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The Law of White Spaces: Race, Culture, and Legal Education

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The scene, drawn from memory, is a first-year law school classroom. It is the early 1980s and the class is on civil procedure. The teacher is a white woman. She is nervous, and the class is dominated by students who provide standard right answers to formulaic law school questions. Other points of view, particularly those of a critical or feminist nature, are either passed over quickly or ignored. Questions of color are never mentioned. More than that, the teacher never calls on any African-American students. Students of color are either ignored completely or told, when they have questions, "We are moving on."

What initially seemed to be nervousness or inexperience becomes accentuated over time as discrimination. As the semester progresses, the African-American students start to test in subtle and quiet ways the teacher's practice of excluding them. Things come to a head when they organize a systematic protest. After every statement or question made by the teacher, at least two of the students raise their hands. After several unsuccessful attempts at asking or answering questions, one African-American student confronts the teacher. When she tells him that she is moving on, the student insists: "I have a question." The teacher reiterates: "We are moving on." The student persists, the teacher repeats. All the African-American students then stand up and walk out of the class. One white student stands up and leaves as well. The rest of the class stays. The course continues without any real interruption. Sometime later a curt apology—"I didn't mean to offend anyone"—suffices to paper over the color lines that the incident revealed.

The incident is set safely in the past and formulated in the third person, without names or details of school or place. It is unthreatening and so, we hope, something that can be used as a starting point for discussing the dynamics of race in the internal culture of law schools. In particular we wish to draw attention to the exception, to the single white student who left in protest with the students of color even though she was not directly a victim of the exclusionary bias.

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What is striking in retrospect is that the rest of the class stayed on, that discrimination was perceived to affect only those who were excluded. We will argue that the opposite is true.[1] The refusal to call on or respond to the African-American students is a symptom that marks an internal dynamic within the included, those who perceive themselves to be without color or unaffected by discrimination. The manifest discrimination, in other words, simply indicates the boundary of a culture. What needs to be studied is the internal dynamic that creates that marker. What needs to be addressed is the law of white spaces: the emotional and epistemic relationships between the white participants, the internal relationships that gained expression in the exclusion of students of color.

The law of white spaces is the object of white studies. It addresses whiteness as color. The relationships within the predominantly white spaces of the law school are thus to be understood as the expression of the conditions of possibility of the exclusionary practices that our initial reminiscence illustrated. Racial discrimination may be most evident in the form of exclusion, but it is lived and inculcated most regularly in our relationships with those perceived to be our similars. As our example illustrates, however, the internal pattern of discriminatory practice took the form of the white students' staying on in the classroom and acting as if they were not affected by or implicated in the process of excluding African-American students. The law of white spaces is one of nonrecognition, silence, or denial. It was enough, back then, for the teacher to say, "I did not mean to offend anyone," as if racial discrimination or the cultural dynamic of a classroom were lodged at the level of individual intent.

The fact that the majority of students stayed on without protest, the fact that they simply wanted to learn the law and thought that the quality of knowledge conveyed was unaffected by the discriminatory character of the classroom conversation, highlights another problem in addressing the internal dynamics of race. The teacher undoubtedly thought that her apology put an end to issues of color lines and that she could now return to the real object of the class, the teaching of civil procedure. It is hard, in other words, to address this question of relationships within the dominant group as a question of race. In large measure for that reason, this article will use case studies drawn from another common law jurisdiction, that of England. It is sufficiently similar to allow for the development of a methodology for analyzing the dynamics of race within the dominant culture, while being sufficiently distant to allow for discussions that are not overinvested in the threat of exposure or the need for denial.

In part I we look at the way in which critical race theory has been defined historically in terms of voice and resistance, silence and exclusion. It dates back in this form to the 1980s, and it is written in large part from the perspective of the minority students who left the classroom so as to dramatize

1. This argument draws from Derrick Bell, Wanted: A White Leader Able to Free Whites of Racism, 33 U.C. Davis L. Rev. 527 (2000).

and confront the pattern of discrimination and exclusion.[2] Much of the success of critical race theory as a political movement has been derived from its vehement assertion of outsider identities and narratives. The antagonistic context within which institutional outsiders have asserted their right to be heard, to own their experience, to be scholars, has also, however, at times had the ironic effect of maintaining their status as outsiders. The hidden face, the white face, of the racialized dynamic of institutional interaction is that of the silent assertion of the superiority of the norm. In an attempt to expose this tacit norm, this law of white spaces, we develop a methodology for analyzing the dynamics of racial interaction in terms of a series of sites of resistance by those who embody the institutional norm. We look specifically at how denial, tacit consensus, externalization, and subjectification operate as mechanisms for constituting the outsider as the exception.

In part II we turn to our first case study, to England and specifically to Cambridge, to a law school and law review that have roughly the same status in England as does Harvard in the United States. We focus initially on the analysis of a series of seemingly incidental remarks on critical race theory made by a Cambridge University law professor, Matthew H. Kramer. His remarks, the first explicit comments on critical race theory to be published in an English law review, are made in the course of short book reviews in the *Cambridge Law Journal* and the *Modern Law Review*. Extreme, highly charged, and frequently reiterated asides in the course of reviews of books unrelated to critique or race (such as the assertion that critical race theory is "lazy, self-indulgent prattle,"[3]) are analyzed symptomatically as unguarded and so exemplary instances of the silencing of questions of race as in any sense pertinent to knowledge, or teaching, of law.

In part III we explore the larger cultural context in which these racial dynamics emerge. We look specifically at the media response to Patricia Williams, an African-American law professor at Columbia University, when she came to England to deliver the prestigious Reith Lectures, to be broadcast on national radio. She came to talk about the adverse consequences of liberal concepts of colorblindness and about the difficulty of addressing these consequences among whites who feel threatened by any discourse that makes race conscious and institutionally visible. Ironically or prophetically her arrival was met with hostile media coverage. She was denounced as a radical, a lesbian, an irrationalist, and a sexually voracious single mother long before she had delivered a word of her lectures. Her efforts at conversation were in large part preempted or silenced by a cultural norm that insisted upon talking about

2. The scholarly expression of this position can be found in Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561 (1984). Delgado points out that even the radical legal scholarship associated with the civil rights movement of the time was written almost exclusively by elite white male scholars. The study is usefully reprised and updated in Richard Delgado, The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later, 140 U. Pa. L. Rev. 1349 (1992).

3. 57 Cambridge L.J. 612, 612 (1998) (reviewing Andrei Marmor, ed., Law and Interpretation (1997)).

other things—her qualifications, her identity, her sexuality, her desires, her style—all the while ignoring and so silencing her plea for recognition that race matters.

In part IV we analyze the case of *Qureshi v. Victoria University of Manchester and Professor Brazier*, a decision in which a faculty of law and the dean of an elite English law school were found liable on six counts of discrimination and one count of victimization.[4] The case was brought by Asif Qureshi, now a full professor in the law faculty at Manchester, who was then a lecturer in law and the only person of color on the faculty. The theme that runs most distinctly throughout the appeal and the judgment is that of silence.[5] Silent exclusion took the form of the indifference of colleagues, and gained expression in countless instances of noncommunication, suppression of information, and nonrecognition.

We conclude in part V with the observation that as whites become more sophisticated about the meaning and experience of race, and as they become more conscious of its significance in relation to white privilege and its corresponding discrimination, the dominant majority becomes increasingly threatened.[6] Knowledge threatens to disrupt the system of benefits that whites enjoy. In the face of this threat, greater efforts are made to suppress the relevance of race to knowledge, and to silence the questioning of culture or the dynamics of inside and outside, to escape to scholarship, to talk of other things.[7]

I. Confronting White Spaces

Without rehearsing the well-established themes of critical race theory, it is worth alluding briefly to the challenge that it poses to the conventional wisdom and culture of the law school. Critical race theory grew out of the civil rights movement and was from its origins a political movement. In the terms used by Derrick Bell in his casebook *Race, Racism, and American Law*,[8] the

4. Case 01359/93 (Decision): Qureshi v. Victoria University of Manchester and Professor Brazier (1997). Case 01359/93 (Remedy Decision): Qureshi v. Victoria University of Manchester and Professor Brazier (1997). Subsequent references to these decisions will be in parentheses in the text. References will be by page and then paragraph number; references to the Remedy Decision will be prefaced R. Victimization, unique to England, is a specific legal form of discrimination defined in terms of retaliation against those who have asserted their right to equal treatment.

5. On attending to silence, see Linda G. Mills, On the Other Side of Silence: Affective Lawyering for Intimate Abuse, 86 Cornell L. Rev. 1225 (1996). On the violence in silence, see Linda G. Mills, Killing Her Softly: Intimate Abuse and the Violence of State Intervention, 113 Harvard L. Rev. 550 (1999).

6. For a discussion of white privilege in the legal academy, see Jane Harris Aiken, Striving to Teach "Justice, Fairness, and Morality," 4 Clinical L. Rev. 1 (1997). On white colorblindness, see Barbara J. Flagg, "Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent, 91 Mich. L. Rev. 953 (1993). On "white studies," see Ruth Frankenberg, White Women, Race Matters: The Social Construction of Whiteness (Minneapolis, 1993). For salutary caution on questions of color and identity, see Paul Gilroy, Against Race: Imagining Political Culture Beyond the Color Line (Cambridge, Mass., 2000).

7. For a discussion of the micropolitics of such denial in the context of judging, see Linda G. Mills, A Penchant for Prejudice: Unraveling Bias in Judicial Decision Making (Ann Arbor, 1999).

8. Boston, 1980.

movement was about consciousness of race in the analysis and teaching of law. Race consciousness implied activism and, wherever necessary, confrontation with authority. A significant aspect of the authority that Bell sought to challenge was that of the academic hierarchy and its assertions both of excellence and of knowledge as attributes of an elite white norm. It was on this issue that he resigned from Harvard Law School, and on this issue that he took his distance from the political quietism of the Critical Legal Conference.[9]

Confronting authority in the academy meant confronting the cultural norm of elite institutions and challenging the epistemic and doctrinal tenets of both conservative and critical legal scholars. In its later elaborations as a critique of the institutional politics of the legal academy as well as of legal doctrine, critical race theory and the latterly more numerous forms of "outsider" jurisprudence have been marked most strikingly by a concern with making issues of race, and consciousness of the embodiment and color of doctrine, visible within the elite enclaves that elaborate and reproduce legal knowledge.[10] This concern with being seen and being heard, with the literal corpora of legality, has found diverse means of expression in concepts of "oppositional voice" and "intersectionality," and the elaboration of alternative "rhetorics of resistance" and textual labors of recuperation.[11] What aligns these concerns with the racial politics of legal institutions is most obviously their shared interest in creating a space and legitimacy, an ontological as well as epistemic place, for cultural difference. Making racial dynamics visible, from the microanalysis of interactions suggested by Patricia Williams to the recognition of narrative analysis and specifically of storytelling as a form of knowledge, involved the elaboration of new objects and forms of legal analysis. Acknowledging difference meant acknowledging new forms of composition and communication, of hermeneutic and of knowing.

Critical race theory self-consciously writes in a different style or oppositional voice, so as to express the experiences of difference. Autobiography, fiction, poetry, anecdote, music, and art are among the diverse local forms of knowledge that critical race theory has experimented with or espoused. The claim to voice is in other words a claim to experience, to a being or place within the public domain, within law. It is precisely this claim to place, to

9. Derrick Bell, Confronting Authority: Reflections of an Ardent Protester 104–09 (Boston, 1994). See also Peter Goodrich, Duncan Kennedy as I Imagine Him, 23 Cardozo L. Rev. 713 (2001).

10. On "outsider" jurisprudence, see Francisco Valdes, Under Construction: LatCrit Consciousness, Community, and Theory, 10 La Raza L.J. 1 (1998); 85 Calif. L. Rev. 1087 (1997). For a history and compilation of key texts from the movement, see Kimberle Crenshaw et al., eds., Critical Race Theory: The Key Writings That Formed the Movement (New York, 1995) [hereinafter Critical Race Theory]. For further readings, see Richard Delgado, ed., Critical Race Theory: The Cutting Edge (Philadelphia, 1995); Adrien Katherine Wing, ed., Critical Race Feminism: A Reader (New York, 1997).

11. On intersectionality, see Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, *in* Crenshaw et al., Critical Race Theory, *supra* note 10, at 357; on rhetorics of resistance, see Kendall Thomas, Rouge et Noir Reread: A Popular Constitutional History of the Angelo Herndon Case, *in* Crenshaw et al., Critical Race Theory, *supra* note 10, at 465.

recognition, identity, and voice that underpins the resistance by whites in each example analyzed in this article.

The existing literature of critical race theory has consistently sought to open up a discursive space within the legal academy, and within the public sphere that the academy occupies. As our analysis will show, critical race theory has had considerable success in making the norms of exclusion explicit and in legitimizing the experiences and narratives of racial outsiders as forms of knowledge, of culture, of institution, and of law. The various tools that have been developed to assert identities and discourses of color have focused on a politics of confrontation, resistance, intersection, and recuperation. It is perhaps in part a reflection of this necessarily polemical position, this struggle for existence, that the other face of racial identity, the norm of whiteness, has only just begun to be exposed or addressed.

The majority of the white legal academy has remained silent about questions of race. More specifically, it has refused to address the norm of whiteness either as a racial consciousness or as a form of knowledge. It has reluctantly included elements of diversity, but has wholly failed to reflect upon its own racialized constitution. White studies in law, we suggest, should inaugurate such a process of self-reflection and elaborate the reasons for the norm of silence—the law of white spaces—that governs the criteria of inclusion and exclusion within the fold of legal and scholarly excellence.

By way of introduction to this hidden face of the dynamic of racial interaction, we would draw attention to a variety of factors that seem to dominate the persistent deflection of attention from the racial composition of the white professoriat and their standards of scholarship. As we will see, what is true of the academy is also pervasive in the culture that it expresses and represents. What we want to suggest is that the culture of silence within the academy should be understood at both the conscious and unconscious level.[12] Questions of race and identity in our culture are highly charged. Who we are in racial terms plays a large part in defining our income, our job status, our social standing, our access to power, promotion, and, in the academy, tenure. The structure of the dominant norm, therefore, needs to be understood as emotional and epistemic, rational and defensive.

Bearing in mind the necessarily conflictual character of the assertion of the significance of race to knowledge and of racial dynamics to institutional decisions, it is useful to tabulate the more usual sites of resistance to engaging with whiteness as race in order to expose the dominant elements or strategies of white identity in the legal academy. Denial, tacit consensus, externalization, and subjectification each influence the dynamics of race in the academy and operate to mask strategies of domination.

Denial. Denial is probably the most complex category and arises both as a form of defensiveness and as an aggressive negation of the relevance of race to knowledge. To the extent that the assertion of racial identity and of outsider

12. On the unconscious character of racism, see Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987).

narratives has necessarily been confrontational, it has embarrassed the white academy as much as it has challenged it. In this initial sense, denial refers to the simple refusal to acknowledge a problem internal to the communicative structures and self-definition of the legal academy and its institutional culture. Denial in this sense involves an unwillingness to talk, an embarrassment or fear of exposure of unconscious prejudices, ingrained stereotypes, habitual patterns of xenophobia—a clutching to the same. One response to what is perceived as a threat or an attack is to maintain a wall of silence, to refuse to recognize the existence of an issue that affects the core of institutional identities and practices. Although an institution, in this mode, will occasionally tolerate outsiders and publish their narratives, and will even appoint them to positions, it offers no narrative of the racialized identity of the norm that it maintains as its protective shield or defense. The institution remains the same. The new influences, experiences, or cultures remain unincorporated and external to the norm. The outsider on the inside continues to be marked by difference. An obvious corollary of denial is that it maintains the epistemic barrier that separates us from them, majority from minority, whiteness from color.

Tacit Consensus. The ideal type of the heroic white male intellectual is never expressly stated. Much more insidiously, the everyday rules of good behavior, of belonging to the institution, of being a successful academic, lawyer, or whatever, are maintained as insider knowledge. They are the rules of the game, too intimate or too ludic to be made public, vital yet devastating in their consequences if unknown or ignored. The consensus is communicated through blood, through air, through atmosphere. It is what the institutional insider already knows.[13] In other words, the most important life skills, the rules of survival, come in the form of a dress code, norms of etiquette, requirements of style in teaching, writing, and judging. Only someone schooled as an insider can know the rules in the manner of the insider. Although outsiders can learn the insider's way of knowing, their difference will always distinguish them, preventing any real penetration of the boundaries between the identical and the different, the similar and the outside.

Externalization. Persons of color, therefore, are defined by their difference. The homogeneity of the tacit consensus expresses itself positively through labeling the outsider as "other." The attributes of the outsider are projections of an outside, of an unknown, of a fear. The specific mechanism of externalization is one of separation, alienation, and estrangement. As in any process of labeling, what rises to the level of expression and so of judgment is the mark of difference or of otherness. It is not the identity or culture of whiteness that is in question, or problematic. Externalization as a strategy dictates that what is different is the narrative and experience of people of color, their history, and their knowledge. Their experience is not our problem, but theirs; it is not internal, but external, not our crisis, but a question of their fitting in. In the end, it is the outsider who is called to change, to adapt, to learn the norm, to understand the law.

13. For analysis of race and work, see Devon W. Carbodo & Mitu Gulati, Working Identity, 85 Cornell L. Rev. 1259 (2000).

Subjectification. If the problem is externalized, the outsider is, by definition, the exception. More than that, the outsider is made to suffer the particularities and idiosyncrasies of the exception. What this means in practice is that personal attributes, choices of style, and of selfhood, are open to magnification, publicity, and excoriation. The outsider is depicted in very personalized terms, in terms we are all too familiar with, as aberrant, as deviant, as perverse. Thus skin tones or colors other than "white" come to signify a unique yet ironically all too universal sexual predation, boundary transgression, fervent irrationalism, even groupism or herd instinct. Difference is explained by these subjective tokens of blame. Externalization of what is perceived as threatening, denial of any interior problem, and the continued need for a tacit consensus end up in the subjectification of the outsider who threatens the norm. Through the exposure of intimate details of lifestyle or personal attribute—from stupidity to promiscuity, from predation to lassitude—the outsider is portrayed as tied to subjective qualities that escape both reason and the norm.

The theoretical argument of this article builds upon the categories outlined above to suggest that an adequate understanding of racial dynamics in law schools must begin with an account of the construction of whiteness, of the racial norm, within the academy. Our argument is that the most subtle aspect of racialized dynamics is that of the tacit assertion of the continuing superiority of the norm. Whiteness is itself the implicit criterion of knowledge, the rule of the institutional game. In each of the case studies, it is upon this awkward and often embarrassed silence, this law of white spaces, that we will focus.

II. *Quis Custodiet Custodes* or Who Reviews the Reviewers?

Writing in the pages of a well-established and professionally edited law review, Matthew H. Kramer, a member of the Cambridge University Faculty of Law, recently asserted the view that critical race theory is "intellectually flimsy humbug" foisted upon the readership of American law journals because of "the ignorance of most journal editors and many faculty."[14] In an earlier book review in the same law journal, he dismissed critical race theory as consisting for the most part of "anti-intellectual ranting by people who are unwilling or unable to construct proper arguments."[15] In a later reprise of this theme, he elaborated the more expansive view that the "lazy, self-indulgent prattle of postmodernism and Critical Race Theory" is to be distinguished from "the rigorous tradition of analytic jurisprudence" and "top-notch legal philosophy."[16]

Lest these cited remarks seem to parody or invent, further quotation is appropriate. In 1999, this time in the *Modern Law Review,* Kramer refers

14. 58 Cambridge L.J. 222, 222 (1999) (reviewing N. E. H. Hull, Roscoe Pound, and Karl Llewellyn: Searching for an American Jurisprudence (1997)).

15. 55 Cambridge L.J. 150, 152 (1996) (reviewing Neil Duxbury, Patterns of American Jurisprudence (1995)).

16. Kramer, *supra* note 3, at 612.

without any further qualification to "the profusion of rebarbative postmodernist blather in contemporary legal theory."[17] Another review offers the opinion that critical legal scholars interpret deconstructive philosophy in a "sophomoric manner" and transform "acute insights" into "limp banalities."[18] Later he describes critical legal scholars laconically in terms of their "errors" and calls them "votaries" of critique.[19] In his most extended digression on this same theme, Kramer makes the general observation that there has been a "woeful lack of rigour" in "far too many recent jurisprudential writings," and then proceeds to assert:

> Faddish creeds such as Critical Race Theory and postmodernism have yielded little apart from intellectual flabbiness. Possessed of neither talent nor training in philosophy, the followers of such creeds have not hesitated to display their lack of competence to the world by putting forward arguments (or ostensible arguments) that are too lamentably feeble and anserine to deserve any response other than contemptuous amusement.[20]

As if such a dismissal were not enough, this particular piece, again a review of a book unrelated to critical race theory, ends by intoning that "the proponents of postmodernist mumbo-jumbo and Critical Race Theory claptrap will not read the book and would not be able to understand it if they tried to read it. However, for anyone interested in legal philosophy rather than charlatanry, the book can be recommended very highly indeed."[21]

That these remarks were published in a law review edited by professional legal academics is surprising. That their publication has to date elicited neither comment nor response is shocking. That their author appears to believe that such polemic manifests "rigour" or expresses talent or training in philosophy is alarming. That such generalization might be thought to be scholarship is insupportable. Whatever the epistemic status of these generalizations, however, their publication in two of the top university law reviews in England must be taken as according at the least a certain credibility and gravamen to the views propounded. It is acceptable, in other words, to conflate postmodernism and critical race theory in an unsubstantiated and overwhelmingly derogatory exercise in labeling or externalization. This is especially significant in light of the fact that no scholarly or substantive article in the top three law journals in England, including the journals in which Kramer's book reviews appear, has ever directly addressed the topic of critical race theory.

It is by implication reasonable to dismiss an undifferentiated grouping of texts produced over a considerable period of time and in response to very different cultural, legal, political, and institutional exigencies, as "anserine"—

17. 62 Mod. L. Rev. 314, 314 (1999) (reviewing Andrew Halpin, Rights and Law: Analysis and Theory (1997)).

18. Kramer, *supra* note 15, at 152.

19. 58 Cambridge L.J. 437, 438 (1999) (reviewing Gregory Alexander, Commodity and Propriety: Competing Visions of Property in American Legal Thought (1997)).

20. Kramer, *supra* note 3, at 612.

21. *Id.* at 614.

as being appropriate to geese—and to imply that their proponents are stupid as well as being liars and frauds. More than that, the language of dismissal is expressly that of contempt. It manifests its disdain in a language that has specifically xenophobic and racial overtones. *Charlatanry, humbug, claptrap, prattle,* and *blather* are terms that historically have been applied most often to foreigners, heretics, or other outsiders. They are terms of exclusion or of denunciation and dismissal, and their racial connotations associate charlatanry and humbug most directly with "aegyptians" or gypsies, claptrap and prattle with Italians, blather with Scots.[22] The term *mumbo-jumbo* is explicitly a racist term, referring to an idol or god worshipped by certain West African tribes and by extension connoting a fetish or other irrational belief.

In whatever way one chooses to interpret the tone of Kramer's remarks, they are surrounded by a peculiar irony. Marginal and extreme though they may be, they constitute one of the first announcements of the existence of critical race theory within the English legal academy. While this announcement may take the form of dismissal, it nonetheless provides a negative introduction to a movement and generically labeled corpus of texts that have otherwise failed to gain any recognition within the English scholarly literature. The adversarial form of acknowledgment is thus paradoxical; it introduces by excluding; it shores up the identity and value or self-worth of the author's position, variously described in terms of "rigour," the "top notch," and "analytic legal philosophy," while diminishing a substantial corpus of texts and positions, generically termed critical race theory, as worthless and anserine.

Kramer's acknowledgment of a racial dynamic in the production of legal knowledge does not invite engagement or dialog. It does not bring the proponents of critical race theory or of critique into the groves of English legal academe for conversation or ratiocination, not least because their capacity to reason and so to converse in a meaningful manner is impugned. The marginal and allusive character of Kramer's aspersions also suggests an unwitting impetus to the form of this engagement. In tone and content this "meiosis" or mocking diminishment of a school of thought is political and polemical; it defends the faith in an apologetic style and seeks to preclude dialog through exclusion or banishment of ideas and authors who exist outside the faith.

The context of Kramer's dismissive externalization of critical race theory is that of the English legal academy and of a long-term history of nonengagement with issues of race and of racial dynamics in the production of legal knowledge. The first substantial account of critical race theory to be published in an English legal periodical postdates Kramer's marginalia and is an account by two U.S. legal academics. It is descriptive, in a frequently pessimistic and sometimes tired tone, of an exclusively American movement.[23] What little

22. On the legal rhetoric of denunciation—the antirrhetic —see Peter Goodrich, Oedipus Lex: Psychoanalysis, History, Law, 41–67 (Berkeley, 1995). On the constitution of Englishness, see Peter Goodrich, Critical Legal Studies in England: Prospective Histories, 12 Oxford J. Legal Stud. 195 (1992).

23. Richard Delgado & Jean Stefancic, Critical Race Theory: Past, Present and Future, 51 Current Legal Probs. 467 (1998).

attention English legal academics had otherwise paid to race, and specifically to racial dynamics in the production of legal knowledge, addressed the history and anthropology of British colonialism and was lodged at the level of the concept of law.[24]

The common law jurisdiction of England never faced a civil rights movement and never enacted any institutional affirmative action with regard to race or gender. In an effort to learn more about racial dynamics in the legal academy in England, we replicated Richard Delgado's inquiry into the racial makeup of published legal scholarship in the top U.S. law reviews; we examined the top three English law reviews—the *Law Quarterly Review,* the *Cambridge Law Journal,* and the *Modern Law Review.* A total of 614 scholarly articles (excluding book reviews and case notes) were published between 1990 and 2000. In total, twelve authors of color were published. One author of color was published five times in the same journal. As a result, the total number of articles published by authors of color stands at seventeen out of 614. No article (as opposed to book review) on critical race theory appeared in those journals during that ten-year period—or to date.

A survey of teachers in British law schools in 1994 was so confident that the racial background of law teachers was not a significant issue that while the survey asked questions about age, gender, qualifications, professional experience, and career trajectory, it did not ask any question about racial or ethnic background.[25] Similarly, a scholarly account of the English law school published in 1994 makes no mention in its chapter on the culture and people of the law school of questions of race.[26] Such denial—the seeming nonexistence of race in the positive form of the universality of Englishness—makes it hard to garner statistics on race in the English legal academy. What is clear if seldom enumerated is that the faculty of the top-ranked English law schools is overwhelmingly white, while the student body in the top-ranked law schools is also predominantly white.[27] The scholarly norms of the academy thus reflect the homogeneity of its legal culture and at the very least a certain lack of consciousness of issues of race that have for some time exercised the U.S. legal academy and have found their most significant and political expression in the writings of critical race theorists.

The externalizing character of Kramer's commentary thus to some extent reflects the tacit consensus on the status of race as a topic within the English legal academy. His remarks externalize because there is no internal institutional consciousness of race. Equally, his remarks are met by silence because they do not contribute to any conversation that currently exists within the

24. See Peter Fitzpatrick, Racism and the Innocence of Law, *in* Critical Legal Studies, eds. Peter Fitzpatrick & Alan Hunt, 119 (Oxford, Eng., 1987); Peter Fitzpatrick, The Mythology of Modern Law 113–18 (London, 1992); Eve Darian Smith & Peter Fitzpatrick, eds., Law and Colonialism, 6 Law & Critique (1995); Eve Darian-Smith & Peter Fitzpatrick, eds., Laws of the Postcolonial (Ann Arbor, 1999).

25. Patricia Leighton et al., Today's Law Teachers: Lawyers or Academics? 1–4 (London, 1995).

26. William Twining, Blackstone's Tower: The English Law School 64–90 (London, 1994).

27. Phil Harris & Martin Jones, A Survey of Law Schools in the United Kingdom, 1996, 31 Law Tchr. 38 (1997).

relevant periodical literature or discussions of doctrine. Such an experience and literature, in other words, is so external to the norm of the English legal academy as to be the equivalent of reportage on "mumbo-jumbo" or the worship of an African fetish.

It would be wrong, however, to conclude this discussion without asking further how the culture supports the relationships and practices, the institutional and interpersonal dynamics, that are exposed in Kramer's comments about critical race theory. It is not likely that Kramer is unique or even particularly exceptional in his reaction to questions of race; witness the case of *Qureshi v. Victoria University of Manchester* described in part IV. It is important, however, first to try and trace the roots of English racial dynamics into the wider culture—racial dynamics that support norms that tolerate Kramer's comments, and also the reactions to Qureshi which we examine later. To illustrate this point, we turn briefly to a second transatlantic example, the English media's response to Patricia Williams.

III. Patricia Williams in Britain

> Sorry, could you start again?
>
> . . . Could you give us the gist of the burden of your first Reith lecture?
>
> . . . But could you just give us a little more about what this colour blindness is, how it manifests itself and who manifests the colour blindness?
>
> . . . I mean who is being blind?[28]

In January 1997 Patricia Williams arrived in London to record a series of lectures on race relations. Not just any lectures. These were the Reith Lectures, delivered every year on BBC Radio 4 in the name of Lord Reith, the founder of the British Broadcasting Corporation. Selections are made from a prestigious list of suggestions drawn up by BBC executives. Patricia Williams was the fourth woman of forty-nine lecturers, and the first black woman to enjoy this honor.

Williams came with the intention of opening a dialog on the dynamics of race spelled out in terms of microaggressions, an analysis of how routine interactions largely unconsciously recreate a world of racial discrimination. Her intention was to initiate a conversation, to present opportunities, largely through storytelling and personal narratives, to discuss the problematics of race in as nonthreatening terms as might be possible.

In light of her intention and generous style, Williams was understandably unprepared for the media firestorm her words would generate. An analysis of the media's response to Williams and the generally expressed view that her ideas were offensive, somehow divined even before she had delivered the lectures, provides a unique glimpse into the racial dynamics of English culture. Building upon the indications of racism drawn out in the Kramer example, this section explores why white liberal journalists and other commentators found Williams's attempted conversation about race so threatening

28. Melvyn Bragg, Radio 4 Interview of Patricia Williams, Feb. 27, 1997.

that they believed that it required preemptive discounting or silencing. We argue that just as externalization and denial predominate in the legal academy, the media seek to impose a tacit consensus by preventing open dialog. The subtlest forms of racism penetrate everyday life, and are recorded explicitly if unwittingly in the self-representation of the social promulgated by the popular press. It is to that mirror of culture that the Patricia Williams case directs attention.

A. Patricia Williams Meets the British Press

The lectures that Patricia Williams was to deliver developed both the themes and the style of her earlier work *The Alchemy of Race and Rights.* The lectures drew attention to the question of race and to the prevalence of racism. They did so in what might be described as a quiet and poetic way. Her concern was with small aggressions and with unconscious patterns of prejudice. Aside from detailing certain painful autobiographical experiences, the lectures argued for no more than the opening of a conversation on questions of race and identity. That conversation was not, however, to unfold. In advance of the delivery of the lectures, the media that interrogated Patricia Williams believed that she was mistaken.

Melvyn Bragg was the first to interview a jet-lagged Williams upon her arrival. Bragg, himself a white liberal, found Williams frustrating, inadequate, and unprepared for his interrogation. Williams seemed flustered and at a loss for words in the face of Bragg's relentless demand for a prosaically quantified account of the substance of the undelivered lectures. "Who" he persisted, without irony or any obvious measure of self-consciousness, "is being blind?"

Tony Gallagher continued the theme and pondered in explicitly sensational terms how the BBC could offer such a prestigious invitation to a "black, unmarried feminist (she has an adopted four-year old son) who is obsessed by the belief that American society is a conspiracy to crush the black female . . . ."[29] His critique focused both on Williams's contention that prejudice is pervasive and on her narrative style: "Far from being clinically argued legal dissections, the books rely on her opinions and personal experience . . . ." Gallagher gathered Williams's enemies in the U.S. for a review of her shortcomings, again focusing on what he called her "self-indulgent rambling." He cited Abby Thernstrom as saying: "[Williams] is guilty of intellectual fraud by trying to imply that we still have a caste society in the U.S. She is intellectually muddled and incoherent—factors which I hope mean her lectures do not make a big splash." From Randall Kennedy he culled this dismissive view: "Facts are important and getting data is important. You can only go so far on the basis of anecdote and memoir." To this, Gallagher appended a report of his inquiry into how Williams was appointed the 1997 Reith Lecturer. He concluded that it was what he calls the "BBC's politics: 'I suppose it's a reflection of the producers' values,' said one who was involved." From Gallagher's perspective, "[t]he austere Lord Reith . . . would be turning in his grave."

29. She's a Militant Black Feminist Who Thinks All Whites Are Racist and That the Family Is Wrong, Daily Mail, Jan. 17, 1997, at 9.

Simon Sebag Montefiore, in another invective against Williams, described her as a "slight, freckled, gentle . . . law professor with light-brown skin and a pukka Boston accent." His interview with her included the following:

> Montefiore: In your private life . . .
> Williams: I resent that question.
> Williams: I'm an academic widow. But I date.
> Montefiore: Do you date blacks or whites?
> Williams: Actually, I date . . .
> Montefiore: Go on.
> Williams: . . . mainly white guys, because I live in a white professional world.[30]

Armed with this response, Montefiore managed to conclude that Williams was a fraud and that her critique of racial discrimination was inauthentic, presumably because of her liaisons or collaborations with the racial enemy: "So much for the white-hater of tabloid imagination."

Bragg, Gallagher, and Montefiore, although the most distasteful, were not Williams's only critics. Bill Mouland, referring to Williams as a "militant black feminist," reported that he found it "delicious" when Melvyn Bragg had to confess that he did not know what Williams was talking about.[31]

In one uniquely British description of Williams, Ken Garner spoke of her "tortuous syntax and clever-clever prose style"; it was, he said, "difficult to catch her drift. Her characteristic, urgent tone of complaint rapidly becomes irritating." "She sounds more like a preacher than a professor."[32] Boris Johnson, to take another example, used a slightly different version of the same assumption of superiority. He attributed Williams's success to the ignorance of U.S. academics and to the imprudence of the English elite: "Only the Americans could reward this kind of mumbo-jumbo with a professorship; only the BBC could give her an important series of lectures."[33]

Other journalists approached Williams's message by claiming that England was better than most places. Jessica Davies, for example, reported that Boris Becker, the German tennis player, and his black wife "want to live here after years of racial harassment in Germany. They say Britain is nonconfrontational and multiracial, and the best place to raise their mixed-race son."[34] Similarly, Sue Gaisford of the *Independent* described Desmond Tutu's first visit to En-

30. A Mutinous Voice in the Melting Pot, Sunday Times, Jan. 26, 1997, § 4 (News Review), at 7.

31. Exclusive: A Preview of This Year's Reith Lectures (if you can understand a word the lady is saying), Daily Mail, Jan. 21, 1997.

32. Scotland on Sunday, March 2, 1997 (Radio Review, Spectrum, p. 21).

33. People in the News: Lecture One—the tedium is the message, The Monday Interview—Prof. Patricia Williams, Daily Telegraph, Jan. 27, 1997, at 32.

34. Exposed! The Sad Truth About Melinda Mania, Mail on Sunday, Feb. 2, 1997, at 3. It should be noted that some journalists found Williams's lectures enjoyable. They were particularly taken by her personal style and by her "finely modulated, exquisitely refined voice." Anne Karpf, Review: Racist Rant? Too Polite by Half; The Reith Lectures, BBC Radio 4, Guardian, Feb. 26, 1997, at 2. See also Gillian Reynolds, The Arts: Not a Black and White Issue on Radio, Daily Telegraph, March 4, 1997, at 21.

gland in an attempt to protect Britain's racial reputation, remembering his "heady sense of liberation from the inhumanity of apartheid" because he and his wife could ask for directions from a white policeman who would address them courteously.[35]

Starting with the last example, one might respond that Williams had not claimed that the police might not be courteous; rather, she was interested in uncovering what might lie behind these niceties.[36] Indeed it was hard to address the themes that Williams wished to discuss when the responses were so illogical, bizarre, ad feminam, and unrelated to the arguments that the lectures presented.[37] What needs to be understood, in other words, is not the surface of the argument put forward by the press, but rather the presuppositions, the small and not so small aggressions that find expression in tacit consensus and the rhetoric of externalization.

There were two correlative features of Williams's work that the press appeared to find most threatening. First, that her lectures failed to present a cohesive argument supported by "facts and figures." Her style of argument, in other words, was different, her form of expression something other than that of the "scientific" norm. Second, and in explicitly personalized form, that she was an African-American unmarried mother, and a law professor. How did *she* become the Reith Lecturer? At no point, in other words, was the press interested in engaging with the substance of Williams's lectures. It is this denial and the correlative externalization of the outsider through denunciations of her difference, that needs to be understood.

B. The Alchemy of Style and Experience

For critical race theory, new forms of literacy and expression were part of an attempt to grasp a language and epistemic or way of knowing that was adequate to a repressed and devalued ethnicity. Williams's was an oppositional voice, and in voicing her opposition she also attempted to decenter the traditional form of legal discourse by beginning from a different point. At its simplest, her style expressed a new form of legal storytelling, one that started from a race-centered point of view.

The oppositional voice or radical style of Williams's scholarship is used to tell the story of a law teacher from the perspective of race. This narrative project necessarily means that the work cannot be judged immediately according to the norms of traditional social scientific or jurisprudential discourse. It expresses a different biography, one bound to a marginal culture whose languages and experiences have been outside the scope of traditionally for-

35. Colour-Blindness Does No Colour Kindness, Indep., March 9, 1997, at 15.

36. We can note, not without irony, that a recent inquiry into the English police's handling of racially motivated crimes concluded unequivocally that "institutional racism" was endemic in the Metropolitan Police Service. See The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William MacPherson of Cluny 645 (London, 1999) (available at <http://www.official-documents.co.uk/document/cm42/4262/4262.htm>).

37. In classical logic "ad feminam" refers to an argument as to a thing. We here update the usage and use the phrase to refer to the gender complement of ad hominem arguments.

mulated academic knowledge. In its strongest form, Williams argues that legal science has resoundingly failed to contribute to our understanding of the differences between the races, or to more enlightened perspectives on racial identity. Academic discourse and legal doctrine alike reflect the culture and institutional community that develop them; their discourses in this sense are imprisoned in the perspectives and prejudices of those that formulate and promulgate them.

The politics of the oppositional voice is one that contests the academic norm both in form and in content. It resists the claim that "science" can quantify racial dynamics in any systematic way because such efforts have historically been infused with the biases of a tacit consensus. It is indeed the reliance on the sciences of society that has to some degree served to maintain white domination. When addressed in this explicit manner, it is perhaps easier to see why the press might find Williams's ideas threatening.

It has been our argument that the threat constituted by difference, and here by oppositional voice, generates denial and, specifically, a refusal to acknowledge the rationality or more simply the substantive content of the outsider's narrative of institutional existence. Denial is necessary because the tacit norms of institutional nondisclosure are placed in jeopardy. The extremity of the reaction of the British press accurately reflected the degree of threat. Williams gently yet persistently argued that colorblindness is a technique for erasing difference and asserting the superiority of a white or "colorless" norm. What was most threatening about her argument was that she traced the effects of this "blindness" into the intimate public sphere of the institution, into the minor conversations and informal judgments of everyday life. Williams's analysis brought racism home. The response of the press was the response of a culture exposed on the inside, and they fought back in kind. Rather than engaging with her narratives of everyday racism, they externalized their response by subjectifying her and so focused on issues such as the people she dated, the fact that she was a single parent, the lightness of her skin, and her American accent. By implication, she was perverse, irrational, and dangerous.

Melvyn Bragg's query "Who is being blind?" operates to impose a silence in two ways. First, it acts to externalize what Williams represents; self-evidently the questioner is not blind, the norm cannot be blind, and therefore it must be the outsider—Williams—who is confused or blind. Second, the question acts as a conduit to another proof that the questioner and his culture can see. Once Williams has been externalized, she can then be subjectified and excoriated, the smallest details of her person and her life judged and dismissed.

Our final example, the case of Asif Qureshi, illustrates a further dimension to the hostility and denial that permeate the examples of Kramer and Williams. Our first two cases share a certain degree of visibility. Kramer is explicit and vocal in his dismissal, plain and simple, of the scholarship of critical race theory. The British press is similarly antagonistic and explicit in its refusal to address what Williams had to say. The case of Qureshi moves closer to the Gorgon's head in that we here encounter the tacit norm of institutional judgment, a code of silence, a literal esprit de corps. For Qureshi, the problem was one of being excluded by tacit rules of membership, by an unwritten code

of how things are done, by manners acquired through birth and institutional provenance.

IV. *Qureshi v. Victoria University of Manchester and Professor Brazier*

> The evidence for the University was given almost exclusively by Professors of Law. However, high academic achievement was not synonymous with common sense, or a perception and understanding of equal and fair treatment of all persons. (R.2.4)[38]

To depict the facts of Asif Qureshi's case involves a microanalysis of quotidian institutional interactions over a ten-year period. In that the logic of denial and of tacit consensus is complex and frequently enacted through omission rather than commission, through silence as often as through words, our reading of the facts entails both interpretation and reformulation. Our concern in interpreting the facts is not simply to publicize the decision arrived at on appeal by the tribunal but to expand upon the decision as an example of the law of white spaces. The significance of the case extends far beyond the Mansfield building which housed the Faculty of Law, or the damp basin in which Manchester is lodged. The story that is told in *Qureshi v. Victoria University of Manchester* is emblematic because of its ordinariness.

Asif Qureshi was not a radical. He was appointed to a lectureship at the University of Manchester as a specialist in international fiscal law. He had no connections either with critique or with race theory. His only radical characteristic was that he was a South-Asian lecturer in a faculty that was otherwise entirely white. He was first appointed in 1985. Twelve years later, in 1997, after protracted internal grievance procedures and then litigation, an industrial tribunal upheld his appeal against the University of Manchester and Professor Rodney Brazier on six counts of discrimination and one count of victimization. Qureshi was awarded damages in the amount of £43,560 sterling against the university, a sum that the tribunal described as being "as far as we know the largest award in a Race Relations case" (R.3.6). The dean of the law faculty, Rodney Brazier, was also found to have played "a pivotal role" in the discrimination and was held personally liable in damages in the amount of £1,320, a sum described as "modest but appropriate" (R.4.10).

When Qureshi, a barrister and doctor of philosophy, was appointed to the Manchester law faculty in 1987, the faculty, in the words of the tribunal, consisted of "18 lecturers, all of whom were white, save the applicant, who is Asian" (R.3.7). He was confirmed in his post in 1988, and was made course director for international fiscal law in 1989. He was a visiting scholar at Yale Law School in 1992. Although he was refused promotion to a senior lectureship in 1992 and in 1993, subsequent to the tribunal's decision in 1997 he was appointed to a full professorship in 1999. On its face, this career trajectory seems unexceptional. Indeed in many respects Qureshi has been extremely successful and now occupies a prestigious position in a top-ranked law school.

38. For mode of referencing, see *supra* note 4.

In this instance, however, appearances are deceptive. Success was achieved at an unreasonable personal cost, despite numerous obstacles, and in the face of an unrepentant code of silence.

Asif Qureshi was an outsider. He experienced discrimination in the form of exclusion and nonrecognition. His conflicts with the faculty were occasioned primarily by noncommunication or by implicit judgments of nonconformity rather than by positive acts of dismissal or derogation. Ironically enough, where discrimination did take the form of direct confrontation, such moments of conflict were manifested in requests or demands that he cease to complain, that he hide his identity, that he not ask for things to be done differently. This hostile environment or negatively imposed working identity was, in other words, simply the tacit consensus on how things were in the faculty. To express difference in such an institutional context was to risk being perceived as different and hence discriminated against, judged negatively, or on occasion victimized.

Qureshi's initial dispute with the law faculty was seemingly innocuous. Appointed primarily to contribute to research, he was not informed of special funds available for studies in his field of expertise (3.8, 4.9). He learned of the Melland Schill Fund only "by accident" (3.8). When he inquired about the criteria for disbursement of the fund, Gillian White, a senior colleague and at the time dean of the faculty, responded that she had authority to use it for general purposes as she wished (3.8). Further inquiries met with obfuscation as to the criteria for disbursement and left Qureshi feeling excluded on two specific fronts. First, Qureshi was not invited to lecture in his area of expertise, despite the fact that the fund was specifically designated to support such lectures. Second, when fund management was transferred from White to another member of the faculty, a white lecturer who was junior to Qureshi was selected to oversee its disbursement (9.34).

This initial encounter, quotidian and marginal as it may seem, is in many aspects emblematic of the pattern of relations that subsequently emerged. It is only chance that gave the outsider access to specifically relevant information about institutional opportunities. The rules for disbursement were not stated, but rather were based upon tacit consensus or insider knowledge. Already the search for information met with a tacit hostility and with the implied assertion that what Qureshi did not understand (and so sought to find out) was necessarily a knowledge not pertinent to him. In a sense, what the institutional and here also racial outsider does not know is what he should not know, namely that he is different.

The next instance of conflict was more dramatic. Qureshi attended a meeting of the faculty convened to discuss potential candidates for a professorship in law. The meeting discussed the vacant post and the composition of the selection panel. "It was then proposed that potential candidates should be suggested and discussed. [Qureshi] said that this was inappropriate—it had a network element, and conflicted with Equal Opportunities practices" (4.11). Qureshi contended that the kind of informal networking that was proposed by the meeting was unlikely to produce an unbiased or open list of candidates given the racial makeup of the faculty, who were, except for him, entirely

white. In response, he was told that this process was typical of university practices in the United Kingdom, and that he was "naive" (4.11).

This second conflict suggests a significant escalation to the pattern or dynamic of interaction. In the formal institutional context of a faculty meeting, Qureshi's inquiry as to the legitimacy of a selection process was met with both a descriptive and a normative response. His questioning of the process was not met with a reasoned justification of the practice; rather it was dismissed as an indication of a certain ignorance. There was no rule to discuss, there was simply a practice, a convention, Blackstone's "tacit and illiterate consensus among men."[39] A description of a practice, of course, is neither a legitimation of it nor a reason for its continuance. Yet to suggest as much was deemed to signal not simply estrangement from the norm but also naiveté. The aspersion of naiveté indicates an escalation of the stakes, an adverse evaluation or even dismissal of the questioner's position. To be naive is not simply to be ignorant, it is to be foolish, credulous, and immature. Clearly, Qureshi had not yet become an insider. His difference marked him now not only as an outsider but also as ridiculous, as falling below the tacit standard of institutional modes of proceeding.

In the following year tensions increased as Qureshi raised a number of related issues of discrimination and fairness in faculty practices. When Qureshi complained to Brazier, then dean of the faculty, that a proposal to hold meetings with nonprofessional staff without a formal agenda was inappropriate, Brazier responded: "You are fearing spectres where none exist. You seem to imply that your colleagues either do not know the general laws . . . or design meetings to circumvent them. This is offensive and groundless" (7.23).

The ever more explicit form of externalization and subjectification should be acknowledged expressly. Earlier we adverted to the way in which being an outsider was treated as an expression of naiveté or foolishness. In this later exchange we glimpse an escalation of these judgments. At this point Qureshi is characterized as hallucinating: his foolishness has now become insanity. Most crucially, the aspersion that Qureshi is seeing ghosts moves the dispute from the refutation of arguments to the denial of the person. The move is one that operates a logic of radical subjectification. The refutation of the dissenting argument slips into ad hominem aspersions, attributions as to the qualities of the subject, his senses, and so too, by implication, his body in its particularity and color.

To take a further example of a similar logic of denial, Qureshi suggested that law exams be graded blind to ensure that female and minority students would be treated equally and would avoid possible victimization. Richard Bragg, a colleague who had on another occasion referred to remarks made by Qureshi as being "daft" (7.25), was skeptical of this suggestion. When Qureshi responded by suggesting that Bragg was failing to consider important equal opportunity issues, Bragg "blew up and said: '[I]f you are saying I am a racist, I will see you outside'" (7.26, 8.26). The incident was not recorded in the

39. William Blackstone, 1 Commentaries on the Laws of England 64 (Chicago, 1979).

minutes of the meeting taken by Gillian White. We learn that "there was a shocked silence. Professor White carried on with the meeting. She did not minute what occurred" (8.26). In other words, in classically English fashion she acted as if nothing had happened and so there was nothing to inscribe. Even if Qureshi could not resist speaking, and even if a colleague broke with convention and engaged in dialog, the institution passed over this abnormality in silence.

White's refusal to record the exchange between Qureshi and Bragg implicitly judges their exchange. Her decision to ignore her colleague's threat to use violence against Qureshi is not insignificant. In one sense, her strategy is one of denial: what is kept out of the record will soon fade from view. It did not really exist and so should be hidden from reason and record. It is law and not life that is written down. Her nonengagement with the exchange is also, however, a judgment of the value of Qureshi's observations. They did not merit inclusion in the record, they were exterior to the norm and so implicitly of lesser value than what was familiar and known. Put differently, drawing attention to the racial dynamics of legal education was expressly insupportable in Bragg's view, and implicitly insupportable or simply irrelevant in White's determination to erase such an exchange from the minutes of the meeting.

In January 1993 Qureshi finally made a complaint to the industrial tribunal regarding the rejection of his application for promotion in 1992. The faculty review committee on that occasion had promoted two other candidates but rejected Qureshi's application. In reviewing the complaint, the tribunal noted certain "astonishing features" of the review committee's deliberations. Application for promotion was by letter and curriculum vitae. The most bizarre feature of the review turned out to be that although application was exclusively by way of written representation, Qureshi's curriculum vitae was forwarded to all members of the committee in advance of the meeting, and all claimed to have read it, yet "only the odd pages of the applicant's curriculum vitae had been copied—pages 2, 4, 6, & 8 were missing. All 8 academics failed to notice this" (13.46).

The exemplary failure to attend to the missing pages is much closer to judgment than to mere omission. More than that, it imposes prejudgment or prior knowledge in place of a hearing or examination. That academics should be content to reach a judgment on the basis of half a document is only slightly less surprising than the fact that these academics were also professors of law. The negative evaluation of Qureshi's application and specifically the preexisting inclination or determination not to promote him were arrived at in advance of the facts. It is reasonable to surmise, in other words, that the decision had already been taken before the application was read. It seems it was a decision arrived at precisely on the basis of everyday exchanges, and the quotidian dynamic of institutional judgments of the norm, namely that Qureshi had proved himself different and therefore unworthy of inclusion.

In response to the faculty review committee's rejection of his application for promotion, Qureshi lodged a formal complaint to the Commission for Racial Equality on the grounds of "a consistent pattern . . . of racial discrimina-

tion" (16.58). This act of communication or of formal dialog was again one in which the faculty was unwilling to engage. This too was to be prejudged as abnormal and hostile behavior. When Qureshi wrote to Brazier, the dean, informing him of his legal action and of his allegation of racial discrimination, Brazier retorted, without inquiring into the basis of the allegations, that it "is nonsense and I emphatically reject it" (16.58). It would seem that not even the formal institution of proceedings for racial discrimination was enough to get Qureshi's voice heard or his experiences acknowledged.

The following year, 1993, Qureshi was invited to put his name forward again for promotion. Indeed, the faculty was forced to consider his promotion because he had reached a certain grade on the salary scale (18.64). Again the application was unsuccessful, and on this occasion further discrimination was held to have occurred. Most notably, in a letter to outside referees, Brazier wrote:

> I am writing to seek your help in possible recommendation that Qureshi be promoted to senior lectureship. Now that he has reached the top four points of the lecturer "B Scale," I am *obliged* to consider his possible case for promotion . . . . I *wonder* if you would be prepared to write a reference about Qureshi. If you can help us in this way I will send you a copy of the university's criteria for these promotions and a copy of his CV (18.67, emphasis added).

This letter was in striking contrast to a letter sent on behalf of one of Qureshi's white colleagues, who was also eligible for promotion. For this colleague, Brazier wrote:

> The issue is clearly whether he deserves a readership now on the basis of his voluminous published work rather than insist he wait a further 2 years. . . . This is a terrible time of year to be bothering you with a request for a reference but happily a reply by the end of September would be timely. If you would like to discuss anything about this then please do give me a ring (19.67).

Ultimately twelve references were sought for Qureshi, and only two references supported a promotion. The tribunal found that "the letter [sent to Qureshi's referees] was not a standard letter. It was very different from the letter asking for references for his white colleague. Further we find that it did send a negative message . . . " (20.69). Given the negative responses of the majority of the referees, the faculty review committee decided not to recommend Qureshi for promotion. The tribunal agreed that since there was insufficient support from external referees, the decision not to promote was appropriate. The tribunal also noted that the committee's decision was probably influenced by Qureshi's complaint to the industrial tribunal and this had affected, to one degree or another, how they proceeded. Finally, the tribunal was also persuaded by the fact that the applicant's contributions to equal opportunities in the university were never given much, if any weight. Indeed, at one point Gillian White suggested that Qureshi remove references to his "contribution to equal opportunities from the curriculum vitae that he was preparing in support of his application for an accelerated salary rise" (8.27, 8.31).

The tribunal concluded unequivocally that Qureshi had been discriminated against and victimized. He had received less "favourable treatment on

grounds of race" in relation to allocation of funds for research, and similar disparagement with respect to his application for promotion in 1993 (38.142, 39.146, 40.147). It held that Qureshi had been granted less favorable treatment on grounds of race with regard to allocation of study leave and had been victimized in relation to his application for an advertised post of senior lecturer in 1994.

The conflicting versions of racial dynamics presented in *Qureshi* provide vivid illustrations of the dynamics of denial, tacit consensus, externalization, and subjectification. The first or familiar story was that of the denial that normative institutional practices operated to exclude the racial outsider. For the law faculty, Qureshi was a troublemaker, a problem, and even paranoid in believing that he was being treated unfairly. For the arbiters of the tacit consensus that governed quotidian dynamics, his complaints amounted to nothing. They were bad manners. Over time, through a process of externalization, they became viewed as an obsessive preoccupation with issues related to equal opportunities.

Moving to subjectification, the depiction of Qureshi as obsessed and obsessive became grounds for justifying his nonpromotion. His lack of success was his own doing. His difference was his undoing—the source of his distraction, his digressions, his imagined conflicts, his paranoia. His difference was his fate, it was a character flaw. All this was his fault. Had Qureshi concentrated on doing his research, he would have succeeded as quickly as his white colleagues.

Denial, tacit consensus, externalization, and subjectification combined to define the case as simply being about competency, and having nothing to do with race at all. Asif Qureshi did not meet the expectations set forth by a white norm. That norm, of course, had never been stated, and racial difference meant that he could not have known what it was. From the beginning, Qureshi was marked to fail. Instead of being invited into a culture and norm, he was externalized and judged because of the differences that his behavior and reactions marked.

V. The Law of White Spaces

The history of race relations in anglophone culture spans a trajectory from slavery to apartheid and thence to ever more subtle forms of exclusion of difference and deafness to the language and experience of racial outsiders. Placed side by side, Matthew Kramer's denunciation of critical race theory, the media response to Patricia Williams, and the story of Asif Qureshi are all narratives of a very modern erasure of racial difference through a refusal to address the arguments that the racial outsider has sought to present. Williams, Qureshi, and critical race theory as a movement in legal scholarship were all met with a hostility that was silent as to the cases that they argued. All have been subjected at times to a rhetoric of denial, tacit consensus, externalization, and subjectification. To raise the question of race and legal knowledge was variously to be ignorant, foolish, or offensive, and expressed either delusion or charlatanry, stupidity or fraud. To advocate consciousness of race was to preach mumbo-jumbo.

In Cambridge, in London, and in Manchester, deafness and dismissal, obstruction and denial, marked the explicit responses of the political, legal, and scholarly culture to these attempts to engage in conversations about race. For example, Qureshi was told to erase his work on equal opportunities from his curriculum vitae. He was told, in other words, by someone with significant authority over him and his future, that he should rewrite himself and hide who he was and what he had done. By implication, he should hide or deny his color so as to measure up to the unspoken white norm, the tacit consensus, that governed preferment and appointment. Similarly, he was repeatedly told that he should withdraw his complaints and apologize for offending people, and that he was seeing injustice where none existed. Not only, in other words, should he hide who he was, he should also deny his perceptions and erase his experiences: what he felt and what he saw were not real. If a person is in large measure the cumulative product of their experiences and perceptions, Asif Qureshi was being told that he did not exist.

That the substance of Patricia Williams's lectures was similarly the subject of denial, and that her discourse was deflected from the domain of dialog into the rhetorical space of externalization and subjectification, also speaks to a refusal to attend to her argument and institutes a silence with respect to the experiences and perceptions she recounted. Her being was redrawn, and her experiences reformulated in terms of stereotypes of madness, predation, and incompetence. In all three cases, in other words, in the relatively secluded world of the legal academy and in the more public and publicized domain of the national press and radio, the attempt to begin a conversation about race was deemed too threatening to countenance and so met with an array of efforts to silence, dismiss, discount, and disable the conversant who wished to lift the veil of colorblindness.

The recuperation of the dynamics of race—the law of white spaces—in the culture and practice of the legal academy is a salutary exercise. The interventions and methods of analysis proposed here are not, however, simply a species of unmasking or critical revelation of the presence of color and race. They tell the story of a norm of tacit consensus to resist self-examination. They tell the story of denial, the penchant to externalize blame and subjectify the messenger. The mechanisms of denial, tacit consensus, externalization, and subjectification all work to accentuate the charge of the unspoken rules—the assumptions or prejudgments—that so often govern racial life.

Recovery involves more than just revealing the law of white spaces. Asif Qureshi won his case and was promoted to full professor. Patricia Williams, however beleaguered by the occasion and audience, delivered her lectures and had the satisfaction of seeing her argument acted out in the public sphere. She was recently the recipient of a MacArthur Award. Both cases were also, in their way, victories. Both cases made a considerable impact in the public sphere and drew attention, even if the attention was predominantly negative, to the question of racial difference. Through their actions, positive identities and legitimate expectations were asserted and the subtle and insidious daily logic of colorblindness was confronted and exposed.

Critical race theory has tended to concentrate on the moment and form of attacks upon the racial outsider. It has attempted to assert an oppositional voice, to confront an authority that has historically excluded the arguments, experiences, and knowledges of the outsider. The narrative of these cases, of Qureshi and Williams, can certainly be analyzed effectively in terms of opposition, transgression, and the claim to tell the story of the outsider within the mainstream of the institution.

The narrative of explicit conflicts, of exclusion and excommunication, represents a dramatic but partial account of discrimination. The other face of that explicit drama is tacit and interior. It is the untold story with which we began. It is the narrative of the students who did not protest, it is the history of academic acquiescence, it is the impoverishment of colorblindness. In short, we have argued that resistance and opposition also imply a site of normality and of centrality. Our focus has been on the political and epistemic procedures that maintain that site and express its superiority, its claim to truth, in the form of a code of initiate knowledge, a tacit consensus, a law of white spaces.