

A RPL IN TIME:
A BROWN BUFFALO’S OBSERVATIONS ON THE ONGOING
STRUGGLE OF CIVIC AND RACIAL NATIONALISM IN
HIGHER EDUCATION – CIRCA 2023

TOM I. ROMERO, II[†]

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I. AUTHOR’S TESTIMONIO: “I AM A CHICANO BY ANCESTRY AND A
BROWN BUFFALO BY CHOICE.”¹

About the same time that the Rocky Mountain Collective on Race, Place & Law (RPL) was founded, I published *The Color of Water: Observations of a Brown Buffalo on Water Law and Policy in Ten Stanzas (Color of Water)*.² In the article, I deliberately claimed literary, analytical, and spiritual heritage to Mexican-American lawyer, Gonzo journalist, and complicated human: Oscar Zeta Acosta.³ Before his mysterious disappearance and likely death in 1974, Acosta lived a series of fascinating lives and held competing and sometimes conflicting, if not problematic, identities.⁴

[†] Ph.D.; J.D.; Founding Member, Rocky Mountain Collective on Race, Place & Law; Professor of Law, Sturm College of Law; Affiliated Faculty, University of Denver Department of History; Faculty Director, Interdisciplinary Research Institute for the Study of (in)Equality, University of Denver. A special thank you to the editors of the *Denver Law Review* for the care they have given this Essay. They, along with all of my students past and present, have informed the experiences I share and inspire me every day to do my part in creating a transformative law school experience. I dedicate this Essay to the memory of Professor Christopher Lasch, one of the founders of RPL. Rest in power my friend.

1. OSCAR ZETA ACOSTA, *THE AUTOBIOGRAPHY OF A BROWN BUFFALO* 199 (First Vintage Books ed. 1989) (1972) [hereinafter ACOSTA 1972].

2. Tom I. Romero, II, *The Color of Water: Observations of a Brown Buffalo on Water Law and Policy in Ten Stanzas*, 15 U. DENV. WATER L. REV. 329 (2012), *republished in* 1 U. MIAMI RACE & SOC. JUST. L. REV. 107 (2011) [hereinafter Romero, *The Color of Water*].

3. *Id.* at 332.

4. Acosta’s life is detailed in ILAN STAVANS, *BANDIDO: OSCAR “ZETA” ACOSTA AND THE CHICANO EXPERIENCE* (1996). Scholars have noted Acosta’s emergence as the lawyer of the Chicano Movement and his seminal role in connecting the realities of law with that of a marginalized racial identity in the United States. See Ian F. Haney López, *Protest, Repression, and Race: Legal Violence*

According to one account:

There is Acosta the anarcho-libertarian *Chicano* raised in California's Riverbank/Modesto and who makes his name as a Legal Aid lawyer in Oakland and Los Angeles after qualifying in San Francisco in 1966. There is the Airforce enlistee who, on being sent to Panama, becomes a Pentecostal convert and missionary there (1949-52) before opting for apostasy and a return to California. There is the jailee in Ciudad Juárez, Mexico, in 1968, forced to argue in local court for his own interests in uncertain street Spanish (or *caló*) after a spat with a hotelkeeper. Finally there is the Oscar of the barricades, the battling lawyer of the schools and St. Basil's protest in 1968. This is the "buffalo" who becomes *La Raza Unida* independent candidate for Sheriff of Los Angeles in 1970, who regularly affirms his first allegiance by signing himself "Oscar Zeta Acosta, Chicano lawyer," and who finally leaves for Mexico in despair, madness even, at the internal divisions of *Chicano* politics.

To these, always, have to be added the rumbustious tequila drinker and druggie ten years in therapy, the hugely overweight ulcer sufferer who spat blood, the twice over divorcee, and the eventual *desaparecido* in 1974 aged 39 who was last seen in Mazatlán, Mexico, and whose end has long been shrouded in mystery. Was he drug or gunrunning, a kind of *Chicano* Ambrose Bierce who created his own exit from history, or a victim of kidnap or other foul play? Above all, from a literary perspective, there has to be Acosta the legendary "first person singular" writer of *The Autobiography of a Brown Buffalo . . .* and *The Revolt of The Cockroach People*.⁵

My own lineal connection to Acosta derives directly from his identity as Chicano,⁶ a racial justice activist and lawyer, a historian, and a

and the Chicano Movement, 150 U. PA. L. REV. 205, 215, 232, 235 (2001); R. Andrés Guzmán, *Oscar "Zeta" Acosta and Generic Politics: At the Margins of Identity and Law*, 16 THE NEW CENTENNIAL REV. 173, 178–85 (2016). Acosta's own role and friendship to Hunter S. Thompson and "Gonzo" journalism—each displayed as part of a larger 1960s counter-culture movement—are noted in A. Robert Lee, *Chicanismo's Beat Outrider? The Texts and Contexts of Oscar Zeta Acosta*, 27 COLL. LITERATURE 158, 164, 166, 170, 172 (2000) and Bruce-Novoa, *Fear and Loathing on the Buffalo Trail*, 6 MELUS 39, 39, 43–44 (1979). As Bruce-Novoa details, Acosta was Hunter S. Thompson's "Dr. Gonzo" and for that reason, he personified a type of journalism that was patently unobjective in detailing outrage at the inequities, hypocrisy, and corruption of the American Dream. Gonzo journalism was therefore a way "to outrage his readers and commit mayhem on the event." Bruce-Novoa, *supra* note 4, at 39–40, 43–44. A flawed representation of his times, Acosta's own writings and life reflected sexism, homophobia, and racism that "all posed a potential threat to the integrity of both the author and the [Chicano] movement." Louis Mendoza, *On Buffaloes, Body Snatching, and Bandidismo: Ilan Stavans's Appropriation of Oscar Acosta and the Chicano Experience*, 26 BILINGUAL REV./LA REVISTA BILINGÜE 79, 83 (2002).

5. Lee, *supra* note 4, at 164–65.

6. The term "Chicano" was embraced by Mexican-American activists in the 1960s to "decolonize" Euro-centric terms like Hispanic, Hispano, and Spanish-American to describe the community. See David Bowles, *Mexican X Part VI: And the Xicanos, Ese?*, MEDIUM (Oct. 14, 2018), <https://davidbowles.medium.com/mexican-x-part-vi-and-the-xicanos-ese-91534614ad1c>. Though it has long-been, and continues to be, a contested term, the term, including its most recent manifestation as Xhicanx, continues to resonate for many Mexican-Americans as way to signify both a non-White identity and oppositional politics against institutional and systemic racism and White supremacy. See

chronicler of institutional and systemic inequity. In *Color of Water*, I reimagined one of the most potent symbols of water lawyers, the Water Buffalo,⁷ to deliberately connect water law, policy, and practice to Critical Race Theory (CRT) and the related fields of race and ethnic studies. As a Mexican-American by heritage and a Chicana race scholar by choice, I have embraced the identity as a Brown Buffalo explicitly⁸ and implicitly⁹ and the resulting responsibility of Brown Buffaloes to expose systemic and institutional racism in “colorblind” areas of law and history.

Indeed, I am unapologetically a Critical Race Scholar. Though my academic values were first forged on the grounds of the University of Michigan in the mid-to-late 1990s¹⁰ and in the annual meetings of Latino & Latina Critical Legal Theory (LatCrit) in the early 2000s,¹¹ the RPL community we created nurtured and gave me the courage to write directly and creatively as a Brown Buffalo. I therefore mimic Acosta’s own multi-dimensionality in “reporting crucial events.”¹² Like Acosta, “I speak as a historian, a recorder of events with a sour stomach. I have no love for

RJ Marquez & Rick Medina, *San Antonio Professor Explains Origins, Rebirth of Term Chicano*, KSAT (Oct. 18, 2021, 12:51 PM), <https://www.ksat.com/news/local/2021/10/18/san-antonio-professor-explains-origins-rebirth-of-term-chicano/>. I have written about the legal implications of this and related terms. Tom I. Romero, II, *La Raza Latina?: Multiracial Ambivalence, Color Denial, and the Emergence of a Tri-Ethnic Jurisprudence at the End of the Twentieth Century*, 37 N.M. L. REV. 245, 249–54 (2007) [hereinafter Romero, *La Raza Latina*].

7. Romero, *The Color of Water*, *supra* note 2, at 331–34.

8. Tom I. Romero, II, *The Color of Equity: Observations of a Brown Buffalo on Indigenous Water Rights, Japanese Internment, and the Socio-Legal History of the Colorado River*, 33 W. LEGAL HIST. 159, 162 (2023); Tom I. Romero, II, *The Color of Local Government: Observations of a Brown Buffalo on Racial Impact Statements in the Movement for Water Justice*, 25 CITY U. OF N.Y. L. REV. 242, 297–98 (2022); Tom I. Romero, II, *A Brown Buffalo’s Observations on Color (Blindness), Legal History, and Racial Justice in the Rocky Mountain West*, 2022 UTAH L. REV. 751, 753–54 (2022).

9. Tom I. Romero, II, *How I Rode the Bus to Become a Professor at the University of Denver Sturm College of Law: Reflections on Keyes Legacy for the Metropolitan, Post-Racial, and Multiracial Twenty-First Century*, 90 DENV. U. L. REV. 1023, 1023 (2013); Romero, *La Raza Latina*, *supra* note 6, at 245–48; Tom I. Romero, II, *Observations on History, Law, and the Rise of the New Jim Crow in State-Level Immigration Law and Policy for Latinos*, 66 AM. Q. 153, 154–55, 158–59 (Mar. 2014); Tom I. Romero, II, *Ditches and Desirability: Regulating Race through the Flow and Quality of Immigration and the Application of Western Water Law in the Nineteenth and Early Twentieth Centuries*, in BEYOND THE BORDERS OF THE LAW: CRITICAL LEGAL HISTORIES OF THE NORTH AMERICAN WEST 162 (Katrina Jagodinsky & Pablo Mitchell eds., 2018); Tom I. Romero, II, *A War to Keep Alien Labor Out of Colorado”: The “Mexican Menace” and the Historical Origins of Local and State Anti-Immigration Initiatives*, in STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY 63, 64–65 (Carissa Byrne Hessick & Gabriel J. Chin eds., 2014).

10. Romero, *La Raza Latina*, *supra* note 6, at 247–48.

11. Roberto L. Corrada, *RPL, CRT, & LatCrit: “Finding the ‘Me’ in the Legal Academy,”* 101 DENV. L. REV. 485, 487–88 (2024). LatCrit serves as the current intellectual home of Critical Race Theory, which emerged out of a workshop held in Madison, Wisconsin in the summer of 1989. See Kevin Brown, *Critical Race Theory Explained by One of the Original Participants*, 98 N.Y.U. L. REV. ONLINE 91, 93 (2023); Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1262–64 (2011); David M. Trubek, *Foundational Events, Foundational Myths, and the Creation of Critical Race Theory, or How to Get Along with a Little Help from Your Friends*, 43 CONN. L. REV. 1503, 1506–07 (2011). LatCrit’s emergence out of CRT is detailed in Francisco Valdes & Stephen W. Bender, *LATCRIT: FROM CRITICAL THEORY TO ACADEMIC ACTIVISM* 1–25 (2021).

12. Oscar “Zeta” Acosta: *Letter to Playboy*, XICANO POETRY DAILY (July 7, 2008), <https://xicanopoetrydaily.wordpress.com/2008/07/07/oscar-zeta-acosta-letter-to-playboy/>.

memories of the past.”¹³ As Acosta did, I question the utility and ongoing persistence of the Black–White color line in the United States.¹⁴

In ways that echo Acosta’s own biographical writings, I have felt both like an outsider and an outcast in the academic legal community.¹⁵ And just as Acosta’s oppositional conscious as a lawyer for the Chicano Movement was forged long before he was born, I am the byproduct of many generations of wise and humble “farmers and hunters” in this land once known as Aztlan.¹⁶ For this reason, I have had to fight for my own voice, chart a distinct path, and embrace fellow travelers in the larger struggle of dismantling racial inequity.¹⁷

I also make the claim that every member of RPL is a Brown Buffalo by choice. In the context of the staid and sterile halls of legal education, we are Acosta’s “*vatos locos*” who, in our own distinct ways, throw “some molotov” against legal tradition and orthodoxy with purpose and precision.¹⁸ In so doing, we are just “mad” enough to believe that we can fundamentally change how law school courses should be taught, how lawyers should be trained, and how the law should work in service of the most vulnerable among us. RPL is one of my most important herds, and collectively we rumble through the halls of the University of Denver Sturm College of Law (Sturm) to make legal knowledge more relevant, legal education more humane, and the bar more committed to dismantling institutional and systemic injustice in our time.

II. THE “AGE OF CONFUSION”

In June of 2023, the United States Supreme Court, in *Students for Fair Admissions v. Harvard (SFFA)*,¹⁹ struck what seemed to be a death blow to the use and consideration of race by institutions of higher education to inform acceptance decisions.²⁰ The culmination of a body of jurisprudence about the deployment of racial classifications by colleges and

13. ACOSTA 1972, *supra* note 1, at 18.

14. Letter from Oscar “Zeta” Acosta to Willie L. Brown, Jr. (1970), in OSCAR “ZETA” ACOSTA: THE UNCOLLECTED WORKS 111, 113–14 (Ilan Stavans ed., 1996) (“When you speak of civil rights, civil liberties, etc. you think of black vs. [W]hite. When there’s talk of investigation of these rights, of federal grants for education, of cheap housing, in other words, discrimination, you speak of Negroes. At the Chinese banquet when all the big whigs [sic] got up to talk, they mentioned first Negroes, and, second Chinese . . . And that’s the way it goes. All America is divided into three parts, [W]hite, black and yellow . . . How about me?” (alterations in original)).

15. “We were outsiders because of geography and outcasts because we didn’t speak English and wore short pants.” ACOSTA 1972, *supra* note 1, at 77.

16. “‘But we are not Mexican,’ the people cry out. ‘We are Chicanos from Aztlan. We never left our land. Our fathers never engaged in bloody sacrifices. We are farmers and hunters and we live with buffalo.’” OSCAR ZETA ACOSTA, THE REVOLT OF THE COCKROACH PEOPLE 161 (First Vintage Books ed. 1989) (1973) [hereinafter ACOSTA 1973].

17. “[S]o we had to fight every single day.” ACOSTA 1972, *supra* note 1, at 77.

18. “Right now the bastards are probably brewing up some molotov for tonight’s action and here I’m being called the *mastermind* . . . They are the *vatos locos*! *Nobody* tells crazy guys what to do . . . It is *they* who have converted me and driven me to this brink of madness.” ACOSTA 1973, *supra* note 16, at 248.

19. 600 U.S. 181 (2023).

20. *Id.* at 181, 197 n.1, 228–30 (2023) [hereinafter SFFA].

universities to achieve substantive diversity, equity, inclusion (DEI) and justice goals,²¹ Chief Justice John Roberts’s majority opinion is problematic for two reasons. First, the opinion signaled the end of an era in the ongoing battle for racial justice on college campuses, where there was tacit recognition of the nation’s ongoing and still unresolved struggle with racial inequality.²² Second, the opinion amplified ongoing confusion about the nation’s commitment to address the ongoing vestiges of White supremacy, xenophobia, antisemitism, sexism, misogyny, and hate directed towards minoritized groups.²³ The *SFFA* opinion was therefore part of a dizzying backlash against efforts by primary and secondary institutions of education to address racial inequity through scholarships, specialized programs, curricular offerings, or even classroom discussions. Started by the Trump Administration’s September 2020 Executive Order outlawing the teaching of so-called “divisive concepts,”²⁴ state governments, university regents, and local school boards in every state have passed hundreds of measures to eliminate nearly every conversation about the salience of race in American culture and life.²⁵ Differing only slightly from the majority

21. The cases include *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 271 (1978), *Grutter v. Bollinger*, 539 U.S. 306, 343–44 (2003), *Gratz v. Bollinger*, 539 U.S. 244, 249–51 (2003), and *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 303 (2013). The goals of diversity in higher education have included: training future leaders, acquiring new knowledge and ways of knowing, promoting a robust marketplace of ideas, and (among other reasons) preparing an engaged and productive citizenry. Yet, as scholars have noted, the diversity rationales like these centered more on the interests of White people than on remedying past and current racism experienced by students of color. See Derrick Bell, *Diversity’s Distractions*, 103 COLUM. L. REV. 1622, 1625 (2003); Osamudia R. James, *White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation*, 89 N.Y.U. L. REV. 425, 470 (2014); Trina Jones, *The Diversity Rationale: A Problematic Solution*, 1 STAN. J. C.R. & C.L. 171, 172–75 (2005).

22. *Grutter*, 539 U.S. at 308, 333 (“Just as growing up in a particular region or having particular professional experiences is likely to affect an individual’s views, so too is one’s own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.”).

23. See Angela Onwuachi-Willig, *Robert’s Revisions: A Narratological Reading of the Affirmative Action Cases*, 137 HARV. L. REV. 192, 201–16 (2023).

24. Exec. Order No. 13950, 85 Fed. Reg. 60683, 60687 (Sept. 22, 2020). A portion of the executive order was struck down by the District Court for the Northern District of California. Order Granting in Part Motion for Nationwide Preliminary Injunction at 1, *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 550 (N.D. Cal. 2020) (No. 5:20-cv-07741-BLF) (granting a nationwide preliminary injunction prohibiting the Office of Federal Contract Compliance Programs from implementing, enforcing, or effectuating § 4 of Executive Order 13950 “in any manner against any recipient of federal funding by way of contract [or] subcontract.”). The order was subsequently rescinded by President Biden on the day of his inauguration. See Exec. Order No. 13985, 86 Fed. Reg. 7009, § 10 at 7012 (Jan. 20, 2021).

25. Kyle Reinhard, *CRT Forward Releases New Report on Anti-CRT Measures and Trends*, CRT FORWARD (Apr. 6, 2023), <https://crtforward.law.ucla.edu/new-crt-forward-report-highlights-trends-in-2021-2022-anti-crt-measures/>. (“For the period of January 1, 2021 through December 31, 2022, CRT Forward has identified and followed the progress of 563 anti-‘CRT’ measures, introduced at nearly even rates in 2021 (280) and 2022 (283). These have emerged from state and/or local authorities in every U.S. state besides Delaware. The nation’s 25 red states are responsible for 63% of all introduced measures; the 20 blue states, for 21% of the total; and the 5 purple states, 16%. Over calendar years 2021 and 2022, a total of 241 of these 563 introduced measures were enacted or adopted. . . . The overwhelming majority of introduced (91%) and enacted (94%) measures include K–12 schools as targets. The 226 total adopted measures targeting K–12 schools impact over 22 million public school children, almost half of the country’s 50.8 million public school students. Institutions of higher education are targeted in about 20% of all introduced measures and 12% of enacted measures. Although institutions of higher education are targeted in fewer total introduced measures,

opinion in *SFFA* announcing “‘colorblindness for all’ by legal fiat,”²⁶ anti-CRT and anti-DEI measures all over the United States have seemingly heralded a new age of racial nationalism into our campuses and classrooms.²⁷

This Essay attempts to make sense of these developments in two interconnected ways. First, I place the *SFFA* decision and related anti-CRT and anti-DEI legislation from 2023 within the context of the tension between White supremacy and racial democratic pluralism that has been the heart of the American condition since its founding. Building upon themes developed by the historian, Gary Gerstle, in his magisterial book, *American Crucible*,²⁸ I identify various waypoints in higher education during the last decade as endemic of the long and ongoing struggle over racial and civic nationalism. RPL’s creation was part of a larger “insurrection” for and by people of color against ongoing White supremacy in America’s courtrooms and classrooms. In 2013, ten years before Justice Ketanji

those which are enacted can have wide-ranging effects: for instance, where a measure applies to all member schools in a state’s public college system. . . . ‘[D]ivisive concepts’ bans have had substantial lasting effect: among all introduced measures linked to the anti-‘CRT’ campaign, 41% seek to regulate at least one form of subject matter first listed and defined in E.O. 13950 as being a ‘divisive concept.’”).

26. *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 407 (2023) (Jackson, J., dissenting).

27. The Chronicle of Higher Education is tracking the scope of efforts to eliminate DEI from institutions of higher education. *DEI Legislation Tracker*, CHRON. OF HIGHER EDUC., <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts> (last visited Jan. 26, 2024). Such efforts, along with the *SFFA* opinion, have substantive real-life impacts for students of color in the admissions process and their subsequent experiences on college and university campuses. See Onwuachi-Willig, *supra* note 23, at 236–39. Accordingly, incidents of bias, like the one’s at Arizona State University or South Carolina University, might increasingly become more common. See Nell Gluckman, *Why One College President is Denouncing a Conservative Campus Group*, CHRON. OF HIGHER EDUC., <https://www.chronicle.com/article/why-one-college-president-is-denouncing-a-conservative-campus-group> (Oct. 23, 2023); see also Caleb Bozard & Eva Flowe, *Homophobic, Racist Rhetoric in Turning Point USA Group Chat Makes Rounds on Social Media*, THE DAILY GAMECOCK (Feb. 23, 2022, 7:31 PM), <https://www.dailygamecock.com/article/2022/02/homophobic-racist-remarks-made-in-student-organization-group-chat-make-rounds-on-social-media-bozard-flowe-news>. Such rhetoric and acts are not new but are part and parcel of recent effort to use institutions of higher education as a battle ground to amplify White resentment. See KYLE SPENCER, *RAISING THEM RIGHT: THE UNTOLD STORY OF AMERICA’S ULTRACONSERVATIVE YOUTH MOVEMENT AND ITS PLOT FOR POWER* 117–26 (2022). At the time of this writing, legislative surveillance against higher education being “woke” has become even more amplified over campus protests regarding antisemitism and islamophobia in the wake of the Israel-Gaza conflict. See Len Gutkin, *The Campus Antisemitism Hearing Was Pure Theatre. It Was Also a Disaster for Colleges*, CHRON. OF HIGHER EDUC. (Dec. 11, 2023), <https://www.chronicle.com/newsletter/the-review/2023-12-11>. To be sure, race, gender, and anti-DEI rhetoric has been a salient, if not fully detailed component of these struggles. See Sherry Sylvester, *Blame DEI for Anti-Israel Protests on Campus*, TEXAS PUB. POL’Y FOUND. (Oct. 20, 2023), <https://www.texaspolicy.com/blame-dei-for-anti-israel-protests-on-campus/>; see Lisa Lerer & Rebecca Davis O’Brien, *In Protests Against Israel Strikes, G.O.P. Sees ‘Woke Agenda’ at Colleges*, N.Y. TIMES (Nov. 1, 2023), <https://www.nytimes.com/2023/11/01/us/politics/republicans-israel-war-protests-college-campus.html>; see Nadra Nittle, *The Spelman College Community Has Stood in Solidarity with Palestinians for Years*, THE 19TH (Nov. 17, 2023, 4:00 AM), <https://19thnews.org/2023/11/spelman-college-community-palestine-solidarity/>; see also LeRon L. Barton, *I’m a Black American. I Stand with Palestinians—I Understand Their Trauma*, NEWSWEEK (Dec. 17, 2023, 10:08 AM), <https://www.newsweek.com/black-american-stand-palestinians-understand-their-trauma-usa-1835324>.

28. GARY GERSTLE, *AMERICAN CRUCIBLE: RACE AND NATION IN THE TWENTIETH CENTURY* (2001).

Brown Jackson's *SFFA* dissent, RPL's founders recognized that "deeming race irrelevant in law does not make it so in life."²⁹

Second, I examine RPL's importance in this particular moment and in the near future. Building on a blog post I published in the spring of 2020, during the early weeks of the COVID-19 shutdowns,³⁰ I argue that institutions of higher education have a distinct obligation to deploy their resources to address systemic and institutional racial inequity and inequality in American culture, politics, and life. Part and parcel of what I (and others) have linked as the related biological, racial violence, and climate change crises gripping the world and backlash to these realities, I argue that RPL remains as important as ever by centering racial justice in law school teaching, research, scholarship, and activism. Rooted in and unapologetic about its values and methodology in critical theory, RPL demonstrates some of the ways that law schools can be a site of emancipatory liberation against racial injustice by training a whole new generation of diverse and committed thought leaders equipped to handle the ongoing crises of our times.

III. THE REVOLT[S] OF THE COCKROACH PEOPLES

In the early months of 2012, Trayvon Martin, a seventeen-year-old Black teenager, was shot and killed by George Zimmerman, the Neighborhood Watch Captain for a housing development in Florida.³¹ Martin's death, the delayed prosecution of Zimmerman, and his subsequent acquittal led to massive protests of systemic and institutional violence against people of color in the United States.³² Martin's death was "jarring in 2012, when the occupant of the White House was Barack Obama, the country's first Black president."³³ President Obama's "election had some insisting that America had turned a real corner in its troubled racial story; even many skeptics thought there had been progress."³⁴ Critically, the tension between a racial and "post-racial" United States had been the subject of

29. *SFFA*, 600 U.S. at 407 (2023) (Jackson, J., dissenting).

30. Tom I. Romero, II, *Always in Crisis: COVID-19 and the Role of Higher Education in Supporting Research, Scholarship, and Curriculum to Challenge Racial Inequity in American Culture and Life*, UNIV. OF DENV.: INTERDISC. RSCH. INST. FOR THE STUDY OF (IN)EQUALITY (Apr. 28, 2020), <https://operations.du.edu/irise/news/always-crisis-covid-19-and-role-higher-education-supporting-research-scholarship-and-curriculum-challenge-racial-inequity-american-culture-and-life>.

31. Dan Barry, Serge F. Kovalski, Campbell Robertson, & Lizette Alvarez, *Race, Tragedy and Outrage Collide After a Shot in Florida*, N.Y. TIMES (Apr. 1, 2012), <https://www.nytimes.com/2012/04/02/us/trayvon-martin-shooting-prompts-a-review-of-ideals.html>.

32. Paul Lewis, Rory Carroll, Richard Luscombe, Adam Gabatt, & Ryan Devereaux, *'I am Trayvon Martin' Rallies Across U.S. Voice Anger at 'Humiliating' Verdict*, GUARDIAN (July 21, 2013), <https://www.theguardian.com/world/2013/jul/21/trayvon-martin-protests>; Adam Nagourney, *Prayer, Anger and Protests Greet Verdict in Florida Case*, N.Y. TIMES (July 14, 2013), <https://www.nytimes.com/2013/07/15/us/debate-on-race-and-justice-is-renewed.html>.

33. Deepti Hajela, *10 Years After Killing of Trayvon Martin, Nation Continues Its Reckoning on Racial Justice*, PBS NEWS HOUR (Feb. 24, 2022), <https://www.pbs.org/newshour/politics/10-years-after-killing-of-trayvon-martin-nation-continues-its-reckoning-on-racial-justice>.

34. *Id.*; see also Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1564–69 (2013).

numerous law review articles and symposia, including one hosted by the *Denver University Law Review* (now the *Denver Law Review*) in 2009.³⁵

Yet the idea that the United States had moved beyond racial division or had become post-racial was shattered by Martin's death. Indeed, in the next few years, continued racial violence against people of color and the failure to hold its perpetrators accountable—from the strangulation of Eric Garner by New York Police in 2014 to the killing of Michael Brown by police in Ferguson, Missouri³⁶—signified ongoing racial violence, discrimination, inequity, and injustice in the United States. Accordingly, Americans across the United States took to the streets, statehouses, court-houses, and even their schools and classrooms to attempt to change the laws, policies, and practices that perpetuated the worst impulses of race and racism in the country.³⁷

Institutions of higher education were important sites in this struggle. Between 2012 and 2018, more than 100 colleges and universities across the United States erupted in protests.³⁸ Dubbed “campus rebellions” by Dr. Frank Tuitt, the Chief Diversity Officer of the University of Denver (DU) during that time, students conducted protests “ranging from minutes-long die ins and street blockings to weeks of hunger strikes, building takeovers, and sit-ins.”³⁹ The Latino Student Alliance at DU, in 2015, led protests on

35. On August 29, 2008, *Denver University Law Review* hosted “The Obama Phenomena: Facets of a Historic Campaign.” *Scholars Descend on Law School to Debate the “Obama Phenomena,”* UNIV. OF DENV. MAG. (Aug. 29, 2008, 11:37 PM), <https://magazine-archive.du.edu/campus-community/scholars-descend-on-law-school-to-debate-the-obama-phenomena/>. Articles that came out of the symposia detailing post-racialism include: Camille A. Nelson, *Racial Paradox and Eclipse: Obama as a Balm for What Ails Us*, 86 DENV. U. L. REV. 743 (2009); John A. Powell, *Post-Racialism or Targeted Universalism?*, 86 DENV. U. L. REV. 785 (2009). Other articles beyond the Sturm symposium include: Neubia Williams, *A Post Racial Era?: How the Election of President Obama and Recent Supreme Court Jurisprudence Illustrate that the United States Is Not Beyond the Centrality of Race*, 4 S. REG'L BLACK L. STUDENTS ASS'N L.J. 1, 3 (2010) (noting that “[p]ost-racialists point to the historic achievement of prominent figures such as Thurgood Marshall, Condoleezza Rice, Shelia Jackson Lee, Eric Holder, Oprah Winfrey, Colin Powell, and, of course, President Obama, as evidence that racism no longer exists.”); Mario L. Barnes, *Reflections on a Dream World: Race, Post-Race and the Question of Making It Over*, 11 BERKELEY J. AFR.-AM. L. & POL'Y 6, 17 (2009) (arguing that individual examples of Black success mask deep rooted socio-economic inequality); Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1594–1604 (2009).

36. Troy Closson, *Officers to Testify About Eric Garner's Death in Long-Delayed Inquiry*, N.Y. TIMES (Nov. 2, 2021), <https://www.nytimes.com/2021/10/25/nyregion/eric-garner-death-inquiry.html>; Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <https://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html>.

37. Jonathan Capehart, *From Trayvon Martin to 'Black Lives Matter,'* WASH. POST (Feb. 27, 2015, 12:39 PM), <https://www.washingtonpost.com/blogs/post-partisan/wp/2015/02/27/from-trayvon-martin-to-black-lives-matter/>; Davey & Bosman, *supra* note 36; German Lopez, *What Were the 2014 Ferguson Protests About?*, VOX (Jan. 27, 2016, 6:19 PM), <https://www.vox.com/2015/5/31/17937764/ferguson-missouri-protests-2014-michael-brown-police-shooting>; *'I Can't Breathe': The Refrain That Reignited A Movement*, AMNESTY INT'L (June 30, 2020), <https://www.amnesty.org/en/latest/news/2020/06/i-cant-breathe-refrain-reignited-movement/>.

38. PLANTATION POLITICS AND CAMPUS REBELLIONS: POWER, DIVERSITY, AND THE EMANCIPATORY STRUGGLE IN HIGHER EDUCATION 1 (Bianca C. Williams, Dian D. Squire, & Frank A. Tuitt eds., 2021). Some of those protests are detailed in *Race on Campus: Progress Marked by Turmoil and Skepticism*, CHRON. OF HIGHER EDUC. (Nov. 6, 2016), <https://uat.brightspot.chronicle.com/article/race-on-campus/>.

39. See Williams, Squire, & Tuitt, *supra* note 38, at 2.

and off campus against the United States’ “broken immigration” system that resulted in the detention of hundreds of migrants only a few miles away from campus.⁴⁰ Additionally, the Black Student Alliance created art on the university’s “Free Speech Wall” in 2016 in support of the Black Lives Matter movement that was repeatedly defaced.⁴¹ That year and again in 2017, DU students hosted a “Black Out” to protest systemic racism on campus and beyond.⁴²

The racial violence, subsequent racial reckonings, and campus uprisings during this moment, however, were neither new nor unique. Their existence and persistence had been inscribed in the very founding documents that comprise our legal and political systems. Conceptualized as “civic nationalism” by historian Gary Gerstle, movements for equal rights and racial justice stand for the proposition that our legal and political systems are founded in the belief of the “fundamental equality of all human beings, in every individual’s inalienable rights to life, liberty, and the pursuit of happiness, and in a democratic government that derives its legitimacy from the people’s consent.”⁴³

As Gerstle points out, however, this civic nationalism has contended throughout American history “with another potent ideological inheritance, a racial nationalism that conceives of America . . . as a people held together by a common blood and skin color.”⁴⁴ This racial nationalism too was inscribed in America’s founding and subsequent documents, which codified Africans as slaves and three-fifths of a person, excluded indigenous peoples from the polity, and limited citizenship to “free [W]hite persons” in a 1790 law that remained in force until 1952.⁴⁵ According to Gerstle, “From the perspective of this racialized ideal, Africans, Asians, [non-White] Latin Americans . . . [and others] did not belong in the

40. John Poe, *DU Students Lead Immigration Protest*, DU CLARION (Nov. 12, 2015), <https://duclarion.com/2015/11/du-students-lead-immigration-protest/>.

41. Grace Carson, *Addressing the Racial Climate at DU*, DU CLARION (Oct. 10, 2016), <https://duclarion.com/2016/10/addressing%20the%20racial%20climate%20at%20du/>; see also Robert Garrison, *Racially Charged Messages Appear on University of Denver Campus*, DENVER7 (Oct. 6, 2016, 10:32 PM), <https://www.denver7.com/news/local-news/racially-charged-messages-appear-on-university-of-denver-campus>; Isaiah Jakab, *Revisiting the 2016 Demands: The 2020 DU Diversity Summit*, DU CLARION (Jan. 27, 2020), <https://duclarion.com/2020/01/revisiting%20the%202016%20demands%20a%20du%20diversity%20summit%20event/>.

42. Kendall Morris, *Black Out Protest Asks Students to #TakeAKnee*, DU CLARION (Oct. 2, 2017), <https://duclarion.com/2017/10/black-out-protest-asks-students-to-takeaknee/>.

43. GERSTLE, *supra* note 28, at 4.

44. *Id.*

45. U.S. CONST. art. I, § 2, cl. 3 (“Representatives and direct Taxes shall be apportioned among the several States which maybe included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”). For an examination of slavery’s deep-rooted embeddedness in American constitutional law, see Juan F. Perea, *Race and Constitutional Law Casebooks: Recognizing the Proslavery Constitution*, 110 MICH. L. REV. 1123 (2012). Congress reinforced White supremacy in making Whiteness a prerequisite of citizenship. Act of Mar. 26, 1790, ch. 3, sec. 1 (limited naturalization to “free [W]hite person[s] . . . of good character.”). The core of Supreme Court cases affirming Indigenous wardship under the Constitution are: *Worcester v. Georgia*, 31 U.S. 515, 536 (1832); *Cherokee Nation v. Georgia*, 30 U.S. 1, 16, 17 (1831); *Johnson v. M’Intosh*, 21 U.S. 543, 590–605 (1823).

republic and could never be accepted as full-fledged members. They had to be *expelled, segregated, or subordinated*.⁴⁶

Understanding race in the United States as the pursuit of and inherent tension between its most aspirational civic principles and the perpetuation of its most hateful racist values is part of the ongoing American story of which higher education, including the training of future lawyers, is a part. While some are pursuing the creature comforts and ostensibly limitless opportunities of an “American Dream,”⁴⁷ calls to “Make America Great Again”⁴⁸ have a more nefarious connotation. To be sure, the notorious cases of ongoing racial violence of the 2010s,⁴⁹ the “dog-whistles” of Trumpism,⁵⁰ and the United States Supreme Court’s and other courts’ hostility to racial equality⁵¹ in the last several years have only reaffirmed Malcolm X’s observation that, for Black individuals and other people of color, “I don’t see an American Dream; I see an American nightmare.”⁵² Oscar Zeta Acosta made a similar observation in his book, *Revolt of the Cockroach People*:

Oscar was in the middle of a grotesque mirror of the American Dream turned nightmare . . . police brutalizing and harassing the community, and murdering a newsman; fire-bombed buildings; Kennedy assassinated; riots in the street; the grand jury system challenged as racist by a Chicano lawyer; Los Angeles in danger of being devastated by a race war.⁵³

Both the dreams and nightmares of White, Black, Indigenous, Latinx/e, and Asian American individuals, as well as Pacific Islanders, shape the ongoing pursuit of racial justice, equality, and equity in the United States.⁵⁴

46. GERSTLE, *supra* note 28, at 4–5 (emphasis added).

47. See SARAH CHURCHWELL, BEHOLD, AMERICA: THE ENTANGLED HISTORY OF “AMERICA FIRST” AND “THE AMERICAN DREAM” 3–4 (2018) (detailing how the concept originally emerged to embrace equality, justice, and democracy for the nation, but became an argument for a consumer capitalist version of democracy around the 1950s).

48. Churchwell argues that the Trump era’s embrace of “America First” linked it directly to an American history of White supremacy and Nazi style fascism. *Id.* at 2. The explicit racism of the Trump era is detailed in Charles R. Lawrence, III, *Implicit Bias in the Age of Trump*, 133 HARV. L. REV. 2304, 2304–08 (2020) (reviewing JENNIFER L. EBERHARDT, BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO (2020)).

49. See *supra* note 37.

50. See IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS ix, 3 (2014) (detailing a coded language to appeal to White racial grievances that became a hallmark of Republican party politics). Those “dog-whistles” became less coded and more explicit once former President Trump took office. See Lawrence, *supra* note 48, at 2311–13.

51. Lawrence, *supra* note 48, at 2329–42; see also Onwuachi-Willig, *supra* note 23, at 201–16.

52. *Malcolm X, Ballots or Bullet Speech*, CHI. REV. PRESS, <https://www.ballotsandbullets.com/malcolm-x> (last visited Mar. 8, 2024) (Malcolm X’s speech was given “at Cory Methodist Church in Cleveland on April 3, 1964”).

53. Bruce-Novoa, *supra* note 4, at 45.

54. Michael Honey, *Book Review*, 100 J. OF AM. HIST. 273, 273 (2013) (reviewing BRITTA WALDSCHMIDT-NELSON, DREAMS AND NIGHTMARES: MARTIN LUTHER KING, JR., MALCOLM X, AND

It was this cauldron and the specific reactions and revolts to Trayvon’s Martin’s death in 2012 that led to the creation of RPL in 2013. As RPL’s founding members were all law professors who had expertise and experience in researching, understanding, and providing substantive and meaningful solutions to racial inequity, we collectively believed that higher education had a special and particular role to play. As the essay by Professor Steefel in this issue details,⁵⁵ RPL was formed with values, principles, and ideals designed to not only challenge, but forever disrupt and discredit the racial nationalism embedded in the American legal system and its related systems of higher education.

To be sure, the formation of RPL was part and parcel of a larger centuries-long project of insurrection and revolution against White nationalism. As “insurrectionists” to institutional and systemic forms of inequity in higher education,⁵⁶ RPL aligned itself with a long-distinguished movement of abolitionists categorically opposed to public and private racial oppression in American history and higher education.⁵⁷ In our support of critically minded students and scholars, we therefore have served as a “campus underground railroad” of faculty change agents, student leaders, and staff “who discretely and strategically work to change the institutions”—be that Sturm, DU, or the law itself—in the values we hold, the types of oppositional programs and projects we support, the structure and content of the courses we teach, and the oppositional scholarship we write.⁵⁸ This is, quite simply, “risky business.”⁵⁹ It is also a revolutionary act, particularly as it is carried out within the legal education context. As Acosta himself defiantly declared: “I’m billed as the only revolutionary lawyer . . . And it’s true: I’m the only one who actually hates the law. The rest are just jiving.”⁶⁰

THE STRUGGLE FOR BLACK EQUALITY IN AMERICA (2011)). As those of us writing about race have repeatedly noted, racial categories are themselves not easy to precisely define nor use uniformly, nevertheless they are important signifiers of power and co-optation, and in “giv[ing] voice to those who have been marginalized or minoritized.” Meera E. Deo, *Better Than BIPOC*, 41 L. & INEQ. 71, 76 (2023).

55. Katherine Steefel, *From Whiteboard to Statement of Principles: The Development of the Rocky Mountain Collective on Race, Place & Law’s Principles*, 101 DENV. L. REV. 457 (2024).

56. D-L Stewart, *Afterword: Against Higher Education: Instruments of Insurrection*, in Williams, Squire, & Tuitt, *supra* note 38, at 318 (Dr. Stewart argues that in higher education, “insurrections are presented as daily and mundane, as well as spectacular and episodic. . . . Daily mundane insurrections [in higher education] include using critical pedagogies and curriculum; hosting space for minoritized groups to gather, support, and plot; and even greeting one another in passing on campus—seeing one another’s humanity in a space where to be human is an act of defiance. Spectacular and episodic acts . . . [include, but are not limited to] [a] hunger strike, administrative occupation, or die-in as protest of yet another Black life lost to state-sanctioned police violence . . .”).

57. Toby S. Jenkins, Rosalind Conerly, Liane I. Hypolite, & Lori D. Patton, *The Campus Underground Railroad: Strategies of Resistance, Care, and Courage within University Cultural Centers*, in Williams, Squire, & Tuitt, *supra* note 38, at 203.

58. See Alexi Freeman, *The Staying Power of RPL: Fostering Belonging Among Students*, 101 DENV. L. REV. 467 (2024); Rashmi Goel, *The RPL Effect*, 101 DENV. L. REV. 447 (2024).

59. Jenkins, Conerly, Hypolite, & Patton, *supra* note 57, at 199.

60. ACOSTA 1973, *supra* note 16, at 214.

With eyes wide open, to understand the pressures we faced to conform as academic practitioners of CRT,⁶¹ we nevertheless collectively believe that our work in the fields and laboratories of legal scholarship, our labor in the classroom, and our service to the university, the community, and the bar are a necessary intervention at this moment. Indeed, RPL positioned itself at this moment in time on the frontlines of America's racial and civic crucible.

IV. THE ONGOING (AUTO) BIOGRAPHIES OF BROWN BUFFALOES

In April of 2020, shortly after the world shut down due to the COVID-19 pandemic, I penned a blog post detailing higher education's important role in responding to the crisis.⁶² At the time, I was particularly concerned about early data demonstrating COVID-19's impact on racially minoritized communities.⁶³ Little did I know that only a few months later, racial inequity in America's criminal justice system and state perpetuated violence would lead to massive worldwide protests in the early months of the pandemic.⁶⁴ Represented most vividly in worldwide public reaction to the deaths of George Floyd and Breonna Taylor at the hands of police, the struggle against systemic racial violence in the Denver metropolitan area manifested itself when activists took to the streets that same summer to protest Elijah McClain's death in 2019.⁶⁵

McClain was a twenty-three-year-old Black man and massage therapist who died after officers of the Aurora Police Department (APD)

61. Margaret E. Montoya & Francisco Valdes, "*Latinas/os*" and the Politics of Knowledge Production: *LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L.J. 1197, 1198 n.3 (2008) (highlighting "backlash" and "retrenchment" against critical studies scholars in academe as part of larger "culture wars" in the United States).

62. See Romero, *Always in Crisis*, *supra* note 30.

63. See Vida Abedi, Oluwaseyi Olulana, Venkatesh Avula, Durgesh Chaudhary, Ayesha Khan, Shima Shahjouei, Jiang Li, & Ramin Zand, *Racial, Economic, and Health Inequality and COVID-19 Infection in the United States*, 8 J. RACIAL & ETHNIC HEALTH DISPARITIES 732, 737–39 (2021); Joseph Benitez, Charles Courtemanche, & Aaron Yelowitz, *Racial and Ethnic Disparities in COVID-19: Evidence from Six Large Cities*, 3 J. OF ECON., RACE, & POL'Y 243, 243–46, 255–57 (2020).

64. See, e.g., Lara Putnam, Erica Chenoweth, & Jeremy Pressman, *The Floyd Protests Are the Broadest in U.S. History—And are Spreading to White, Small-Town America*, WASH. POST (June 6, 2020, 2:10 AM), <https://www.washingtonpost.com/politics/2020/06/06/floyd-protests-are-broadest-us-history-are-spreading-white-small-town-america/>; Dana R. Fisher, *The Diversity of the Recent Black Lives Matter Protests is a Good Sign for Racial Equity*, BROOKINGS (July 8, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/07/08/the-diversity-of-the-recent-black-lives-matter-protests-is-a-good-sign-for-racial-equity/>; Adam Serwer, *The New Reconstruction*, ATLANTIC (Oct. 2020), <https://www.theatlantic.com/magazine/archive/2020/10/the-next-reconstruction/615475/>; Lola E. Peters, *Sustaining Anti-Racism After a Summer of Protests for Black Lives*, CROSSCUT (Oct. 15, 2020), <https://crosscut.com/opinion/2020/10/sustaining-anti-racism-after-summer-protests-black-lives/>; Ed Pilkington, *After 15 Stunning Days of Anti-Racist Protests . . . What Happens Next?*, THE GUARDIAN (June 20, 2020, 5:00 AM), <https://www.theguardian.com/us-news/2020/jun/10/george-floyd-protests-what-happens-next>.

65. See, e.g., Sam Tabachnik & Judith Kohler, *Thousands Gather in Aurora to Protest Elijah McClain's Death; Tensions Rise as Evening Falls*, DENV. POST (June 27, 2020, 11:44 PM), <https://www.denverpost.com/2020/06/27/elijah-mcclain-protests-aurora-saturday/>; Kenya Evelyn, *Elijah McClain: Police Use Pepper Spray to Disperse Violin Vigil*, THE GUARDIAN (June 29, 2020, 3:29 PM), <https://www.theguardian.com/us-news/2020/jun/29/elijah-mcclain-colorado-police>.

restrained him in a chokehold.⁶⁶ An independent panel investigated McClain’s death and found that the APD officers stopped him without justification.⁶⁷ Indeed, they unreasonably escalated their use of force despite McClain “crying out in pain, apologizing, explaining himself, and pleading with the officers.”⁶⁸ To add further insult, not even those charged with McClain’s care met their duty—the paramedics that treated him administered the wrong dose of tranquilizer.⁶⁹

The large-scale reaction to the murders of Elijah McClain, George Floyd, Breanna Taylor, and so many other people of color in the summer of 2020 seemed to be a watershed moment in the ongoing dialectic between racial and civic nationalism in American history. Described by commentators as a hopeful indicator about the potential for “unprecedented” racial progress in the United States, the protests catalyzed a variety of institutional responses designed to recognize and dismantle systemic racism.⁷⁰

Yet, a hostile response to such efforts quickly emerged in a variety of hearings, legislation, and policies adopted to discredit CRT and related inclusive pedagogical practices. Classrooms and curriculums suddenly became the primary battleground in the struggle to be colorblind or color-conscious.⁷¹ Not surprisingly, lawyers were behind this effort. The

66. See Lucy Tompkins, *Here’s What You Need to Know About Elijah McClain’s Death*, N.Y. TIMES (Oct. 13, 2023), <https://www.nytimes.com/article/who-was-elijah-mcclain.html>.

67. CITY OF AURORA, COLO., INVESTIGATION REPORT AND RECOMMENDATIONS 2, 5–7, 10, 106 (Feb. 22, 2021), [https://cdnsm5-hosted.civillive.com/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20\(FINAL\).pdf](https://cdnsm5-hosted.civillive.com/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20(FINAL).pdf).

68. Three police officers were subsequently prosecuted. Colorado juries found one officer guilty of criminally negligent homicide and assault, while the other two were acquitted of all charges. See Rick Sallinger, Jesse Saries, & Jennifer McRae, *Not Guilty: Aurora Police Officer Nathan Woodyard Acquitted in Elijah McClain Death*, CBS NEWS (Nov. 6, 2023, 6:26 PM), <https://www.cbsnews.com/colorado/news/nathan-woodyard-not-guilty-verdict-elijah-mcclain-death-aurora-police-officer/>; Eric Levenson & Andi Babineau, *Aurora Police Office’s Actions Had ‘Cataclysmic Effect’ on Elijah McClain, Prosecutor Says as Manslaughter Trial Opens*, CNN (Oct. 17, 2023, 3:23 PM), <https://www.cnn.com/2023/10/17/us/elijah-mcclain-police-trial-woodyard/index.html>.

69. INVESTIGATION REPORT, *supra* note 67, at 7, 10. As of this writing, the two paramedics who treated McClain are currently in trial. Allison Sherry, Tony Gorman, & Alison Borden, *Paramedics Found Guilty of Criminally Negligent Homicide in Death of Elijah McClain*, CPR NEWS (Dec. 22, 2023, 6:00 PM), <https://www.cpr.org/2023/12/22/elijah-mcclain-trial-of-paramedics-jury-verdict/>.

70. See, e.g., Lara Putnam, Erica Chenoweth, & Jeremy Pressman, *The Floyd Protests are the Broadest in U.S. History—And are Spreading to White, Small-Town America*, WASH. POST (June 6, 2020, 2:10 AM), <https://www.washingtonpost.com/politics/2020/06/06/floyd-protests-are-broadest-us-history-are-spreading-white-small-town-america/>; Dana R. Fisher, *The Diversity of the Recent Black Lives Matter Protests is a Good Sign for Racial Equity*, BROOKINGS (July 8, 2020), <https://www.brookings.edu/articles/the-diversity-of-the-recent-black-lives-matter-protests-is-a-good-sign-for-racial-equity/>; Adam Serwer, *The New Reconstruction*, ATLANTIC (Oct. 2020), <https://www.theatlantic.com/magazine/archive/2020/10/the-next-reconstruction/615475/>; Lola E. Peters, *Sustaining Anti-Racism After a Summer of Protests for Black Lives*, CROSSCUT (Oct. 15, 2020), <https://crosscut.com/opinion/2020/10/sustaining-anti-racism-after-summer-protests-black-lives/>; Pilkington, *supra* note 64.

71. See, e.g., Ibram X. Kendi, *The Mantra of White Supremacy*, ATLANTIC (Nov. 30, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/white-supremacy-mantra-anti-racism/620832/>;

Attorney General of the State of Montana, for example, cynically declared that CRT and antiracism programming and curriculum violated state and federal law⁷² and in fact were a direct “*threat to [the] stability of our institutions.*”⁷³ Such efforts accordingly metastasized in the courts,⁷⁴ in statehouses,⁷⁵ and in universities,⁷⁶ as leaders in higher education across the country were forced to rename, replace, or remove existing services and support designed to explicitly make universities more diverse, equitable, and inclusive.

Continuing efforts at the highest levels of government and university leadership are about more than just the classroom or a program or even a collective, like RPL. Rather, they signal a sudden but unsurprising retreat from a sustained commitment to addressing the roots and ongoing crisis of racism within communities.⁷⁷ And much like Americans who denied the threat of COVID-19 or the efficacy of vaccines,⁷⁸ or those who deny the existential threat posed by climate change,⁷⁹ these efforts undermine the rigorous and meticulous work of race scholars in our universities who have labored tirelessly to detail the deep-rooted and still-ongoing reality and violence of racial nationalism.

Though my blog post had not anticipated the reaction to or the depth of anger catalyzed by the crises of racial violence in the summer and early fall of 2020, nor its powerfully swift backlash in the last few years, it

Rashawn Ray & Alexandra Gibbons, *Why are States Banning Critical Race Theory?*, BROOKINGS (Nov. 2021), <https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/>; Jon Wiener, *The Predictable Backlash to Critical Race Theory: A Q&A with Kimberlé Crenshaw*, THE NATION (July 5, 2021), <https://www.thenation.com/article/politics/critical-race-kimberle-crenshaw/>.

72. 58 Op. Mont. Att’y Gen. 1 (May 27, 2021), <https://dojmt.gov/wp-content/uploads/AGO-V58-OI-5.27.21-FINAL.pdf> (arguing that it “discriminates on the basis of race, color, or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, Article II, Section 4 of the Montana Constitution, and the Montana Human Rights Act.”).

73. *Id.* at 17 (emphasis added). I examine this, as well as other state-level legal and political backlash to race and DEI curriculum in more detail in *A Brown Buffalo’s Observations on Color (Blindness), Legal History, and Racial Justice in the Rocky Mountain West*. Romero, *A Brown Buffalo’s Observations*, *supra* note 8, at 768–70.

74. Theo Francis & Lauren Weber, *The Legal Assault on Corporate Diversity Efforts Has Begun*, WALL ST. J. (Aug. 8, 2023, 5:30 AM), <https://www.wsj.com/articles/diversity%20equity%20dei%20companies%20blum%202040b173>.

75. *DEI Legislation Tracker*, CHRON. OF HIGHER EDUC. (Jan. 26, 2024), <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts>.

76. Joe Killian, *UNC-Chapel Hill Grapples With Non-Discrimination Policies, Will Set Tone for University System*, NC NEWSLINE (July 27, 2023, 5:55 AM), <https://ncnewsline.com/2023/07/27/unc-chapel-hill-grapples-with-non-discrimination-policies-will-set-tone-for-university-system/>.

77. *See id.*; Oyin Adedoyin, *Penn State’s Diversity Dilemma*, CHRON. OF HIGHER EDUC. (Dec. 22, 2022), <https://www.chronicle.com/article/penn-states-diversity-dilemma>; Calli McMurray, *Where Do College’s Antiracism Centers Go From Here?*, CHRON. OF HIGHER EDUC. (Nov. 27, 2023), <https://www.chronicle.com/article/where-do-colleges-antiracism-centers-go-from-here>.

78. *See, e.g.*, Sun Kyong Lee, Juhyung Sun, Seulki Jang, & Shane Connelly, *Misinformation of COVID-19 Vaccines and Vaccine Hesitancy*, 12 SCI. REPS. 13681 (2022); Tara Zimmerman, Kristina Shiroma, Kenneth R. Fleischmann, Bo Xie, Chenyan Jia, Nitin Verma, & Min Kyung Lee, *Misinformation and COVID-19 Vaccine Hesitancy*, 41 VACCINE 136, 136–44 (2023).

79. *See, e.g.*, Shelley Boulianne & Stephanie Belland, *Climate Denial In Canada and the United States*, 59 CAN. REV. SOCIOLOG. 369, 369–94 (2022).

nevertheless staked out a claim that higher education, especially institutions like DU, had a mission-driven duty to substantively respond to deep rooted institutional and systemic racial inequity in our time. My words bear repeating here:

We are at pivotal moment in American and world history and institutions of higher education are both called on and tested in ways that should force us to reckon with our missions that directly address the dire outcomes of inequity and inequality. Higher education and its many disciplines are certainly not a panacea. But if COVID-19 has taught us anything, it is that the natural sub-molecular world (as well as much knowledge in between) is intricately connected to human lives of vastly different and almost always unequal experiences. Such inequality and related inequity is not a matter of chance, but is the product of historical and ongoing forces of power, privilege and oppression that all those who engage in research, scholarship, and creative works should, at the very least, be prepared to explain why it is not relevant to their work or even their teaching.

. . . [H]igher education is currently undergoing an existential crisis to be relevant as it become [sic] less affordable and less accessible. Ironically, those same historically underrepresented students who find higher education to be of the greatest benefit to themselves and society represent the largest growing and most important demographic for these same institutions to survive⁸⁰ in the near future. Whether as students or future faculty members, these individuals succeed when what they learn or what they research is directly connected to their lives and communities.⁸¹

Those institutions in higher education committed to some concept of a public or larger good therefore have a choice. We can deploy our resources in highly specialized and un-connected ways that ignores these demographic realities in the core research and teaching work that we do. Or, we can identify and be fully committed to using our unique position in the production and transmission of knowledge that takes seriously within and between disciplines what (at least in the United States) has and continue [sic] to be one of the most salient challenges of the human condition: racial inequality. In the present challenging climate, higher education can be relevant, impactful, and forward thinking to not only ask and come up with answers to the tough questions, but can train a whole new generation of diverse and committed thought leaders equipped to handle the on-going crises of these times.⁸²

80. Nathan D. Grawe, *The Enrollment Crash Goes Deeper Than Demographics*, CHRON. OF HIGHER EDUC. (Nov. 1, 2019), <https://www.chronicle.com/article/the-enrollment-crash-goes-deeper-than-demographics/>.

81. *From College to Life*, GALLUP, https://news.gallup.com/reports/232583/from-college-to-life-part-2.aspx?g_campaign=item_233645&g_medium=copy (last visited Mar. 9, 2024).

82. Romero, *Always in Crisis*, *supra* note 30; see also Huck Gutman, *Higher Education Cannot Train a New Generation Without the Humanities*, COMMON DREAM (Dec. 27, 2023), <https://www.commondreams.org/opinion/higher-education-without-humanities>.

As I indicated in my blog, crisis is borne from opportunity. A recent essay by Dr. Feisal G. Mohamed argues that *SFFA* should be considered a “gift in disguise.”⁸³ Like many others, Dr. Mohamed questions the lip service that higher education has historically paid to DEI efforts.⁸⁴ Dr. Mohamed argues that:

In its orthodox expressions, [higher education] praises diversity as an aspect of well-rounded training: Every student benefits from being exposed to a diversity of people and perspectives. Tomorrow’s leaders in industry, or medicine, or law, the argument runs, will be more effective if in their university experience they share classrooms with people of various backgrounds and life experiences. *Such language seems designed to pacify all and satisfy none.*⁸⁵

My DU Morgridge College of Education colleague, Dr. D-L Stewart, has similarly criticized diversity and inclusion rhetoric as nothing more than a “language of appeasement” explicitly designed to prevent transformative institutional change.⁸⁶

In even more damning vein, Dr. Tuitt and Dr. Bianca Williams argued in 2021 that modern day universities, like antebellum plantations of the past, have reproduced a traumatic exploitation of Black and Brown bodies and minds.⁸⁷ To be sure, many institutions of higher education, including DU, were not only initially formed to perpetuate White supremacy and Settler-Colonialism,⁸⁸ but are essential to the perpetuation and strengthening of unequal and inequitable racialized labor markets.⁸⁹

The end of Affirmative Action in university admissions, scrubbing of CRT and related race scholarship from curricula, and dismantling of DEI programs, policies, and practices might very well mark the end of an era. As I noted earlier, when RPL was founded in 2013, it was born in a moment of campus and national crises over racial injustice that were neither unique nor new. Indeed, every year since then has brought about another death, another outrage, and another opportunity to confront the conditions and perpetuation of institutional and systemic racism on- and off-campus.

83. Feisal G. Mohamed, *The Court’s Affirmative-Action Ban Is a Gift In Disguise*, CHRON. OF HIGHER EDUC. (Sept. 27, 2023), <https://www.chronicle.com/article/was-the-courts-affirmative-action-ban-a-gift-in-disguise>.

84. See Ariana González Stokas, *Higher Ed’s DEI Lip Service: On My Disillusioning Experience As A Chief Diversity Officer*, CHRON. OF HIGHER EDUC. (May 4, 2023), <https://www.chronicle.com/article/higher-eds-dei-lip-service>. Further critiques are detailed in Part 2: Institutional Rhetoric and the False Promises of “Diversity” and “Inclusion” in Williams, Squire, & Tuitt, *supra* note 38, at 119–26.

85. Mohamed, *supra* note 83 (emphasis added).

86. Dafina-Lazarus Stewart, *Language of Appeasement*, INSIDE HIGHER ED. (Mar. 29, 2017), <https://www.insidehighered.com/views/2017/03/30/colleges-need-language-shift-not-one-you-think-essay>.

87. Williams, Squire, & Tuitt, *supra* note 38, at 6–7.

88. I detail specifically DU’s connection to the Sand Creek Massacre and larger efforts of other universities to reckon with their problematic pasts in Tom I. Romero, II, *The Color(blind) Conundrum in Colorado Property Law*, 94 U. COLO. L. REV. 449, 451–57 (2023).

89. Stewart, *supra* note 56, at 314–15.

Yet, in spite of efforts to diversify student and faculty bodies in the 1980s and 1990s, to embed “inclusive excellence” as a primary metric in university practices in the 2000s, or in the growth of more recent DEI practices, programs, and positions,⁹⁰ the last ten years have demonstrated that institutions of higher education remain remarkably uninterested in transforming the racial nationalist conditions upon which they are built and remain stratified.⁹¹

As Professors Sumi Cho and Angela P. Harris further warn, the economic conditions upon which universities and law schools have operated since World War II have fundamentally become less stable, more regressive, and hostile to any transformative change.⁹² Seen initially in the Great Recession of 2008 and exacerbated by the COVID-19 pandemic in 2020 and 2021, the business model of higher education has become hostile to meaningful racial equity and inclusion.⁹³ One example of this hostility is seen in the decision of one of the major accrediting bodies for law programs—the Association of American Law Schools—to stop “providing public access to its annual *Statistical Report on Law Faculty* demographic[s] [data].”⁹⁴ As Professors Cho and Harris ask, “What better way to acknowledge the postdiversity era than to stop taking account of racial data?”⁹⁵

Thus, law schools and other institutions of higher education are currently at a crossroads. There are no longer political or legal incentives to transform what our classrooms, curriculums, or campuses look like.⁹⁶ Economic uncertainties drive the growth of programs and “brands” that only reinforce “mechanistic, utilitarian outcomes such as employment and job placement.”⁹⁷ As DU’s own purchase and massive investment of a mountain campus in 2022 symbolizes,⁹⁸ higher education is literally removing itself miles and miles away from dealing with the ongoing challenges,

90. See generally J. Brian Charles, *The Evolution of DEI*, CHRON. OF HIGHER EDUC. (June 23, 2023), <https://www.chronicle.com/article/the-evolution-of-dei>.

91. See Williams, Squire, & Tuitt, *supra* note 38, at 6; see also Armond Towns, *Inclusion = Racial Violence? Time, Space, and the Afterlife of the Plantation*, in Williams, Squire, & Tuitt, *supra* note 38, at 119; Jesse Carr, Nicole Truesdell, Catherine M. Orr, & Lisa Anderson-Levy, *Future Thinking and Freedom Making: Antidiversity as an Intervention to the Plantation Politics of Higher Education*, in Williams, Squire, & Tuitt, *supra* note 38, at 141–70; Frank A. Tuitt, *The Contemporary Chief Diversity Officer and the Plantation Driver: The Reincarnation of a Diversity Management Position*, in Williams, Squire, & Tuitt, *supra* note 38, at 171–98.

92. See Sumi Cho & Angela P. Harris, *Afterword: El Espiritu de Resistencia*, in FRANCISCO VALDES & STEVEN W. BENDER, *LATCRIT: FROM CRITICAL LEGAL THEORY TO ACADEMIC ACTIVISM*, 121 (2021).

93. *Id.* at 121–22.

94. *Id.* at 123.

95. *Id.*

96. To reiterate, most of these incentives only seemed to be window dressing, performative, and designed to satisfy no one.

97. Stewart, *supra* note 56, at 316.

98. Sara Weissman, *Natural Learning: The University of Denver Recently Opened a Campus in the Rocky Mountains To Enhance Academic Programs and Improve Mental Health*, INSIDE HIGHER ED. (July 4, 2022), <https://www.insidehighered.com/news/2022/07/05/university-denver-introduces-new-mountain-campus#>.

realities, and crises of our times, especially those involving the ongoing pandemic of racial violence and injustice perpetuated by private and public actors.

For law and other critically trained faculty, Professors Cho and Harris describe a potentially bleak future:

If tenure-track positions become increasingly scarce, scholarship . . . becomes devalued in contrast [to] teaching, and teaching becomes a student-pleasing, winner-take-all market, then it will be hard to interest junior faculty in transgressive scholarship. Instead, new faculty will be tempted to hunker down, conform, and attempt to ride out the storm alone rather than banding together to work for transformation.⁹⁹

In stark terms, we are at a moment where higher education can capitulate to the pendulum of racial nationalism, continuing to be the modern plantation making “people fit [to] work” as part of its larger historical and still-ongoing efforts towards “maintaining the US social order informed by racial, gender, and class hierarchies.”¹⁰⁰ Or, as Dr. Mohammed envisions, “universities can, and must, openly claim a more compelling set of core values: *advancing social justice, serving the public good, pursuing true democracy.*”¹⁰¹ Since the late 1960s, “minoritized communities” have created the conditions for “revolutionary” politics to not only navigate, but also emancipate, institutions of higher education from racism, sexism, classism, and oppression.¹⁰² Though such politics and vision of higher education has long been contained, “sanded down” and co-opted,¹⁰³ the persistence of its values conforms with the highest aspirations of the nation’s civic nationalist ideals to meet such challenging moments in time.

That time is now. Law schools and other institutions of higher education must redouble efforts to train students to understand systemic and institutional forms of racism. For law students in particular, American Bar Association accreditation may well demand such a requirement of every law school.¹⁰⁴ Law schools and other institutions of higher education must find ways to support research, scholarship, and creative work to find meaningful and substantive solutions to deep-rooted racial inequity and other forms of inequity. Law schools and other institutions of higher education need to be supportive of minoritized populations who increasingly will

99. Cho & Harris, *supra* note 92, at 124.

100. Stewart, *supra* note 56, at 316–17.

101. Mohamed, *supra* note 83 (emphasis added).

102. See Jenkins, Conerly, Hypolite, & Patton, *supra* note 57, at 221.

103. Cho & Harris, *supra* note 92, at 118; see also Cristobal Salinas, Jr. & Valerie A. Guerrero, *Tokenizing Social Justice in Higher Education*, 517 COUNTERPOINTS 161 (2018) (reviewing how higher education currently engages with the concept of social justice and recommending effective engagement in social justice at the individual, institutional, and cultural levels).

104. 2023–2024 STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. § 303(C) (AM. BAR ASS’N 2023) (requiring that law schools “shall provide education to law students on bias, cross-cultural competency, and racism.”).

mitigate the effects of the enrollment cliff.¹⁰⁵ Law schools and other institutions of higher education need to be unafraid and provide their students with the necessary tools to be culturally and socially responsive to diverse clients' needs.¹⁰⁶

Specifically, law schools can become liberatory sites to dismantle the carceral state,¹⁰⁷ to aid indigenous “water protectors,”¹⁰⁸ to passionately represent clients from “shit hole countries,”¹⁰⁹ to give voice and restitution to all those who live in sacrifice zones,¹¹⁰ to restore and expand the franchise,¹¹¹ and to call out acts of acts of hate, hypocrisy, and ongoing color-blindness where it sees them.¹¹² As Dr. Mohammad states simply: “If universities fail to do [such] things, it will not be the fault of the Supreme

105. See Paul Copely & Edward Douthett, *The Enrollment Cliff, Mega-Universities, Covid-19, and the Changing Landscape of U.S. Colleges*, 90 CPA J. 22, 22, 27 (2020); Kevin Carey, *The Incredible Shrinking Future of College*, VOX (Nov. 21 2022, 7:03 AM), <https://www.vox.com/the-highlight/23428166/college-enrollment-population-education-crash>; Robert Kelchen, *The Haves and Have-Nots of Higher Education: College Enrollments Are Becoming Increasingly Unequal*, CHRON. OF HIGHER EDUC. (June 14, 2023), <https://www.chronicle.com/article/the-haves-and-have-nots-of-higher-education>.

106. See generally L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. C.R. & C.L. 201, 233–35 (2020); Phyllis C. Taite & Nicola “Nicky” Boothe, *Teaching Cultural Competence in Law School Curricula: An Essential Step to Facilitate Diversity, Equity, & Inclusion in the Legal Profession*, 2022 UTAH L. REV. 813, 818 (2022).

107. Alice Ristroph, *The Curriculum of the Carceral State*, 120 COLUM. L. REV. 1631, 1682–84 (2020).

108. See generally *Defending Water Protectors and Indigenous Rights*, BERKLEY LAW (Sept. 14, 2023), <https://www.law.berkeley.edu/podcast-episode/defending-water-protectors-and-indigenous-rights/> (describing the Water Protector Legal Collective, a legal nonprofit that works to provide legal support and advocacy for Indigenous peoples and climate justice movements); *Collaboration with Water Protectors Legal Collective*, THE UNIV. OF ARIZ. JAMES E. ROGERS COLL. OF L., <https://law.arizona.edu/collaboration-water-protectors-legal-collective> (last visited Mar. 9, 2024).

109. See Abed Ayoub & Khaled Beydoun, *Executive Disorder: The Muslim Ban, Emergency Advocacy, and the Fires Next Time*, 22 MICH. J. RACE & L. 215, 217–19 (2017); Dana Van De Walker & John R. Slate, *The 2017 Trump Administration Travel Ban and International Graduate Applications at Two Texas Public Universities*, 5 HIGHER ED. POLS. & ECONS. 1, 2 (2019); Elora Mukherjee, *The End of Asylum Redux and the Role of Law School Clinics*, 133 YALE L.J.F. 473, 476 (2023). One of RPL’s founders, the late Professor Christopher Lasch, was the chief visionary in the establishment of Sturm’s Immigration clinic. *In Memoriam: Professor Christopher (“Chris”) Lasch*, UNIV. OF DENV. (June 30, 2021), <https://duvpfa.du.edu/2021/06/in-memoriam-professor-christopher-chris-lasch/>; Tony Flesor, *DU Expands Crimmigration Work*, LAW WK. COLO. (Apr. 22, 2019), <https://www.law-weekcolorado.com/article/du-expands-crimmigration-work/>; Press Release, The Congressional Black Caucus, *The Congressional Black Caucus Denounces Expansion of Trump’s Discriminatory Ban* (Feb. 6, 2020) (available at <https://cbc.house.gov/news/documentsingle.aspx?DocumentID=2151>).

110. See Hope Babcock, *Environmental Justice Clinics: Visible Models of Justice*, 14 STAN. ENV’T. L.J. 3, 5–7 (1995); GOLDEN GATE UNIV. SCH. OF L., 2019 ENVIRONMENTAL LAW AND JUSTICE CLINIC REPORT (2020); The concept of a sacrifice zone is detailed in, Ryan Juskus, *Sacrifice Zones: A Genealogy and Analysis of an Environmental Justice Concept*, 15 ENV’T. HUMAN. 3, 5–6 (2023).

111. See *Fordham Law School Launches Voting Rights and Democracy Project*, FORDHAM L. NEWS (Mar. 16, 2022), <https://news.law.fordham.edu/blog/2022/03/16/fordham-law-school-launches-voting-rights-and-democracy-project/>; *Law School Alumni Tackle Voting Rights Challenges Nationwide*, YALE L. SCH. (Nov. 10, 2021), <https://law.yale.edu/yls-today/news/law-school-alumni-tackle-voting-rights-challenges-nationwide>; Kristin Nussbaumer, *Election Law as Elective of Choice*, 56 ST. LOUIS U. L.J. 747, 748 (2012).

112. See McMurray, *supra* note 77. As of this writing, campuses are struggling to deal with antisemitism and islamophobia unleashed by the conflict in Israel and the Gaza Strip. See Kate Hidalgo Bellows, *Bias-Related Incidents Are Roiling Colleges. What Might the Response Look Like?*, CHRON. OF HIGHER EDUC. (Nov. 6, 2023), <https://www.chronicle.com/article/bias-related-incidents-are-roiling-colleges-what-might-the-response-look-like>.

Court. It will be owing to the penny-pinching and pusillanimity of universities themselves.”¹¹³

As the other essay contributions in this collection make clear, RPL bridges that gap, providing an organizational model of racial justice and public good to DU and other similarly situated mission-driven and publicly engaged colleges and universities. RPL articulates values that build towards a more just future.¹¹⁴ RPL trains students to address and thoughtfully solve the hard questions of racial inequity.¹¹⁵ RPL nurtures new ways of knowing and encourages praxis of public and civic engagement.¹¹⁶ RPL creates a substantive and sustainable community of belonging based on human dignity, mutual respect, and shared values.¹¹⁷

For these reasons, RPL remains just as important, if not more important, today than it was in 2013. It is part of a necessary revolution in higher education.¹¹⁸ It is an instrument of “insurrection” against the oppressive and entrenched forces of racial nationalism not only in higher education, but in law and legal orthodoxy.¹¹⁹ It is a laboratory of critical race data, scholarship, curriculum, and creative work necessary to eradicate racial injustice. And most importantly, it allows all of us that are part of RPL—law professors, students, and staff—to do our part, as Brown Buffaloes, in bending the arc of the moral universe towards justice.

V. AUTHOR’S POSTSCRIPT: RADICAL HOPE, BUFFALOES, AND DREAMING FREEDOM IN HIGHER EDUCATION

The day before I submitted this essay to the *Denver Law Review* editors, I had the privilege of breaking bread with one of my colleagues at DU, Dr. Sarah Pessin. A philosopher by training and critical theorist by choice, Dr. Pessin and I were talking how and in what ways critical theory could provide guide points to address the paralysis of higher education to deal with not only racism, but antisemitism, islamophobia, and other related traumas happening every day on our campuses. Dr. Pessin introduced me to the concept of “Radical Hope” which was developed by Jonathan Lear in his book, *Radical Hope: Ethics in the Face of Cultural Devastation*.¹²⁰ In the first pages of the book, Lear relates the following testimony of Plenty Coups, the last chief of the Crow Nation.

[W]hen the buffalo went away the hearts of my people fell to the ground, and they could not lift them up again. After this nothing

113. Mohamed, *supra* note 83.

114. Steefel, *supra* note 55.

115. Lindsey Webb, *From a RPL in the Classroom to a Wave in the World: Coursework Focused on Race, Place & Law*, 101 DENV. L. REV. 479 (2024).

116. Corrada, *supra* note 11.

117. Freeman, *supra* note 58; Goel, *supra* note 58.

118. Jenkins, Conerly, Hypolite, & Patton, *supra* note 57, at 221.

119. Stewart, *supra* note 56, at 318.

120. JONATHAN LEAR, *RADICAL HOPE: ETHICS IN THE FACE OF CULTURAL DEVASTATION* (2006).

happened. . . . Besides, you know that part of my life as well as I do. You saw what happened to us when the Buffalo went away.¹²¹

I was startled to see that Lear, like me, and like Oscar Zeta Acosta, referred to the ongoing importance of the Buffalo—whether as the center and symbol of minoritized culture or as a metaphor for dignity, power, and justice—in forcing us to consider the challenges of collapse and decay around us. Transformed by Plenty Coups’s wisdom, Lear asks how “should we live with” the knowledge that our past and present are deeply flawed?¹²² His answer, the audacity of Radical Hope thus becomes a way to reconcile the “difficult knowledge” of injustice and inequity, with an ethical commitment to imagine and build towards a very different future.¹²³

I will leave a much deeper analysis of Radical Hope and legal education for another time. Yet, I wanted to mark here its meaning to find and seek light in the darkness of our current state of higher education. As bell hooks reminds us, the work that happens in our classrooms and clinics is the practice of freedom, rooted in love for justice, for our students, for our peers, our colleagues, and even our schools.¹²⁴ We, collectively, need to have the radical hope to dream into existence classrooms and campuses full of roaming buffaloes.

121. *Id.* at 2.

122. *Id.* at 7.

123. An example of what this might look like in a curriculum is detailed in, Lisa Farley, *Radical Hope: Or, the Problem of Uncertainty in History Education*, 39 CURRICULUM INQUIRY 537, 542–47 (2009).

124. See BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* 1–12, 59–75 (1994) (critiquing current notions and practices of teaching and learning while detailing the importance of teaching students to transgress against racial, sexual, and class boundaries in education).