphold our rights, even while legal institutions were facilitating the blockbusting practices that would turn our nearly all-white neighborhood into an all-Black one within a decade. All of my thinking and writing has in some way engaged this push-and-pull duality between law's aspirational promise and its material disappointments. In wrestling with the hopes that grew out of reform, and the frustrations that emerged from retrenchment, I am fortunate to have been in conversation and partnership with numerous interlocutors throughout this journey, to whom I am eternally grateful.¹⁶ These mentors and colleagues have thrown down their buckets where they were to fashion conceptual bridges and analytic tools to alter the structures that reproduce inequality.

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15. *Backtalker*, my forthcoming memoir, describes my work as inspired by the dialogue I was exposed to within my home and in wider society. That sensibility matured into my scholarship. I do not talk back into a vacuum but against particular systems of thought and inherited structures of power. See KIMBERLÉ CRENSHAW, *BACKTALKER* (forthcoming 2022); see also Rita Omokha, 'I See My Work as Talking Back': How Critical Race Theory Mastermind Kimberlé Crenshaw Is Weathering the Culture Wars, *VANITY FAIR* (July 29, 2021), <https://www.vanityfair.com/news/2021/07/how-critical-race-theory-mastermind-kimberle-crenshaw-is-weathering-the-culture-wars> [<https://perma.cc/X6XU-UQ75>].
16. James Turner at Cornell and the faculty at Africana Studies (and through them, the intellectual traditions of W.E.B. Du Bois and Oliver Cox); Duncan Kennedy, Gerry Frug, and Martha Minow at Harvard; Dave Trubek, Jim Jones, and Dirk Hartog at Wisconsin; Christine Littleton and Fran Olsen, the Femcrits of northern and southern California; Catharine MacKinnon, Mary Jo Frug, and Wendy Williams—all in various ways, sparred, cajoled, and engaged me as a budding scholar. And of course, there are my soulmates in CRT—Derrick Bell, Mari Matsuda, Chuck Lawrence, Denise Carty-Bennia, Neil Gotanda, Stephanie Phillips, Robert A. Williams, Gary Peller, and Gerald Torres—who constituted the intellectual village I called home. Added to them were the twenty others who answered the call to come to Madison, Wisconsin for a workshop in "New Developments in CRT" when in fact, there were no old developments. UCLA provided the space for me to teach the first Critical Race Theory course in the country, and when my colleagues Devon Carbado, Cheryl Harris, Carole Goldberg, Laura Gómez, and Jerry Kang came together to establish the first Critical Race Studies program in the United States, the project could finally claim an institutional home. Today my community also includes the thirty-plus employees of the African American Policy Forum cofounded with Luke Charles Harris, and the team at the Center for Intersectionality and Social Policy Studies at Columbia Law School.

My greatest wish is to be able to say that our forward trajectory has once again found its footing, so that these comments can serve as a mere epilogue to a journey whose destination is clearly within reach. At minimum, I would have hoped that the massive social reckoning prompted by the killing of George Floyd¹⁷ and Breonna Taylor¹⁸ would have opened pathways for more

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17. George Floyd, a 46-year-old African American man, was killed on May 25, 2020 in Minneapolis, Minnesota, when he was handcuffed and pinned to the ground by Derek Chauvin, a white police officer, who pressed his knee onto Mr. Floyd's neck for almost nine minutes, despite Mr. Floyd's desperate pleas that he could not breathe. See Christine Hauser, Derrick Bryson Taylor, & Neil Vigdor, *I Can't Breathe: 4 Minneapolis Officers Fired After Black Man Dies in Custody*, N.Y. TIMES (June 15, 2020), <https://www.nytimes.com/2020/05/26/us/minneapolis-police-man-died.html> [<https://perma.cc/XV7Z-GRY7>]; see also N.Y. Times Staff, *What We Know About the Death of George Floyd in Minneapolis*, SEATTLE TIMES (Sept. 8, 2020), <https://www.seattletimes.com/nation-world/what-we-know-about-the-death-of-george-floyd-in-minneapolis> [<https://perma.cc/DU2Z-YKJZ>]. In an episode of the African American Policy Forum's biweekly *Under the Blacklight* series, we reflected on the breathtaking inhumanity that seared this moment into history:
Engulfed by a dark shadow of despair and distress after bearing witness to the calculated cruelty of Derek Chauvin casually pressing the life out of George Floyd, we found ourselves in a solar ecliptic moment. Our hearts will never be the same after hearing a man beg for his life beneath Derek's knee, calling out in desperation for his dead mother, and finally succumbing to the weight of American law enforcement. This utter expendability of Black life is amplified by the bloodletting that [enacted] it.
Alicia Garza, Robin D.G. Kelley, Devon Carbado, Maria Moore, AG Keith Ellison, & Kimberlé Crenshaw, *Under the Blacklight: The Fire This Time*, INTERSECTIONALITY MATTERS! (June 10, 2020) <https://podcasts.apple.com/us/podcast/19-under-the-blacklight-the-fire-this-time/id1441348908?i=1000477440931>; see also Angela Onwuachi-Willig, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV. 817; see also Tim Arango & Andrés R. Martínez, *'On the Ashes of Tragedy': Mixed Emotions on Anniversary of George Floyd's Death*, N.Y. TIMES (June 25, 2021), <https://www.nytimes.com/2021/05/25/us/george-floyd-memorial.html> [<https://perma.cc/BBQ6-5VJ2>]; see also Robin D.G. Kelley, *What Kind of Society Values Property Over Black Lives*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/opinion/george-floyd-protests-looting.html> [<https://perma.cc/LC6A-7E7Q>].
18. Breonna Taylor was a 26-year-old E.R. technician who was killed when police mistakenly entered her home in the middle of the night on a no-knock warrant, searching for a suspect who lived far away from Ms. Taylor. After Ms. Taylor's boyfriend fired a shot in self-defense against the plainclothes officers, they fired nearly thirty-two rounds into her apartment, striking her eight times. See Alisha Haridasani Gupta, *Why Aren't We All Talking About Breonna Taylor?*, N.Y. TIMES (Oct. 30, 2020), <https://www.nytimes.com/2020/06/04/us/breonna-taylor-black-lives-matter-women.html> [<https://perma.cc/X4EW-45JF>]; see also Richard A. Oppel Jr., Derrick Bryson Taylor, & Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Apr. 26, 2021), <https://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/KS2S-U9G5>]; see also Fran Garrett, Rhanda Dormeus, Maria Moore, Sharon Cooper, Gina Best, Sharon Wilkerson, &

critical thinking about law rather than less; that CRT would have found quarter as an invaluable conceptual framework within this global movement to uncover the systemic dimensions of racial and intersectional injustice.¹⁹

Unfortunately, the very opposite impulse gained traction. Critical Race Theory and intersectionality²⁰ have not only been labeled as

Kimberlé Crenshaw, *Under the Blacklight: Telling Stories of State Violence & Public Silence*, INTERSECTIONALITY MATTERS! (June 26, 2020), <https://podcasts.apple.com/us/podcast/21-under-the-blacklight-telling-stories-of/id1441348908?i=1000479802625> (emphasizing how Breonna Taylor's murder falls far from the available frames that have been used to protest anti-Black police because she was a woman and she was killed inside her own home). For an in-depth analysis of Black women's vulnerability to police violence, see THE AFRICAN AMERICAN POLICY FORUM, #SAYHERNAME: BLACK WOMEN'S STORIES OF STATE VIOLENCE AND PUBLIC SILENCE (forthcoming 2022 with Haymarket Press). In 2015, the African American Policy forum created the hashtag #SayHerName to lift up the stories of Black women, girls, and femmes who were slain by police killings and to provide support for their families. See #SAYHERNAME, AFR. AM. POL'Y F., <https://www.aapf.org/sayhername> [<https://perma.cc/2YKC-XTMG>] (last visited Mar. 6, 2022); see also KIMBERLÉ WILLIAMS CRENSHAW, ANDREA J. RITCHIE, RACHEL ANSPACH, RACHEL GILMER & LUKE HARRIS, SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 1 (2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf [<https://perma.cc/747U-TFQE>] ("The failure to highlight and demand accountability for the countless Black women killed by police over the past two decades . . . leaves Black women unnamed and thus under protected in the face of their continued vulnerability to racialized police violence."). See also KIMBERLÉ CRENSHAW, *We Must Center Black Women: Breonna Taylor and Bearing Witness to Black Women's Expendability*, in ABOLITION FOR THE PEOPLE (Colin Kaepernick ed., 2021) (linking the killing of Emmett Till to the murder of Breonna Taylor as consequences of anti-Black racism rooted in patriarchal white supremacy).

19. See, e.g., Kimberlé Williams Crenshaw, *Fear of a Black Uprising*, NEW REPUBLIC (Aug. 13, 2020), <https://newrepublic.com/article/158725/fear-black-uprising-confronting-racist-policing> [<https://perma.cc/B3Q9-HATV>] (framing demands for public safety through dismantling the "hyper-militaristic, racist functions of the police as the coercive power of white nationalism."). But see, LDF *Issues Statement on the Failure to Advance the George Floyd Justice in Policing Act of 2021*, NAACP LEGAL DEF. FUND (Sept. 22, 2021), <https://www.naacpldf.org/press-release/ldf-issues-statement-on-the-failure-to-advance-the-george-floyd-justice-in-policing-act-of-2021> [<https://perma.cc/5X89-FHQK>] (describing the failure of the U.S. Senate to pass the George Floyd Justice in Policing Act—a federal bill which sought to end qualified immunity, ban no-knock warrants in federal drug case, and create a national police misconduct registry, among other provisions—despite passage in the House of Representatives).
20. See, e.g., H.B. 626, 134th Gen. Assemb., Reg. Sess. (Ohio, 2022), https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb616/IN/00/hb616_00_IN?format=pdf [<https://perma.cc/B5SR-FGTM>] (prohibiting school districts from "select[ing] any textbook, instructional material, or academic curriculum that promotes any divisive or inherently racist concept" including critical race theory, "intersectional theory," and the 1619 project among other concepts).

“divisive,”²¹ “dangerous,”²² and “un-American,”²³ they have also been appropriated as a container to denounce the wider project of antiracism and social justice writ large.²⁴

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21. On September 22, 2020, President Trump signed Executive Order 13950, Combating Race and Sex Stereotyping, which directed federal employees and contractors to cease any trainings and review funding for any federal grant recipients that discussed a host of “divisive concepts” on racism and sexism—including CRT—calling them “anti-American” and “scapegoating.” In the Executive Order, he described how those pushing for a different vision of America harbored a “destructive ideology . . . grounded in misrepresentations of our country’s history and its role in the world.” Exec. Order No. 13977, 86 Fed. Reg. 6803 (Jan. 18, 2021), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-race-sex-stereotyping> [<https://perma.cc/DQB3-E73E>]. Although the order was rescinded by President Biden, the tactic quickly spread to red states. Across the country, the attack on CRT has become a powerful political weapon on the right. On his first day in office, Virginia’s newly elected governor immediately passed a swath of conservative orders, with the first on the list as a directive to “restore excellence in education by ending the use of divisive concepts, including Critical Race Theory, in public education.” See Glenn Youngkin, *Executive Order Number One: Ending the Use of Inherently Divisive Concepts, Including Critical Race Theory, and Restoring Excellence in K–12 Public Education in the Commonwealth*, COMMONWEALTH VA. OFF. GOVERNOR (Jan. 15, 2022), <https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/74—eo/74—eo/EO-1—ENDING-THE-USE-OF-INHERENTLY-DIVISIVE-CONCEPTS,-INCLUDING-CRITICAL-RACE-THEORY,-AND-RESTORING-EXCELLENCE.pdf> [<https://perma.cc/22QT-YE4S>]; see also Oliver Laughland, *Glenn Youngkin Attempts to Ban Critical Race Theory on Day One as Virginia Governor*, GUARDIAN (Jan. 16, 2022, 12:59 PM), <https://www.theguardian.com/us-news/2022/jan/16/virginia-governor-glenn-youngkin-sworn-into-office-critical-race-theory> [<https://perma.cc/A3SR-KWYL>].
22. See, e.g., Jason Hill, *Critical Race Theory Aims to Murder the Souls of White Children*, FEDERALIST (Aug. 13, 2021), <https://thefederalist.com/2021/08/13/critical-race-theory-aims-to-murder-the-souls-of-white-children> [<https://perma.cc/G76H-RGUN>]; see also Marc A. Thiessen, *Opinion: The Danger of Critical Race Theory*, WASH. POST (Nov. 11, 2021, 2:47 PM), <https://www.washingtonpost.com/opinions/2021/11/11/danger-critical-race-theory> [<https://perma.cc/9MQE-CH7C>]. West Virginia state Senator Mike Azinger stated, “CRT is coming like a freight train into public education, government, corporate boardrooms, and—most ominously and dangerously—into the church.” Stephen Kearse, *GOP Lawmakers Intensify Effort to Ban Critical Race Theory in Schools*, PEW (June 14, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/06/14/gop-lawmakers-intensify-effort-to-ban-critical-race-theory-in-schools> [<https://perma.cc/2KY7-CH52>].
23. At the federal level, a proposed Senate Resolution seeks to express “the sense of the Senate that Critical Race Theory serves as a prejudicial ideological tool, rather than an educational tool, and should not be taught in K–12 classrooms as a way to teach students to judge individuals based on sex, race, ethnicity, or national origin.” S.R. 246, 117th Cong. (2021), <https://legiscan.com/US/text/SR246/2021> [<https://perma.cc/KZ6Y-FZSB>]. The Resolution states that CRT’s teachings “stand in contrast to the overarching goal of the Civil Rights Act of 1964,” it “serves to resegregate institutions of education and balkanize students into groups by race and ethnicity,” and it has “manifested itself in damaging ways in United States elementary and secondary schools.” *Id.* Further, it

Across the country, a moral panic²⁵ over what has been labeled Critical Race Theory²⁶ has led to the firing of accomplished teachers like Matthew Hawn in

describes how CRT “seeks to portray the United States not as a united Nation . . . but rather a Nation of many victimized groups based on sex, ethnicity, or national origin.” *Id.*

24. See Adam Harris, *The GOP’s ‘Critical Race Theory’ Obsession*, ATLANTIC (May 7, 2021), <https://www.theatlantic.com/politics/archive/2021/05/gops-critical-race-theory-fixation-explained/618828> [<https://perma.cc/W5YP-SCX4>] (“[Critical race] theory soon stood in for anything resembling an examination of America’s history with race. Conservatives would boil it down further: Critical race theory taught Americans to hate America.”).
25. See Samuel Hoadley-Brill, *Critical Race Theory’s Opponents are Sure It’s Bad. Whatever It Is.*, WASH. POST (July 2, 2021, 12:33 PM), https://www.washingtonpost.com/outlook/critical-race-theory-law-systemic-racism/2021/07/02/6abe7590-d9f5-11eb-8fb8-aea56b785b00_story.html [<https://perma.cc/BP7X-QLPB>] (describing how the goal of these CRT bans is to “banish . . . all critical discussion of the impact of race in American life today.”). Much of the well-funded disinformation campaign animating the depiction of CRT as an intellectual boogeyman began after Christopher Rufo self-declared a “one-man war against critical race theory.” *Id.* The objectives motivating this racially inflamed dog-whistle-turned-bullhorn politics are clear. Rufo declares, “We have successfully frozen their brand—‘critical race theory’—into the public conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category.” Christopher F. Rufo (@realchrisrufo), TWITTER (Mar. 15, 2021, 12:14 PM), <https://twitter.com/realchrisrufo/status/1371540368714428416> [<https://perma.cc/8BJZ-66PY>]. “The goal is to have the public read something crazy in the newspaper and immediately think ‘critical race theory.’” Christopher F. Rufo (@realchrisrufo), TWITTER (Mar. 15, 2021, 12:17 PM), <https://twitter.com/realchrisrufo/status/1371541044592996352> [<https://perma.cc/GR3C-LJV5>]; see also Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict Over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory> [<https://perma.cc/5FGC-VVYD>] (quoting Rufo’s explanation that, when strung together, the phrase “critical race theory” connotes “hostile, academic, divisive, race-obsessed, poisonous, elitist, anti-American.”).
26. *But see* ALAUNA C. SAFARPOUR, DAVID LAZER, JENNIFER LIN, CAROLINE PIPPERT, JAMES DRUCKMAN, MATTHEW A. BAUM, KATHERINE OGNANOVA, ROY H. PERLIS, MAURICIO SANTILLANA, KRISTIN LUNZ TRUJILLO, ATA USLU, ALEXI QUINTANA, JOHN GREEN, HONG QU, & ANJULI SHERE, THE COVID STATES PROJECT #73: AMERICAN ATTITUDES TOWARD CRITICAL RACE THEORY 15 (2021), <https://osf.io/crv95> [<https://perma.cc/SM65-5FY8>] (finding that an overwhelming majority of U.S. residents—seven out of ten in all—can’t explain what Critical Race Theory is). A July 2021 national opinion survey by Reuters/Ipsos found many of those who said they were familiar with the term CRT showed that they embraced a variety of misconceptions about CRT that have been largely circulating among conservative news outlets. See also Chris Kahn, *Many Americans Embrace Falsehoods About Critical Race Theory*, REUTERS (July 15, 2021, 11:13 AM), <https://www.reuters.com/world/us/many-americans-embrace-falsehoods-about-critical-race-theory-2021-07-15> [<https://perma.cc/Z9YY-K2AS>] (reporting that “57 percent of adults said they were not familiar with [CRT],” and of the respondents who

Tennessee,²⁷ the canceling of Black and Latinx studies courses in Texas,²⁸ and the creation of bounties on teachers in New Hampshire²⁹ and in North Dakota.³⁰ Politicians have sought to censor any study of the way that the

claimed familiarity, “only 5 percent correctly answered all seven true-false questions that the poll asked about the history and teachings of critical race theory.”)

27. In May 2021, Tennessee teacher Matthew Hawn was fired in May this year, after he assigned an article by Ta-Nehisi Coates, “The First White President,” and showed Kyla Jenée Lacey’s poem “White Privilege” to students in his contemporary issues class at Sullivan Central High School in Blountville, TN. Hawn wanted to explore the topic of white privilege with his students but was ultimately silenced despite his remarkable 16-year teaching record. See *Reinstate Matthew Hawn – Fired for Teaching About White Privilege*, AFR. AM. POL’Y F. (Dec. 14, 2021), <https://www.aapf.org/post/reinstate-matthew-hawn> [<https://perma.cc/N9SV-T7ZR>]; see also Hannah Natanson, *A White Teacher Taught White Students About White Privilege. It Cost Him His Job.*, WASH. POST (Dec. 6, 2021, 8:00 AM), <https://www.washingtonpost.com/education/2021/12/06/tennessee-teacher-fired-critical-race-theory> [<https://perma.cc/SD2N-9QA3>]. Hawn is one of countless teachers across the country who have faced persecution from their school districts for teaching about racism in schools and for creating safe learning spaces for all children. Florida educator Amy Donofrio was terminated after she stood up for Black students at Riverside High School and refused to take down a Black Lives Matter flag in her classroom. See Sydney Boles, *DCPS Settles ‘Black Lives Matter’ Flag Case, Terminates Whistleblower Teacher*, WJCT NEWS (Aug. 4, 2021, 9:25 AM), <https://news.wjct.org/first-coast/2021-08-04/dcps-settles-black-lives-matter-flag-case-terminates-whistleblower-teacher> [<https://perma.cc/PF8Q-NZZW>].
28. In May 2021, Texas Governor Greg Abbott signed HB 3979 into law, prohibiting teachers from engaging in “race or sex stereotyping,” preventing schools from awarding credit for student service learning with advocacy groups, and banning schools from requiring teachers to discuss controversial issues. See H.B. 3979, 2021 Leg., 87th Legis. Sess., (Tex. 2021), <https://legiscan.com/TX/text/HB3979/2021> [<https://perma.cc/7MB2-2V2U>] (preventing teachings that suggest that “slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality”). Texas’s legislation directly targets the teaching of systemic racism. See *id.*
29. In New Hampshire, a proposed bill titled “An Act Relative to Teachers’ Loyalty” seeks to prohibit educators from teaching any theory or doctrine that suggests that “the United States was founded on racism.” See H.B. 1255, 2022 Leg., Reg. Sess. (N.H. 2022), http://gencourt.state.nh.us/lsr_search/billText.aspx?id=1537&type=4 [<https://perma.cc/P32T-6K32>]. HB 1255 would revive a Cold War-era statute mandating “teachers’ loyalty” and preventing the instruction of Communism, Marxism, Socialism, or any materials that cast the founding of America and its present in a negative light. See *id.* New Hampshire’s law also includes a private cause of action, putting a bounty on teacher’s heads and boasting a \$500 reward for the first person who “successfully catches a public school teacher breaking the law.” See Jenna Romaine, *Mom’s Group Puts \$500 ‘Bounty’ on Teachers Who Teach ‘Divisive Concepts’*, HILL (Nov. 16, 2021), <https://thehill.com/changing-america/enrichment/education/581722-moms-group-puts-500-bounty-on-teachers-who-teach> [<https://perma.cc/B47R-W8PY>].
30. In November 2021, North Dakota Republican Governor Doug Burgum signed into law a bill that bans instruction in “critical race theory,” defined in the legislation as “the theory that racism is not merely the product of individual bias or prejudice, but that racism is systemically embedded in American society and the American legal system to

American legal system sometimes facilitates and reinforces racial inequality.³¹ That legislators can appropriate law to banish critiques of law should rattle every last one of us. Changing the rules about what racial histories can be

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- facilitate racial inequality.” H.B. 1508, 67th Legis. Assemb., Spec. Sess. (N.D. 2022), <https://legiscan.com/ND/text/1508/2021/X1> [<https://perma.cc/HY2C-TB9T>].
31. One analysis of anti-CRT legislation found that:
- Since January 2021, 41 states have introduced bills or taken other steps that would restrict teaching CRT or limit how teachers can discuss racism and sexism, according to an Education Week analysis. Fourteen states have imposed these bans and restrictions either through legislation or other avenues.
- See Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUC. WK. (Mar. 1, 2022), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/H7NP-ATWD>]. The latest wave of anti-CRT legislation is also interested in punishing individual educators for teaching truth in their classrooms. Compare S.B. 1401, 58th Leg., 2d Sess. (Okla. 2022) http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20INT/SB/SB1401%20INT.PDF [<https://perma.cc/89EK-52HM>] (allowing parents to challenge schools that teach “lessons related to Critical Race Theory” in court and legislating that any school employee that parents name in their petition could be personally responsible for up to \$10,000 in damages) with H.B. 2898, 55th Leg., 1st Reg. Sess. (Ariz. 2021), <https://legiscan.com/AZ/text/HB2898/2021> [<https://perma.cc/7C33-7DSS>] (threatening Arizona public schools with fines of up to \$5,000 as a consequence for any educator teaching the truth about our racial history). Currently, there are nine proposed bills that provide a private cause of action to parents who may sue school districts for teaching what they define as “Critical Race Theory.” See, e.g., H.B. 7 (Fl. 2022), <https://www.flsenate.gov/Session/Bill/2022/7/BillText/Filed/PDF> [<https://perma.cc/F9ZC-HNU2>] (holding that the Stop W.O.K.E. Act will ban the teaching of Critical Race Theory and give parents a private right of action to sue). Consider Montana Attorney General Knudsen’s binding opinion—carrying the force of Montana law—that held that in many instances the use of “Critical Race Theory” and “antiracism” programming discriminates on the basis of race, color, or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, Article II, Section 4 of the Montana Constitution, and the Montana Human Rights Act. See MT DEPT. JUST., *Attorney General Knudsen Issues Binding Opinion on Critical Race Theory* (May 27, 2021), <https://dojmt.gov/attorney-general-knudsen-issues-binding-opinion-on-critical-race-theory> [<https://perma.cc/W2MU-Z6JS>]. This effort, among others, is a strategic attack aimed to use Title VI of the Civil Rights Act of 1964 to eviscerate disparate impact and to fully render it inconsequential as a “racial thumb” on the scales of justice. See *Ricci v. DeStefano*, 557 U.S. 557, 594 (2009) (Scalia, J., concurring); see also *Rollerson v. Brazos River Harbor Navigation Dist.*, 6 F.4 633, 648 (5th Cir. 2021) (noting “[t]here’s a big difference between prohibiting racial discrimination and endorsing disparate impact theory . . . It’s the difference between color blindness and critical race theory”) (emphasis added). And what is left of disparate impact might be prohibited by those legislative initiatives that target anything other than prejudiced-based disparate treatment from being framed as discriminatory.

taught, and what experiences can be acknowledged³² is not a healthy feature of a robust democracy.

32. The weaponizing of CRT to censor antiracist education has paid dividends for the right. By fomenting a crisis around an unfamiliar academic term, the scope of their ever-broadening attack on public education and the need for coalitional coordination to resist it has been obscured. Legislators have expanded the current wave of censorship against CRT to target material that acknowledges, engages, and recognizes LGBTQ identities, experiences, and expression. For example, Florida’s “Parental Rights in Education” bill, dubbed by critics as the “Don’t Say Gay” (DSG) bill, bans classroom instruction on sexual orientation or gender identity in kindergarten through grade 3 or “in a manner that is not “age-appropriate or developmentally appropriate” for students. See H.B. 1557 (Fl. 2022), <https://www.flsenate.gov/Session/Bill/2022/1557/BillText/er/PDF> [<https://perma.cc/DL64-JADK>]. The “Don’t Say Gay” ban tracks the previously enacted Stop W.O.K.E. Act, which is essentially a “Don’t Say Race” (DSR) bill. See H.B. 7 (Fl. 2022), <https://www.flsenate.gov/Session/Bill/2022/7/BillText/Filed/PDF> [<https://perma.cc/F9ZC-HNU2>] (restricting teaching on structural racism to “age-appropriate” principles of “individual freedom” and warning educators that “classroom instruction and curriculum may not be used to indoctrinate or persuade students to a particular point of view”). Political opposition to the “Don’t Say Gay” bill was voiced by: President Biden (@POTUS), TWITTER (Feb. 8, 2022, 3:07 PM), <https://twitter.com/POTUS/status/1491186973511458818> [<https://perma.cc/2DC6-DLJ6>] (declaring that his administration will “continue to fight for the protections and safety [that every member of the LGBTQ community] deserve[s]”); the corporate community, see Annika Kim Constantino, *Businesses Oppose Florida’s ‘Don’t Say Gay’ ban on Discussion of LGBTQ Issues in Public Schools*, CNBC (Mar. 29, 2022), <https://www.cnbc.com/2022/03/29/businesses-oppose-floridas-dont-say-gay-bill-banning-talk-of-lgbtq-issues-in-public-schools.html> [<https://perma.cc/76GJ-394Y>] (describing how over 200 businesses signed a petition opposing anti-LGBTQ); and eventually, the Disney corporation. See Sarah Whitten, *Disney Vows to Help Repeal ‘Don’t Say Gay’ Law, Says Florida Gov. DeSantis Shouldn’t Have Signed It*, NBC (Mar. 28, 2022), <https://www.cnbc.com/2022/03/28/disney-vows-to-help-repeal-dont-say-gay-law.html> [<https://perma.cc/KKQ5-7LA8>]. The robust pushback has prompted some concern from Republican strategists who worry that the GOP may have gone too far in making the party seem anti-gay. See Annie Linskey and Casey Parks, *Some Republicans Fear Party Overreach on LGBT Measures*, WASH. POST (Apr. 23, 2022), <https://www.washingtonpost.com/politics/2022/04/23/republicans-lgbt> [<https://perma.cc/CA2G-GD7N>]. By contrast, there has been no comparable worry that the Republicans might have “gone too far” in banning CRT, nor has President Biden nor any other high-ranking official spoken about the negative impact of such attacks on students of color.

The distinct ways that anti-CRT legislation and “Don’t Say Gay” legislation have been received by progressives, liberals, and the media warrant fuller treatment elsewhere, but a few troubling dimensions stand out here. While the DSG legislation is readily legible as an attack on LGBTQ students, the DSR initiatives, packaged as anti-CRT, are legible only as ideological disputes, not as attacks on students of color and their communities. This reflects a misunderstanding not only about how the forced silencing of historical and structural racism impacts students of color, but also how DSG and DSR are both ideologically driven assaults that harm historically marginalized students. Confusion also reigns from a partial uptake of intersectionality. A key dimension of intersectionality that is sometimes overlooked is that intersectional vulnerability is not sufficiently addressed simply by centering multiple identities, but by acknowledging and

It is a symptom of a dying one.

resisting the ways that regimes of power are collaborative and overlapping. Although queer students of color are sometimes foregrounded as especially vulnerable to DSG, they, like their straight counterparts, are specifically subjugated by DSR as well, a distinct and compounding force of silencing. Intersectional failures result from superficially intersectional politics: so long as DSR initiatives are not also understood to be assaultive and stigmatizing, the challenges facing LGBTQ students of color will be undertheorized and underdressed. Exacerbating these intersectional failures are coalitional ones as well. The push to repeal DSG while leaving DSR in play, effectively leaves some students at the mercy of MAGA zealots who have seized on public education as a way to program a future that recuperates their nostalgic past. No student should be left behind in the rescue mission to restore and enhance the affirming objectives of a fully inclusive public education. To resist intersectional failure as well as the divide and conquer tactics from the right, both bans warrant concerted and coordinated resistance.

This censoring³³ of knowledge—along with measures suppressing voting³⁴ and criminalizing protest³⁵—represent something much more dangerous than a tactical maneuver to prevail in the next political season.³⁶

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33. Legislatures across twenty-nine states, including Texas, Indiana, and Oklahoma are banning scores of books about race, gender, and sexuality and criminalizing librarians who attempt to shelve them. See, e.g., Bill Chappell, *A Texas Lawmaker is Targeting 850 Books That He Says Could Make Students Uneasy*, NPR (Oct. 28, 2021, 1:00 PM), <https://www.npr.org/2021/10/28/1050013664/texas-lawmaker-matt-krause-launches-inquiry-into-850-books> [<https://perma.cc/D6CH-AYS4>] (explaining how a Texas state lawmaker is targeting 850 books that “might make students feel discomfort, guilt, anguish, or any other form of psychological distress because of their race or sex.”); see also Hannah Joy, *Parents Criticize Ruby Bridges Book in Debate Over CRT, Tenn. Curriculum*, YAHOO! (July 8, 2021), <https://www.yahoo.com/now/parents-criticize-ruby-bridges-book-212700985.html> [<https://perma.cc/KJ4P-FBXS>] (detailing how Tennessee parents led by Moms of Freedom oppose “Ruby Bridges Goes to School,” a beautifully illustrated story written by Bridges herself detailing the lonely journey to integrate her New Orleans school, because they claim it depicts the white backlash to school desegregation); see also S.B. 17, 122d Gen. Assemb., 2d Reg. Sess. (Ind. 2022), <http://iga.in.gov/legislative/2022/bills/senate/17#document-221c1669> [<https://perma.cc/5M7H-TTW4>] (aiming in Indiana to allow for the criminal prosecution of school librarians for disseminating “material harmful to minors”). For a comprehensive list of banned and challenged books, see *Banned and Challenged Classics*, BANNED & CHALLENGED BOOKS, <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/classics> [<https://perma.cc/E97A-FU8S>] (last visited Mar. 6, 2022).
34. Senate Republicans blocked the John R. Lewis Voting Rights Advancement Act, which passed in the House of Representatives, leaving voters of color in a burgeoning crisis of disenfranchisement without the full protections of the Voting Rights Act. See Erin B. Logan, *John Lewis Voting Rights Bill Fails in Senate Amid Rise of GOP-led State Restrictions*, L.A. TIMES (Nov. 3, 2021, 3:11 PM), <https://www.latimes.com/politics/story/2021-11-03/john-lewis-voting-rights-bill-fails-in-senate-amid-cascade-of-gop-led-state-restrictions> [<https://perma.cc/Q7ZN-9699>]. Some of these barriers to the ballot box include voting registration restrictions, redistricting abuses and racial gerrymandering, felony disenfranchisement, voter ID laws, and voter purges. See, e.g., *Block the Vote: How Politicians are Trying to Block Voters From the Ballot Box*, ACLU (Aug. 18, 2021), <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020> [<https://perma.cc/NGW6-T2FE>] (“1 in 16 Black Americans cannot vote due to disenfranchisement laws.”).
35. For a detailed account of how Republicans responded to #BlackLivesMatter with anti-protest bills, see Sophie Quinton, *Republicans Respond to Black Lives Matter With Anti-Protest Bills*, PEW (Feb. 4, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/02/04/republicans-respond-to-black-lives-matter-with-anti-protest-bills> [<https://perma.cc/4ECS-5TF2>] (noting that Republican legislators in 22 states have either proposed or enacted increased penalties for protestors since 2016 and describing how many of the proposals target specific acts of protest popular among Black Lives Matter participants).
36. As referenced in the epigraph to this speech, Toni Morrison cautioned against the descent into fascism, warning that the move toward a “final solution is not a jump” but a series of steps. Now, her work is being banned. See Gene Seymour, *Erasing Toni Morrison’s Vision*, AFR. AM. POL’Y F.: THE FORUM (Feb. 17, 2022) (explaining how Morrison’s *Beloved* and *The Bluest Eye* were banned because

This is a strategy to seize power for a century.³⁷ And mainstream media contributes to the moral panic by being slow to expose the source and motivation behind the effort, resorting to a both-sides approach that fuels the stealth disinformation campaign to demonize CRT.

That civil society seems to be lethargic in the face of this cultural war only adds to the urgent need for educators to confront the crisis facing our democracy.³⁸ As legal educators, we are or soon will be faced with crucial challenges concerning how to teach, think, and act in the face of this profound breach of our professed norms.

This will not be the first time that legal education must navigate a world in which law has been used to enforce and normalize racially repressive conditions. Our track record in stepping up to such challenges is disconcerting, but we now have a chance to repair mistakes of the past. Legal education was far from the forefront of efforts to problematize the legalized theft of land, labor, and freedom that underwrote our nation's creation and rapid expansion. Nor did it lead the way in rethinking and dismantling the institutionalized dimensions of white supremacy that survived the mid-

the books included “sexually explicit material” that had “lots of graphic descriptions and disturbing language”); see also Alison Flood, *Toni Morrison Defends ‘Sacredness’ of Books Against Censorship*, GUARDIAN (June 5, 2009), <https://www.theguardian.com/books/2009/jun/05/toni-morrison-sacredness-censorship> [<https://perma.cc/TE58-3C4N>] (quoting Toni Morrison defending the “sacredness” of books against censorship). But this censorship comes at a time when it has never been more important to talk about race. All of the lessons from the civil rights movement forward should not be packed up and put away for storage.

37. We have had efforts to suppress literacy, writing, advocacy, and thinking about race from the earliest moments of our history. Abolition material was characterized as seditious and regulated by law to ensure that Black enslaved people could not read. See Anthony Conwright, *Today It's Critical Race Theory. 200 Years Ago It Was Abolitionist Literature*, MOTHER JONES (Oct. 2021), <https://www.motherjones.com/politics/2021/07/critical-race-theory-slave-abolition-school-literature> [<https://perma.cc/6N8Z-QWVG>] (connecting the current outrage around CRT to state legislatures' efforts to repress the spread of abolitionist literature, ban the “teaching of slaves to read and write,” and to quell white anxieties of Black uprisings).
38. Over 8,000 teachers signed a petition on behalf of the Zinn Education Project to “refuse to lie to young people about U.S. history and current events.” See *Pledge to Teach the Truth*, ZINN EDUC. PROJECT, <https://www.zinnedproject.org/news/pledge-to-teach-truth> [<https://perma.cc/B5UA-FF96>] (last visited Mar. 6, 2022); see also Valerie Strauss, *Teachers Across the Country Protest Laws Restricting Lessons on Racism*, WASH. POST (June 12, 2021, 2:25 PM), <https://www.washingtonpost.com/education/2021/06/12/teachers-protest-laws-restricting-antiracism-lessons-in-school> [<https://perma.cc/YHB8-6DZV>].

twentieth century repudiation of segregation.³⁹ Before Derrick Bell's *Race, Racism & American Law* casebook,⁴⁰ there was little academic analysis of how the formally neutral doctrines, values, and practices that undermined the post-Reconstruction Amendments continued to ratify social arrangements that were directly traceable to Reconstruction's overthrow.⁴¹ Elite institutions that prided themselves on educating lawyers to serve the modern society were woefully ill-equipped to nurture the legal talent needed to disentangle white supremacist values from legal doctrine and practices. Consequently, many institutions, and the lawyers and scholars they incubated, were left on the sidelines of the most significant matters of the day.

39. See George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 110–11 (2003) (noting the history of formal gatekeeping mechanisms to the legal profession that relied on racially discriminatory requirements when Black and Jewish people began to apply for bar admission in the late 19th Century); see also J. Cunyon Gordon, *Painting by Numbers: 'And, Um, Let's Have a Black Lawyer Sit at Our Table'*, 71 FORDHAM L. REV. 1257, 1274 (2003) (quoting an American Bar Association resolution that mandated racial demographic data after the Bar Association accidentally let three Black men become members because the Bar Association had never "contemplated that members of the colored race should become members of this Association.") (internal citation omitted).

40. See generally, DERRICK A. BELL, *RACE, RACISM, AND AMERICAN LAW* (6th ed. 2008) (authoring the seminal text on racism's foundational role in the American legal system). See also A. Leon Higginbotham, Jr., *Book Review: Race, Racism and American Law*, 122 U. PA. L. REV. 1044 (1974) (noting the value of Bell's casebook as it positions contemporary issues against the backdrop of past racial deprivations).

41. Here, I recall Justice Marshall's critique of the Constitution at the Bicentennial Celebration. He states:

I do not believe that the meaning of the Constitution was forever "fixed" at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, that we hold as fundamental today. When contemporary Americans cite "The Constitution," they invoke a concept that is vastly different from what the framers barely began to construct two centuries ago *While the Union survived the civil war, the Constitution did not.*

Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1, 2–4 (1987) (emphasis added). For acknowledging these imperfections, some called for Marshall's impeachment. It is fair to say that the faction that declared Marshall to be unfit to sit on the Supreme Court has won in the end. A towering advocate for civil rights—a Thurgood Marshall—today would be an unlikely nominee given the odds against his confirmation.

In fact, the legal revolution that *Brown v. Board*⁴² represented emerged from the segregated classrooms and libraries outside of the rarified center of legal education.⁴³ Decades later, our post-Civil Rights generation of matriculating law students encountered a studied agnosticism toward the legally facilitated dimensions of racial subordination. The uninterrogated past remains embedded in the courses that were taught, the cases that we read,⁴⁴ the legal problems that were prioritized, the measurements of legal talent that were embraced, and the interests that were privileged.⁴⁵

Beyond academic agnosticism toward white supremacy, we must recognize that our legal institutions actively facilitated separate-but-equal segregation in the years preceding the Second Reconstruction. We cannot forget that in the era of Jim Crow, both the American Bar Association and the AALS approved the country's first "Jim Crow law school" at Lincoln University in St. Louis in December of 1941.⁴⁶ Rather than allow Lloyd Gaines to desegregate the University of Missouri School of Law, the Missouri state legislature opted to create an entirely new segregated law school for Black

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42. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (overturning *Plessy v. Ferguson*, 163 U.S. 537 (1896), and ending de jure racial segregation).
 43. See Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).
 44. For a groundbreaking exploration of how seminal Supreme Court opinions could have come out differently had a justice open to CRT been on the bench, see BENNETT CAPERS, DEVON W. CARBADO, R.A. LENHARDT, & ANGELA ONWUACHI-WILLIG, *CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND THE LAW* (Bennett Capers, Devon W. Carbado, R.A. Lenhardt, & Angela Onwuachi-Willig eds., 2022) (rewriting key U.S. Supreme Court and some appellate opinions to illustrate a clear articulation of CRT's presence in legal doctrine).
 45. See Kimberlé Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 2 (1988) (describing how the dominant modes of legal pedagogy force minority students to engage in presumptive "perspectivelessness" where they are expected to posit an analytical stance that has no specific cultural, political, or class characteristics).
 46. See Ernesto Longa, *A History of America's First Jim Crow Law School Library and Staff*, 7 CONN. PUB. INT. L.J. 77, 79–80 (2007) (noting that the editors of the *Chicago Defender*, the nation's most influential Black weekly newspaper, presciently concluded that because the *Gaines*, 305 U.S. 337 (1938), decision failed to abolish the Jim Crow educational system in Missouri, the state would quickly move to set up a separate law school at Lincoln University); see also Angela Chen, *Desegregating Mizzou*, JSTOR DAILY (Nov. 23, 2015), <https://daily.jstor.org/desegregating-mizzou> [<https://perma.cc/TUZ4-CCZ5>] ("Missouri's supreme court promptly decided to pass the Taylor bill and spend \$200,000 to build a law school for Lincoln rather than to integrate."). For detailed accounts of Lloyd Gaines's life and long struggle to desegregate Mizzou, see generally Larry Grothaus, "The Inevitable Mr. Gaines": *The Long Struggle to Desegregate the University of Missouri*, 26 J. SW. 21 (1984). But see, Sarah Riva, *The Coldest Case of All? Lloyd Gaines and the African American Struggle for Higher Education in Missouri*, 23 W. LEGAL HIST. 21 (2010) (noting how Gaines's mysterious disappearance has never been solved).

students in St. Louis.⁴⁷ The University of Texas likewise sought to stave off the integration of its law school with a hastily built school for Heman Marion Sweatt, another Black first-year law student whom the apartheid South sought to marginalize.⁴⁸ Ultimately, the U.S. Supreme Court's overdue repudiation of such schemes provided a doctrinal building block for segregation's formal demise in *Brown v. Board of Education*. Perhaps it can be said that among legal education's most noteworthy contributions to that landmark case is that the failed efforts to sustain segregated law schools laid the groundwork for the dismantling of separate-but-equal doctrine writ large.

For generations, mainstream legal education would sustain a matter-of-uncontestable-fact attitude toward law and racial power, detached from the hard realities faced by the least of us. Convinced that neither the future of American democracy nor the stability of the Republic required otherwise, our leading law schools ensured that the legal structure of racial subordination remained a topic far removed from the center of legal theory and practice. This apparent consensus reflected little awareness of how faith in our democracy rested on racial quicksand. Yet the January 6th assault on the U.S. Capitol tells us otherwise. Among the images of rioters who stormed the Capitol to "take our country back" was the Confederate battle flag, long a symbol of righteous rebellion for those who chose to break with the nation rather than share it one day with those they had enslaved. These sentiments have not died but have evolved. It is not an accident that the lies about the 2020 election being stolen are centered in places like Detroit, Milwaukee, Atlanta, Phoenix, and others where the choices of nonwhite voters handed the White House to President Biden. Yet, the current connections between our anti-democratic and racist history are readily obscured by a profound ignorance about the violent origins of our contemporary political order. Our newly elected president said at the time that this is not who we are.⁴⁹ But even a cursory history of Redemption reveals that this is exactly who we have

47. See Ernesto Longa, *A History of America's First Jim Crow Law School Library and Staff*, 7 CONN. PUB. INT. L.J. 77, 83 (2007).

48. *Sweatt v. Painter*, 339 U.S. 629, 631–36 (1950) (holding that the legal education offered to Sweatt was not substantially equal to what he would have received if admitted to the University of Texas Law School).

49. *Transcript: 'It's not Protest, It's Insurrection': Biden Delivers Remarks on 'Siege' Upon U.S. Capitol*, WBUR (Jan. 6, 2021), <https://www.wbur.org/news/2021/01/06/transcript-joe-biden-capitol-chaos> [<https://perma.cc/V24C-NL8P>] (quoting President-elect Biden stating "America is about honor. Decency, respect, tolerance—that's who we are, that's who we've always been.").

been.⁵⁰ For those who wonder whether our democracy can go off the rails, if “it” can happen here, we need only heed our past to know that “it” already has. To understand how explicitly anti-democratic desires can be framed as defending freedom, we have to grapple with discomfiting histories and their contemporary reflections, particularly those that have been obscured by myths and rehearsed in our academic institutions.

We can only hope that the events unfolding since January 6th are now game changers, that recovered memories of the relationship between authoritarian tyranny and white supremacy make it abundantly clear that there is no daylight between attacks on democracy and attacks on antiracism. We’ve seen this movie before, and we can see where this is going. The time to write a different ending is now.

One of the promises my parent’s generation—the race men and women of the 20th century—bequeathed to us was the commitment to do everything possible to hand us the baton with the lead. This basic commitment is the least that antiracists and true democrats across the political spectrum should be keen to embrace now. Future generations deserve a rich inheritance, enhanced by the lessons, the struggles, and the victories of those who have come before. Yet, with the resurgence of know-nothing laws, policies, and demands, we are witnessing an erosion of our hard-won literacy.⁵¹ Without the ability to see and convey the threats to our multiracial democracy, we are left woefully underprepared to address them. These are dangerous times—for justice, for democracy, and for law itself. As James Baldwin once noted, “ignorance, allied with power, is the most ferocious enemy justice can have.”⁵²

The challenge we face now as educators is to refuse to accept these conditions as the new normal and to be as ferocious in the fight against

50. For comprehensive analyses of the era of racial redemption, resentment, and terror that followed the Reconstruction Era, see ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863–1877* (2014 ed.); HEATHER COX RICHARDSON, *THE DEATH OF RECONSTRUCTION* (2004); DAVID BLIGHT, *RACE AND REUNION: THE CIVIL WAR IN AMERICAN MEMORY* (2001); Kimberlé Williams Crenshaw, *The Capitol Riots and the Eternal Fantasy of a Racially Virtuous America*, *NEW REPUBLIC* (Mar. 22, 2021), <https://newrepublic.com/article/161568/white-supremacy-racism-in-america-kimberle-crenshaw> [<https://perma.cc/FQ6D-X4V7>].

51. Association of American Law Schools, *AALS Hot Topic Program: Can Public Institutions Ban Critical Race Theory?*, (Jan. 31, 2022), <https://www.youtube.com/watch?v=HivIgGpfEvY> [<https://perma.cc/6KJV-9FPB>] (analyzing legal and pedagogical challenges to the growing attacks on academic freedom and antiracist history).

52. JAMES BALDWIN, *NO NAME IN THE STREETS* 149 (1972).

ignorance as others are in the fight to impose it. We need to shore up our commitments to academic freedom and bravely confront the vestiges of our profession's past collaboration with white supremacist values and practices.

In the legal academy, we have reasons for hope. As we see from the interventions of five Black women deans honored at last year's AALS meeting for their Antiracist Clearinghouse project,⁵³ this is far from a leaderless enterprise. Equally significant is the recognition that such a project might be censored in states with bans on "divisive concepts." Like the white-only signs of the past, the threats to such important work through the "divisive concept" trope gives us a concrete illustration of what is at stake and why we must not acquiesce.⁵⁴

I am also encouraged by academics who have undertaken the challenge of introducing and passing in academic senates a model resolution to Defend Academic Freedom to Teach about Race and Gender Justice and CRT.⁵⁵ This

53. I must lift up the work of Dean Angela Onwuachi, Dean Kim Mutcherson, Dean Carla D. Pratt, Dean Danielle Holley-Walker, and Dean Danielle M. Conway for creating space for their "collective voices as leaders of law schools to engage our institutions in the fight for justice and equality." *Law Deans Antiracist Clearinghouse Project*, ASS'N AM. L. SCHS., <https://www.aals.org/about/publications/antiracist-clearinghouse> [<https://perma.cc/2W55-RQGJ>] (last visited Mar. 6, 2022).

54. Enacted state legislation such as Oklahoma HB 1775, Florida's Stop W.O.K.E. Act, Texas HB 3979, and North Dakota HB 1508 (among others) would ban important educational initiatives like the Antiracist Clearinghouse simply because they acknowledge how racism is systemically embedded in the American legal system.

55. See Colleen Flaherty, *A Template for Academic Freedom*, INSIDE HIGHER ED (Dec. 15, 2021), <https://www.insidehighered.com/news/2021/12/15/professors-promote-resolution-academic-freedom> [<https://perma.cc/TYG7-B8G2>]. Many institutions nationwide have adopted or are considering adoption of AAPP's Faculty Senate Resolution in support of academic freedom, the teaching of Critical Race Theory, and race and gender education. Some of these schools include the University of Alabama; University of California (system-wide); University of Colorado (system-wide); Yale University; University of Delaware; Santa Fe College; DePaul University; Northwestern University; Washington College; University of Massachusetts Lowell; University of Massachusetts Boston; Michigan State University; University of Minnesota-Twin Cities; Jackson State University; University of Mississippi; Molloy College; State University of New York; Queensborough Community College; North Carolina A&T State University; North Dakota State University; North Dakota University System; Ohio State University; Portland State University; University of Oregon; Pennsylvania State University; University of Rhode Island; Coastal Carolina University; College of Charleston; Furman University; University of South Carolina; College of Charleston, South Carolina; Baylor University; University of Houston Clearlake; University of Houston; University of Texas at Austin; University of Texas at San Antonio; Prairie View A&M University; University of Houston-Victoria; University of Tennessee-Knoxville; University of Utah; Virginia Commonwealth University; Virginia Tech; and University of Wisconsin-Madison. See Nick Anderson and Susan Svriuga, *College faculty are fighting back against state bills on critical race theory*, WASH. POST (Feb. 19, 2022),

campaign—which seeks to reject any attempts by bodies external to the faculty, including Boards of Trustees or state legislatures, to restrict or dictate university curriculum on any matter, including matters related to racial and social justice—has blossomed in several universities across the country.⁵⁶ To those faculty senates that have passed the resolution, thank you for exercising the privilege of tenure and for engaging the shared governance process to speak out against state efforts to ban unfashionable ideas.

And I deeply appreciate the five deans of the University of California law schools who refused to “stand silent” amidst the increasingly absurd caricatures about CRT that have been routinely deployed in a coordinated misinformation campaign.⁵⁷ I hope their refusal to remain silent will inspire

<https://www.washingtonpost.com/education/2022/02/19/colleges-critical-race-theory-bills> [<https://perma.cc/H3PU-T55S>]. Despite this progress, some of these institutions have faced backlash. Days after the UT-Austin Faculty Council approved a measure reaffirming instructors’ right to teach about racial justice and Critical Race Theory, Lt. Gov. Dan Patrick declared that he would push to end professor tenure for all new hires at Texas public universities and colleges in an effort to combat faculty members who he says “indoctrinate” students with teachings about CRT. He also proposed a change to state law that could make teaching CRT grounds for revoking tenure for professors who already have it. See Kate McGee, *Lt. Gov. Dan Patrick Proposes Ending University Tenure to Combat Critical Race Theory Teachings*, TX. TRIB. (Feb. 18, 2022), <https://www.texastribune.org/2022/02/18/dan-patrick-texas-tenure-critical-race-theory> [<https://perma.cc/4SUJ-YD9W>].

56. AAPF’s Template Academic Senate Resolution codifies these protections: “Senate resolutely rejects any attempts by bodies external to the faculty to restrict or dictate university curriculum on any matter, including matters related to racial and social justice, and will stand firm against encroachment on faculty authority by the legislature or the Boards of Trustees.” See Colleen Flaherty, *A Template for Academic Freedom*, INSIDE HIGHER ED (Dec. 15, 2021), <https://www.insidehighered.com/news/2021/12/15/professors-promote-resolution-academic-freedom> [<https://perma.cc/TYG7-B8G2>].

57. Deans Erwin Chemerinsky (UC Berkeley School of Law), David L. Faigman (UC Hastings College of Law), Kevin Johnson (UC Davis School of Law), Jennifer Mnookin (UCLA School of Law), and L. Song Richardson (UCI School of Law) stated:

We cannot stand silent . . . CRT is most assuredly not contrary to what we stand for. The intellectual value of Critical Race Theory is something we experience every day, through the brilliance of the numerous CRT scholars whom we are proud to call our colleagues . . . [and] the ways our students benefit from the learning and the teaching of Critical Race Theory as part of their education . . . We know that the perspectives, critiques, and engagements that CRT offers are needed more now than ever. They are not in the least “anti-American propaganda”—rhetoric redolent of McCarthyism and the Red Scare, deeply anti-intellectual episodes in our own history—but rather, quite necessary to our hopes for an America that will someday live up to its promise of equality for all.

Erwin Chemerinsky, David L. Faigman, Kevin Johnson, Jennifer Mnookin, & L. Song Richardson, *Joint Statement of the Deans of the University of California Law Schools About the Value of Critical Race Theory*, UCLA LAW (Sept. 11, 2020),

others within our ranks to rise against the specter of increasing authoritarianism. It will take the support of colleagues throughout the profession to reverse the current descent into a new McCarthyism.⁵⁸ The possibility of syllabi, research dollars, and permissible perspectives being dictated by politicians in state capitals across the country is no longer a distant possibility. This is not a drill.

It is folly to assume that by waiting for the storm to pass cooler heads will prevail and our institutions will hold. When we have lost our way in the past, it was not simply because the forces of repression and fear were too overwhelming to deter, but because the silence and complacency of too many⁵⁹ allowed an autocratic faction to alter the trajectory of our democracy. Toni Morrison, in the speech that opens these remarks, speaks of how the tragedies that have marked human history have sometimes issued from the unholy marriage of aggression and silence. She describes the process through which failures to object to positions that were once unthinkable evolve into conditions that are naturalized, accepted, and advanced. Is this far afield from what is happening in our democracy as we speak? As we ponder whether the worst-case scenarios might happen here, Morrison urges us to consider how our capacity to see “it” may be lost in the numbing failure to resist the steps along the way.

I sincerely want to believe that the moral arc of the universe bends toward justice,⁶⁰ but I believe that nothing is inevitable. Hope, for me, rests

<https://law.ucla.edu/news/joint-statement-deans-university-california-law-schools-about-value-critical-race-theory-0> [<https://perma.cc/EPQ5-VTFX>].

58. In its statement denouncing the bans on CRT, AALS declared these laws are “designed to stifle a full exploration of the role of race and racism in United States history and, in so doing, they also erase some people from the very classrooms in which they have a right to be full participants as students and as educators.” See *Statement by AALS on Efforts to Ban the Use or Teaching of Critical Race Theory*, ASS’N AM. L. SCHS. (Aug. 3, 2021), <https://www.aals.org/aals-newsroom/statement-on-critical-race-theory> [<https://perma.cc/3MJB-ZAC9>].
59. “The only thing necessary for the triumph of evil is that good men do nothing.” See QUOTE INVESTIGATOR (last visited Mar. 18, 2022), <https://quoteinvestigator.com/2010/12/04/good-men-do> [<https://perma.cc/HWU5-5LFD>].
60. “We shall overcome because the arc of the moral universe is long but it bends toward justice.” See Dr. Martin Luther King Jr., “Remaining Awake Through a Great Revolution” Speech given at the National Cathedral (Mar. 31, 1968). See also Kimberlé Williams Crenshaw, *Op-Ed: King Was a Critical Race Theorist Before There Was a Name for It*, L.A. TIMES (Jan. 17, 2022, 4:15 AM), <https://www.latimes.com/opinion/story/2022-01-17/critical-race-theory-martin-luther-king> [<https://perma.cc/NZ2F-SH23>] (“[W]e must defeat the faction that facilitated the U.S. Capitol riot, put democracy on life support, and continues to demand

on reading our current situation with full awareness of our past and acting on what we see. It is the collective responsibility of all of us in the legal profession is to do just that. We must resist fiercely every war waged against teaching discomfoting truths about racism in America. And we must meaningfully confront the complex role our profession has played in the struggle for true and abiding racial justice.

Thank you again, AALS colleagues, for this brief respite, for this light, for this honor. I am lifted. I am reenergized. I am grateful.