

# CRITICAL RACE THEORY

MODEL MEASURE  
AND  
IMPLEMENTATION

in Curriculum



**CRT Forward**  
*Tracking Project*

**UCLA**

School of Law  
**Critical Race Studies**

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# ACKNOWLEDGMENTS

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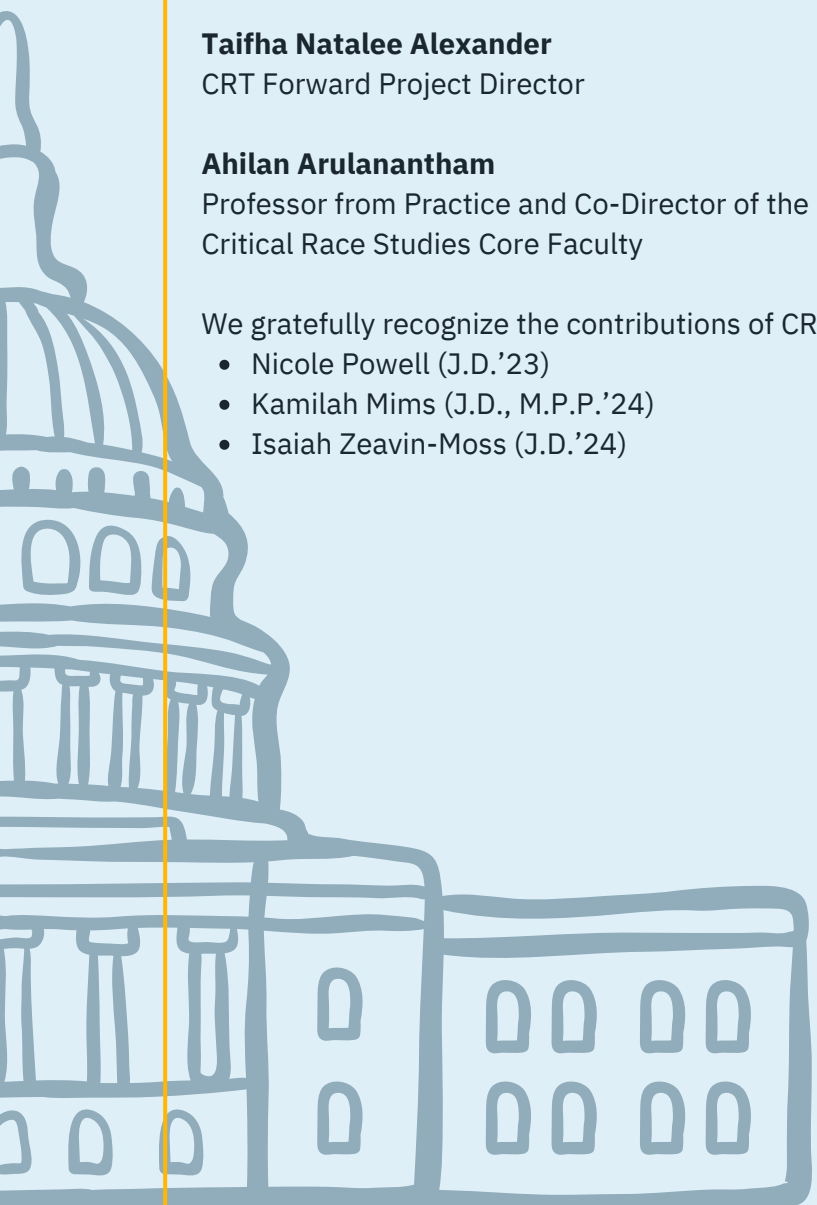
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# PREFERRED CITATION

Taifha Natalee Alexander & Ahilan Arulanantham, *Critical Race Theory Model Measure and Explanatory Memorandum*, UCLA School of Law Critical Race Studies, CRT Forward (2024).

# I. INTRODUCTION



This memorandum aims to explain the purpose of the following model measure. The proposed legislation would preserve the freedom of teachers to teach—and students to learn—about racism, including its history and on-going effects in this country. It does this by providing a framework through which state governments can encourage the teaching and learning of Critical Race Theory ("CRT") principles as a lens through which to teach and learn about racial inequality in America, its history, and its current manifestations, to enhance K-12 public school curricula.

We believe the model measure should be of interest to a broad range of policymakers but imagine it may be most useful to those in progressive states who wish to ensure students and teachers have access to truthful information about race and systemic racism to build on critical understandings of racial inequality, including its history and its enduring effects.

The model measure would accomplish that goal by describing CRT concepts and then prohibiting state or local efforts to ban teachings, research or trainings that are in alignment with those principles. An understanding of the legislation will also serve to facilitate a deeper comprehension of CRT and its vitality in securing a thriving multiracial democracy for all.

*Information as of publication (Summer 2024). Please refer to the CRT Forward Tracking Project online for updated details and resources: [crtforward.law.ucla.edu](http://crtforward.law.ucla.edu), and Critical Race Studies at UCLA School of Law at [law.ucla.edu/academics/centers/critical-race-studies](http://law.ucla.edu/academics/centers/critical-race-studies).*



# FOUNDATIONAL PRINCIPLES OF CRT

Critical Race Theory emerged as a theoretical and practical approach to scrutinize the persistence of racial inequality in American society, despite significant civil rights advancements.<sup>1</sup> Critical Race Theory can be defined as an approach for understanding that racism is not merely a product of individual bias but a systemic issue, deeply embedded within the laws,<sup>2</sup> policies, and institutional frameworks of society. It suggests interventions and changes<sup>3</sup> to rectify such inequities. The following model measure defines the kinds of educational content that should be permitted in classrooms to allow students to deepen their understanding of racial injustices through learning CRT concepts.



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## Core Principles

### A. Race as a Social Construct<sup>4</sup>

At the core of CRT is the understanding that race lacks any inherent biological foundation; rather, race is a product of social and institutional processes with tangible consequences. Race has shaped and been shaped by law; it is not a fixed, objective category. This perspective invites a reevaluation of racial categories, emphasizing their fluidity and the role of power dynamics in the construction of race.

#### Race as a Social Construct

Race lacks any inherent biological foundation. It is a product of social and institutional processes. Shaped by law; it is not a fixed, objective category.

#### Systemic Nature of Racism

Racism transcends individual prejudices. Even laws and policies enacted without explicit racial animus can constitute and reify racial inequities.

#### Intersectionality and Anti-Essentialism

Racial and other social identities an individual possesses must be considered to fully understand the forms of discrimination they face in the world.

#### Critique of Colorblindness

By overlooking the realities of race and structural racism, colorblind policies can inadvertently reconstitute racial inequities. Race-based disparities require race-conscious strategies.

#### Inclusivity Beyond the Black/White Binary

The experiences of other historically subordinated groups and broader perspective are crucial for developing inclusive, equitable solutions to racial injustices.

# Core Principles continued

## *B. Systemic Nature of Racism<sup>5</sup>*

Racism transcends individual prejudices, manifesting instead as a structural phenomenon. Laws and policies, even those enacted without explicit racial animus, can constitute and reify racial inequities. This view shifts the focus from personal failings to the need for systemic reforms, advocating for changes in legal and policy frames that address and dismantle racial disparities.

## *C. Intersectionality and Anti-Essentialism<sup>6</sup>*

CRT exposes the complexities of discrimination through the concepts of intersectionality and anti-essentialism. More specifically, reducing individuals to a single aspect of their social identities does not allow for an understanding of the multifaceted issues a person might face. As a result, CRT principles dictate that the racial and other social identities an individual possesses must be considered to fully understand the forms of discrimination they face in the world. CRT recognizes the varied and nuanced ways in which racism intersects with other forms of oppression – including gender, disability, and others – and advocates for tailored solutions that address the multifaceted nature of discrimination.

## *D. Critique of Colorblindness<sup>7</sup>*

CRT challenges the efficacy of colorblind approaches to combating discrimination. By overlooking the realities of race and structural racism, colorblind policies can inadvertently reconstitute racial inequities. As a result, CRT principles advocate for race-conscious strategies to address and rectify race-based disparities.

## *E. Inclusivity Beyond the Black/White Binary<sup>8</sup>*

CRT extends beyond the traditional focus on Black and White racial groups to encompass the experiences of other historically subordinated groups. This broader perspective is crucial for understanding the manifestations of racism and for developing inclusive, equitable solutions to racial injustices.

## IMPLICATIONS FOR EDUCATION POLICY

The following model measure affirms the importance of teaching about racism in educational settings, and would, if enacted, protect educators who teach CRT.

Integrating CRT into age-appropriate curriculum has the potential to provide students with a nuanced understanding of racial dynamics and the historical and contemporary impacts of racism. By introducing these foundational concepts, students can develop into more informed, critical, and empathetic members of their communities. Further, approaching curriculum in this manner helps to successfully highlight the experiences of all students in the classroom. In fact, CRT allows students to critically examine historical events and societal structures through a racial equity lens. The CRT principles described in the model legislation could be seamlessly integrated into various curricula, including social studies, history, civics or government, and English or literature.



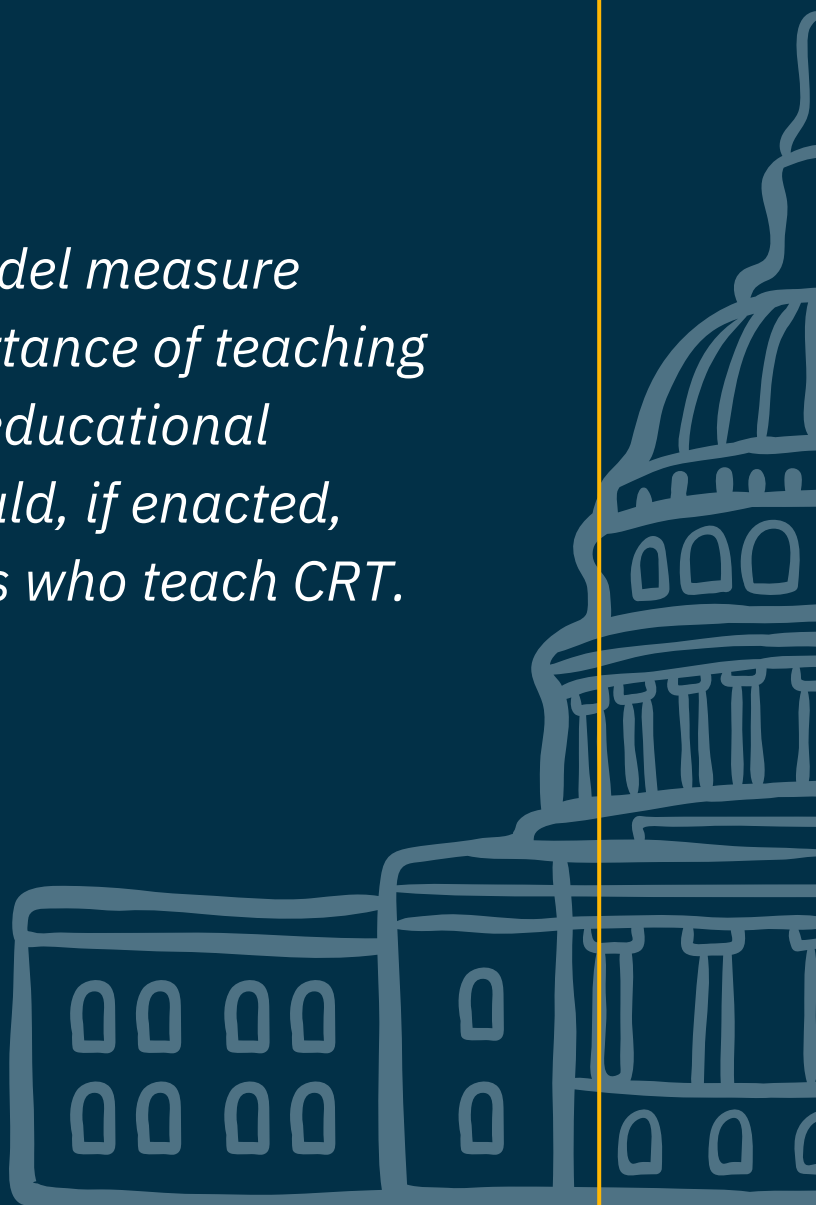
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## II. MODEL MEASURE



*The following model measure affirms the importance of teaching about racism in educational settings, and would, if enacted, protect educators who teach CRT.*



# Critical Race Theory (CRT) Forward Act

## MODEL STATE EDUCATION BILL

UCLA School of Law Critical Race Studies Program | CRT Forward Project

June 2024

To protect teachers who educate students in Critical Race Theory (CRT) concepts and supports students' freedom to gain an accurate understanding of CRT.

### **CRT Forward Act**

AN ACT relating to education; encouraging school districts to support and protect - rather than punish - teachers, administrators and other employees who instruct students who teach social studies, history, civics, literature, or any other subject in whole or part from the perspective of CRT. Amends the [State] Education Code to establish that the teaching of CRT shall not be prohibited or penalized in any manner.

### **Definitions.**

- (a) Critical Race Theory ("CRT"). A theory and a practice that seeks to understand why racial inequality persists, despite civil rights advancements, in a society that has explicitly condemned racism and has repeatedly adopted laws and policies intended to eliminate it.
- (b) "Government." Any federal, state, or local department, office, agency, state board, commission, public corporation, or other organizational unity of or created under the executive branch of federal, state, or local government.
- (c) "School district." Any [state] public entity, which is not a subdivision of a county, organized for the purpose of conducting and maintaining public schools within a geographic area determined by law.
- (d) "Public School." Any [state] kindergarten through 12th grade schools that are under the control of a school district, county office of education, the state, or a charter school that is operating pursuant to the ["state education code".]



## Findings.

The Legislature finds the following:

- (a) Due to the state-wide and national proliferation of anti-CRT measures in K-12 schools, higher education, government agencies and private businesses, a legislative necessity exists to protect the teaching of CRT in educational institutions, safeguarding intellectual freedom and ensuring that educators and students have access to truthful information about race, racism, systemic racism, and CRT as a tool to advance racial and social justice.
- (b) Data from the UCLA School of Law CRT Forward Tracking Project demonstrates that as of June 2024, a total of 247 local, state, and federal government entities across 49 states and the District of Columbia have introduced 807 anti-CRT bills, resolutions, executive orders, opinion letters, statements and other government instruments aimed at suppressing, banning, or severely restricting anti-racist teaching, training, research, and curriculum.
- (c) According to CRT Forward data, approximately 90% of all enacted anti-CRT measures specifically target K-12 education. However, recent data trends indicate a strategic shift, with an increasing focus on higher education compared to previous years.

The Legislature adopts the following widely recognized components of CRT:

- (a) Racism is not merely a product of individual bias, but a systemic issue deeply embedded within law, policies, and institutional frameworks of American society. This understanding shifts the focus from personal failings to the need for systemic reforms advocating for changes in legal and policy frames that address and dismantle racial disparities.
- (b) Race lacks any inherent biological foundation. Rather, race is a product of social and institutional processes with tangible consequences. This perspective invites a reevaluation of racial categories, emphasizing their fluidity and the role of power dynamics in the construction of race.
- (c) Discrimination occurs on multiple axes based on an individual's membership in various social identity groups. This social reality necessitates a multifaceted approach to address discrimination, acknowledging the complex ways race intersects with other forms of oppression, including gender, disability, and others.
- (d) Colorblind policies, by overlooking the realities of race and structural racism, can inadvertently reconstitute racial inequities. Race-conscious strategies are needed to address and rectify race-based disparities.

- (e) CRT extends beyond the traditional focus on Black and White racial groups to encompass the experiences of other historically subordinated racial and ethnic groups. This broader perspective is crucial for understanding the manifestations of racism and developing inclusive, equitable solutions.
- (f) Despite significant civil rights advancements, racial inequality persists, underscoring the need for a theoretical framework like CRT that focuses on the persistence of racial inequity and advocates for necessary interventions.
- (g) Teaching CRT in educational settings is crucial for providing students with an understanding of racial inequality, historical and contemporary impacts of racism, and fostering a more informed, critical, and empathetic society.

THE PEOPLE OF THE STATE OF ["STATE"], REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**1. Nothing in this Act shall be construed or applied to inhibit or violate the rights protected by the Constitutions of this state and the United States of America or undermine intellectual freedom and free expression.**

**2. For purposes of this section, the following shall be understood as Critical Race Theory concepts:**

- (a) No race is innately superior to another.
- (b) There is no “essential” definition of any race that can be identified based on specific physical, moral, intellectual, or other traits that are inherent to members of particular racial groups. Race as a means for categorizing humans according to their appearance or other phenotypical characteristics, is not based in any inherent biological quality. Instead, race has been constructed through social and institutional processes, like law<sup>1</sup>, throughout history. In this sense, race is a social construct.
- (c) Critical Race Theory is both a theory and a practice which seeks to illuminate the relationship between law and racial power while also advocating for racial equality.
- (d) The structures, laws, and policies of governance in this country have contributed to racial subordination by causing racially-disparate outcomes in various sectors of society. These structures, laws, and policies remain widespread in the United States and are often heavily insulated from, and resistant to, change.
- (e) Racism embedded in societal structures can be disrupted and replaced with structures, concepts, and policies that guarantee racial equality.
- (f) Neither the United States nor any state is irredeemably racist.

- (g) Racism can become enshrined into law and perpetuated by individuals who themselves are not acting with any personal racial animus. This means that racism is a structural phenomenon rather than a problem that derives from the failure on the part of individuals to treat people equally.
- (h) American civil rights advancements and regression should be understood through a framework of reform and retrenchment in which peaks of civil rights progress are often followed by valleys of civil rights regressions.
- (i) Intersectionality demonstrates that discrimination does not occur on a single axis but on multiple axes based on an individual’s identification with social identity groups.
- (j) Anti-essentialism is the understanding that reducing individuals to a single aspect of their social identities does not allow for the multifaceted ways in which discrimination may arise. As a result, anti-essentialist principles require attention to the racial and other social identities an individual possesses at the same time.
- (k) CRT recognizes that colorblindness does not ensure nondiscrimination because colorblindness obscures and ignores the presence of structural racism. As a result, CRT rejects the concept of colorblindness and asserts that remedies to address racial inequities must be race conscious.
- (l) CRT extends beyond the Black/White Binary, or the common conception of racism as Blackness vs. Whiteness, to include other racial and ethnic groups in their struggles and triumphs to secure civil and human rights.

**3. This Act prohibits** school districts from firing, disciplining, or otherwise engaging in adverse employment action against teachers, administrators, other employees, or contractors who use CRT to instruct, train, or otherwise support student curricular and co-curricular learning.

**4. Preemption of Rules, Regulations, Policies and Statements.**

- (a) In General – No institution of state or local government, including but not limited to any school district or public school, may adopt, maintain, enforce, prescribe, or continue in effect any measure or provision having the force and effect of restricting the teaching of CRT or any CRT Concepts, as defined in Section 2.
- (b) State Law Preservation – Nothing in this Act may be construed to preempt, displace, or supplant federal, state or local civil rights laws.
- (c) Authority – This Act recognizes the authority of educational institutions to establish guidelines, procedures, and policies to ensure teaching and learning occur in age-appropriate educational settings.

**5. Effective Date.**

This Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

## III. SOURCES

<sup>1</sup> See CRT definition on CRT Forward Tracking Project FAQ Page. Taifha Natalee Alexander, LaToya Baldwin Clark, Isabel Flores-Ganley, Cheryl Harris, Jasleen Kohli, Paton Moody, Nicole Powell, Kyle Reinhard, and Noah Zatz. CRT Forward Tracking Project FAQ [05/1/2024]. UCLA School of Law Critical Race Studies Program, [www.crtforward.law.ucla.edu](http://www.crtforward.law.ucla.edu).

<sup>2</sup> See generally Reginald Oh & Thomas Ross, Judicial Opinion as Racial Narrative in *Race Law Stories* (2014). In this piece, the authors discuss the ways in which judicial opinions are revered in the public sphere, rendering their words with legitimacy, and creating truths which enshrine the biases of individual judges into our collective memories about history and racial hierarchies.

<sup>3</sup> Since the founding of CRT, scholars have suggested and dreamed of interventions that would allow for solutions to structural racism. The audacity to dream of a better, more perfect Union suggests that there is space to change the current structures and, in fact, they can be changed. For example, Derrick Bell's broader body of work including, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987) discussed the complexities of affirmative action and the need to address systemic racial inequality through policies that consider the interest of marginalized communities. Bell's writings and ideas have directly contributed to strategies to support racial justice efforts. Further, Crenshaw's theory of intersectionality has paved the way for understanding how cognizable discrimination claims can be brought in courts when individuals have experienced discrimination based on multiple axis.

<sup>4</sup> The Court in *Hudgins v. Wright* found that race is based on phenotype and outlines specific physical characteristics that are attributable to the Black, Indigenous, and White races and essentially creates a test to determine whether a person, based on phenotype, is presumed to be a free person or enslaved. *Hudgins v. Wright*, 11 Va. (1 Hen. & M.) 134 (1806).

In *Theophanis v. Theophanis* (1932), the Court finds that a person's phenotype and performance determines their race. The Court in *Theophanis* identifies specific characteristics, like neatness and professionalism, that it deems are only attributable to the White race to find that the woman in the case is White. *Ozawa v. U.S.*, 260 U.S. 128 (1922). The Court in *Ozawa* found that the Naturalization Act of 1906 does not allow for Japanese people to apply for citizenship because Japanese people were not considered "free white people" as established under the Act. In *Abdullahi v. Prada* (2008), the Court found that there are different factors to take into consideration when determining race like common ancestry and distinct physical traits. In *Saint Francis College et al. v. Al-Khazraji*, 481 U.S. 604 (1987), the Court found that ancestry or ethnicity is equivalent to race. In *Malone & Malone v. David Haley*, Mass. Sup. Jud. Ct. Suffolk Cnty. July 25, 1989, the Court found that merely identifying as a race is not enough to establish race, instead a person must show that: (a) they identify as a member of a particular race and (b) others within the race recognize the person as a member. The court also found that documentary evidence, such as a birth certificate or photograph, or visual observations of a person's features were sufficient to establish race. In *People v. Hall*, 4 Cal. 399 (1854), the Court determined whether a Chinese person could testify against a White defendant. The California Supreme Court in *People v. Hall* racialized the Chinese person as Black or Indigenous to uphold the provision that "No [Indigenous Person] or [Black Person] shall be allowed to testify as a witness in any action in which a White person is a party." The provision was later amended to state that "No [Indigenous Person]...or [Asian], or Chinese [Person] shall be permitted to give evidence in favor or against any White person. In *Gong Lum v. Rice*, 275 U.S. 78 (1927), the Court found that a Chinese child is considered "Colored" and therefore unable to attend an all-White school.

<sup>5</sup> In *Faces at the Bottom of the Well* (1992), Derrick Bell argues that racism does not merely operate as discrimination and mistreatment between individual actors, but instead is a permanent phenomenon, embedded in US institutions. In *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color* (1991), Kimberlé Crenshaw argues that even when specific forms of structural racism dissipate, structural racism continues to persist through different mechanisms in response to changes in law, society, and policy. A salient example of this is the abolishment of slavery followed by the institution of Jim Crow, Juan Crow, and Black Codes.

<sup>6</sup> See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stanford L. Rev.* 581, 585 (1990). Harris defines gender essentialism as "...the notion that a unitary, "essential" women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience. The result of this tendency toward gender essentialism, I argue, is not only that some voices are silenced in order to privilege others (for this is an inevitable result of categorization, which is necessary both for human communication and political movement), but that the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice of "We the People"- among them, the voices of [B]lack women."

See also Angela Onwuachi-Willig, *The Admission of Legacy Blacks*, 60 *VANDERBILT L. REV.* 1142, 1169 (2007). In *Admission of Legacy Blacks*, Onwuachi-Willig argues that among the larger category of Black Americans, there exists disparate and varied access to elite education based on several subgroups, including multiracial parentage, or being the child of an African or Caribbean immigrant.

<sup>7</sup> Devon W. Carbado, *Critical What What*, 43 *CONN. L. REV.* 1593 (2011); See generally Neil Gotanda, *A Critique of Our Constitution is Colorblind*, *Stanford L. Rev.* (1991).

<sup>8</sup> Juan F. Perea, *The Black/White Binary Paradigm of Race: The Normal Science of American Racial Thought*, 10 *La Raza L.J.* 127 (1998); See Laura Gomez, *Manifest Destinies: The Making of the Mexican American Race* (2007). In *Manifest Destinies*, Laura Gomez describes how judicial opinions and international treaties racialized Mexican-Americans as White while also creating second-class citizenship for Mexican American citizens of the United States. See also Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 *Harvard Civ. Lib. Rev.* (2005). In Jerry Kang's article, he explains that Asian-Americans also experience unfavorable treatment and "regimes of negative action" in various US educational institutions. See also Angela Riley, *Owning Red: A Theory of Indian (Cultural) Appropriation*, 94 *Texas L. Rev.* (2016). In this article, Angela Riley describes the ways in which Indigenous culture is consistently appropriated in popular media which denigrates and diminishes important Indigenous cultural products. The Black/White Binary is evident when reviewing legal canon. In Constitutional Law canon *Plessy v. Ferguson* is discussed, but not *Gong Lum v. Rice* - a case that also cemented "separate but equal" on racial lines. Similarly, the Constitutional Law canon focuses on *Brown v. Board of Education*, but *Mendez v. Westminster* is not - a case decided six years before *Brown* where the U.S. District Court for the Southern District of California found language-based segregation practices were in violation of the Constitution.

## ADDITIONAL RESOURCES

- **Critical Race Theory: The Key Writings That Formed the Movement** by Neil Gotanda, Garry Peller, Kendall Thomas & Kimberlé Crenshaw eds.
- **Critical Race Theory: An Introduction** by Richard Delgado; Jean Stefancic
- **Critical Race Theory: A Primer (Concepts & Insights)** by Khiara M. Bridges
- **On Critical Race Theory: Why It Matters & Why You Should Care** by Victor Ray

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