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TAKING THE FORK IN THE ROAD

Brendan D. Cummins and Justin D. Cummins[†]

Crossroads, Directions, and a New Critical Race Theory. Edited by Francisco Valdes, Jerome McCristal Culp, and Angela P. Harris. Temple University Press, 2002. 528 pages. \$79.50.

“When you come to a fork in the road, take it!” Yogi Berra’s dictum usually draws laughs. But there is a deeper truth to it.¹ It is about moving forward boldly in an uncertain world. It is about following plural paths to the same destination. It is about continuing to take the initiative despite the contradictions we face in our daily lives. These truths are found in the new book, *Crossroads, Directions, and a New Critical Race Theory*.

This ambitious new anthology attempts to set forth the agenda(s) of the legal scholarly movement known as Critical Race Theory (“CRT”). As the title suggests, the movement is at a crossroads. The various authors have taken different paths, but they converge on common themes. A central question that the authors tackle from different angles is how to address ongoing white privilege and subordination of people of color. They approach this issue using an array of scholarly tools, including comparative analyses, story-telling, historiography, literary references, statistical assessment, philosophical insights, and

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Many thanks to Professor Harlon Dalton of the Yale Law School, whose conference on Critical Race Theory generated many of the essays in the anthology, and Professor John Powell for his wise insights and guidance over the years. S.T.P.

1. Apparently, there is enough truth to sustain an entire book. See YOGI BERRA WITH DAVID KAPLAN, WHEN YOU COME TO A FORK IN THE ROAD, TAKE IT!: INSPIRATION AND WISDOM FROM ONE OF BASEBALL’S GREATEST HEROES (2002).

dialogue. The anthology combines entries by old favorites, such as Charles Lawrence, Kimberlé Crenshaw, and Catharine MacKinnon, with work by relative newcomers, such as Devon Carbado, Julie Su, and Robert Hayman, Jr. Aesthetically speaking, the result is a pastiche with considerable panache.

The book comes in the wake of a backlash in the academy and the media against CRT. Much of the criticism of CRT is mere caricature. CRT scholars have been mischaracterized as racial balkanizers who capitalize on resentment for academic advancement, or soft-headed storytellers who offer “childish” narratives in the guise of scholarship.² CRT has even been blamed for the O.J. Simpson verdict.³ Anyone who reads CRT scholarship can see these criticisms for what they are. CRT has been effective in the realm of academia, providing an oasis of progressive thought and a supportive environment for scholars of color. The best test of CRT’s strength is its growth in the marketplace of ideas.⁴

The book’s editors articulate the principal themes that unite CRT. First, CRT advocates progressive race-conscious policies, recognizing that color-blindness in a racially stratified society simply perpetuates inequality.⁵ According to this perspective, affirmative action programs are crucial to overcome deep-rooted racial injustice, past and present. Mere prohibitions on discrimination fail to address active oppression in the form of de jure and de facto segregation—in our schools, workplaces, neighborhoods, and institutions—that has existed for centuries. Affirmative action allows people of color greater access to social and economic opportunity as well as to institutions of political power necessary to challenge ongoing inequalities.

Second, CRT contends that racism is a structural phenomenon

2. See, e.g., Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40; DANIEL A. FARBER & SUZANA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* 52-71 (1997).

3. See Jeffrey Rosen, *The Bloods and the Crits: O.J. Simpson, Critical Race Theory, the Law, and the Triumph of Color in America*, NEW REPUBLIC, Dec. 9, 1996, at 27. Note the “humorous” comparison of CRT scholars to a Los Angeles street gang in the title of Rosen’s article.

4. See *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J. dissenting) (stating “the best test of truth is the power of the thought to get itself accepted in the competition of the market. . .”).

5. FRANCISCO VALDES, ET. AL., *Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millennium*, CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 1 (Francisco Valdes et al. eds., 2002) [hereinafter CROSSROADS].

rather than an individual failing.⁶ It is necessary to rectify the role of white privilege in the job market, the criminal justice system, residential patterns, and the educational system, among other things. Treating racism as an individual vice will not suffice. CRT asks that we examine the myriad ways in which poor people of color are stymied in their efforts to advance, from the time they try to find reliable transportation to their low-wage job in the morning until the time they return from their second job at night to their segregated housing in a distressed neighborhood. Fighting racism is more about tackling these practical problems than it is about saving souls.

Third, CRT emphasizes that racism is interconnected with sexism, homophobia, economic exploitation, and other forms of oppression.⁷ The different forms of hierarchy are heads of the same hydra. They reinforce each other and could not have such power independently. CRT suggests that we must take account of other forms of oppression in devising a program against racism.

Another theme of CRT is “antiessentialism.”⁸ This concept challenges the notion that a racial category such as “whiteness” is grounded in an unchanging natural essence. CRT scholars emphasize that traditional racial categories have been socially defined in ways that exclude the voices of people without privilege. For example, “blackness” and “whiteness” have been stereotyped in ways that oppress poor people of color. Antiessentialism seeks to disconnect skin “color” distinctions from the moorings of racial hierarchy. That is to say, an African-American person need not be pigeonholed into a negative stereotype; nor should a white person benefit from a preconception based on privilege. However, antiessentialists do not advocate color-blindness. Rather, they advocate permitting all people to (re)define what race means so that it may no longer be a fulcrum of oppression.

The volume is divided into three major sections that delineate the CRT movement’s past, present, and future: “Histories,” “Crossroads,” and “Directions.” The “Histories” section provides a multifaceted retrospective to put the present in context. CRT veteran Kimberlé Crenshaw gives an interesting behind-the-scenes account of how the movement coalesced from the mutual concerns

6. *Id.* at 1-2.

7. *Id.* at 2.

8. *Id.* at 2-3; see also Catharine A. MacKinnon, *Keeping It Real: On Anti-Essentialism*, in *CROSSROADS*, *supra* note 5, at 71.

of people of color in the legal academy.⁹ Sumi Cho and Robert Westley provide a detailed account of the influence of student activism on CRT, focusing on one particular longitudinal case study of a faculty diversity effort.¹⁰

The “Crossroads” section is divided into three parts. The first, entitled “Race,” contains various efforts to capture the implications of the fundamental proposition that “race is a social construct.”¹¹ Robert Chang emphasizes that the enactment of antidiscrimination laws changed the role of this proposition.¹² In the 1950s and 1960s, civil rights advocates used the social construction argument to justify eliminating de jure discrimination against people of color on the grounds that all people were basically the same. In short, the civil rights movement sought equal treatment in a strict or formal sense. Increasingly, civil rights advocates now use the social construction argument to address ongoing de facto discrimination based on the insight that people of color are differently situated than whites because of the way race has been historically constructed. In other words, strictly equal treatment of people of color—formal equality—actually perpetuates longstanding inequality. Therefore, advocates now focus on meaningful equal treatment—substantive equality—which often warrants race-conscious strategies.

The second part of the “Crossroads” section includes essays on the theory and practice of integrating personal narratives into legal scholarship.¹³ Narratives help humanize the arid abstractions of legal discourse. In particular, CRT focuses on “stories told from the perspective of those at the bottom of power relations.”¹⁴ It is easier to overlook the human needs of the powerless when speaking in conceptual generalities. It is harder to ignore a personal story of suffering. For example, analysis of immigration law takes on a whole different meaning when it includes the perspective of a Mexican house cleaner seeking naturalization.¹⁵

9. See Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or ‘A Foot in the Closing Door,’* in CROSSROADS, *supra* note 5, at 9.

10. Sumi Cho & Robert Westley, *Historicizing Critical Race Theory’s Cutting Edge: Key Movements That Performed the Theory*, in CROSSROADS, *supra* note 5, at 32.

11. See, e.g., Robert S. Chang, *Critiquing ‘Race’ and Its Uses: Critical Race Theory’s Uncompleted Argument*, in CROSSROADS, *supra* note 5, at 87.

12. *Id.* at 95.

13. See, e.g., Margaret E. Montoya, *Celebrating Racialized Legal Narratives*, in CROSSROADS, *supra* note 5, at 243.

14. *Id.* at 244.

15. *Id.* (citing Gerald P. Lopez, *The Work We Know So Little About*, 42 STAN. L.

Narratives also provide a common language and imagery for the movement, knitting together CRT scholars with threads of rhetoric.¹⁶ Personal stories allow CRT scholars and “those at the bottom of power relations” to vent their pain, to affirm their value, and to articulate a vision of what a just world can be.¹⁷

The third part of the “Crossroads” section analyzes CRT in the context of globalization.¹⁸ The authors emphasize that CRT tenets mesh well with post-colonial themes of human rights, self-determination, and economic justice.¹⁹ However, the authors emphasize that a critique of racism focused solely on the United States is inadequate. CRT must be brought into the context of the broader struggles of people of color against oppression around the world.

The last section, entitled “Directions,” attempts to chart a course for the future of CRT. Julie Su and Eric Yamamoto pose important questions: “Why are progressive law professors so often absent from the in-the-trenches legal struggles of communities of color . . .? . . . And why are political lawyers so often missing from gatherings of progressive academics . . .?”²⁰ Su and Yamamoto propose forming “critical coalitions” of advocates, scholars, activists, and community members to work together for racial and economic justice.²¹

The proposal for “critical coalitions” guides us in the right direction.²² However, after reading the entire volume it is clear that CRT scholars have not yet heeded the clarion call. The volume contains relatively little in the way of analysis or strategy that is directly relevant to the daily work of civil rights practitioners. The authors of this book review are both civil rights attorneys in private

REV. 1 (1989)).

16. *Id.* at 243.

17. *Id.* at 244-46.

18. *See, e.g.,* Celina Romany, *Critical Race Theory in Global Context*, in *CROSSROADS*, *supra* note 5, at 303.

19. *Id.* at 305.

20. Julie A. Su & Eric K. Yamamoto, *Critical Coalitions: Theory and Praxis*, in *CROSSROADS*, *supra* note 5, at 379.

21. *Id.* at 387-89.

22. The emergence of the Legal Scholarship for Equal Justice program in Minnesota offers a concrete example of how scholars can help to develop the much-needed “critical coalitions” discussed in *CROSSROADS*, *supra* note 5. Scholars, practitioners, and activists are taking steps to bridge the gaps between them, thanks to the vision and leadership of Professor Eric Janus of William Mitchell College of Law, and other progressive faculty.

practice. We found the book to be rich with theoretical insights as to why we should do the work we do. The book is lacking, however, in meaningful guidance as to how civil rights lawyers might become more effective at what we do. Specifically, how do we translate the concepts of antiessentialism and social construction into persuasive doctrinal arguments? How does the focus on narrativity weigh against the advocate's instinct not to reveal too much too soon to opposing counsel? What concrete legal theories and political/social/legal strategies might be deployed to address structural racism? It is difficult to think through these questions in the hurly burly of practice, *i.e.*, when your client calls to say that the landlord turned off the heat in the dead of winter to retaliate against her for filing a claim.

CRT scholars have the time and insight to address the big strategic questions that we as practitioners put aside due to pressing daily problems. However, we practitioners have the perspective and practical savvy that comes from confronting racism and other forms of oppression in more concrete, on-the-ground ways. Thus, as Su and Yamamoto correctly point out, it is incumbent on scholars and practitioners alike to forge "critical coalitions" so that we can learn from each other and build better strategies.

Toward that end, CRT scholars should consider a more pragmatic approach when trying to help "those at the bottom of power relations." Cornel West has described pragmatism as "a future-oriented instrumentalism that tries to deploy thought as a weapon to enable more effective action."²³ The *Crossroads* volume contains a well-developed diagnosis of present problems, but it is less clear about the prescriptions for a better future. We need well-informed action to build a just society. Working together, CRT scholars and civil rights advocates can make a significant contribution to the cause of racial justice.

23. RICHARD A. POSNER, *OVERCOMING LAW* 12 (1995) (quoting CORNEL WEST, *THE AMERICAN EVASION OF PHILOSOPHY: A GENEALOGY OF PRAGMATISM* 5 (1989)).