



**YALE  
CRT  
2016**

**Race (In)Action**

Yale Law School: April 9th, 2016

# Welcome!

It's 2016. But racism still permeates our society, seemingly with renewed vigor. We find it in our policing, on our campuses, and within our politics. Those committed to social justice and racial equality have found leaders in the academy, in the courts, and on the streets: The luminaries who meticulously expose racism's entrenchment in America, the practitioners who fight for justice on a skewed playing field against overwhelming odds, and the activists who shape the conversation and push both the public and its institutions toward necessary reform.

*Race (In)Action: The 2016 Critical Race Theory Conference* is an opportunity to merge these visions and put theory into action. Through engaging discussions on topics such as education, policing, social movements, and intersectionality, conference attendees will hear from some of the best and brightest in the field. We hope that scholars, practitioners, and activists alike will leave the conference better equipped to confront the sources of persistent injustice today.

This Conference also fills an important curricular void for students. Only a handful of law schools have permanent Critical Race Theorists on their faculty. Yale, and many others, do not. For many students, this conference will offer a perspective on race, law, and society that is not available at their academic institutions. Everyone attending this conference and everyone who helped make it a reality is playing an important role in advocating for Critical Race Theory as a field of study and an end to racism, structural oppression, and white supremacy in our society.

Thank you,

Katherine, Helen, Graham, Jeanine, Will, and Rachel,  
2016 CRT Conference Organizers

# Keynote



**Angela Onwuachi-Willig** is the Charles and Marion Kierscht Professor of Law at the University of Iowa. Professor Onwuachi-Willig's research explores issues of race, class, rhetoric, stigma, and identity, particularly in the context of antidiscrimination law and family law. She is author of the book *According to Our Hearts: Rhinelander v. Rhinelander and the Law of the Multiracial Family* (Yale 2013). She has served as the Chair for AALS Committee on the Recruitment and Retention of Minority Law Teachers and Students for two years, leading the Committee as it drafted and developed an official Statement of Good Practices on the Recruitment and Retention of Minority Law Teachers. She also is the founder of the Lutie A. Lytle Black Women Law Faculty Workshop, which has helped to diversify the legal professoriate, has resulted in the production of many books and hundreds of articles and essays by its participants, and has assisted dozens of women on the path to tenure.

# Race (In)Action:

A conversation with students of the Reclaim Harvard Law School Movement and Professor Margaret Montoya

**Ke'Andra Levingston** is currently a second year student at Harvard Law School. At Harvard, she serves as a Capital Punishment Extern for Texas Defender Service, co-chair of Alumni Affairs for the Black Law Students Association, and a member of the Committee on Sports and Entertainment Law. Since 2015, Ke'Andra has worked within the Reclaim Harvard Law Movement to organize for racial justice for staff and students. In her separate pursuits, Ke'Andra worked as a 2015 Editorial Intern and Contributor for Blavity, a media and technology platform for black millennials. This summer, she will work on transactional legal matters at both Sidley Austin LLP and Viacom Entertainment.



**Titilayo Rasaki** is a second year student at Harvard Law School. At HLS, she is a student attorney at the Harvard Legal Aid Bureau where she represents clients in summary process eviction cases and post-foreclosure litigation. She is also an organizer in the Reclaim Harvard Law Movement. Last summer, she was an intern at the Center for Children's Law and Policy and will be work at Arnold & Porter in DC this summer.

**Margaret Montoya** is a Professor Emerita of Law at the University of New Mexico School of Law and former Senior Adviser to Chancellor for UNM Health Sciences Center. She is currently a Visiting Professor at the University of New Mexico Family and Community Medicine Department. Her research and activism focus on Health and Racial Equity issues. Her article, *Mascaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse* is an icon of Critical Race Theory Literature. She was also among the first group of women and men of color who were recruited, applied, were accepted, and graduated from Harvard Law School.



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Association

# Race, Class and Higher Education



**Meera E. Deo** is a professor at the Thomas Jefferson School of Law. She is a nationally-recognized interdisciplinary scholar who utilizes empirical methods to interrogate institutional diversity and affirmative action. Professor Deo's interdisciplinary and empirical research on institutional diversity has been cited in numerous amicus briefs filed in the U.S. Supreme Court. Her scholarship draws from original empirical research to investigate the law student and law faculty experience. She is currently collecting, analyzing, and disseminating data for a landmark study of diversity in legal academia that examines how the intersectionality of race and gender affect tenure and promotion, work/life balance, institutional support, and other aspects of the personal and professional lives of American law faculty.

**Vinay Harpalani** is an associate professor of law at Savannah Law School. Vinay Harpalani is Associate Professor of Law and teaches Constitutional Law (I & II), Civil Procedure (I & II), and Employment Discrimination. Professor Harpalani's scholarship focuses on race, education, and constitutional law, examining legal, social, and political dimensions of racial identity. He has authored several law review articles on race-conscious university admissions and is frequently invited to comment and speak about the topic. His article, "Diversity Within Racial Groups and the Constitutionality of Race-Conscious Admissions," which was published in the University of Pennsylvania Journal of Constitutional Law, was cited in several amicus briefs to the U.S. Supreme Court in *Fisher v. University of Texas at Austin*.



**Khiara M. Bridges** is a Professor of Law at Boston University Law School. Her most recent work -- including "Class-Based Affirmative Action, or the Lies that We Tell about the Insignificance of Race," 96 Boston University Law Review 55 (2016) and "The Deserving Poor, the Undeserving Poor, and Class-Based Affirmative Action (forthcoming Emory Law Journal) -- has focused on Affirmative Action in higher education. She has also written extensively about race, class, and reproductive justice and is the author of *Reproducing Race: An Ethnography of Pregnancy as a Site of Racialization* (2011) and *The Poverty of Privacy Rights* (forthcoming Stanford University Press 2017).

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# CRT and Social Movements



**Justin Hansford** is an assistant professor at St. Louis Law School. He has been at the forefront of legal organizing and advocacy in the aftermath of the murder of Mike Brown. He co-authored the Ferguson to Geneva human rights shadow report and accompanied the Ferguson protesters and Mike Brown's family to Geneva, Switzerland to testify at the United Nations. He has served as a policy advisor for proposed post-Ferguson reforms at the local, state, and federal level, testifying before the Ferguson Commission, the Missouri Advisory Committee to the United States Civil Rights Commission, and the President's Task Force on 21st Century Policing.

**Amna Akbar** is an assistant professor of law at The Ohio State University Moritz College of Law. She has written extensively on the role of counter-radicalization in shaping national security policing and prosecutions. Underlying her research is an effort to understand the relationships between law and legal discourse, policing, and inequality. With her students, she has litigated in state, federal, and transnational forums against domestic and foreign governments for human and civil rights abuses, researched and written community-based human rights reports, and collaborated with community organizations in campaigns for public education and collective change.



**Amrita Basu** is the Domenic J. Paino 1955 Professor of Political Science and Sexuality, Women's and Gender Studies; Chair of Political Science. Her work focuses on the meaning of feminism and the relationship between feminist and women's movements. Amrita Basu has served on several editorial boards including the board of *The Bulletin of Concerned Asian Scholars* since 1992, and the *International Feminist Journal of Politics and Meridians: Feminism, Race, Transnationalism* since 2002 and 2001, respectively. She was the South Asia editor for *The Journal of Asian Studies* from 1995-2001. Basu also has served on several academic committees including as the Chair of the Women and Politics Council of The American Political Science Association from 2005-2006.

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Society

# CRT and International Law



**Vasuki Nesiah** is a legal scholar with a focus on the law and politics of international human rights and humanitarianism, with a particular focus on transitional justice. Her past publications have engaged with different dimensions of public international law, the international legal history of colonialism and international feminisms. Amongst other projects, she is completing a co-edited volume on the Bandung conference and critical traditions in international law (Forthcoming with Cambridge Univ. press). She is also in the early stages of a new project on the discourses and debates that have framed the subject of reparations at the intersection of international human rights framework and the legacies of slavery and colonialism.

**Robert D. Bullard** is the Dean of the Barbara Jordan-Mickey Leland School of Public Affairs at Texas Southern University in Houston, Texas. He is often described as the father of environmental justice. Professor Bullard received his Ph.D. degree from Iowa State University. He is the author of seventeen books that address sustainable development, environmental racism, urban land use, industrial facility siting, community reinvestment, housing, transportation, climate justice, emergency response, smart growth, and regional equity. Professor Bullard was featured in the July 2007 CNN People You Should Know, Bullard: Green Issue is Black and White. In 2008, *Newsweek* named him one of 13 Environmental Leaders of the Century. And that same year, Co-op America honored him with its Building Economic Alternatives Award (BEA).



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# The Changing Dynamics of Race in America



**Faiza Patel** serves as co-director of the Brennan Center's Liberty and National Security Program. Her research, writing, and advocacy focuses on .S. counterterrorism policy, racial and religious profiling, human rights and humanitarian law, chemical weapons and international law. Ms. Patel is the author of three reports: *Rethinking Radicalization* (2011); *A Proposal for an NYPD Inspector General* (2012); and *Foreign Law Bans* (2013).

**Steven Bender** is a Professor of Law and Associate Dean for Research and Faculty Development at Seattle Law School. He is a national academic leader on immigration law and policy. He has published many articles and books on Immigration law, including "Run for the Border: Vice and Virtue in U.S.-Mexico Border Crossings," (NYU Press 2012); "Greasers and Gringos: Latinos, Law, and the American Imagination," (NYU Press 2003); "One Night in America: Robert Kennedy, Cesar Chavez, and the Dream of Dignity." Along with his colleague, Francisco Valdes, and other editors from the LatCrit community, Bender is publishing a new West casebook titled *Critical Justice: Systemic Inequality and Social Impact Advocacy*.



**Francisco Valdes** is a Professor of Law and a Dean's Distinguished Scholar at the University of Miami. Dr. Valdes' work focuses on constitutional law and theory, Latina/o legal studies, critical outsider jurisprudence and Queer scholarship. Since 1995, Dr. Valdes has contributed regularly to LatCrit symposia and publications to help elucidate LatCrit approaches to knowledge-production, critical theory, and academic activism. During this time, Dr. Valdes' work on constitutional theory, critical race studies and queer scholarship also has been published in numerous law reviews, other academic journals and various book anthologies, including both specialty and mainstream venues. Along with his colleague, Steven Bender, and other editors from the LatCrit community, Bender is publishing a new West casebook titled *Critical Justice: Systemic Inequality and Social Impact Advocacy*.

**Meejin Richart** is a member volunteer of CAAAV Organizing Asian Communities and works at the Center for Constitutional Rights. She has been the CAAAV representative to the Justice for Akai Gurley coalition since April 2015, and during that time has seen the first police officer in over 10 years be convicted of manslaughter for killing Akai. Meejin is a community organizer interested in putting an end to state violence both domestically through policing and abroad through U.S. militarism.



# Race and Policing



**Tracey L. Meares** is the Walton Hale Hamilton Professor of Law at Yale University. Professor Meares's teaching and research interests focus on criminal procedure and criminal law policy, with a particular emphasis on empirical investigation of these subjects. Together with Tom Tyler, she directs the Justice Collaboratory at Yale Law School, which plays a central role, along with John Jay University and the Center for Policing Equity at UCLA in a new federal initiative to build trust and confidence in the criminal justice system. Her writings on such issues as crime prevention and community capacity building are concertedly interdisciplinary and reflect a civil society approach to law enforcement that builds upon the interaction between law, culture, social norms, and social organization.

**Devon Carbado** is the Honorable Harry Pregerson Professor of Law at UCLA School of Law. Professor Carbado writes in the areas of employment discrimination, criminal procedure, constitutional law, and identity. He is the author of "Acting White? Rethinking Race in 'Post-Racial' America" (Oxford University Press) (with Mitu Gulati) and the editor of several volumes, including *Race Law Stories* (Foundation Press) (with Rachel Moran), *The Long Walk to Freedom: Runaway Slave Narratives* (Beacon Press) (with Donald Weise), and *Time on Two Crosses: The Collective Writings of Bayard Rustin* (Cleis Press) (with Donald Weise). He is also a board member of the African American Policy Forum.



**Meejin Richart** is a member volunteer of CAAAV Organizing Asian Communities and works at the Center for Constitutional Rights. She has been the CAAAV representative to the Justice for Akai Gurley coalition since April 2015, and during that time has seen the first police officer in over 10 years be convicted of manslaughter for killing Akai. Meejin is a community organizer interested in putting an end to state violence both domestically through policing and abroad through U.S. militarism.

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# Race, Gender, and Intersectionality

**Priscilla Ocen** is an Associate Professor of Law at Loyola Law School, where she teaches criminal law, family law and a seminar on race, gender and the law. Her work examines the relationship between race and gender identities and punishment. In particular, Ocen's scholarship has explored conditions of confinement within women's prisons and the race and gender implications of the use of practices such as shackling during labor and childbirth. She has also explored the ways in which race, gender and class interact to render women of color vulnerable to various forms of violence and criminalization. Her work has appeared in academic journals such as the California Law Review, the UCLA Law Review and the Du Bois Review as well as popular media outlets such as the Los Angeles Daily Journal, Ebony and Al Jazeera.



**Monica Bell** is a legal sociologist who primarily uses qualitative methods to investigate under-recognized aspects of persistent and concentrated poverty, then interrogates how the law structures, and might respond to, those conditions. Her recent work has focused on police regulation and police-community relations, but her more general focus is the regulation of institutions that structure the daily lives of Americans living in poverty. Her most recent popular article, "What Happens When Low-Income Mothers Call the Police" was published at TalkPoverty.org; an academic article on this topic is forthcoming in the Law & Society Review.

**Catherine Smith** is a Professor at the University of Denver Sturm College of Law and the Associate Dean of Institutional Diversity and Inclusiveness. Professor Smith's current research explores the equal protection rights of children of same-sex parents. Her other research interests include torts, civil rights law, and critical race theory. Her articles have been published in Wisconsin Law Review, North Carolina Law Review, and Rutgers Law Review, and Connecticut Law Review.



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Women

# Emerging Scholars Workshop

## **Karen Gaffney: Critical Race Theory in Action: Talking to White People About “the Permanence of Racism”**



More than fifteen years ago, I started exploring Critical Race Theory in my English PhD and ever since have found it to be the most powerful theoretical approach to understanding race and racism. However, when I attended two CRT conferences recently, I found myself one of the only participants outside of the legal profession. While I'm concerned that disciplines outside of legal studies are not giving CRT the attention it deserves, it's inspiring that CRT has begun to break down the boundary between scholarship and community activism, and perhaps that is the most important boundary to break. From Scandal's episode devoted to "dog whistle politics" (not coincidentally the name of Ian Haney-López's recent book) to The New Jim Crow's best-seller status to Kimberlé Crenshaw's name and work appearing throughout social media, it's clear that CRT is starting to have a profound impact on the country's understanding of systemic racism. We need to celebrate and build on this expansion, and this paper will focus on two concepts from CRT that can be used as strategies to engage white people in understanding what Derrick Bell called "the permanence of racism": 1. Even though scholars take for granted that race is a social construct and not biological, this usually comes as a surprise to my students and the people I speak with in the community. Beginning with this key point gives white people hope and responsibility by showing them how they've been misled and how they need to take action. 2. Then we explore how whites have been further manipulated to support the ideology of colorblindness as a way of perpetuating systemic racism. These strategies are based on my experience teaching an introductory college course on race and facilitating community conversations about race, both of which have been primarily to a white audience.

## **Khaled Beydoun and Erika Wilson: Reverse Passing**

Throughout American history untold numbers of people have concealed their true racial identities and assumed a white racial identity in order to reap the economic, political and social benefits associated with whiteness. This phenomenon is known as passing. While legal scholars have thoroughly investigated passing in its conventional form; the corollary process of reverse passing – the process in which whites conceal their true racial identity and present themselves as non-white – has not been closely investigated within legal scholarship. Rachel Dolezal provides a timely study of the process of reverse passing. Dolezal – an Africana Studies Instructor and head of the Spokane, Washington NAACP – was outed as being white after years of phenotypically and culturally presenting herself as a Black woman. Dolezal's "outing" generated much popular debate and scholarly discourse, most of which tended to frame her actions as a one-off occurrence by a deviant actor. This Article takes a contrary position. Though reverse passing is often framed as deviant or irrational, this

Article demonstrates how the Court's affirmative action jurisprudence creates tangible and intangible incentives for white actors to identify as non-white. It suggests that the Court's entrenchment of the diversity rationale as the primary compelling state interest that can be used to justify race-conscious affirmative action programs, generated situational value in non-whiteness. That situational value in non-whiteness now creates incentives that previously did not exist for whites to reverse-pass in order to obtain access to opportunities in education, employment and beyond.

### **Blanche Cook: Heteropatriarchal Performance and The Shooting of Michael Brown**



The body of Michael Brown furnished a canvas for white heteropatriarchal performance. The shooting of Brown, like the investigation and grand jury proceedings surrounding his murder, paradigmatically exemplifies white heteropatriarchal performance on vulnerable bodies. White heteropatriarchy inscribes its preeminence and the victim's inferiority on the flesh of the victim itself. This maneuver is unmistakably white, male, and heterosexist. White heteropatriarchy is inherently unstable because it constantly perceives itself under threat, creating a tension and anxiety necessitating release on vulnerable bodies. Its performance, however, is not done purely to discharge its anxiety through the mangling, control, and humiliation of the victim's body; rather, the ritual of performance exalts white heteropatriarchy over the victim's body and reassures it of its communal supremacy, protection, security, and divine order.

The system of criminal law enforcement in the United States provides an apparatus by which white heteropatriarchy can perform this ritual unscathed and exempt from detection, correction, and punishment. It also elevates and champions white heteropatriarchal performance as heroic. Policing provides a venue for the performance. The grand jury legitimizes its enactment. Taken together, and in the context of police shootings of unarmed people of color, policing and the grand jury device reassure white heteropatriarchy of its celebrated communal dominance, preeminence, and protection.

Although scholars have theorized about systemic racialized violence in policing, less attention has been given to systemic white heteropatriarchal practices in the investigations and grand jury processes surrounding excessive use of force cases involving black bodies, as typified in Brown's murder. The valorization of whiteness and the vilification of blackness, however, are the lens through which we see evidence and determine both the legal narrative and public discourse surrounding the "body of proof." Given this current moment of hyper-racism, these rituals of white heteropatriarchal performance will occur with greater frequency, and if uninterrupted, will occasion the collective loss of our humanity as well as a criminal justice system plagued with diminishing moral authority. Given the enormous consequences, disruption of white heteropatriarchy, as an operative in law enforcement, is mandatory.

### **Theodore Young: Race in Three Dimensions**

Race is frequently talked about as a being on a spectrum between white and Black, with all other races falling somewhere along the spectrum. Recently, there have been those who have pushed back against this notion towards a more nuanced and inclusive conceptualization of how race and racism works in the United States. In this paper, I hope to explore some of the more popular theories of racism affects different communities of color, as well as some of their shortcomings. Furthermore, I hope to put forward my own theory that builds on these existing theories (as well as some basic algebraic concepts) that includes a more fluid and nuanced view of not only how different communities of color interact with

whiteness, but how they interact with one another. In doing so, I hope to reframe discussions of how communities of color come into conflict with each other as a struggle for agency from whiteness and racism.

**Andrea Freeman: Black Card: Discrimination Against Black Female Credit Card Consumers**



Racism against Black female credit card consumers is a core piece of the systemic inequality that perpetuates dramatic disparities in wealth, employment, health, and education. Over several decades, credit cards have evolved into an essential tool for lower and middle class families to maintain financial stability through strategic balancing between debt and disposable income. Now, without a credit card, many households could not manage to meet the basic needs of their families. Credit card companies take advantage of this reality, imposing exploitative fees, interest rates, and other conditions on consumers who have no choice but to use their products. Even worse, the companies do so in a racially discriminatory way, burdening Black women with the worst credit card terms, unrelated to credit risk. This type of consumer racism dates back to the Reconstruction era, and reflects an unbroken chain of laws and policies cementing racial economic inequality. Further, raced and gendered stereotypes serve to make the resulting inequality appear cultural and personal, instead of institutional. *Black Card* applies a critical race theory analysis to the problem of racism against credit card consumers, exploring how discriminatory practices by credit card companies uniquely affect Black women, limiting their ability to participate fully in society. The industry profits from ubiquitous popular culture images of Black women as irresponsible spenders, embodied by the 'welfare queen,' a single mother who reproduces solely to acquire funds from the government and spend beyond her means. The false image of the welfare queen also justifies racial profiling of shoppers and false accusations of credit card fraud. After interrogating the complex legal, social, and political structures that facilitate discriminatory corporate practices against Black female credit card consumers, *Black Card* contemplates multi-faceted approaches to achieving greater economic equality through a more just distribution of the resource of consumer credit.

**Stacy Hawkins: The Long Arc of Diversity Bends Towards Equality: Deconstructing the Progressive Critique of Workplace Diversity Efforts**

This paper challenges the progressive critique of instrumental workplace diversity efforts as problematic both in principle and in practice. By properly situating instrumental workplace diversity efforts within the context of their equal employment opportunity (EEO) origins and highlighting the evidence demonstrating their beneficial effects for women and racial/ethnic minorities in particular, this paper argues that instrumental workplace diversity efforts are, or at the very least have the potential to be, equality-enhancing, notwithstanding their expressly instrumental aims. Deconstructing the progressive critique of workplace diversity efforts in this way reveals the true concern as less about instrumental workplace diversity in principle than about how instrumental workplace diversity efforts might operate in practice. Taking seriously the progressive concern for the harms that might accrue to women and racial/ethnic minorities when instrumental workplace diversity efforts go awry in practice, this paper relies on theories of law and organizational theory to respond to this more pragmatic concern by suggesting how Title VII law and doctrine has been, and how it ought to continue to be, interpreted and applied by courts in response to instrumental workplace diversity efforts in ways that promote their equality-enhancing effects and otherwise restrict their potential to incur the kinds of harms that most concern progressive scholars.