

THE CLOUDED PRISM*

Harlon L. Dalton†

I'd like to open with a brief passage from Bob Gordon's sensitive essay entitled "New Developments in Legal Theory" which appears in *The Politics of Law*.¹ The essay begins by assaying the relationship between theorists and practitioners, or, more precisely, the tendency of people who attend Critical Legal Studies (CLS) conferences to sort themselves into two categories: theorists and practitioners. As you listen to the passage, I want you to substitute mentally the phrase "people of color" for the term "practitioners." I ask this of you for two reasons. First, most minority scholars are, by virtue of our life circumstances, practitioners in one way or another, people committed to pursuing an active program to change the situation of our people. I will return to this point in a moment. Second, it seems to me that in any event, the position of "practitioners" and that of people of color, vis-a-vis the tastemakers of CLS, are much the same.

After acknowledging the practitioner/theorist split, Gordon observes: "It is not—not at all—that the 'practitioners' are against theory." (Remember, "practitioners" equals "people of color.")

They are hungry for theory that would help make sense of their practices; that would order them meaningfully into larger patterns of historical change or structures of social action; that would help resolve the perpetual dilemma of whether it is or is not a contradiction in terms to be a "radical lawyer," whether one is inevitably corrupted by the medium in which one works, whether one's victories are in the long run defeats or one's defeats victories; or that would suggest what

* What follows is the transcript of Professor Dalton's remarks at a panel of the tenth National Critical Legal Studies Conference.

† Associate Professor of Law, Yale Law School; J.D., Yale Law School, 1973; A.B., Harvard University, 1969.

¹ Gordon, *New Developments in Legal Theory*, in *The Politics of Law: A Progressive Critique* (D. Kairys ed. 1982).

tactics, in the boundless ocean of meanness and constraint that surrounds us, to try next.²

I want to affirm that Gordon's is a fair and accurate description of both practitioners and people of color. We hunger for theory. But, as Gordon goes on to point out, there is the lingering and widespread suspicion within the CLS movement that the theorists do not hunger for praxis. And it is this absence of a positive program on the part of many in CLS (with some quite notable exceptions)³ and indeed the *disdain* for program by some,⁴ that is one of the central difficulties that people of color have with the Critical Legal Studies movement. I think that this difficulty is rooted in biography, in specific history, in what Cornel West refers to as genealogy.⁵

In addition to acknowledging the theorist/practitioner divide within CLS, and the unrequited desire of practitioners to bridge

² *Id.* at 281.

³ See, e.g., Frug, *The City as a Legal Concept*, 93 Harv. L. Rev. 1057 (1980); Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 Minn. L. Rev. 265 (1978); Simon, *Visions of Practice in Legal Thought*, 36 Stan. L. Rev. 469 (1984).

⁴ I am not unmindful of the concern expressed by many Critics that until and unless we have successfully jettisoned our dominant belief systems, any attempt to formulate a positive program will likely (will inevitably?) reintroduce the very patterns of domination and alienation that we seek to escape.

I am likewise aware of the related conviction that the best way (the only way?) to break out of the strait jacket of "liberal legal consciousness" is to concentrate on delegitimizing—"trashing," if you prefer—its conceptual underpinnings. Indeed, I share the concern that we risk undermining ourselves by moving ahead with a positive program before the critique has adequately altered our consciousness. I also recognize the utility and even necessity of delegitimation. I am convinced, however, that the movement can and must proceed on two tracks simultaneously. Despite the risk of replicating the tried and untried path, we must create even as we reenvision. In my view, negative critique and positive program are, or at least can be, symbiotic; the former launches the latter and keeps it on course, whereas the latter saves the former from petulance and self-parody.

My hunch is that the tendency of some Critics to disdain program arises out of the self-need to defend "trashing" against critics without and within the movement and to guard against reformism and co-optation with unflagging vigilance. For some, sneering at those who would construct a program no doubt reflects conscious strategy; for others, battle-fatigue. Matters are made all the more confusing by the fact that some program "trashers" refuse to stay put. Duncan Kennedy, for example, responded to my presentation at the Conference by announcing with characteristic relish that he was one of the "unnamed people accused of 'even disdaining' program." I feel constrained to point out that Kennedy has publicly called for the unity of theory and practice and has proposed a program or two in his time. Kennedy, *Cost-Reduction Theory as Legitimation*, 90 Yale L.J. 1275, 1283 (1981); see also Kennedy, *Utopian Proposal or Law School as a Counterhegemonic Enclave* (April 1, 1980) (unpublished manuscript on file with Harvard Civil Rights-Civil Liberties Law Review).

⁵ See, West, *Race and Social Theory: Toward a Genealogical Materialist Analysis* (1987) (unpublished manuscript on file with Harvard Civil Rights-Civil Liberties Law Review).

it, Bob Gordon's essay offers us the biography of a typical "Crit."⁶ Instead of quoting directly from Gordon, I would like to take advantage of the late Ed Sparer's paraphrase of Gordon, which tells Gordon's tale in fewer words:

In his essay Gordon provides a kind of intellectual biography of the type of lawyer and law teacher who came to be engaged in Critical legal theory: a person "who first started thinking seriously about law as a student in law school in the late 1960's"; who there experienced a kind of "toned down" Legal Realism and surface "policy analysis"; who went on to engage in the social struggles of the late 1960's and early 1970's when the "march of historical progress was in trouble"; who then experimented with "the emerging vocation of the liberal but antiestablishment, activist reform lawyer, who would deploy the techniques of the system against the system." But disappointment, experience, and reflection raised problems. "[D]octrinal victories peaked all too early," the "most favorable rule outcomes [were obtained] just where enforcement of them seemed most hopeless." Such lawyers and law teachers began to push for more and deeper explanations.⁷

Now I take it that that is, as far as it goes, a fitting biography of the composite Crit. But I think the description is radically incomplete—unless we read between the lines. Closer inspection reveals that the people who attended law school in the late Sixties were for the most part white males, a fact that was certainly true of the founding fathers of CLS. And by the term "white male," I mean to signify more than simply pigment and chromosomal structure. I mean to capture the social meaning that attaches to being part of the master race, and that flows from being one of those for whose benefit patriarchy exists and the memory of the goddess has been expunged.⁸

⁶ "Crit" is the self-selected nickname of members of the CLS movement.

⁷ Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 Stan. L. Rev. 509, 556–57 (1984) (citations omitted). This piece, which appeared in the phonebook-length January, 1984 symposium issue of the Stanford Law Review, demonstrates that legal writing can be simultaneously scholarly and moving. It is, in a word, classy.

⁸ See, e.g., M. Stone, *When God Was a Woman* (1978); see also C. Downing, *The Goddess: Mythological Images of the Feminine* (1984).

In reflecting further on the biography of a classic Crit, I am reminded of my first encounter with the Critical Legal Studies movement, which occurred, appropriately I suppose, at the Harvard Law School during the course of unsuccessful interviews for a faculty appointment. Perhaps the most salutary part of that experience was my meeting with Morton Horwitz.⁹ It was, in fact, quite a pleasant encounter, during the course of which Morty quite gently asked me, in essence, whether I, in my earlier incarnation as a public interest lawyer, minded serving to legitimate The System and providing a palliative for the underclass. Although I thought his question rather odd, I saw that his concern was obviously genuine. I sidestepped the question for a while. Eventually, I got up the courage to ask Morty whether he truly believed that “the revolution” would begin at the Harvard Law School. His answer was quite sweet. He reflected for a moment and as best I can recall, he said: “I guess I really do, but the truth is that I was a four-eyed kid who read books and that was about all that I could do. So it’s quite natural that I would find attractive a view of politics that fits what I do best.” Morty thought a moment longer, then added: “I might wake up ten or twenty years from now and find out that I’m totally wrong and that I’ve been simply deluding myself. If that happens, I’m going to be quite unhappy, but I don’t think it will.”¹⁰

I think that Morty’s observations provide additional insight into the biography of the typical Crit. It suggests that we can add to Gordon’s description the image of a four-eyed male child who loved books, who lived in them, who lived in his head. Imagine someone who was quite alienated early on, perhaps socially awkward, rather disconnected from much of the richness of the surrounding world. Not surprisingly, then, in adulthood he, along with others of like mind, set about to construct a community—indeed a noble and praiseworthy example of “creative imagining.”¹¹ Fittingly, the community they created

⁹ Horwitz, a bona fide CLS heavyweight and first-rate legal historian by anyone’s definition, is the author of, *inter alia*, *The Transformation of American Law, 1780–1860* (1977).

¹⁰ Despite the quotation marks, this is at best a paraphrase of Horwitz’s remarks. Although I do not pretend to remember his actual words, I am quite confident that I have faithfully captured their sense and tone.

¹¹ See, e.g., Gordon, *supra* note 1, at 286–90.

was a self-consciously intellectual one in which intellectual machismo is encouraged and revered.¹²

Now I want to contrast that biography with the biography of the black, brown, red, and yellow folks who have circled around CLS' door in fluctuating numbers for the last ten years, always invited in for tea, but rarely invited to stay for supper, lest we use the wrong intellectual fork. No matter how smart or bookish *we* were, we could not retreat from the sights, sounds, and smells of the communities from which we came. We learned from life as well as from books. We learned about injustice, social cruelty, political hypocrisy and sanctioned terrorism from the mouths of our mothers and fathers and from our very own experiences. Books sometimes confirmed that reality; more often they misrepresented or were indifferent to *our* reality. And from the beginning we learned, not as an article of political faith but rather as a simple fact of life, that our fate and that of all persons of similar hue were inseparably intertwined. That fundamental connectedness, together with our distinctive subcultures, nourished and sustained us, created in us

¹² I was not prepared for the strong visceral reaction of many male Crits to this characterization. For the balance of the Conference it came to be known as the "four-eyed wimp" crack. In truth, I never used the term "wimp" and did not envision my remarks as a putdown. (Duncan Kennedy, however, has opined that "CLS is a real-life revenge of the nerds." Kennedy, *Psycho-Social CLS: A Comment on the Cardozo Symposium*, 6 *Cardozo L. Rev.* 1013, 1018 (1985)). In passing along Morton Horwitz's self-description, somewhat embellished, and suggesting that it was as "true" of the CLS founding fathers as, say, "engage[ment] in the social struggles of the late 1960's and early 1970's," I meant only to suggest that the roots of the theory/practice split go deep. However, "the typical Crit" is no more to blame for favoring an approach to life and struggle that resonates with his history than I am to blame for favoring an approach that resonates with mine. The key to solidarity is identifying and acknowledging our differences and their impact on our perspectives. In general, people of color understand reasonably well where the dominant culture is coming from; we must, to survive. My critique of CLS can profitably be viewed as a plea to those critical of that culture, but also born of and rewarded by it, to learn and respect where *we* are coming from.

Some at the Conference assumed that my "four-eyed *kid*" description had negative sexual overtones. That particular freight didn't originate with me. It has never occurred to me to compare the virility of men who wear glasses and read books (a club of which I am a member) with that of those who don't. I trust that those who experienced sensitivity on this point were at least as offended by Alan Freeman's and John Henry Schlegal's treatment of Bruce Ackerman in *Sex, Power & Silliness: An Essay on Ackerman's Reconstructing American Law*, 6 *Cardozo L. Rev.* 847 (1985). In that essay Freeman and Schlegal accuse Ackerman of having to prove his "comparative genital superiority," *id.* at 858, and of authoring a book "best . . . described as an instance of 'male-chimp display behavior,'" *id.* at 857. *But see* Kennedy, *Psycho-Social CLS: A Comment on the Cardozo Symposium, supra*, at 1016. ("[t]he new genre of trashing (as in Freeman and Schlegal) may be as dismissive and snide as its liberal counterpart").

an unshakeable sense of community. The lucky ones among us revelled in that community, fed on it. Others of us resented it, or tried to hide from it. But escape was not possible, for the community was within us and we were branded forever.

Part of the reality of that community, at least in our time and space, was that "the life of the mind" as an overriding and singular commitment was not possible. Not only would "putting on airs" not win us many friends, but neither would it position us to influence people. As Malcolm X used to ask, "What do you call a black man with a Ph.D.?" And, as every person of color in this room knows, the answer is "Nigger." A thoroughgoing familiarity with Foucault, Derrida, Habermas and Gramsci will not save us from "the fishy stare on the bus."¹³ And so, whether out of social concern or self-preservation, we learned from the start to harness our brains to the problems of the day. We felt the freedom to play with mind puzzles only after the practical intellectual work of the day was done.

I think that the genealogic differences between classic CLSers on the one hand and us pretenders on the other, helps to explain why CLS patriarchs (again with some notable exceptions) feel no need to articulate a positive program, and in some cases glory in the absence of one, whereas people of color cannot be satisfied unless and until a program emerges. Similarly, the quite distinct social circumstance of white males has led to a "rights critique" that is oblivious to, and potentially disruptive of, the interests of people of color. To say more on this point, however, would be to subtract from the enormously powerful presentation with which Patricia Williams has graced us.¹⁴

The failure or refusal to develop a positive program and the dismissive critique of rights discourse are perhaps the most significant theoretical divides between classic CLS and progressive people of color. There are, however, other points of tension that exist wholly apart from any particular theoretical concern. As I reflect on the sentiments expressed at the minority caucus held the first evening of the Conference,¹⁵ two thoughts come

¹³ I must confess. I stole the phrase enclosed in quotation marks from Cornel West.

¹⁴ See Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 Harv. C.R.-C.L. L. Rev. 401 (1987).

¹⁵ The opening evening of the CLS Conference was spent in separate "minority" and "non-minority" caucuses. If I had to identify four questions that pervaded the minority caucus, they would be: Why are we here? Why do we feel uncomfortable

primarily to mind. One is our sense of having been silenced by CLS, and the second is our sense of having been appropriated or used.

How have we been silenced? One way, already much discussed at the Conference, is the existence of high barriers to entry into discussion.¹⁶ I am not familiar with the CLS version of “talking that talk” and “it don’t mean a thing if it ain’t got that swing,” but there’s a sense in which if you don’t talk that talk, you won’t be heard. I find it marvelously ironic that the slavish adherence to magic words by Crits is on a level that would make Myers McDougal envious.¹⁷

In preparing to speak at this Conference, I experienced great trepidation, given this question of “voice.” I spent the last several weeks filling my head with CLS babble. The problem is that it kept falling out. I kept chucking it back in there, and out it would come again. So ultimately I decided to do a strange thing: to be “authentic.” I realized that unless I spoke in my own voice—something I insist upon doing with my New Haven colleagues across the political spectrum—I wouldn’t be able to connect my talk with the richness of my own experiences. Despite this insistence, I am quite confident that there have been, or will be, moments aplenty of “intersubjective zap”¹⁸ between me and my sisters and brothers of color, between me and my sisters without regard to color, and indeed between me and a fair number of the white males in the room.

Fortunately, there are several signs that this mental lock step is breaking down. In much of the recent CLS literature

being here? What do we hope to accomplish? and Why is this night unlike all other nights?

¹⁶ The Conference’s opening plenary session was entitled “Thinking About Race in America.” The panelists Rodolfo Acuna, Professor of Chicano Studies at California State University at Northridge; Bell Hooks, Assistant Professor of English, African and Afro-American Studies at Yale; and Cornel West, Associate Professor of Philosophy of Religion at the Yale Divinity School, gave powerful, mind-expanding presentations, each in his or her own quite distinctive voice. During the question and answer period, Bell Hooks took the occasion to ask her colleague and friend Cornel West a question: “Why do you insist on using all that meta-language when you know it serves to put distance between you and the very people you’re talking about?” The ensuing intellectual donnybrook was the most lively and broadly participatory session of the Conference.

¹⁷ Myers McDougal, the eminent international law scholar, has thousands of devoted former students around the globe, every one of whom still remembers the McDougalisms that comprised the *lingua franca* in “Mac’s” classroom.

¹⁸ This CLS buzz phrase can freely be translated as a sudden, unexpected, electric moment of shared intuition. Only a Crit would load down a zippy word like “zap” with a brain-deadener like “intersubjective.”

there is a healthy kind of playfulness and self-deprecation. Some within or sympathetic to the movement have dared to poke fun at “footnote number one,”¹⁹ and there is even emerging discontent with the CLS version of the “sonata form” as an all-constraining way of writing.²⁰ And as the kinetic discussion at the plenary session of the Conference demonstrated,²¹ there is a fair amount of discontent with the trap of prescribed language.

A second silencing mechanism, one that surfaced within CLS a couple of years ago,²² is especially insidious. My favorite form of it is: “I don’t want to be made to feel like a guilty white male.” This conversation-stopper has really sapped the energy of the caring people—white, black, brown, and yellow—who worked hardest at putting together this Conference.²³ And it has threatened to derail those of us who were never too sure we were welcome on this train in the first place.

A third silencing mechanism, the one mentioned most frequently at the minority caucus is, I think, the simplest: exclusion from all dialogue that matters. As John Powell put it, “I feel spoken for and I feel spoken about, but rarely do I feel spoken to.”²⁴ The theme of exclusion also figured prominently in Pat Williams’ fanciful tale of her unsuccessful attempt to enter an East Side boutique where surely she would find the perfect present.²⁵ It was a wonderfully evocative story, like the other

¹⁹ See, e.g., Shapiro, *The Death of the Up-Down Distinction*, 36 Stan. L. Rev. 465, 465 n.1 (1984) (“This is the obligatory footnote citing all my earlier articles and all the other works in the Critical Legal Studies movement that I think are worth reading. Fortunately, as I get older and the first list gets longer, the second list gets shorter.”); Soifer, *Confronting Deep Strictures: Robinson, Rickey, and Racism*, 6 Cardozo L. Rev. 865, 865 n.1 (1985) (“At this point, it is *de rigeur* to list much of the work of one’s friends, all of one’s own past work, most of what one has recently read, virtually everything one should have read, or all of the above. I won’t.”).

²⁰ See Gordon, *Critical Legal Histories*, 36 Stan. L. Rev. 57, 58 n.3 (1984). After describing how the article will proceed, Gordon observes: “The knowledgeable reader will have noticed that this outline follows a format (orthodoxy synthesized—partial critiques—total critique and transcendence—critique of the critique) that has become almost as stylized in CLS work as the sonata form was in classical composition. Perhaps it’s time for a new format.” *Id.*

²¹ I refer here to the reaction to Bell Hooks’ critique of meta-language. See *supra* note 16 and accompanying text.

²² My overly obscure reference is to the 1985 CLS Conference that was organized by self-described “Femcrits” who sought, against the odds, to encourage the CLS movement to take seriously and treat sensitively the concerns of 53 percent of the population (and a sizeable chunk of CLS’ membership).

²³ I confess that the printed version of this sentence is slightly expurgated so that I can send my parents reprints.

²⁴ John Powell is the new Legal Director of the American Civil Liberties Union.

²⁵ Pat’s story was, characteristically, metaphorical and a touch surreal. At its most literal level, the story concerned Christmas shopping somewhere in Manhattan. See Williams, *supra* note 14.

stories we told each other. And it is precisely because CLS says it is committed to the enrichment of theory by such stories that our feeling of being shut out, of being talked for and about, but not to, is so galling.

To see this phenomenon in action we need look no further than to the way in which this Conference was initially planned. White folk decided to have a Conference about the concerns of colored folk and set an agenda that focused solely on what CLS could do for us. It apparently did not occur to the original organizers that the objects of the Conference might also serve in a more creative, more constructive, more personal and less reified role. Nor did it occur to them, as best I can tell, that a central focus of any such Conference should be what *we* can do for CLS. In what way is the work of CLS impoverished by our absence from the dinner table? We do have a hell of a lot to offer.²⁶

For example, I take it that everyone drawn to CLS is interested in specifying in concrete terms the dichotomy between autonomy and community. If so, talk to us. Talk TO us. Listen to us. We have lots to say, out of the depths of our own experiences. For many of us, our sense of community is a strength, a resource, something we struggle to hang onto, sometimes in the most peculiar ways, especially when the pull of autonomy is strongest. The day that I am awarded tenure, should that happy event occur, any pleasure that I experience will be more than offset by the extreme panic that I'm sure will set in; I will worry that I have been propelled (or more honestly that I have wittingly, selfishly and self-destructively propelled myself) two steps further away from so much that has nurtured me for so long. Even for those of us who have revelled in the sense of connectedness that, paradoxically, racial oppression has conferred upon us, there is a kicker: we don't have any *choice* in the matter. We can't choose to be a part of the community; we can't choose *not* to be a part of the community. It's not like deciding whether to go to CLS summer camp this year.

Not only do we have much to offer that persons with a different genealogy cannot otherwise apprehend, but what we

²⁶ See Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 Harv. C.R.-C.L. L. Rev. 301 (1987); Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323 (1987); Williams, *supra* note 14.

have to offer is *important*, as Bell Hooks so beautifully demonstrated. With creativity and an open mind, "we can," she informs us, "use information from the margin to transform how we think about the whole."²⁷

Let me turn briefly to the other tension between classical Critics and us pretenders that is not specifically rooted in differences over theory: the feeling or fear of many people of color that even as we are being silenced or ignored, our concerns are being *appropriated*. Let me offer just one simple anecdote to illustrate. A couple of days ago I described to a once lost, now found, friend, Trina Grillo, an article I had recently read that was in the form of a dialogue between Duncan Kennedy and Peter Gabel. The piece, entitled "Roll Over Beethoven,"²⁸ uses as an epigram the chorus of Chuck Berry's song of the same name:

Roll over Beethoven
Tell Tchaikovsky the news.
I got the rockin' pneumonia
Need a shot of rhythm and blues.

Trina's response was characteristically passionate, funny and insightful. Her *second* reaction was: "Gee, isn't it appropriate that they would identify themselves as rock stars." Her *first*

²⁷ To illustrate this point Professor Hooks at the Conference drew upon the work of Rollo May. She discussed how May, in his book *The Courage to Create* (1975), described his attempt to understand how children who are abandoned by their parents cope. May, after interviewing a number of subjects, noted a marked discrepancy between the responses of children from privileged circumstances and those of children born into the underclass. The latter were much more successful at coping with abandonment in a healthy and constructive way.

Professor Hooks observed that many, if not most, scholars would assume that this puzzling disparity was somehow explained by the unfathomable "pathology of the ghetto," and would therefore either trim the sample to exclude "atypical" households, or drop a footnote acknowledging the mystery of it all. May did neither; instead he explored further the results "from the margin" and discovered that the difference between the two groups lay in the extent to which the children knew and understood early on that abandonment might be their fate. In the privileged families, discord and dissolution were never discussed, and the truth was squelched and covered over. By contrast, underclass parents leveled with their kids about the precarious state of the family. The children, therefore, had a jump on coming to grips with their eventual abandonment and, more importantly, did not deeply resent their parents for keeping them in the dark.

The moral drawn by Professor Hooks from this story is that May's decision to take seriously the people at the margin of society taught him something of benefit to the whole, a lesson that likely would have escaped him had he focused solely on the center. Hooks illustrates this same phenomenon in a different context in her own book, *Feminist Theory From Margin to Center* (1984), especially in chapter one.

²⁸ Gabel & Kennedy, *Roll Over Beethoven*, 36 Stan. L. Rev. 1 (1984).

reaction was: "How dare they appropriate our music in that way."

That remark instantly resonated for me, but it was a bit of a surprise coming from Trina because when I first met her in college twenty-two years ago, she terrorized me into paying attention to Bob Dylan, despite my loudly-voiced protest that I didn't want to listen to any music "by that white boy" who, in any event, "can't even sing." Trina disarmed me by agreeing with both of my assessments, but pronouncing them irrelevant. And I learned that she was right—Dylan can't sing but he sure can preach, and he may be white but he is universal as well.

So it seemed unlikely that Trina was objecting in principle to white folks listening to Chuck Berry, and as we talked it became clear that her concern, and mine, was deeper and more specific. The employment, or "deployment" if you prefer, of "Roll Over Beethoven" as the title and epigram for a dialogue between two classic Crits suggested a deep concern for the needs of black folk and a heightened sensitivity to our culture and history. Yet nothing in the fifty-plus pages that followed the Chuck Berry chorus fulfilled that promise. Nor indeed did the piece provide "a shot of rhythm and blues"—Mantovani perhaps . . . or at best Windham Hill.²⁹

Let me end on a somewhat more positive note. At the minority caucus, we discussed not only our alienation from CLS but also our attraction to it. The latter subject produced a quite rich and full conversation. As Kimberle Crenshaw observed, one of the nice things about dealing with Crits is that you don't have to start from scratch in a conversation. You can start at step five or so, and *then* have an argument.³⁰ We are not unmindful of the fact that there are, within the CLS literature and in practice as well, instances of concern for the needs of people of color,³¹ albeit usually without recourse to our own "take" on

²⁹ Following my presentation, at least three dear friends told me that "the Windham Hill crack" hurt. No one owned up to listening to Mantovani. Let me state publicly that I enjoy listening to at least some of the music recorded on the Windham Hill label. I am particularly fond of George Winston. The point of my remark was not that Windham Hill lacks redeeming cultural value, but simply that it should not be confused with rhythm and blues, or with jazz, for that matter.

³⁰ Kimberle Crenshaw is Acting Professor of Law at the University of California at Los Angeles and one of the organizers of the Conference.

³¹ A notable example in the literature is Alan Freeman's *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 Minn. L. Rev. 1049 (1978). A notable example in practice is the decision to devote this Conference to racism as a phenomenon. Notwithstanding my criticisms about the way the Conference was put together and the anticipatory pouting of various

those needs. Questions of race aside, there is some terrific writing in the now-quite-voluminous CLS literature. Personally, for example, I look forward to reading anything written by Bob Gordon, Bill Simon or Karl Klare.³² And there are many wonderful *people* among the members of the Conference, a list that overlaps but is not necessarily coextensive with the list of folks I like to read. Furthermore, there are some quite wonderful scholars and human beings among the people who classify themselves as “fellow travelers,” the category in which most progressive people of color place ourselves. I’ve already mentioned the late Ed Sparer. Frank Michelman is another who rates an “A” in both respects.

Finally, I am quite drawn, intellectually and spiritually, to the work of many “Femcrits.”³³ Indeed the only reason I did not place some of them on my illustrative list of CLS favorites is that I’m not sure of the extent to which they have been included as part of the CLS family by those with the power to recognize kinship.³⁴ That said, I suspect that one of the likely outcomes of this Conference will be a deepening of solidarity between people of color and others in the fellow traveler category, and between people of color and Femcrits. More broadly, I hope that this Conference results in a sense of deepened solidarity among all of us here, regardless of race or gender, who have on occasion felt silenced, or at least stifled, who have felt devalued or undervalued, who have felt a bit manipulated, or at least pulled along in a direction we weren’t sure we wanted to follow.³⁵

powers that be, the simple decision to have the Conference at all is commendable, and of enormous benefit in these parlous times.

³² There are others I like to read as well. I shy away from listing them and their works since footnote one, by any other number, would smell as stale. It is also the case that I continue to find new favorites as I inch my way through a literature that is growing faster than I can read.

³³ Having declined to cite the male Crits I feel a bit stuck here. At the same time, I recognize that citation, even by outlanders, can confer legitimacy upon scholars who do not inherit it by a combination of birthright and institutional privilege. My Solomonic solution is to cite a single recent piece, written by my friend and colleague Lucinda Finley, that is a “must read” in and of itself, and that draws on the work (i.e., check out the footnotes) of an impressive array of feminist legal scholars. See Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 Colum. L. Rev. 1118 (1986).

³⁴ It was suggested to me, following my remarks, that my implicit recognition of the prevailing statusarchy serves, in a real sense, to perpetuate it. Upon reflection, I’m inclined to agree. I should have realized that in order to transcend, one sometimes has to transcend.

³⁵ During the plenary session on the last day of the Conference, it was suggested

that white males had felt silenced by *my* remarks. I was instantly reminded of my own response, at age seven or so, to a playmate whose mother had recently died. "I know how you feel," I said knowingly. "We just buried my favorite turtle after it softened to death."

It was also suggested that an attempt had been made to "kill the father." Insofar as the comment was meant to evoke Freud, I will charitably let it pass. There is, however, a sense in which the speaker was right. I do think that the time has come to say goodbye to Bwana, the Great White Father. However, I, for one, have no taste for blood. The smart ruler will, upon sensing that an aroused populace has taken to the streets in the direction of the palace, dash to the front of the crowd, baton in hand, and proclaim the whole thing a victory parade. Far from wanting to kill the father, I want the person inside that role to take his rightful place as my brother. Older brother, perhaps, in the ways of the world we would reenvision together if not in the ways of the one we presently inhabit—wiser even. But brother, nonetheless.

