FOREWORD

Race, Multiculturalism, and the Jurisprudence of Transformation

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Liberal individualist theory has vitally shaped the legal consideration of race and racial discrimination. Yet Professor Lawrence argues that this theory’s exclusive focus on individual harms jeopardizes the future of group-based remedies such as affirmative action. He contends that a substantive approach, rather than a procedural one, can better address racial issues. What Professor Lawrence labels a “transformative approach” would focus not on remedying individual indignities but on correcting group-level injustices, and the author maintains that it offers the only effective means for subordinated groups to combat omnipresent white supremacy.

INTRODUCTION

In June of 1955, the Congress of the People was convened in Kliptown, South Africa, a village on “a scrap of veld a few miles southwest of Johannesburg.”1 The Congress, conceived and organized by a multiracial coalition of black, white, Indian, and Coloured organizations, was a convention that united all of the oppressed and all of the progressive forces in South Africa to issue a clarion call for change and to create a set of principles that would be the foundation of a new South Africa.2

President Nelson Mandela recalls the meeting of the Congress in his autobiography:

More than three thousand delegates braved police intimidation to assemble and approve the final document. They came by car, bus, truck, and foot. Although the overwhelming number of delegates were black, there were more than three hundred Indians, two hundred Coloureds, and one hundred whites....

... The platform was a rainbow of colors: white delegates from the COD [Congress of Democrats], Indians from the SIAC [South African Indian Congress], Coloured representatives from SACPO [South African Coloured Peo-

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1. NELSON MANDELA, A LONG WALK TO FREEDOM 150 (1994).
2. Id. at 148-50.

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people’s Organization] all sat in front of a replica of a four-spoked wheel representing the four organizations in the Congress Alliance . . . .

. . . There were dozens of songs and speeches. Meals were served. The atmosphere was both serious and festive. On the afternoon of the first day, the charter was read aloud, section by section, to the people in English, Sesotho, and Xhosa. After each section, the crowd shouted its approval with cries of “Afrika!” and “Mayibuye!”

The Congress of the People stands as a landmark in the history of South Africa’s freedom struggle, and the Freedom Charter became a blueprint for that struggle. It remains the foundational document for South African progressives in their continuing effort to realize the full fruits of their revolution.

I write this foreword having recently returned from my first trip to South Africa. I traveled there with a group of seven American law professors to meet and talk with a group of about forty South African judges and lawyers, including several members of South Africa’s new Constitutional Court. I did not dare to hope that I would live to see a free South Africa and I am humbled by the extraordinary and wondrous thing that South Africa’s people have accomplished. Of course the freedom struggle is far from over. The ravages of apartheid are enormous. Its wounds are deep. But South Africa’s fledgling democracy holds great hope and great promise. The hope is fueled by the spirit of a people determined to live fully free. The promise is made possible by the people’s vivid memory of apartheid’s oppressive horrors and their knowledge

3. Id. at 150-51. The Congress of Democrats was formed in 1952 “as a party for radical, left-wing, antigovernment whites.” Id. at 149. The COD “closely identified itself with the ANC . . . and advocated a universal franchise and full equality between black and white.” Id. Also established in 1953, the South African Coloured People’s Organization, formed by Coloured leaders and trade unionists, grew out of the struggle to preserve the Coloured vote in the Cape. Id. The South African Indian Congress had been formed in 1923 to represent the interests of the Indian population in South Africa. Id.

4. The preamble to the Freedom Charter reads as follows:

We, the people of South Africa, declare for all our country and the world to know:

That South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of the people;

That our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality;

That our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities;

That only a democratic state, based on the will of the people, can secure to all their birthright without distinction of colour, race, sex or belief;

And, therefore, we, the people of South Africa, black and white, together—equals, countrymen and brother—adopt this FREEDOM CHARTER. And we pledge ourselves to strive together, sparing nothing of our strength and courage, until the democratic changes here set out have been won.

Mandela, supra note 1, at 151-52.


6. Kimberlé Crenshaw, Gerald Frug, Karl Klare, Mari Matsuda, Frank Michelman, Elizabeth Schneider, and I were invited by the Center for Applied Legal Studies in Johannesburg to meet with a group of judges, academics, and lawyers for a series of conversations about South Africa’s new Constitution and issues of constitutional interpretation. Our South African colleagues included members of South Africa’s Constitutional Court and members of the newly elected Parliament.
that the fight against apartheid must go on so long as its legacy of white privilege and black suffering remains.

If I have one great fear for South Africa's people, it is that they will find a way to forget their history, as we in the United States have done so successfully. I fear that a day will come when a South African court will declare that race-based remedies violate the rights of a white man because "our Constitution is color-blind," because there is no proof of past discrimination, because societal discrimination is too "amorphous," because such remedies violate the "vested rights" of whites, or simply because affirmative action generates great hostility among groups that are not preferred. I fear that this day will come well before the wrongs of apartheid are righted.

Most of all, I fear that when these lies are told they will be believed. I fear that one day it will be accepted knowledge that black people live in Soweto and white people live in the plush suburbs of Johannesburg because that is the natu-


8. "There was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city's prime contractors had discriminated against minority-owned subcontractors." Croson, 488 U.S. at 480. But see Peter Charles Hoffer, "Blind to History": The Use of History in Affirmative Action Suits: Another Look at City of Richmond v. J.A. Croson Co., 23 Rutgers L.J. 270, 289-95 (1992) (recounting a history of discrimination by the city of Richmond and the white business community against African-Americans and criticizing the major­ity for its unduly narrow reading of relevant history); Lawrence, supra note 7, at 10-12 (criticizing the majority opinion in Croson for failing to find direct evidence of race discrimination by the city against minority contractors despite Richmond's history of slavery and segregation).

9. Writing for the Court, Justice Powell rejected the use of racial classifications as a means for remedying societal discrimination on the ground that "[s]ocietal discrimination, without more, is too amorphous a basis for imposing a racially classified remedy." Wygant v. Jackson Bd. of Educ. 476 U.S. 267, 276 (1985); see also Croson, 488 U.S. at 499 (opinion by Justice O'Connor characterizing the long history of discrimination against African-Americans in the construction industry as an "amorphous" basis for remedying that discrimination); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 307 (1977) (opinion by Justice Powell describing societal discrimination as "an amorphous concept of injury that may be ageless in its reach into the past").

10. See, e.g., International Brotherhood of Teamsters v. United States, 431 U.S. 323, 324, 354 (1977) ("Congress did not intend to make it illegal for employees with vested seniority rights to continue to exercise those rights, even at the expense of pre-[Title VII] discriminatees."); see also Wygant, 476 U.S. at 282-83 (finding that a school board's affirmative action plan that conflicted with a school's seniority system unfairly burdened the interests of white workers). "The rights and expectations surrounding seniority make up what is probably the most valuable capital asset that the worker "owns," worth even more than the current equity in his home." Layoffs disrupt these settled expectations [surrounding seniority] in a way that general hiring goals do not." Id. at 283 (quoting Richard H. Fallon, Jr. & Paul C. Weiler, Firefighters v. Stotts: Conflicting Models of Racial Justice, 1984 SUP. CT. REV. 1, 58). But cf. Cheryl I. Harris, Whiteness As Property, 106 HARV. L. REV. 1710, 1776 (1993) (arguing that the white workers' interests in their jobs, protected in Wygant, is an example of a judicially recognized property right in white skin privilege).

11. See Paul Brest & Miranda Oshige, Affirmative Action for Whom?, 47 STAN L. REV. 855, 858 (1995); see also Croson, 488 U.S. at 493 ("Unless [racial classifications] are strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility.").
eral state of things—because blacks are genetically inferior, because the welfare system has made them dependent, because black culture is a "culture of poverty," because somehow in a free market, merit-based competitive system they have fallen to the bottom. We are not certain why, but it must not be racism, given our "colorblind" society.

I. LIBERAL THEORY AND TRANSFORMATIVE THEORY: TWO VIEWS ON THE PROJECT OF EQUALITY

In assembling the articles for this Symposium, the Law Review's editors asked the question, "How does our legal system currently address (or fail to address) the emerging problem of interminority group conflict?" They were particularly interested in how the bipolar, black-white model of race relations functions, or is less than functional, in a multicultural society. The symposium's authors have responded to the editors' concerns by addressing more general problems of race relations, racial classifications, race consciousness, and racial identity, considering issues of interminority group conflict as part of an analysis of one or more of these larger issues.

For the past twenty years the American conversation on race has been dominated by a debate over the morality, constitutionality, and political efficacy of affirmative action. Judge Wilkinson, Dean Brest and Miranda Oshige, and Professor Ramirez have all written articles that extend and further develop this debate. While these articles differ in emphasis, suggested solutions, and particularity of setting, they share a framework of analysis that places them squarely within the prevailing legal discourse on questions of race.

This discourse is shaped by a political philosophy, jurisprudential theory, and legal doctrine that sees the command of equal citizenship as primarily concerned with protecting individuality. Thus, racial classifications are presumed invidious and looked upon with suspicion because when we judge a

12. See Richard J. Herrnstein & Charles Murray, The Bell Curve: Intelligence and Class Structure in American Life 269-315 (1994) (documenting that African-Americans score lower on intelligence tests than European-Americans and arguing that this disparity reflects genetically and environmentally influenced differences in cognitive ability).

13. Mickey Kaus argues that "welfare may not have been the main cause of the underclass, but it enabled the underclass to form." Mickey Kaus, Yes, Something Will Work: Work, Newsweek, May 18, 1992, at 38, 38. The widespread acceptance of this view is evidenced by the political rhetoric surrounding presidential and congressional calls for getting rid of "welfare as we know it."


15. But see Martin J. Katz, The Economics of Discrimination: The Three Fallacies of Croson, 100 Yale L.J. 1033, 1045-48 (1991) (analyzing the efficacy of race-neutral remedies and concluding that only race-conscious remedies will enable victims of racial discrimination to compete on equal footing in a free market system).

16. "As this Court has noted in the past, the 'rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights.'" City of Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989) (quoting Shelley v. Kraemer, 334 U.S. 1, 22 (1948)).
person based on her race we disregard her unique human individuality and thereby deprive her of the dignity and freedom of self-definition and self-actualization. The focus here is on the irrelevance of race to our humanness and therefore to our status as citizens. Race is irrelevant, or should be. This is the meaning of Justice Harlan's admonition, "Our Constitution is color-blind," and of Martin Luther King's challenge that we judge one another by the "content of our character" rather than the color of our skin.

This view of equal protection seeks to assure human dignity and equality by requiring fair governmental process. Race is suspect because it introduces a factor into the decisionmaking process that has nothing to do with who we are as individuals. Racial classification is wrong because, by distributing benefits based on an individual's membership in a racial group, we are likely to make erroneous assumptions about the attributes of that individual. It matters not whether the purpose of the policy is the perpetuation of racial subordination

17. Those who argue that race is irrelevant often use the word race as if it were a synonym for skin color. Richard Wasserstrom notes that this view demonstrates a misunderstanding of the social construction of race:

[T]o talk of race is to talk of more than the way one looks.

... One complex but true empirical fact about our society is that the race of an individual is much more than a fact of superficial physiology. It is, instead, one of the dominant characteristics that affects both the way the individual looks at the world and the way the world looks at the individual.


18. "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Plessy v. Ferguson 163 U.S. 537, 559 (Harlan, J., dissenting). For an argument that contemporary legal doctrine and political discourse have transformed Justice Harlan's prescriptive ideal of color-blindness into an assertion that denies society's continuing racism, see Lawrence, supra note 7; see also T. Alexander Aleinikoff, *Re-Reading Justice Harlan's Dissent in Plessy v. Ferguson: Freedom, Antiracism, and Citizenship*, 1992 U. Ill. L. Rev. 961, 969 (1992) (arguing that Justice Harlan did not view the use of racial classifications as unconstitutional per se; rather, he believed that segregation violated the Equal Protection Clause of the 14th Amendment because it maintained white supremacy).

19. Hortense J. Spillers, *Martin Luther King and the style of the Black Sermon*, in *III MARTIN LUTHER KING JR.: CIVIL RIGHTS LEADER, THEOLOGIAN, ORATOR* 876, 888 (David J. Garrow ed., 1989) ("I have a dream today that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.") (quoting King's "I Have a Dream" speech).


It is inconsistent with constitutional norms to select people for unusual deprivation on the basis of race, religion, or politics, or even simply because the official doing the choosing doesn't like them. When such a principle of selection has been employed, the system has malfunctioned: indeed we can accurately label such a selection a denial of due process.

*Id.* at 137. In its pure form, the quest for procedural justice is utterly value neutral, in that it purports to separate rule application from questions of value. Professor Tom Heller has noted that process theory "reflects the influence of liberal social theory which, for historical reasons, is committed to the positivist principle that it is not possible to philosophically compare the merits of competing normative propositions." Thomas C. Heller, *The Importance of Normative Decisionmaking: The Limitations of Legal Economics as a Basis for a Liberal Jurisprudence—As Illustrated by the Regulation of Vacation Home Development*, 1976 Wis. L. Rev. 385, 388.

or its demise. The classification injures each person whose individuality it ignores. For process theorists, race consciousness, group-based decisions, and identity politics are necessarily in tension with equality and human dignity.

For example, Dean Brest and Miranda Oshige begin their analysis by asking, "How can a group-based policy be reconciled with the strong tradition of liberal individualism in American political thought?" And Judge Wilkinson argues that Brown v. Board of Education expressed the view that race was "not the salient characteristic of an American citizen or even a relevant characteristic of public decisionmaking at all." But there is another way to think about the problem of race and racism and the project of racism's eradication. This is to think of racial equality as a substantive societal condition rather than as an individual right. The substantive approach sees the disestablishment of ideologies and systems of racial subordination as indispensable and prerequisite to individual human dignity and equality. The nonsubstantive approach sees the individual right to be treated without reference to one's race as primary. This individualist right is asserted unconstrained by reference to continuing societal conditions of inequality and it

22. Professor Ely appears to draw a distinction between the use of racial classifications for racial subordination and their use for racial subordination's demise in the argument that affirmative action does not warrant heightened scrutiny because there is no danger that a white legislature will discriminate against itself. See id. at 170. But cf. Richmond v. J.A. Croson Co., 488 U.S. 469, 495 (1989) (citing ELY, supra note 20, at 170, in support of the Court's application of strict scrutiny to the city's affirmative action program where a bare majority of the Richmond city council members were black). The concern that a political majority will more easily act to the disadvantage of a minority based on unwarranted assumptions or incomplete facts would seem to militate for, not against, the application of heightened judicial scrutiny in this case. See John Hart Ely, The Constitutionality of Reverse Racial Discrimination, 41 U. Chi. L. Rev. 723, 739 n.58 (1974) ("Of course it works both ways: a law that favors Blacks over whites would be suspect if it were enacted by a predominantly Black legislature.").

23. When I speak of process theorists here, I am including stigma theorists. Stigma theorists see the elimination of racially stigmatizing actions as a central concern of the Equal Protection Clause. See Paul Brest, The Supreme Court, 1975 Term—Foreword: In Defense of the Antidiscrimination Principle, 90 Harv. L. Rev. 1, 8-12 (1976) (arguing that race-dependent decisions should receive heightened scrutiny because they cause stigmatic harm to the targeted groups). Like process theory, stigma theory focuses on the harm racial classifications pose to the individual. Racial classifications act as a badge or symbol that degrades the individual in the eyes of society. Id. at 8. This degrading badge injures her by leading the public decisionmaker to treat her in accordance with the demeaned status symbolized by the badge instead of in accordance with her attributes as an individual. Ultimately, stigma theory is also concerned with fair process. See Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317, 355 (1987) (noting that proponents of the process defect theory and the stigma theory have identified different manifestations of the same cultural phenomena—the dehumanizing cultural meaning of blackness).

24. Brest and Oshige, supra note 11, at 859.


26. Alan Freeman has coined the term "victim perspective" for what I have called the substantive or transformative approach and "perpetrator perspective" for what I have called the nonsubstantive or individualist approach. Alan David Freeman, Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, 62 Minn. L. Rev. 1049, 1052-53 (1978). Professor Freeman explains how traditional antidiscrimination law approaches racial discrimination from the perspective of a perpetrator, rather than the point of view of the victims of discrimination:

The concept of "racial discrimination" may be approached from the perspective of either its victim or its perpetrator. From the victim's perspective, racial discrimination describes those conditions of actual social existence as a member of a perpetual underclass. This per-
is privileged in relation to the eradication of those conditions. This privileging of individual rights over the goal of systemic change is what leads process theorists to see affirmative action as an "extraordinary remedy."  

The difference between these approaches is not simply a difference in what one chooses as the best way of going about remedying the injury of racism, although there are certainly differences in the prescriptions that follow almost inevitably from each view. More significantly, each approach defines the injury of racism differently. The theory that places the right with the individual likewise sees the injury as one suffered by individuals. The theory that seeks societal transformation sees the injury as done to the collective, as suffered by us all.

This foreword begins with the history of the Congress of the People because that history is a story of a multicultural coalition and because it is a story of freedom fighters who understood that the primary and fundamental goal of a struggle for human dignity and equality must be the complete transformation of a society founded upon dehumanization and the maintenance of inequality. The members of the Congress knew that apartheid imprisoned every woman...
and man. Blacks, whites, Asians, biracials, multiracials, Zulus, Xhosas, Sothos: All were dehumanized by the ideology and institutions of white supremacy. None of them would be free until all were free. None could claim an individual right to equal treatment, to a job or a university education, in a world defined by fundamental inequality.

The drafters of the Freedom Charter, and those who continue the freedom struggle as newly enfranchised South African citizens, understood and understand that apartheid cannot be ended by pronouncement. It must be dismantled. This is where I begin. Our legal system, our politics, our conversations, our theory will not address emerging problems of interminority conflict until we know that our common enemy is white supremacy. I use the word "our" to mean all of us, those whom white supremacy defines as superior as well as those whom it relegates to varying degrees of inferiority.

If our legal system fails to address the emerging problem of interminority group conflict, it is because it has failed to address the continuing legacy of American apartheid. If our bipolar, black/white model for thinking about racial inequality is dysfunctional in a multiracial society, it is because it is a model that never worked in the first place, even when most Americans who were not white were black. The law's prevailing paradigm for achieving racial equality failed us then, and it fails us now, because it is not first about the eradication of white supremacy.

If the drafters of the Freedom Charter were asked how best to address the problem of interminority group conflict, I think their approach would be very different from one that views protection of the individual as the primary task of the project of equality. Their first question might be, "In what different, complex, and interrelated ways is the experience of each group related to the maintenance of white supremacy?" This is not an easy question to answer. It does not avoid the difficult problems of group definition and membership raised by Professor Ramirez, Professor Hing, and Dean Brest and Ms. Oshige. But it is very different from asking whether one group has been more disadvantaged or more victimized than another, or whether one group's disadvantage is "intractable" and another's is not, or whether individual members of one group are more like one another, in disadvantage suffered, cultural affinity, or polit-

31. See, e.g., Brest & Oshige, supra note 11, at 877-99 (raising questions of how an institution might determine an individual's "group identity" to fulfill the goals of an affirmative action program); Bill Ong Hing, In the Interest of Racial Harmony: Revisiting the Lawyer's Duty To Work for the Common Good, 47 STAN. L. REV. 901, 951 (1995) (asking whether when Koreans are victims of hate crimes they ought to be classified as people of color or Asian-American); Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, 47 STAN. L. REV. 957 (1995) (indicating that increasing numbers of multiracial individuals will raise categorization problems in the context of both affirmative action and census data gathering).

32. See Ramirez, supra note 31, at 963 (asking "whether blacks are uniquely disadvantaged historically and, if so . . . does the lesser history of discrimination against Latinos and Asians mean that they are entitled to a lesser remedy or no remedy at all?"). But cf. Hing, supra note 31, at 951-52 (rejecting the argument that hate crime statutes ought to exclude Koreans because they are generally less victimized in society than African-Americans or Native-Americans).

33. Brest & Oshige, supra note 11, at 874 (arguing that affirmative action is appropriate where a group's disadvantage is "significant and intractable").
ical outlook, than individual members of another group. It is a different question because its ultimate concern is with righting a wrong done to us all and not with compensating individuals or the groups they compose. This kind of question seeks out the interrelatedness and intersection of our injuries. It is not just blacks who are injured by stereotypes about blacks, but Latinos and Asians and even whites.

The drafters of the Freedom Charter might well ask whether, in a particular instance, a race-based admissions policy or a separate dorm for blacks advances the struggle against apartheid. But that question is necessarily answered in context. It requires a concrete response to specifically felt forms of domination. For example, since its inception in 1912, the ANC has steadfastly pursued a policy of nonracialism, but prior to 1965, only Africans were admitted as members.34 There was a felt need for an organization for Africans which had the chief goal of achieving African unity and full political rights. This was not a case of "separatists . . . circling the wagons around their own race," or "reject[ing] the possibility of interracial understanding."35 It did not inhibit the ANC's close cooperation with progressive whites, Coloureds, and Indians or their active participation in multiracial coalitions. Nor did it prevent them from later opening the organization's membership to non-Africans. Likewise, when black, Asian, or Latino students seek a safe haven in theme dorms or ethnic organizations, they need not reject the value of interracial empathy, communication, coalition, or even love. Times and places where one can be free from the hard work of cross-cultural bridge building may be a prerequisite to the building of sturdy bridges that go both ways.36

This year there are two women from Cape Town, South Africa, in my Constitutional Law class. They are black. That is how they self-identify. (Under apartheid they were designated "Coloured.").) Progressive nonwhites in South Africa, be they African, Asian, or one of the many variations of multiracial South Africans, self-identify as "black." This is a political statement, a symbol of resistance to the labels that defined and divided them under apartheid, and a deliberate choice to identify with the bottom of the old hierarchy. It is a statement of their solidarity in opposition to white supremacy. It is a reminder that

34. MANDELA, supra note 1, at 320.
35. Wilkinson, supra note 31, at 1007. Judge Wilkinson asks the rhetorical question, "Can . . . an African American professor be trusted to grade the performance of an Asian American student whose values and experience the professor cannot begin to glimpse?" Id. My answer is yes, so long as he is aware of his internalized racism and the limitations of his own knowledge and experience, is prepared to learn from and about her while he teaches, and is committed to including Asian-Americans in the academy to fill the gaps in our collective knowledge.
36. For a discussion of the necessity of a safe homeplace for successful community building, see Bernice Johnson Reagon's essay on coalitions. That is the nature of coalition. . . . You have to give it all. . . . It never gets enough. It always wants more. So you better be sure you got your home someplace for you to go to so that you will not become a martyr to the coalition. . . . You do not have to die because you are committed to coalition. . . . But you do have to know how to pull back . . .
Bernice Johnson Reagon, Coalition Politics: Turning the Century, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 356, 361 (Barbara Smith ed., 1983); see also BELL HOOKS, YEARNING: RACE, GENDER, AND CULTURAL POLITICS 41-49 (1990) (discussing how the sense of homeplace provides a refuge in the struggle against race- and gender-based subordination); notes 95-100 infra and accompanying text.
when they are divided and in conflict with one another, when they harbor racist attitudes and engage in racist acts against their African, or Asian, or mix-raced sisters and brothers, that conflict, that racism, is the product of apartheid and white supremacy.

II. BUILDING COALITIONS AND WORKING AT HOME: FIGHTING WHITE SUPREMACY WITHIN RACIALLY SUBORDINATED COMMUNITIES

The hardest work to be done in the struggle against white supremacy must be done within and among communities of color. When I have worked with students, colleagues, or community groups to build multiracial coalitions, we have found these things the most difficult and most important: (1) understanding the complex interrelatedness of our racial subjugation; (2) confronting our own internalized racist beliefs and the ways in which we participate in the maintenance of white supremacy; (3) resisting constructions of race that divide and demean us; (4) learning to talk and listen to one another, to share experience, to empathize with and understand one another; (5) finding ways to sustain ourselves as we do the difficult, and often thankless, work of coalition building.37

Professor Hing’s article in this Symposium describes the work of several lawyers who encourage their clients to resolve interminority legal conflicts in ways that do not exacerbate racial tension between Asian-American and African-American communities.38 Hing suggests that in light of the societal objective of furthering racial harmony, we should reconsider the adversary ethic and the notion of deference to the client’s moral judgment when the case raises the possibility of racial conflict.39

In the remainder of this foreword, I consider three obstacles faced by lawyers and nonlawyer activists who work within and among racially subordinated communities. I suggest ways of understanding and confronting these problems that are grounded in the transformative theory of equality discussed in Part I. First, racially subordinated persons have internalized white supremacist beliefs. We must recognize how those beliefs are manifested in our attitudes and actions towards other racially subordinated people so that we can change them. Second, white supremacy achieves its purpose partly through the power to define the meaning of race. We must examine the multiple ways in which white supremacy defines us as racial “others” and create new definitions of race and community that empower us. Third, coalition building among racially subordinated communities is hard work. This is especially so because we have internalized the racism of the dominant white culture. When conflict divides our communities, the supporters of white supremacy will tell us that this conflict is inevitable, that it is proof we have little in common. They will offer us a

37. See e.g., Hing, supra note 31, at 938-48 (describing the sense of frustration experienced by lawyers and community activists working on multicultural coalition building in Los Angeles, Brooklyn, and San Francisco).
38. See id.
39. Id. at 905-17.
temporary and illusory chance to stand with them and look down upon our sisters and brothers. When our coalitions are successful, they will condemn them as exclusionary and separatist. We must take time to nurture ourselves within familiar communities and cultures so that we will have the strength and self-respect necessary for building coalitions.

A. How White Supremacy Turns Us Against Ourselves and Each Other

"F__ Chinamen, get out of the projects."\(^{40}\)

When a Vietnamese family is driven out of its home in a project by African-American youth,\(^{41}\) that is white supremacy. When a Korean store owner shoots an African-American teenager in the back of the head,\(^{42}\) that is white supremacy. When 33 percent of Latinos agree with the statement, "Even if given a chance, [African-Americans] aren't capable of getting ahead,"\(^{43}\) that is white supremacy. When over 40 percent of African-American voters in California support proposition 187, the antiimmigrant initiative, that too is white supremacy.\(^{44}\)

The phenomenon of racial prejudice among individuals in racially subordinated communities aimed at individuals or groups from other racially subordinated communities does not represent a novel form of racism. It does not exist separate and independent from white prejudice. It cannot be explained without reference to the history of white racism in America and the continuing legacy of that history in our culture.\(^{45}\) Blacks, Asians, and Latinos learn and adopt the belief systems of the dominant white culture. People of color are taught to hate themselves in a white supremacist culture. White racism is internalized. We straighten our hair and bleach our skin. We pay plastic surgeons to make our eyes look round. We use the white man's words to demean ourselves and to disassociate ourselves from our sisters and brothers.\(^{46}\) And then we turn this self-hate on other racial groups who share with us

\(^{40}\) See id. at 947-48. Professor Hing says these are among the first words taught to Asian families moving into San Francisco Housing Association projects. Id.

\(^{41}\) Id. at 948.

\(^{42}\) Id. at 912.


\(^{45}\) See Lawrence, supra note 23, at 322 ("To the extent that cultural belief system has influenced us all we are all racists.").

\(^{46}\) Nell Irvin Painter has discussed Justice Thomas' characterization of his sister as the quintessential welfare queen:

In a speech to Republicans (who practically invented the role of welfare queen), he had made [Emma Mae] Martin into a stock character in the Republican scenario of racial economics. His point was to contrast her laziness with his hard work and high achievement to prove, I suppose, that any black American with gumption and a willingness to work could succeed.

Nell Irvin Painter, Hill, Thomas, and the Use of Racial Stereotypes, in RACE-ING JUSTICE, EN-GENDER-ING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY 200, 201 (Toni Morrison ed., 1992) [hereinafter RACE-ING JUSTICE]; see also RONALD SURESH ROBERTS,
the ignominy of not being white. When we do this we borrow a lexicon of racism that originates in white supremacy. When I hear anti-Asian hate speech in the mouths of young African-Americans, I know that these words, these ideas, do not have their origin in the black community. I know this because they are the words of eighteenth and nineteenth century anti-Asian xenophobia, of the Chinese Exclusion Act and the anti-Japanese movement of the early twentieth century. They are the words and images that justified the internment of thousands of Japanese-Americans during World War II. They are the stuff of Charlie Chan movies and "oriental" villains on Saturday morning television cartoons.

CLARENCE THOMAS AND THE TOUGH LOVE CROWD (1995) (arguing that theorists such as Stephen Carter perpetuate the myth of an essentially blind meritocracy, which denies the existence of arbitrary barriers to success in America and the reality of racism). In a related area, see Linda Chavez’s attacks on bilingual education in defense of the English Only movement. Linda Chavez, The "beehemoth" of bilingual ed. grows fat on federal largesse, Denver Post, June 27, 1994, at D2; Linda Chavez, Bilingual education gobbles up kid, taxes, USA Today, June 15, 1994, at A15; Linda Chavez, Multilingualism getting out of hand, USA Today, Dec. 20, 1994, at A13.

47. Violent anti-Asian sentiments are becoming increasingly common in popular music. Rap artist Ice Cube, in his song Black Korea (from the release Death Certificate), refers to Korean-Americans as "Oriental ones, can you count, mother E——?" and "little chop-suey ass." He then goes on to rap about burning down Korean shops: "So pay respect to the Black fist / or we'll burn your store, right down to a crisp / and then we'll see ya / cause you can't turn the ghetto into Black Korea." In the song US, Ice Cube further expresses his misplaced anger, as he raps, "I see all the Japs grabbin' every vacant lot in my neighborhood." Death Certificate shot to number three on Billboard’s pop chart for November 18, 1991, and sold two million copies during its first four days of availability. Gwen Murahuka, PAC CITIZEN, Nov. 29, 1991, at 1, 8, 7.


A 1876 editorial in the Marin Journal reflected this hatred:

That he is a slave, reduced to the lowest terms of beggarly economy, and is no fit competitor for an American freeman.

That he herds in scores, in small dens, where a white man and wife could hardly breathe, and has none of the wants of a civilized white man.

That he has neither wife nor child, nor expects to have any.

That his sister is a prostitute from instinct, religion, education, and interest, and degrading to all around her.

That American men, women and children cannot be what free people should be, and compete with such degraded creatures in the labor market.

That wherever they are numerous, as in San Francisco, by a secret machinery of their own, they defy the law, keep up the manners and customs of China, and utterly disregard all the laws of health, decency and morality.

That they are driving the white population from the state, reducing laboring men to despair, laboring women to prostitution, and boys and girls to hoodlums and convicts.

That the health, prosperity and happiness of our State demand their expulsion from our shores.


50. See JAPANESE AMERICANS: FROM RELOCATION TO REDRESS 75-83 (Roger Daniels, Sandra C. Taylor & Harry H.L. Kitano eds., 1986) (describing the hysteria surrounding the internment of Japanese-Americans during World War II).
I hear my father’s stern voice speaking to me. I am five or six years old, and someone has given me an ink blotter and a set of rubber stamps for hand-printing cartoons. The rubber stamps are all Dick Tracy characters (or was it Little Orphan Annie?). One of the stamps depicts a character named “Chink.” His name is carved into the rubber on the stamp. My father tells me I cannot use this stamp. He explains that this is a name that people have used to make Chinese people feel bad, to make them feel inferior. These are the same people who call us “nigger.” They do it for the same reason. We do not use this word in our house for the same reason that we do not use the other word. They are both about the same thing.

Asian-American immigrants learn to fear and despise African-Americans before they ever see one in person. America exports its racism in Hollywood images of criminals, pimps, and prostitutes. In Latin American countries, white skin privilege is as much a part of the culture as in the United States. When nonwhite immigrants come to this country, these beliefs are reinforced by the ubiquitous political and cultural pressures to assimilate, to become an American. White supremacy, to paraphrase Malcolm X, is as American as apple pie.

The ideology and culture of white supremacy turn communities of color against one another by creating hierarchies of privilege and access and by assigning racially subordinated groups to different places within those hierarchies. Those of us who are assigned a higher status on this ladder find that our belief in another group’s inferiority gives us an investment in white privilege. 51 We are rewarded for our racism and are less likely to experience the full force of our own subordination. Those of us who are assigned a lower status resent the relative privilege of those who are a rung above us on the ladder. 52 We scapegoat the groups who are forced by their own subordination to live or work in proximity to us or take the menial jobs that would otherwise be ours. 53 We express our anger and resentment in white racist terms, seizing on the stereotypes and symbols used by whites to label the targets of our anger inferior.

Because South Africa’s racial hierarchy was made explicit and codified, it provides the clearest example of how white supremacy divides and conquers the racially subordinated. The Population and Registration Act and the Group Areas Act formed the cornerstones of apartheid. The Populations and Registration Act and the Group Areas Act formed the cornerstones of apartheid. The

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51. This phenomenon is analogous to Derrick Bell’s notion of “the principle of involuntary sacrifice.” Bell argues that “[i]n the resolution of racial issues in America, black interests are often sacrificed so that identifiably different groups of whites may settle a dispute and establish or reestablish their relationship.” DERRICK A. BELL, JR., RACE, RACISM AND AMERICAN LAW 29-30 (2d ed. 1980). He points to several points in American history where the creation of a black subclass enabled poor whites to identify with and support the policies of the upper class while wealthy whites retained all their former prerogatives. Id. at 25-28 (reviewing the historical analyses of Edmund Morgan and C. Vann Woodward).

52. See Lisa C. Ikemoto, Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed “Los Angeles,” 66 S. CAL. L. REV. 1581, 1585-88 (1993) (describing how, after the Los Angeles uprising, conflicts between African-Americans and Korean-Americans were explained by both communities with stories employing the image of the breadline and a first-in-time principle to claim entitlement). “Some complained that Korean Americans had in effect cut in line. The premise was that African Americans have been waiting in line a longer time and that more recent arrivals must go to the back.” Id. at 1586.

53. See e.g., Hing supra note 31, at 909-15.
tion Act authorized the government to officially classify all South Africans according to race. Under the Group Areas Act, each racial group could own land, occupy premises, and do business only in its own separate area. While all three nonwhite groups were deprived of political and social rights, apartheid created clear status distinctions between the groups, giving Asians some privileges denied to Coloureds, who in turn were more privileged than Africans. President Mandela describes how the South African prisons not only separated political detainees by color but also served them different meals according to their place in the racial hierarchy. White prisoners received white sugar and white bread with their meals. Indian and Coloured prisoners were given brown sugar and bread, and African prisoners received neither bread nor sugar.

My students from South Africa tell me that shortly before the first free national elections in their country, the National Party, the ruling party during the apartheid regime, distributed a comic book throughout Miller's Plain, a large segregated subdivision in Cape Town populated entirely by South Africans designated under apartheid as "Coloured." The housing in the subdivision is modest and significantly poorer than most white neighborhoods in Cape Town, but it is a significant step up from the townships where Africans have been forced to live. The residents of Miller's Plain are mostly the working poor. Many of them hold jobs that were reserved for Coloureds under apartheid.

The National Party's campaign comic book depicted a typical Miller's Plain Coloured family: a mother, a father, three children, and a dog. Each strip told a tale of how, if elected, Mandela and the ANC would allow the Africans to take everything the Coloured family had worked so hard to get. The depictions in the comic of both Coloureds and Africans employed blatantly racist stereotypes. In one strip, an unkempt African rings the doorbell. The mother goes to the door and asks what he wants. "I've come to look at the house that Mandela is giving me after the elections," he says. The Cape Town province was the only province the National Party carried in the elections. Coloured voters overwhelmingly supported the National Party.

In the United States, the racial hierarchy among nonwhites is less explicit and more complex. But the hegemony of these hierarchies is, if anything, made more powerful by the complexity and instability of meaning that produces perceived racial privilege. White skin privilege, Caucasian feature privilege, straight hair privilege, citizenship privilege, standard English privilege, male privilege, class privilege, heterosexual privilege, and traitor-to-your-race privilege intersect in intricate and ever-changing ways to create these racial hierar-

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54. See Mandela, supra note 1, at 106. At the core of apartheid was the division of South Africa's population into four "racial groups"—white, Coloured, Indian, and African. In addition to the Population Registration Act and the Group Areas Act, the racial hierarchy was further enforced by the Prohibition of Mixed Marriages Act, the Immorality Act, and the Reservation of Separate Amenities Act, which prohibited marriage and sexual relations across each of these racial lines and segregated the races in public facilities. See Leonard Thompson, A History of South Africa 190 (1990).

55. See Mandela, supra note 1, at 212.
chies. Thus native-born blacks may look down on nonblack Mexican immigrants even as black West Indian immigrants are looking down on native-born blacks.

Professor Lisa Ikemoto has examined the stories of ethnic conflict used to explain the April 1992 uprising in Los Angeles. She posits that such stories, including those told by the ethnic groups who were parties to the conflict, are shaped by the master narrative and in turn become part of that narrative. She describes how both African-Americans and Korean-Americans positioned themselves as more white within the racial hierarchy. African-American accounts of the conflict took a nativist position, describing Koreans as foreign and therefore less American (read white). Korean-Americans responded "by casting themselves within the 'American Dream'—Koreans working hard to support their families, survive as immigrants, and succeed as entrepreneurs" and by describing blacks in stereotypical white supremacist terms.

Ikemoto sees the master narrative at work behind this hierarchical "positioning," shaping both the African-American and Korean-American accounts of the conflict:

The rule underlying this racial positioning is white supremacy. Racial positioning would not be coherent, could not take place, but for racism. In other words, I have used "positioned" as an active verb, with Korean-Americans and African-Americans as actors, but here I sense a master hand positioning Korean-Americans and African-Americans as objects.

I use the term "intersect" as Kimberlé Crenshaw has used it to explain how discrimination against women of color is experienced. Professor Crenshaw argues that legal doctrine's treatment of gender and race discrimination fails to capture this experience and calls for a more complex, nuanced analysis to reveal how the female experience is covertly coded white and the black experience is coded male. 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; see also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245-51 (1991) (exploring how racism and sexism combine to frustrate women of color who suffer battering and sexual abuse); Kimberlé Crenshaw, *Whose Story Is It Anyway? Feminist and Antiracist Appropriations of Anita Hill in RACE-ING JUSTICE*, supra note 46, at 402, 404-07 (applying intersection analysis to explain Anita Hill's difficulty communicating her injury).

Ikemoto uses the concept of master narrative here "to describe white supremacy's prescriptive, conflict-constructing power, which deploys exclusionary concepts of race and privilege in ways that maintain intergroup conflict." Ikemoto, supra note 52, at 1582.


Ikemoto, supra note 52, at 1588.

The shoplifter, gang member, looter images employed by Korean-Americans are reinforced by the master narrative image of African-Americans as violent and criminal. Id. at 1591 n.33; see also IRA RIEBEN, *GANGS, CRIME AND VIOLENCE IN LOS ANGELES: FINDINGS AND PROPOSALS FROM THE DISTRICT ATTORNEY'S OFFICE* (1992) (a report describing how police have categorized almost half of all black men in Los Angeles as gang members); Stephen Braun & Ashley Dunn, *View of Model Multiethnic City Vanishes in Smoke*, L.A. TIMES, May 1, 1992, at A1 (describing how media images reinforced long-held fears and prejudices of the city).

Ikemoto, supra note 52, at 1589.
A similar phenomenon is at work in the response of African-American and Asian-American communities to proposition 187, the ballot measure that amended the California Constitution to exclude undocumented aliens from public schools, health services, welfare, and other governmental benefits. Forty-four percent of African-Americans voters and 46 percent of Asian-American voters supported the proposition.62 In fact, many joined in the xenophobic anti-immigrant rhetoric of a campaign aimed primarily at Mexican-American immigrants.63 Much of this can be explained in economic terms—by the fear and insecurity of people living at the margin and forced to fight over a too small piece of the economic pie.64 But blacks and Asians misplaced the responsibility for these economic problems when they asserted their right to be fully American (read nativist), internalizing the master narrative's white "we" against a nonwhite "other."65 Latinos, too, were not immune to white supremacy's power to turn us against ourselves. Almost a quarter of California's Hispanic voters supported proposition 187.66

Professor Gerald Torres tells the following story about his father. Professor Torres was born in the high desert of California in the small company town of Victorville (Victor Cement was the company). His father had grown up in this town, but during the years when Professor Torres was growing up, the Torres family lived in a different town, San Bernadino. How they came to live in San Bernadino reflects the pervasiveness of racial and ethnic discrimination and its embeddedness in our culture. When Professor Torres' father returned from service in World War II, he tried to buy a house in his hometown, but, because of restrictive covenants and racist attitudes, he could not find anyone willing to sell to a Mexican-American in the neighborhood of his choice. A proud man, he said to hell with the city where he'd grown up and moved his family down the mountain to San Bernadino. Some fifteen years later, proposition 14, the so-called fair housing initiative, appeared on the California ballot. This initiative aimed to amend the state constitution in order to repeal existing antidiscriminatory fair housing laws and to protect the right of property owners to discriminate on any basis in the sale or rental of their property.67 Professor Torres' father, despite his personal experience as a victim of housing discrimi-
nation, voted in favor of proposition 14. Professor Torres says that he is certain his father would have voted for proposition 187 also had he been alive to do so.68

I have touched upon just a few of the myriad and complex ways in which interethnic conflict can be best understood as the product of internalized white supremacy. To suggest that interethnic tensions among minority groups are caused by race-conscious affirmative action is to argue that we can eliminate the fights over the crumbs thrown from the master’s table by not throwing any more crumbs. The transformative approach to the project of equality suggests that a better solution for those of us who are fighting each other is to understand that we are fighting over crumbs and to understand why. Only then can we get on with the project of fighting for a world where we all have seats at the table.69

B. The Social Construction and Reconstruction of Race

Race and racial categories are not natural.70 They are social. They are created by culture, politics, and ideology. They are what poststructuralists call a “social construction.”71 The meaning of “race” in America has been constructed in a history and culture dominated by the ideology of white supremacy. White supremacy has given race and racial categories particular meanings to serve its hegemonic purpose. These meanings change with time and place,72

Neither the state nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person who is willing or desires to sell, lease, or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

CAL. CONST. art. I, § 26. The California Supreme Court ruled that the amendment violated the United States Constitution and, in a 5-4 decision, the United States Supreme Court affirmed. Reitman v. Mulkey, 64 Cal. 2d 529, 413 P.2d 825 (1966), aff’d, 387 U.S. 369 (1967).

68. Professor Torres told this story at the Society of American Law Teacher’s 1995 Robert Cover Memorial Study Group, which was titled “Proposition 187 and the Politics of Race” and led by Professor Torres and Professor Lisa Ikemoto. I am thankful to Professor Torres for sharing this story with us and allowing me to use it in this essay.

69. See Charles R. Lawrence III, Beyond Redress: Reclaiming the Meaning of Affirmative Action, 19 AMERASIA J. 1 (1993) (arguing that the goal of affirmative action should be the systemic disestablishment of the structures, institutions, and ideologies of racial subordination).

70. “Racial categories are fundamentally social in nature and rest on shifting sands of biological heterogeneity. The biological aspects of ‘race’ are conscripted into projects of cultural, political and social construction. ‘Race’ is a social formation.” Lucius Outlaw, Toward a Critical Theory of “Race,” in ANATOMY OF RACISM 58, 68 (David Theo Goldberg ed., 1990) (footnotes omitted); see also STEPHEN JAY GOULD, THE MISMEASURE OF MAN (tracing how pseudo-science has been used throughout history to support and advance racism); Rick Weiss, Academics Warn That Misunderstandings of Genetics Could Fuel Racism in U.S., WASH. POST, Feb. 20, 1995, at A7.

71. To recognize that race is socially constructed does not make it any less real. Critical race theorists know this from lived experience: [R]ace as a biological fact is problematic. However, the fact that race is socially constructed does not establish that race lacks meaning or force . . . . The use of purported genetic differences among races to justify subordination and exclusion is one example of the meaningfulness of race.


72. Under a poststructuralist account, the meaning of race is neither unitary nor fixed. It is “an unstable and ‘decentered’ complex of social meanings constantly being transformed by political strug-
but the central meaning that white supremacy has given race persists: There are whole, complete, entitled human beings (read white), and there are "others." These others are not like us. They are fundamentally inferior, less completely human.

One response to this defamatory construction of race is to forbid the use of racial categories. This is the colorblind approach: All racial classifications are deemed suspect because racial categories are viewed as inherently racist. Affirmative action stigmatizes its beneficiaries because of the racist meaning that inevitably attaches to racial preferences. Supporters of this response would have us believe that cultural meanings 400 years in the making will disappear if we prohibit reference to those meanings in public law and policy. Although the colorblind approach makes explicit racial categories unlawful, this does not mean they no longer exist, nor does it change their meaning. Under current Supreme Court doctrine, declaring racial classifications suspect amounts to little more than an interdiction against saying the word "race" out loud.

Proponents of the colorblind approach do not assert that we are absolutely colorblind. Such an assertion is impossible in the face of continuing open and notorious bigotry. Instead, they argue for the limited use of "narrowly tai-

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73. See Crenshaw, supra note 65, at 1372 ("Racism helps create an illusion of unity through the oppositional force of a symbolic 'other.' The establishment of an 'other' creates a bond, a burgeoning common identity of all non-stigmatized parties—whose identity and interests are defined in opposition to the other." (footnotes omitted)); see also Patricia Williams, The Alchemy of Race and Rights: Diary of a Law Professor 125-30 (1991) (discussing how others' attempts to include her in antisemitic discussions gave her an ambivalent sense of privilege).

74. See Brown v. Board of Educ., 347 U.S. 483, 495 (1953) (holding racially segregated education "inherently unequal").

75. City of Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989) ("[U]nless [racial classifications] are strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility."); see Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 298 (1977) ("[P]referential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth.") (footnotes omitted). Stephen Carter has said: "People of color do not need special treatment in order to advance in the professional world; we do not need to be considered the best blacks, competing only with one another for the black slots. On the contrary, our goal ought to be to prove that we can compete with anybody..."


77. See, e.g., Howard Kohn, Service with a Sneer, N.Y. Times, Nov. 6, 1994, § 6 (Magazine), at 43 (discussing the Denny's litigation that resulted from the refusal of the restaurant chain to seat or serve black customers, including a party of secret service agents); Blair S. Walker & Judith Schreroer, Paralyzing Prejudice: Minority Customers Still Shut Out, USA Today, June 11, 1993, at 1B (commenting on the Shoney's litigation that resulted from the cofounder of the chain's use of racial slurs and policy of not hiring black workers); see also H. Ehrlich, Campus Ethnoviolence and the Policy Options (National Institute Against Prejudice & Violence, Institute Report No. 4, Mar. 5, 1990) (showing the rise of reported hate crimes on university campuses across the country), cited in Mary J. Matsuda,
lored" race-conscious remedies in cases where such remedies are necessary to redress past or continuing racial injustice. This standard acknowledges the continued existence of some racism and amends the "no-out-loud-talk-about-race" rule with the words, "The word race may be said out loud in extraordinary circumstances." The very use of the word "extraordinary" in this context reinforces the assertion of societal colorblindness. It implies that the bigot who is occasionally caught is an extraordinary case.

A slightly different reading of this position is to understand it as an assertion of faith in a proposed cure to the disease of racism, rather than as a denial of racism's existence. Now the "no-out-loud-talk" rule becomes a method of ridding ourselves of race consciousness. This approach treats the demeaning social construction of race as if it were a bad habit that one could break by not using express racial categories. Thus, race consciousness should be employed sparingly not because there is no racism to remedy, but because the best way to overcome racism is not to speak about race.

Faith in the colorblind cure contains an implicit acceptance of a significant cost. The admitted injury imposed by the still-virulent and demeaning social construction of race continues while we wait for the "just-don't-say-it" approach to work. But this cost includes more than what can be measured by a reckoning of those cases where racial discrimination is real in fact but not in law. The narrow doctrinal view of what counts as racism helps spread the epidemic of denial. Now reactionary voices, the same voices that resisted integration, have seized upon the liberal rhetoric of colorblindness to call for an end to race-conscious remedies while, with a barely disguised conspiratorial chuckle, they disseminate the most malignant racially coded messages.

Listen to the code words of the 1994 political campaigns: criminal, crime rate, inner city, welfare mother, illegal immigrant, social program participant,
unqualified candidate, illegitimate children, affirmative action.\textsuperscript{82} Is there any American voter who does not hear the racial subtext in these images? Is there any person of intelligence who cannot recognize the purposeful manipulation of white fears in the tough-on-crime, welfare reform, antiimmigrant rhetoric?

The same politicians who rely on the social constructions of race to polarize Americans between "us" and "them"\textsuperscript{83} call for an end to affirmative action programs, which they say violate the principle of colorblind equality. The colorblind race baiter completes his white supremacist wizardry by blaming affirmative action itself for creating hostility, resentment, and racial divisiveness.

This is the supreme, cruel irony. "Affirmative action" and "colorblindness" themselves become race-coded words used by politicians who rely on the social construction of race to convey racist meanings. The anti-affirmative action provision recently proposed as a California ballot initiative\textsuperscript{84} is the latest example of a political campaign that relies on the intersecting ideologies of formal equality and white supremacy to send the racist message, "It's time to put them back in their place," while trumpeting the rhetoric of equal rights.\textsuperscript{85}

Critical race theorists offer an alternative to the colorblind "just-don't-talk-about-it" approach to race and racism. We name it and talk about it; the more conversation the better. Rather than attempt to avoid demeaning constructions of race by acting as if they don't exist, we call for direct engagement with white supremacy in the battle over meanings that define us and our place in the

\begin{itemize}
  \item \textsuperscript{82} Former KKK grand wizard David Duke has commended the new, more sophisticated racists for having achieved much of what he had called for during his bid for the United States Senate, Louisiana governorship, and the Republican nomination for the presidency in the early 1990's: "I'm happy to see the way things are going," he said, citing growing GOP emphasis on welfare reform, immigration and programs of racial preference. Watching Republican television ads last fall, Duke said, "about 80% of them look like they were taken directly from my television spots. Imitation is the sincerest form of flattery.

  \item \textsuperscript{83} As Professor Lani Guinier has noted, Those candidates who won often did so by mobilizing the discontent of some voters and demobilizing others whose anger could not be directed at easy scapegoats. This has been called "the politics of exclusion" or the "cult of otherness." "They" are not like "us." "They" are blameworthy ... But our discourse of blame is failing Americans of all races. We will all lose if we allow negative campaigns with their racial coding about "them" to dominate the conversation of democracy.

  \item \textsuperscript{84} An organization that calls itself the California Civil Rights Initiative plans to sponsor a 1996 ballot initiative that would make it illegal for any government employer to give preferences in hiring, public contracts or student admissions based on race, color or gender. George Skelton, \textit{Affirmative Action Issue: Another 187?}, L.A. \textit{Times}, Feb. 3, 1995, at A3; see CAL. A.B. 211, 1995-96 Leg., Reg. Sess. ( repealing existing affirmative action requirements and prohibiting any public "preferences on the basis of race, sex, color, ethnicity or national origin ... .") to any person for hiring or promotional purposes).

  \item \textsuperscript{85} Professor Lani Guinier notes: [M]any whites express their resentment at "them" in the language of less government, meaning no more subsidies for "them." According to a Times/Mirror Poll (9/21/94), 51% of whites now agree "We have gone too far in pushing for equal rights in this country." Equal Rights! We have gone too far in pushing for equal rights for "them" in this country.

  \item \textsuperscript{84} Lani Guinier, \textit{Different Voices, Common Talk: Why We Need a National Conversation About Race}, Speech at the National Press Club 1-2 (Nov. 29, 1994) (transcript on file with the Stanford Law Review).

  \item \textsuperscript{85} Lani Guinier, \textit{ supra note 83}, at 4.
world. We choose to be active combatants in the struggle over how to name and understand our lived experience.

Angela Harris describes critical race theory's engagement in the battle over the meaning of race as an application of a poststructuralist theory of discourse:

Under a post-structural account . . . “race” is neither a natural fact, simply there in “reality,” nor a wrong idea, eradicable by an act of will. “Race” is real, and pervasive: our very perceptions of the world . . . are filtered through a screen of “race.” And because the meaning of “race” is neither unitary or fixed, while some groups use notions of “race” to further the subordination of people of color, other groups use “race” as a tool of resistance. 86

Our project, then, is to engage in this resistance, this struggle against white supremacy’s meanings. The first step is to recognize those meanings and understand them to be racist. Then we must name ourselves (black, Latino/a, Asian, Puerto Rican, Chicano, Japanese, Korean, people of color, African diaspora, pan-Asian, colonized, progressive, antiracist) and give those names meanings that oppose and undermine white supremacy. This is the work done by storytelling and historical reconstruction. This is the work of identity politics, of black, Latino/a, and Asian student groups, of women of color conferences and rainbow coalitions. This naming and giving meaning is the work of theory building. Intersectionality, 87 multiple consciousness, 88 cultural visibility, 89 cultural meaning, 90 assaultive speech, 91 prophetic vision, 92 and Pomo Afro Homo 93 are names we have given to complex and liberating understandings of culture, politics, and the law.

Giving names and meanings to our own lived experience is central to transformative politics because, as we define ourselves, we create new communities and reconstruct communities that have fallen apart. These communities can be large multicultural coalitions and they can be small, uniracial, and familiar. We need both to do our work.

C. Coalition Building and the Need for Homeplace

Coalition work is not done in your home. Coalition work is done in the streets. And it is some of the most dangerous work you can do. And you shouldn’t look for comfort. Some people will come to a coalition and they rate the suc-
cess of the coalition on whether or not they feel good when they get there. They're not looking for a coalition; they're looking for a home!94

However fragile and tenuous (the slave hut, the wooden shack), had a radical dimension. Despite the brutal reality of racial apartheid, of domination, one's homeplace was the site where one could freely confront the issue of humaniza-

For African-Americans and other subordinated people of color, domestic households are not politically neutral private space. Home is a place where fathers and mothers teach daughters and sons history and critical consciousness, where we affirm one another and, by so doing, heal the wounds inflicted on us in the battle against racist domination. Home is the place where we gather the strength to go out in the streets and build coalitions.

Several years ago, when I taught at Stanford, I was a guest at a dinner party hosted by a colleague. As was too often the case at such dinner parties, I was the only person of color at the table. During a discussion in which we recollected early school experiences, several of my colleagues noted that they had liked school because it was a place where expectations were clear and one could experience success free from the arbitrary and irrational unfairness of life as a child in an at-times dysfunctional family. For me, the experience had been exactly the reverse. The predominantly white school my two sisters and I attended was a battleground for us, and each night at the dinner table the members of my family checked in with one another. This was a time for healing, for dressing each other's wounds, for telling stories and doing critical deconstruction of the stories we'd heard at school. It was a time for airing our differences, for mapping out strategy, for restoring our dignity and the sense of our own beauty that was denied us in the public world.

My parents were confirmed integrationists. They were Christians and pacifists. They believed firmly in the presence of God in all human beings and in the command to love one's enemy as well as one's neighbor. My sisters and I learned that it was our moral responsibility to build bridges of understanding across the chasms created by racism. We were talented at the dangerous work of coalition building, at finding common ground, common cause, and friendship with schoolmates and teammates from homes very different from our own. We were school leaders, class presidents and team captains, despite what our peers viewed as our oddball radical politics. But school was a battleground nonetheless, and my parents understood this. They taught us racial pride and the skills of survival in a racist world, and they gave us a safe and nurturing place to learn the lessons of resistance.

The struggle against white supremacy necessarily involves the dangerous work of building coalitions among communities of color and with other communities whose subordination intersects with our own. We cannot build coalitions if we have not created safe places for the equally difficult and important work that families do.

94. Reagan, supra note 36, at 359.
95. Hooks, supra note 36, at 42.
Coalition work requires time and space to build trust. It requires creating methods and models for conversation, collaboration and sharing. Engaging in collective action and careful reflection means starting small and building on the trust that we create in the process of doing this difficult work together.

I have sought to make a small contribution to this work through my teaching. In my seminar on racism and the law, I try to bring multiracial groups of students together to learn the skills of coalition building. My purpose has been to create a space where students can examine how our separate experiences of subordination intersect and reinforce one another. I have tried to start small and to strike a balance between the need to build interethnic bridges and the students’ need for a place to do this work in relative safety.

I have tried to make these classes ethnically diverse. It is important that many different ethnic communities are represented, and it is also important that, where possible, a critical mass of students appears from each ethnic group. This class must be a place where students who find themselves marginalized and alienated within white institutions can experience some of the safety and nurturance of homeplace. It must be a place where students are confident that there is enough common cause, enough trust, enough good will, enough shared experience and understanding to enable them to confront the most difficult conflicts within and between our communities and to address the hardest issues of ideology and strategy.

Often, such fledgling efforts at coalition among people of color are subjected to attack and criticism. These attacks come from within our communities as well as from outsiders. Attacks on coalition efforts from inside communities of color usually assume a nationalist stance, accusing coalitionists of being insufficiently identified with their own race, as in “not black enough,” or of collaborating with the enemy. When whites attack coalitions among people of color, the criticism usually takes the form of accusations of exclusion, segregation, and reverse discrimination.

One of my small teaching efforts was subjected to such an attack. I think the story is instructive because it is both an example of a small success in coalition building and an illustration of how resistance to transformative antiracist politics is framed in the language of colorblind equality.

In 1990, I taught a seminar at Stanford Law School entitled Constitutional Law: Minority Issues. When I chose students for the course, I did so with a

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96. For example, in his autobiography, Nelson Mandela describes how the Pan-Africanist Congress, a black antiapartheid organization, attempted to discredit the ANC by asserting that the ANC’s coalition with the largely white and Indian South African Communist Party sold out the interests of black Africans. MANDELA, supra note 1, at 257-58.

97. Nelson Mandela recalls that the Pan-Africanist Congress branded the ANC’s early attempts to negotiate with the ruling white minority a “betrayal.” MANDELA, supra note 1, at 384; see also Hing, supra note 31, at 941 (describing how members of the Korean-American community label those Koreans who are actively working to build coalitions with African-Americans and Latinos as “not ‘Korean enough’”).

98. For a more detailed account of the political and pedagogical principles that guided this course, see Charles R. Lawrence III, The Word and the River: Pedagogy as Scholarship as Struggle, 65 S. CAL. REV. 2231 (1992).
concern for creating a small space within the law school for coalition building and homeplace. I wanted to relieve my students momentarily from the endless job of educating white folks. I wanted to put the project of our liberation at the top of the list of priorities. I wanted to create a climate where we could do the hardest kind of work, where we could move beyond opposing whites and engage in the task of learning about ourselves and one another.

Twenty-six students enrolled in the seminar. Fourteen were African-American students, six were Latino/a, three were Asian-American, six were European-American, and one was a Native American. These numbers add up to more than twenty-six because I am double counting four biracial students (a woman with a black father and an Asian mother, two women with white fathers and Latina mothers, and a woman with a white father and a Native American mother). Under the law declared unconstitutional in *Loving v. Virginia,* only four people in this class could have married a Caucasian.

This class was more like homeplace than any I'd taught since my days as a community school principal in the Roxbury section of Boston. In saying this I do not mean that it was a warm, fuzzy place free of conflict. It was a site for the dangerous work of coalition building. For many students of color, it was the first law school experience in which they did not find themselves a member of a token minority. For most of the white students, it was the first experience of life as a racial minority. Students of color were more vocal in this class, more willing to share life experiences, more willing to articulate their misgivings about dominant doctrine and theory, more willing to disagree with each other and with me.

Most importantly, they were more willing to talk about their own racism, about the conflicts between communities of color, and about the issues that divide us within our respective communities. We fought, we laughed, we cried, people walked out of class, classes extended far into the night. On the class evaluation form, one student responded to the question that asked how many hours a week were spent on the class: "Every waking hour." It was the hardest teaching I have ever done. There were many days I wished I'd offered the class as an open enrollment course and prepared a lecture each week. But in the end, this class was my most rewarding teaching experience, and, although the students had quarrels with various aspects of the course, they were unanimous expressing their enthusiasm.

Even before the first class met, I was attacked for its ethnic composition. A small group of white students lodged a protest with the dean accusing me of

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99. More than 60 students applied for the 28 places in the seminar. As was my practice, I asked students to fill out a rather lengthy application form. For a description of some of the information elicited on this application, see note 109 infra.

100. 388 U.S. 1, 11-12 (1967) (holding unconstitutional a Virginia statute that prohibited white persons from marrying any nonwhite person, subject to an exception for certain Native Americans). Under the statute, blacks, Asian-Americans, and members of any other nonwhite racial class could intermarry without statutory interference.
practicing reverse racial discrimination and separatism. I responded that I had selected the class on merit, which I had done. Given my goals for the class, these were the best qualified students. I had selected the students based on a rather extensive written application and chosen those students with backgrounds and experiences that predicted an ability to understand the complex issues we would discuss and to contribute to the class. I had admitted several highly qualified white students. Although I was tempted to tell the dean that the small number of white students was a "pool problem," I restrained myself. This was probably the most racially diverse class in the law school. Moreover, women (seventeen) and out gays and lesbians (four) were better represented than elsewhere. Although my attackers accused me of selecting a class whose politics were homogeneous, a wide political spectrum was represented. We were alike in our shared infection with the disease of American racism and our shared commitment to fighting that disease.

Although the initial attack on the course was restricted to a small group of students, my students and I also experienced a more widespread misunderstanding and mistrust among our fellow students and colleagues. The dean asked the curriculum committee to reconsider the general issue of whether the law school should continue to allow consent-of-instructor courses, but my course and the courses of a Chicano professor, Gerald Lopez, seemed to be the main focus of this reconsideration. In two different faculty meetings, we

101. See Wendy Leibowitz, Free Speech and the Curriculum, STAN. L.J., Mar. 1990, at 9 (voicing objections to the perceived exclusion of white students from certain popular civil rights seminars including Constitutional Law: Minority Issues). Leibowitz writes:

I was taught that segregation is wrong. I believe that it is equally wrong whether it is perpetrated against people of color or by people of color. I do not think an ethical institution should tolerate segregation, no matter how it is justified. Nor do I think that tenured professors of color should be held to different standards than tenured white professors. Professor Lawrence and Professor Lopez have contributed great things, behind closed doors, to their students. But they have done a great deal of damage in the process—damage to the majority of students, who are only asking that they open their doors.

Id. at 14.

102. This is an argument often made by white institutions in defense of their failure to hire or admit more minorities. They argue that the dearth of minority hires results from the small pool of "qualified" minority applicants. See City of Richmond v. J.A. Croson Co., 488 U.S. 469, 501-02 (1989) ("[W]here special qualifications are necessary, the relevant statistical pool for purposes of demonstrating discriminatory exclusion must be the number of minorities qualified to undertake the particular task."); see also Randall L. Kennedy, Racial Critiques of Legal Academia, 102 HARV. L. REV. 1745, 1763 (1989) ("The fragmentary evidence available suggests that there are, unfortunately, insufficient numbers of black candidates qualified by traditional criteria to put the white academic establishment to [the] test.").

103. Although the ethnic composition in my seminars changed from year to year, they were always among the most diverse classes in the law school and could not be considered segregated unless one's definition of integration required white domination. For example, the year before, my Constitutional Law: Minority Issues class consisted of 13 white students, six Latino/a students, four Asian-American students, and five African-American students.

104. Consent-of-instructor courses permitted professors of limited enrollment classes to select the students to be admitted when there were more applicants than spaces. For several different accounts of the controversy surrounding these courses, see Michael Adams, Consent-of-Instructor Should Stay, STAN. L.J., Nov./Dec. 1988, at 7; David C. Lee, The Facts About Consent-of-Instructor Courses, STAN. L.J., Apr./May 1990, at 4; Leibowitz, supra note 101, at 9; George Niño, Consent-of-Instructor Drawing Fire, STAN. L.J., Oct. 1988, at 1.
discussed whether it was legal or right for an instructor to exclude people from a course based on their race. "Did any of my colleagues think I had acted with racial animus?" I asked. "Of course not, but it is important to clarify our policy on these courses," was my colleagues' reply.

Why did white students react so strongly to the racial composition of this class? Why did they experience my efforts to give students of color an opportunity to prepare themselves for work that would be central to their lives as lawyers and community leaders as about excluding them? I think that the reasons for the protest against this class are related to its purposes. White students' initial experience of being segregated or unfairly excluded was a symptom of their expectation of white privilege. It was almost as if they could not imagine a law school class where they were not in the majority, as if their whiteness gave them a property right to a place in my class.105

But I think the broader institutional resistance reflected something more. The law school had admitted students of color and it had hired me so that we could attend to its business, the business of perpetuating elites. We were there to add color, to share what we knew of those-who-would-be-ruled with the future rulers, and perhaps to be assimilated at the margins of the ruling elite. The liberation of colonized communities of color was not on the law school agenda.106 The law school's goals for diversity did not include the transformation of a white supremacist society.

While the faculty at Stanford did not vote to eliminate consent-of-instructor courses (that would have restricted their own prerogatives of privilege), they did establish detailed procedural guidelines that prescribed how students would be selected for such courses. They also included a substantive policy provision stating that while race and gender may be considered as factors for the purpose of achieving diversity, they may not be used to achieve homogeneity.

I asked my colleagues for one last clarification before we voted on this rule: "Was my first-year constitutional law section, a class where approximately 20 percent of the students were people of color, a more diverse class than my race law class, where 20 percent of the students were white?" "Of course not," was the only answer my question allowed. I could select students for my classes using whatever criteria I pleased. But the new provision's legislative history

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105. See Harris, supra note 10, at 1745-57 (arguing that the benefits of white skin privilege have been codified in American law, creating a de facto property right in the social construct of "whiteness").
106. If the law school's primary mission was the maintenance of existing hierarchies, our attempts to define a homeplace might well be viewed as in conflict with that mission. As bell hooks notes, the colonizer has always known the importance and power of homeplace in liberation struggles:

An effective means of white subjugation of black people globally has been the perpetual construction of economic and social structures that deprive many folks of the means to make homeplace . . . . It is no accident that the South African apartheid regime systematically attacks and destroys black efforts to construct homeplace . . . . For when a people no longer have the space to construct homeplace, we cannot build a meaningful community of resistance.

hooks, supra note 36, at 46-47.
could be read to include the footnote, "So long as said class is not too colored." 107

For me, the central lesson of this story is not whether or not my attention to race in choosing students for this class was morally or constitutionally justifiable. Rather, it is a lesson about how I envisioned the purpose of my course, and how that purpose was necessarily different from the purpose envisioned by liberal theory. In other words, although I believe race-conscious affirmative action can be justified using either liberal theory or transformative theory, I think there is an important difference between the two, and that difference is reflected in the stated goals of each.

My criteria for admitting students to my class can certainly be defended under a liberal individualist approach to equal protection. 108 This was not a case of invidious racial discrimination. None of my colleagues and none of the students who knew me believed that I had intentionally excluded white students from the seminar because of racial animus towards whites. Furthermore, my selection of the minority individuals can be justified in classical liberal individualist terms: (1) They were the best qualified, in terms of both academic and experiential preparation; 109 (2) they were victims of past discrimination, shown by the history of student and faculty segregation, and of continuing discrimination, shown by the still largely segregated student bodies and faculties at colleges they attended and at the Stanford Law School; 110 (3) they were more likely than nonadmitted students to return to serve underserved minority communities or to become future role models for others in those communities. 111

While each of these justifications has merit, the argument offered to support them is abstracted from the conditions in which they arise. 112 It focuses our

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107. See, e.g., Ramirez, supra note 31, at 961 (noting that race-conscious selection procedures have frequently been criticized for their "exclusionary effect" on white people and that in states like New Mexico and California, where persons of color are rapidly becoming a majority, these exclusionary effects "will undoubtedly affect the political acceptance of color-conscious remedies").

108. Dean Brest and Ms. Oshige consider liberal individualist rationales for affirmative action in their article in this symposium. Brest & Oshige, supra note 11, at 862-72.

109. Among other questions, the course application asked students to indicate: (a) other race discrimination or race-related courses they had taken as undergraduates or in law school, (b) work experiences in communities of color, (c) membership and work with minority organizations or other organizations concerned with race discrimination, (d) their career plans, and (e) their community background. From the answers to these questions, I made determinations about individual students' knowledge and sophistication about the issues covered in the course.

110. Most students of color in the class had attended elite undergraduate institutions where the numbers of minority faculty members remain minuscule. At the time there were only four full-time professors of color on the Stanford Law faculty. Even the student who was most vocal in the protest against consent-of-instructor courses, and my course in particular, thought there were good reasons for increasing minority students' chances of studying with a minority professor, considering the dearth of minority professors and of courses offered on the subject of race. See Leibowitz, supra note 101, at 9.

111. Dean Brest and Ms. Oshige have examined how individual minority group members are more likely to serve as role models for others in their group, more likely to infuse wealth and power connections into minority communities, and more likely to change outsider stereotypes of the groups to which they belong. Brest & Oshige, supra note 11, at 868-72.

112. See Crenshaw, supra note 65, at 1353 (discussing Mark Tushnet's critique of rights). "According to Tushnet, the language of rights undermines efforts to change things by absorbing real demands, experiences, and concerns into a vacuous and indeterminate discourse. The discourse abstracts
attention on the injury to, or rights of, the individual who is admitted, leaving the individual who is excluded to ask, "What about my rights?" In this framework, the excluded student does not see the societal conditions in the world around the law school as relevant to the admission decision. Even if there are good reasons for improving the opportunity of an admitted minority student, the choice to improve those opportunities at the nonadmitted white student's expense will be experienced as unprincipled and unfair.

The transformative approach justifies the decision as having everything to do with societal conditions. This class is about ending white supremacy. I admitted these students because I determined that they had individual qualities that would best serve that purpose, but that is not the only reason. I also chose them because to choose them is itself transformative. The conditions that exist in a law school, where students of color and their communities are not central to the institutional mission, are the conditions of white supremacy. To organize a class whose primary and central purpose is to further the interests of subordinated students and their communities transforms those conditions.

The white student will still experience my failure to include her as a deprivation. But now my answer does not seek to justify that decision by explaining how individual minority students are more deserving than she, or by trying to make sense of racial categories without attention to their context. My answer is that the students I chose to admit better served the purpose of transforming a white supremacist world. This is a transformation that will make us all more fully human. If anything has been taken from her, it is the privilege of whiteness in a white supremacist society, the privilege of standing in the front of a line created by white supremacy. And that privilege is harmful to her as well as to me.

real experiences and clouds the ability of those who invoke rights rhetoric to think concretely about real confrontations and real circumstances." Id. (citing Mark Tushnet, An Essay on Rights, 62 Tex. L. Rev. 1363, 1382-84 (1984)).

113. In referring to conditions of white supremacy at Stanford Law School, I am not speaking from a "perpetrator perspective." See Freeman, supra note 26, at 1053-54. By this I mean that I do not wish to single out Stanford as a blameworthy institution, violating an otherwise shared norm of racial equality. Stanford is no worse than other law schools and universities in its treatment of minorities. In some respects it has done better than others in giving attention to the interests of subordinated groups. But conditions that were created under American apartheid have not yet been transformed at Stanford. And the university's central mission continues to be the preparation of white elites to govern in a world where racial privilege continues to be the norm.

114. The larger law school community, including white students who had not been admitted to the class, benefited directly and immediately from the homeplace work that students of color did in the Constitutional Law: Minority Issues seminar. The difficult and complex conversations that began in the seminar rarely ended there. When they left the classroom, students in the seminar carried lessons they learned from one another with them. Their discussions continued with roommates, partners, friends, and classmates. They took new insights, new knowledge, and new questions with them to their classes in family law, feminist theory, and criminal procedure. They organized a conference on women of color and the law and a Law Review symposium. Symposium, Women of Color at the Center, 43 Stan. L. Rev. 1175 (1991). Just as my sisters and I had used our family dinner conversations to prepare ourselves intellectually and emotionally for teaching and bridge building in our predominantly white high school, the students enrolled in Constitutional Law: Minority Issues used the seminar to become more active, effective contributors to the law school discourse.
The injury inflicted by privilege requires fundamental change before it can be healed. On this, Justice Albie Sachs, one of President Mandela's appointments to South Africa's Constitutional Court, has written:

From a human rights point of view, the starting point of constitutional affirmation in a post-apartheid democratic South Africa is that the country belongs to all who live in it, and not just to a small racial minority. If the development of human rights is criterion, there must be a constitutional requirement that the land be redistributed in a fair and just way, and not a requirement that says there can be no re-distribution . . . .

Affirmative action by its nature involves the distribution of inherited rights. It is distributory rather than conservative in character.¹¹⁵

It may take a long time for the white student who was not admitted to my class to understand how my efforts to help students of color do the work of coalition building can be about her humanity. The combined hegemony produced by white supremacy and formal equality make that understanding extremely difficult. We do nothing to further that understanding when we tell those who feel excluded by affirmative action that the beginning of their discomfort marks the end of our willingness to transform a racist world.

CONCLUSION

I have argued here for a transformative jurisprudence that borrows from the vision of the Freedom Charter adopted by the South African Congress of the People. The demographic changes making our nation an increasingly multiracial society present both promise and peril for the project of human equality. The promise lies in the possibility of renewing the vision of America as strengthened by its diversity and of American life as a struggle for inclusion and belonging. The peril lies in the divisive exploitation of race as a mechanism for social control and exclusion.

In a diverse and pluralistic nation, the struggle against white supremacy is a struggle for a world in which we can all be more human. We cannot wage this war with our eyes closed to the historical injuries of racism and the damage that it does to us still. The jurisprudence and politics of transformation do not offer a quick fix, but ultimately they are our only hope. They offer the only possibility of true human freedom.

¹¹⁵ Sachs, supra note 5, at 8.