

IN THIS MOMENT

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ABSTRACT:

It is 2024, and the wealth gap in the United States of America is increasing. Women's reproductive rights and the LGBTQIA+ community are under attack. Affirmative action in higher education is no more. And books are being banned all across the country. It is very easy to be overwhelmed and consumed by all the problems that are confronting us and to lose sight of the bigger picture. In this very short essay, I situate our present moment in two important ways. First, I place 2024 into critical and historical context, because the problems currently confronting us are not isolated events that appeared overnight. Instead, they are expressions of long-simmering antagonisms and fears that have deeply entrenched roots in our socio-economic-political system. This context should ground and guide us, the OutCrits of today and our allies, as we navigate the precarious world we find ourselves in. Second, I focus on the majority-white to minority-white demographic transition that will occur in the United States in 2044 as one of the triggers for what Antonio Gramsci calls an "organic crisis." More specifically, I argue that the U.S. is currently in an organic crisis, one which I suggest threatens the white, hetero-patriarchal norms on which this country was built and has given rise to the "White Identity movement." But, because a crisis does not dictate a specific outcome, the crisis we are currently in is also a moment of reconstruction and, therefore, a moment of potential change. It is up to us to make the most of it.

I. INTRODUCTION

It never occurred to me that I might be living my life in a moment of historical significance. But, then again, I wonder if anyone just living their life in whatever time period they happened to be born into realizes the significance of their epoch. I doubt it.

We've been here before . . . haven't we?¹ Reproductive justice, LGBTQIA+ rights—one step forward, two steps back . . . or maybe ten. I want to believe that the arc of the moral universe bends toward justice. But keeping the faith is hard when we are fighting old battles that we previously won and being besieged politically, economically, and socially.²

Many of the problems we are currently confronting seem eerily familiar but also very different, which makes finding new ways to think about and understand this moment that much more imperative. In this essay, I try to do just that. In Part II, I identify some of our current problems and then put the present moment into historical and critical context. In Part III, I use Antonio Gramsci's concept of an "organic crisis" to explain what is happening in the United States, introducing what I am calling the "White Identity movement." I conclude the essay with a couple of brief "OutCrit"³ reminders that the stories we tell matter. So, we need to keep telling them regardless of whether we have told them before.

II. SITUATING THE PRESENT MOMENT

There is no denying that, in late 2024, we are currently living in a moment whose contours and consequences are yet to be fully determined. We are also living in a moment where many of us don't talk to each other because we are more polarized now than we have ever been. *Roe v. Wade* is

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1. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1336–37 (1988) ("The Reagan Administration arrived in Washington in 1981 with an agenda that was profoundly hostile to the civil rights policies of the previous two decades.").

2. See *infra* Part II.

3. "OutCrits" include legal scholars aligned with "outgroups," like Critical Race Theory, Queer Legal Theory, ClassCrits, etc.; Francisco Valdes, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits, and LatCrits*, 53 U. MIA. L. REV. 1265, 1270 n.21 (1999) ("The 'OutCrit' denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet 'different' subordinated groups in an interconnective way. By 'OutCrit' I thus mean . . . those scholars who identify and align themselves with outgroups in this country, as well as globally.").

gone, and we can't even agree on whether women are dying or not.⁴ There is even a new term to describe our emotionally loaded political disagreements—"affective polarization."⁵ To make matters worse, we live at a time in which our ability to form legally recognized coalitions, e.g., class actions, is systematically being eliminated. The United States Supreme Court, for example, has held time and time again that mandatory arbitration clauses and class action waivers are valid and enforceable, which results in fewer opportunities to form coalitions amongst, for example, consumers and employees.⁶

Here is just some of what is going on in the United States in 2024:

- **Wealth Gap:** The wealth gap is widening.⁷ A February 5, 2024 paper published by the Federal Reserve Bank of St. Louis reveals that the top 10% of households in the United States have \$6.5 million in wealth and, as a group, hold 66.6% of total U.S. household wealth.⁸ "Black families own[] about 24 cents for every \$1 of white family wealth, on average[,] while "Hispanic families own[] about 19 cents for every \$1 of white family wealth, on average."⁹
- **LGBTQIA+ Rights:** The ACLU is tracking 526 anti-LGBTQ bills in 34 U.S. states and Puerto Rico.¹⁰ To put this number into better perspective, the ACLU was tracking 318 anti-LGBTQ bills on January 22, 2024. That number jumped to 429

4. See, e.g., Oriana González, *Health Experts See Rise in Maternal Mortality Post-Roe*, AXIOS (July 5, 2022), <https://www.axios.com/2022/07/05/maternal-mortality-death-abortion-ban-roe>.

5. Joel Achenbach, *Science Is Revealing Why American Politics Are so Intensely Polarized*, WASH. POST (Jan. 20, 2024), <https://www.washingtonpost.com/science/2024/01/20/polarization-science-evolution-psychology/> ("affective polarization" describes "[p]olicy preferences . . . entangled with a visceral dislike of the opposition").

6. See, e.g., *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011); *Epic Sys. Corp. v. Lewis*, 584 U.S. 497 (2018); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019).

7. See Andre M. Perry et al., *Black Wealth Is Increasing, but so Is the Racial Wealth Gap*, BROOKINGS INST. (Jan. 9, 2024), <https://www.brookings.edu/articles/black-wealth-is-increasing-but-so-is-the-racial-wealth-gap/> (According to the Federal Reserve's Survey of Consumer Finances, between 2019-2022, "the racial wealth gap increased by \$49,950—adding up to a total difference of \$240,120 in wealth between the median white household and the median Black household.").

8. Ana Hernández Kent & Lowell R. Ricketts, *The State of U.S. Wealth Inequality*, FED. RSRV. BANK OF ST. LOUIS (Oct. 22, 2024), <https://www.stlouisfed.org/institute-for-economic-equity/the-state-of-us-wealth-inequality>.

9. *Id.*

10. See *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024> (Dec. 6, 2024).

on February 15, 2024, and then to 463 on February 28, 2024. According to Every Town for Gun Safety, there have been 298 murders of transgender and gender-expansive people in the United States since 2017.¹¹ According to the Human Rights Campaign, twenty-nine Black transgender women were killed in 2017;¹² and thirty-five transgender and gender-expansive people were killed in 2023, of whom 84% were people of color and 50% were Black transgender women.¹³

- **Environmental Racism:** In 1983, three of the four largest off-site hazardous waste facilities were located in communities that were overwhelmingly African American.¹⁴ Today, people of color make up 56% of the population in the United States living in neighborhoods with Toxic Release Inventory facilities.¹⁵ “Low-income communities are more likely to be exposed to climate change threats (e.g., flooding, storms, and droughts) due to inadequate housing and infrastructure.”¹⁶
- **Reproductive Health Restrictions:** A year after the United States Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women’s Health Organization*, “20 states are enforcing more bans limiting abortion than before the ruling, including 14 states that have banned abortion at conception.”¹⁷

11. *How Does Gun Violence Impact the Communities You Care About?*, EVERYSTAT, <https://everystat.org/#transgender> (last visited May 14, 2024) (Everytown for Gun Safety has been tracking homicides of transgender and gender-expansive people since 2017).

12. Stephen Peters, *20 Years After Matthew Shepard’s Brutal Murder, LGBTQ People Are Still Facing Epidemic of Violence*, HUM. RTS. CAMPAIGN (Oct. 12, 2018), <https://www.hrc.org/press-releases/20-years-after-matthew-shepards-brutal-murder-lgbtq-people-are-still-facing>.

13. *Fatal Violence Against the Transgender and Gender-Expansive Community in 2023*, HUM. RTS. CAMPAIGN FOUND., <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-nonbinary-community-in-2023> (last visited Apr. 5, 2024); *New Everytown Data on Transgender Homicides Reveals Concentration in the South*, EVERYTOWN FOR GUN SAFETY (Feb. 13, 2024), <https://www.everytown.org/press/new-everytown-data-on-transgender-homicides-reveals-concentration-in-the-south/#:~:text=This%20violence%20is%20not%20evenly,gender%20expansive%20people%20remain%20unsolved> (putting the number of transgender and gender-expansive murdered in 2023 at 35).

14. Tseming Yang, *Old and New Environmental Racism*, 2024 UTAH L. REV. 109, 116 (2024).

15. *Environmental Justice Factsheet*, CTR. FOR SUSTAINABLE SYS., UNIV. OF MICH., PUB. NO. CSS17-16, <https://css.umich.edu/publications/factsheets/sustainability-indicators/environmental-justice-factsheet> (last visited Dec. 28, 2024).

16. *Id.*

17. Rebecca Goldman, *Abortion Rights and Access One Year After Dobbs*, LEAGUE OF WOMEN VOTERS, <https://www.lwv.org/blog/abortion-rights-and-access-one-year-after-dobbs>

In February 2024, the Alabama Supreme Court ruled that frozen embryos, or “extrauterine children,” have the same legal rights as children.¹⁸

- **Voting Rights Restrictions:** According to the Brennan Center, “Between January 1 and October 10, 2023: [a]t least 14 states enacted restrictive [voting] laws, all of which will be in place for the 2024 general elections At least 6 states enacted 7 election interference laws, with all 7 taking effect before the November 2024 elections.”¹⁹ Given that laws that restrict voting only serve to undermine faith in elections, it seems clear that all these new laws negatively impacted what happened at the polls in 2024.
- **Affirmative Action Gutted and DEI Attacked:** In June 2023, the United States Supreme Court struck down race-conscious affirmative action in college admissions programs,²⁰ overturning decades of precedent since *Regents of the University of California v. Bakke*²¹ was decided in 1978. The Chronicle of Higher Education is tracking 81 bills in 29 states and Congress, introduced since 2023, that “prohibit colleges from having diversity, equity, and inclusion offices or staff; ban mandatory diversity training; forbid institutions to use diversity statements in hiring and promotion; or bar colleges from

(Aug. 2, 2023); *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state/> (last visited Apr. 5, 2024).

18. *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515 and SC-2022-0579, 2024 WL 656591, at *4 (Ala. Feb. 16, 2024) (“[N]either the text of the Wrongful Death of A Minor Act nor this Court’s precedents, exclude *extrauterine children* from the Act’s coverage. Unborn children are children under the Act, without exception based on developmental stage, physical location, or any other ancillary characteristics.”) (emphasis added).

19. *Voting Laws Roundup: October 2023*, BRENNAN CTR. FOR JUST. (Oct. 19, 2023), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2023?ms=gad_voting%20rights_673789674949_8628877148_153488863916&gad_source=1&gclid=CjwKCAiAuYuvBhApEiwAzq_YiUD42fVkvFrkd7Ofps-FzCx7t4WfAb4ay4_YsX2B8cEMsGSYquhsBRoCBZ4QAvD_BwE.

20. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

21. *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).

considering race, sex . . . in admissions or employment.”²²

- **Right to Work Laws:** A right-to-work state is one in which state law prohibits union security agreements. Twenty-eight states and Guam currently have right-to-work laws that stifle union participation.²³
- **Book Bans:** Between 2021-2023, a total of 5,894 books have been banned in schools in the United States with the majority of “books that include diverse characters, primarily characters of color and LGBTQ+ characters, [being] overwhelmingly subject to book bans.”²⁴

But the problems currently confronting us are not isolated events that appeared overnight. Instead, they are the current expressions of long-simmering antagonisms and fears that have deeply entrenched roots in our socio-economic-political system.²⁵ The moment we are living in is not detached from everything that has come before.²⁶ Rather, this moment and everything happening in it are a part of a continuum stretching back to the “discovery” and subsequent founding of this country. And, given the recent coordinated and sustained attacks on Critical Race Theory,²⁷ it is critical that we, the OutCrits of today, remember our intellectual lineage. So, to understand *this* moment in our critical history requires us to put our current

22. See Chronicle Staff, *DEI Legislation Tracker*, THE CHRON. OF HIGHER ED., <https://0-www-chronicle-com.library.swlaw.edu/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts> (Aug. 30, 2024).

23. See *Right-To-Work States—Guide for 2023*, CLOCKIFY, <https://clockify.me/learn/business-management/right-to-work-states/> (last visited Apr. 5, 2024); *Right-To-Work Resources*, NAT’L CONF. OF STATE LEGIS., <https://www.ncsl.org/labor-and-employment/right-to-work-resources> (Dec. 19, 2023) (detailing Guam’s right-to-work status).

24. *Banned in the USA: The Mounting Pressure to Censor*, PEN AM. (Sep. 1, 2023), <https://pen.org/report/book-bans-pressure-to-censor/#:~:text=During%20the%202022%E2%80%99323%20school,public%20schools%20across%20the%20country.>

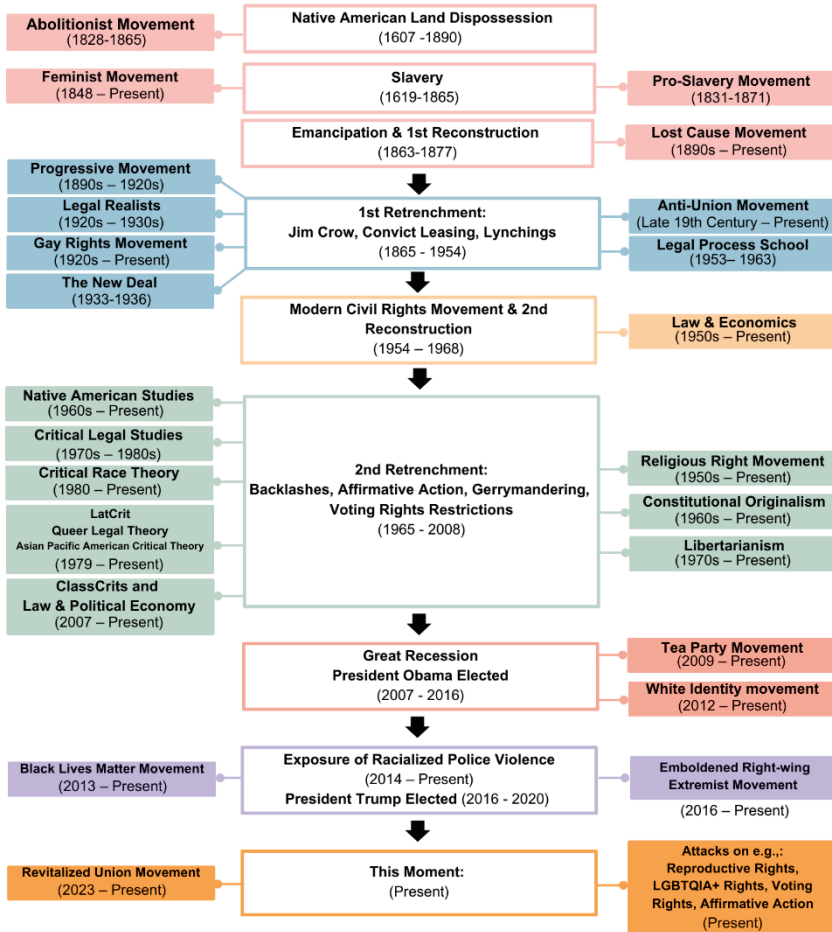
25. Cf. STEVE JONES, ANTONIO GRAMSCI 95 (2006) (“Capitalism[,]” Gramsci argues, “is riven by deep and incurable problems . . .”).

26. Milan Babić, *Let’s Talk About the Interregnum: Gramsci and the Crisis of the Liberal World Order*, 96 INT’L AFFS. 767, 771 (2020) (“ . . . if crises are not reducible to single, exogenous events, they represent more than just a single moment separating the old from the new order. They are, rather, long, multidimensional and transformative processes of economic and political insecurity that can last for decades . . .”).

27. Taifha Alexander, *CTR Forward: Tracking the Attack on Critical Race Theory* 4, UCLA SCH. OF L., https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf (last visited Dec. 28, 2024) (The Critical Race Studies program at UCLA School of Law traces the attacks on Critical Race Theory to September 2020 when then-President Trump’s Executive Order 13950, which banned “‘divisive concepts’ . . . that conservative operatives organized under the banner of ‘CRT.’”).

moment into context. One perspective of that context—in chart form--might look like this:²⁸

This Moment in Critical Context



Professor Danielle Kie Hart (she/her)

28. All of the citations in support of the references in the graphic can be found in the Appendix.

III. GRAMSCI AND OUR “ORGANIC CRISIS”

*“The question I wonder is after death, after my last breath
When will I finally get to rest through this oppression?
They punish the people that’s asking questions
And those that possess steal from the ones without possessions.”*

“Me Against the World,” Tupac Shakur²⁹

Are we in a third retrenchment? If so, what prompted it? If you look at the first two retrenchments, they came on the heels of distinct periods of reconstruction marked by the end of the Civil War and the Reconstruction Amendments, and the Modern Civil Rights Movement in the 1960s. Looking back over the last 20–30 years, however, nothing that could be called a reconstruction has occurred. Significantly, the attacks from the Right seem to be directed everywhere, against everyone even remotely Liberal, and all at once. So instead of a retrenchment, I think we are in what Antonio Gramsci would call an “organic crisis.”³⁰

An organic crisis is one that “challenge[s] the very fundamentals on which social orders are built[.]”³¹ and can last for decades.³² In an organic crisis, the group in power is unable to resolve the crisis within the social order’s existing frameworks, which results in a “crisis of authority.”³³ During this crisis of authority, “the old is dying and the new cannot be born[.]”³⁴ And because “the old is dying,” the crisis of authority incentivizes the group in power to “shore up its rule through whatever ideological, economic, political[,] and legal resources it has at its disposal.”³⁵ The result is that, in the interregnum created, as the shift in the balance of social forces is sorted out, “a great variety of morbid symptoms appear.”³⁶ One such morbid symptom is the rise of “the charismatic ‘man of destiny,’ who offers the leadership necessary to overcome the impasse and construct a new settlement based on the force of their personality.”³⁷ When conservative

29. 2PAC, *Me Against the World*, on ME AGAINST THE WORLD (Interscope Records & Out da Gutta Records 1995).

30. Zachary Levenson, *An Organic Crisis Is Upon Us: When Gramsci Goes Viral*, SPECTRE J. (Apr. 20, 2020), <https://spectrejournal.com/an-organic-crisis-is-upon-us/>.

31. Babic, *supra* note 26, at 772.

32. Babic, *supra* note 26, at 771.

33. Babic, *supra* note 26, at 772; *see also* JONES, *supra* note 25, at 96–97.

34. Babic, *supra* note 26, at 773.

35. JONES, *supra* note 25, at 95.

36. JONES, *supra* note 25, at 99.

37. JONES, *supra* note 25, at 99.

forces maintain control over mechanisms of power, the “charismatic man of destiny” and the movement that follows him will take a reactionary form.³⁸

We are and have definitely been witnessing many “morbid symptoms” in red and blue states all over the country, especially since Donald Trump’s ascendancy in U.S. politics in 2016. But Trump is not the crisis—he is just a symbol of it. So, to be clear, the group in power currently experiencing the crisis of authority is straight, white men. The hegemony that white, straight men have enjoyed since the founding of this country is being threatened from several different but related directions at once, including *but not limited to* (1) the majority white-to-minority white demographic shift; (2) the decline of Christianity in the United States;³⁹ and (3) women: (i) the share of women who earn as much or significantly more than their husbands in opposite-sex marriages has tripled in the last 50 years—men are the primary or sole breadwinner in only 55% of these marriages;⁴⁰ and (ii) an increasing number of women are choosing to stay unmarried until much later in life.⁴¹ The organic crisis now taking place in the United States, therefore, is one that challenges white hetero-patriarchal normativity, i.e., the “very fundamentals” on which the social order of the United States was built.⁴²

38. JONES, *supra* note 25, at 99.

39. See, e.g., *Modeling the Future of Religion in America*, PEW RSCH. CTR. (Sep. 13, 2022), <https://www.pewresearch.org/religion/2022/09/13/modeling-the-future-of-religion-in-america/>.

40. Cf. Susan L. Brown et al., *The Rising Midlife First Marriage Rate in the U.S.*, NAT’L LIB. OF MED. (June 8, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9616076/#:~:text=Over%20the%20past%20half%20century,57%25%20between%201995%20and%202020> (“Over the past half century, the U.S. first marriage rate has plummeted 60%, falling from 76.5 marriages per 1,000 unmarried women ages 15 and older in 1970 to just 31.3 per 1,000 in 2018 The share of women ages 18-49 who have ever married dropped from 72% to just 57% between 1995 and 2020.”); Richard Fry et al., *In a Growing Share of U.S. Marriages, Husbands and Wives Earn About the Same*, PEW RSCH. CTR. (Apr. 13, 2013), <https://www.pewresearch.org/social-trends/2023/04/13/in-a-growing-share-of-u-s-marriages-husbands-and-wives-earn-about-the-same/>.

41. See, e.g., Richard Fry & Kim Parker, *Rising Share of U.S. Adults Are Living Without a Spouse or Partner*, PEW RSCH. CTR. (Oct. 5, 2021), <https://www.pewresearch.org/social-trends/2021/10/05/rising-share-of-u-s-adults-are-living-without-a-spouse-or-partner/> (“[I]n 2019, roughly four-in-ten adults ages 25-54 (38%) were unpartnered—that is, neither married nor living with a partner . . . up sharply from 29% in 1990.”).

42. See, e.g., Mary Anne Franks, *Where the Law Lies: Constitutional Fictions and Their Discontents*, in *LAW AND LIES: DECEPTIONS AND TRUTH-TELLING IN THE AMERICAN LEGAL SYSTEM* (Austin Sarat ed., 2015) (analyzing the fact and consequences stemming from the omission of women and people of color from “We the People” in the U.S. Constitution); Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 *STAN. L. REV.* 335 (1989) (discussing who owned property in Colonial America and the role that reality played for democratic lawmaking going forward).

It is beyond the scope of this short essay to examine all the causes contributing to this crisis. Instead, this essay focuses on the moral panic⁴³ around race fueled by the impending demographic shift in the U.S., and two of its consequences—white fear of race-based change and the coalescence of the “White Identity movement.”

According to the United States Census Bureau, non-Hispanic white people are currently the majority group in the country because, racially and ethnically, they account for more than 50% of the American population.⁴⁴ But the Bureau predicts that by 2044—a scant 20 years from now—white people will be the minority racial group in the United States.⁴⁵ The proportion of white people in the population has been declining since 1950 and has continued to decline gradually since then.⁴⁶ In 1980, the white population comprised almost 80% of the total population but by 2000, that number had dropped to 69.1%.⁴⁷ By 2018, whites comprised just over 60% of the population, which is the lowest number ever recorded.⁴⁸ In fact, if the 2020 census data is confirmed, “the 2010 to 2020 decade would be the first decade since the first census was taken in 1790 when the white population did not grow.”⁴⁹

43. According to Oxford Reference, a moral panic is “[a] mass movement based on the false or exaggerated perception that some cultural behavior or group of people is dangerously deviant and poses a threat to society’s values and interests. Moral panics are generally fueled by media coverage of social issues.” Available at <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100208829>. Two different people at ClassCrits XIV also discussed moral panic: (1) Michael Smith discussed the moral panic surrounding drag queens and Critical Race Theory on the Conservative Constitutionalism panel; and (2) Catherine Carpenter discussed the moral panic around sex offender registration laws on the Dual Consciousness panel.

44. Sandra L. Colby & Jennifer M. Ortman, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060* at 9, U.S. CENSUS BUREAU (Mar. 3, 2015), <https://www.census.gov/library/publications/2015/demo/p25-1143.html>.

45. *Id.* at 1.

46. Dudley Poston & Rogelio Sáenz, *The US White Majority Will Soon Disappear Forever*, TEX. A&M TODAY (May 6, 2019), <https://today.tamu.edu/2019/05/06/the-us-white-majority-will-soon-disappear-forever/#:~:text=When%20the%20U.S.%20was%20established,where%20it%20stayed%20until%201950>.

47. William H. Frey, *The Nation Is Diversifying Even Faster than Predicted, According to New Census Data*, BROOKINGS INST. (July 1, 2020), <https://www.brookings.edu/articles/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted/>.

48. Poston & Sáenz, *supra* note 46.

49. Frey, *supra* note 47.

This is not news.⁵⁰ In fact, media reporting on this demographic shift has proliferated since the late 1990s.⁵¹ But the inevitable white majority-to-white minority shift (the “majority-minority shift”) became much more salient in public discourse by the time President Obama was elected to his second term in 2012. Professor Crystal Parikh recounts the following story:

One day after the 2012 presidential election, Bill O’Reilly (2012), conservative commentator for the Fox News network, declared, “the white establishment is now the minority,” to explain how the nation’s first black president, Barack Obama, was able to win a second term in office. In response to O’Reilly’s proclamation, *New York Times* op-ed columnist Charles Blow (2012) explained that, in fact, white Americans are projected to remain the majority racial population in the United States until 2043. Blow nonetheless acknowledged, “The browning of America is very real and unrelenting.”⁵²

Empirical studies show that making the shift salient to white Americans produces several effects, including: (1) causing white people to express more anger, fear, and racial bias towards racial minorities and more sympathy for and positive evaluations of their own racial group;⁵³ (2) decreasing whites’ support for racial diversity as an idea that should be valued and pursued;⁵⁴ (3) eliciting racial discrimination;⁵⁵ and (4) increasing whites’ sense that their social position in the racial hierarchy is being threatened, which then increases their support for politically conservative parties, policies, and candidates.⁵⁶ In addition, when white people think their position is under threat, they also tend to perceive more anti-white discrimination.⁵⁷

50. David Simson, *Hope Dies Last: The Progressive Potential and Regressive Reality of the Antibalkanization Approach to Racial Equality*, 30 WM. & MARY BILL RTS. J. 613, 664 (2022) (footnote omitted) (the U.S. Census Bureau projected in 2008 “that by the middle of the twenty-first century the United States would move from a majority-white to a ‘majority-minority’ nation”).

51. Maureen A. Craig et al., *Racial and Political Dynamics of an Approaching “Majority-Minority” United States*, 677 ANNALS AM. ACAD. POL. & SOC. SCI. 204, 205 (2018).

52. Crystal Parikh, *Minority*, in KEYWORDS FOR ASIAN AMERICAN STUDIES 161 (Cathy J. Schlund-Vials et al. eds., 2015).

53. Simson, *supra* note 50, at 665–66; Craig et al., *supra* note 51, at 206.

54. Simson, *supra* note 50, at 667.

55. Craig et al., *supra* note 51, at 207.

56. Craig et al., *supra* note 51, at 208.

57. Maureen A. Craig & Jennifer A. Richeson, *Majority No More? The Influence of Neighborhood Racial Diversity and Salient National Population Changes on Whites’ Perceptions of Racial Discrimination*, 4 RSF 141, 142 (2018); Craig et al., *supra* note 51, at 209 (“[T]he impacts of salient shifting demographics are not unique to whites—that is, members of dominant social groups.”); *id.* at 208–09 (explaining that non-Hispanic racial minorities, such as Asians and Blacks, were more inclined to support politically conservative policies and self-identified as more conservative when shown Hispanic demographic shifts).

That “white” is a race and white people have a racial identity are not new ideas. People have claimed “White” as a distinct and superior race since at least the Age of Enlightenment.⁵⁸ Blacks and, subsequently, African Americans have been studying white people since slavery.⁵⁹ White as a racial category has also been theorized by progressives (or the Left) for over 100 years from W.E.B. Du Bois to Audre Lorde and bell hooks, to Eric Foner, David Roediger, and countless others. Cheryl Harris’s 1993 article, *Whiteness as Property*,⁶⁰ remains one of the most important papers in the Critical Race Theory canon.

The concept of “white race-consciousness”⁶¹ is also not new. Kimberlé Crenshaw, for example, focused on the ideology behind white racial consciousness and traced its roots to white supremacy before documenting the ways in which white racial consciousness sustains white racial dominance in American society.⁶² Ian F. Haney López grappled with white racial consciousness by expounding on the social construction of white racial identity.⁶³

58. See, e.g., David Hume, *Negroes . . . Naturally Inferior to the Whites*, in RACE AND THE ENLIGHTENMENT: A READER 31, 33 (Emmanuel Chukwudi Eze ed., 1997) (“I am apt to suspect the negroes and in general all other species of men . . . to be naturally inferior to the whites. There never was a civilized nation of any other complexion than white . . .”); ANDREW S. CURRAN, THE ANATOMY OF BLACKNESS: SCIENCE & SLAVERY IN AN AGE OF ENLIGHTENMENT 118 (2011) (“Deciphering the black African’s status within the human species nonetheless remained a vexing problem for a number of Enlightenment-era philosophes.”); according to Professor Andrew Curran: For the majority of philosophes working around mid-century [1750-1770], the “symptoms” of blackness extended to three overlapping realms: the moral, the intellectual, and the physical. The supposed moral or behavioral liabilities of the *nègre* included sloth, barbarism, paganism, and hypersexuality. For many philosophes, these were natural extensions of the black African mind or *esprit*, which, unlike its white counterpart, supposedly lacked basic intelligence, an ability to reason, and historical memory.

Id. I need to thank Alesi Woodward-Hart for bringing race in the Enlightenment Age to my attention and for the references she provided.

59. JENNIFER BEECH, WHITE OUT: A GUIDEBOOK FOR TEACHING AND ENGAGING WITH CRITICAL WHITENESS STUDIES 4 (2020) (David R. Roediger’s Preface and Introduction to *Black on White: Black Writers on What it Means to Be White*) (“When Langston Hughes published *The Ways of White Folks* [sic] some sixty years after the end of slavery, he featured a story ‘Slave on the Block’ near the book’s outset—a story which highlighted the necessity for slaves to critically study potential white owners[.]. Hence, from slavery on, African-Americans have a long tradition of observing, studying, and writing about whiteness and whites.”).

60. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

61. IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 14 (10th anniversary ed. 2006) (explaining that race-consciousness is “the explicit recognition of racial differences . . .” So, at its most basic, *white* racial consciousness means that a white person explicitly recognizes that whites are different from Blacks, Asians, Latinos, etc.).

62. See Crenshaw, *supra* note 1.

63. See HANEY LÓPEZ, *supra* note 61.

apartheid, their enthusiasm belied, just beneath the surface, a striking degree of fear, bewilderment, disillusionment, and dread.⁶⁶

This expanded white race consciousness has the potential to unite (if it hasn't done so already) otherwise disparate groups of white people (who would never have anything to do with each other under other circumstances) around the common conviction that racial minorities threaten their social position in American society.⁶⁷ This coalescence of white race consciousness can be tapped into and even manipulated to oppose race-based initiatives like affirmative action, book bans, and the like. I am calling this coalescence of white race consciousness in this present moment the “White Identity movement.”

Ironically, I am using Dean Daryl Joji Maeda's description of the Asian American movement⁶⁸ as the analogical basis for the White Identity movement that I think exists in the United States in 2024. According to Dean Maeda, the Asian American movement was constructed, evolved over time, was “rife with contradictions,” and remains in flux.⁶⁹ And while the term “Asian American” signified a collective solidarity, the group was actually comprised of many different Asian ethnicities.⁷⁰ The movement was also not unitary because it “featured tremendous variety in terms of geography [e.g., New York, Seattle, San Francisco, Hawaii], [and] campaigns [e.g., higher education, sweatshops, healthcare], and ideology.”⁷¹ The tension between uniformity and variation, therefore, had to be constantly negotiated.⁷² Given all of its diversity, flexibility, and variations, Dean Maeda concluded that:

[I]t makes more sense to speak of the “Asian American movement” (without capitalization) rather than the “Asian American Movement.” Doing so sidesteps the problem of defining the Asian American movement precisely in favor of understanding that a variety of loosely affiliated groups and individuals were united by a conviction that racism, class exploitation, and imperialism negatively impacted people of Asian ancestry in the United

66. *Id.* (“[A]s time wore on, even wealthy white South Africans began to radiate a degree of fear and frustration that did not match any simple economic analysis of their situation. A startling number of formerly anti-apartheid white people began to voice bitter criticisms of post-apartheid society.”).

67. See Crenshaw, *supra* note 1, at 1372 (“The establishment of an ‘other’ creates a bond, a burgeoning common identity of all non-stigmatized parties—whose identity and interests are defined in opposition to the other.”).

68. Daryl Joji Maeda, *Movement*, in *KEYWORDS FOR ASIAN AMERICAN STUDIES* 165, 165–68 (Cathy J. Schlund-Vials et al. eds., 2015).

69. *Id.* at 165, 167.

70. *Id.* at 166.

71. *Id.* at 167.

72. *Id.* at 166.

States, and acted on that conviction to transform society accordingly.⁷³

The “White Identity movement” is very similar: it is constructed, will evolve over time, and is rife with contradictions. The term “White Identity” also signifies a collective solidarity, but it, too, consists of many different groups of white people in different places, and with different campaigns and ideologies. Think, for example, about the Patriot Front and suburban white women.⁷⁴ Consequently, the White Identity movement will remain in flux. The White Identity *movement*, like the Asian American *movement*, therefore, can best be understood as “a variety of loosely affiliated groups and individuals”⁷⁵ “united by a conviction that”⁷⁶ the imminent majority-minority shift threatens the social position of whites in the racial hierarchy of the United States.⁷⁷ One could therefore argue that white people in America are experiencing a “crisis of authority,” which incentivizes them to shore up their social position “through whatever ideological, economic, political[,] and legal resources [they have] at [their] disposal.”⁷⁸ This is what we are seeing play out across the United States right now.

The example of white suburban women *may* be indicative of the coalescence of the White Identity movement and its shift to the Right. In 2017, suburban women “were the driving force behind Democrat Jon Ossoff’s (ultimately losing) campaign in Georgia’s special congressional election.”⁷⁹ The Republican deficit with this demographic was so bad in 2018 that even a Republican strategist opined “that the GOP has an ‘overwhelming challenge’ with suburban women.”⁸⁰ Four years later, white suburban women shifted to Republicans in significant numbers just before the 2022 mid-term elections.⁸¹ In *The Hill*, Julia Mueller reported that “[e]xactly half

73. *Id.* at 167.

74. See, e.g., Danielle Kurtzleben, *What We Mean When We Talk About ‘Suburban Women Voters,’* NPR (Apr. 7, 2018, 7:01 AM ET), <https://www.npr.org/2018/04/07/599573817/what-we-mean-when-we-talk-about-suburban-women-voters> (“In the December special Senate election in Alabama, both campaigns heavily courted suburban women in the closing days. Just after that election, a Republican strategist concluded to *The New York Times* that the GOP has an ‘overwhelming challenge’ with suburban women.”).

75. Maeda, *supra* note 69, at 167.

76. *Id.* at 166.

77. Frey, *supra* note 47.

78. Jones, *supra* note 25, at 95.

79. Kurtzleben, *supra* note 75.

80. *Id.*

81. See Julia Mueller, *Republicans Pick Up Ground Among White Suburban Women: Poll,* THE HILL (Nov. 2, 2022, 11:56 AM ET), <https://thehill.com/homenews/campaign/3715678-republicans-pick-up-ground-among-white-suburban-women-poll/>; Catherine Lucey, *White Suburban Women Swing Toward Backing Republicans for Congress,* THE WALL ST. J. (Nov. 3, 2022, 6:49 PM ET), <https://www.wsj.com/articles/white-suburban-women-swing-toward-backing->

of suburban white women report thinking the Republican Party has a plan to ‘make life easier’ for people like them, while just 35[%] think Democrats have the better strategy.”⁸²

There could very well be, and probably are, other factors motivating this shift because individual agency is complicated. That said, it is also entirely possible that the white race consciousness I am discussing in this essay is one of those factors, even if white suburban women and mainstream whites, for that matter, do not recognize it.⁸³

IV. CONCLUSION

*And I said to him:
Are there answers to all of this?
And he said:
The answer is in a story
and the story is being told.*

From “Narrative Theology #1” by Pádraig Ó Tuama⁸⁴

It seems very true—the moment we are living in is a moment of crisis. This is why it is really important to keep three things in mind. First, while a crisis represents the confluence of a myriad of underlying societal contradictions, a crisis also serves to move a society from one historical phase to the next.⁸⁵ This means that “every crisis is also a moment of reconstruction”⁸⁶ and, therefore, a moment of potential change.⁸⁷ We do not know yet what the outcome of this particular crisis will be because the crisis does not dictate the resolution.⁸⁸ Maybe we will end up with another version

republicans-for-congress-11667381402 (reporting that the results of a Wall Street Journal poll, which surveyed 297 white suburban women, showed that white suburban women “favor[ed] Republicans in congressional races by 15[%].” Strikingly, an August Wall Street Journal poll showed white suburban women favoring Democrats by 12%).

82. Mueller, *supra* note 82 (emphasis added). According to the Library of Congress’s website, “The Hill is a non-partisan newspaper for and about Congress, breaking stories from Capitol Hill, K Street, and the White House.” *The Hill*, LIBR. OF CONG., <https://www.loc.gov/item/lcwaN0018560/#:~:text=The%20Hill%20is%20a%20non,Street%2C%20and%20the%20White%20House> (last visited Apr. 14, 2024).

83. See generally Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (discussing unconscious racism and how it is fostered, how it functions, and how it impacts society and its hierarchical structure).

84. PÁDRAIG Ó TUAMA, IN THE SHELTER: FINDING A HOME IN THE WORLD 5 (2015).

85. Babic, *supra* note 26, at 771.

86. *Id.*

87. Stuart Hall & Doreen Massey, *Interpreting the Crisis*, 44 SOUNDINGS 57, 57 (2010).

88. *Id.* at 57-58.

of the current status quo, or a slightly transformed version of it. Or maybe the status quo, with its longstanding and entrenched hierarchies, will be radically transformed. The point is that we have the opportunity, if not the obligation, to be a part of the changes that are to come.

Second, if we are to be effective agents of equality and justice, we must commit to critically reflecting on ourselves. As Gerald López instructed some of us 15 years ago, “it’s a decisive mistake to think we can change systems without changing ourselves.”⁸⁹ This is particularly true for those of us who claim a white or partially white identity, given that whites are the group most likely to experience cognitive dissonance associated with the majority-minority shift. Critical self-reflection is necessary, because, at the end of the day, we need “a concerted effort to work with one another to learn how better to avoid reinforcing what we claim to want to transform.”⁹⁰

And finally, we need to remember that the crisis we are experiencing right now is just a moment, part of a continuum. Nothing exists in isolation, which means we are never alone. We are the fruit of everything that has come before us and the harbingers of things yet to come. What we do and the stories we tell now matter. As Margaret Montoya told us thirty years ago in her ground-breaking article, *Mascaras, Trenzas, y Greñas, Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, storytelling challenges traditional legal discourse and, “[i]n the hands of Outsiders, storytelling seeks to subvert the dominant ideology.”⁹¹ We need to keep telling our stories and fighting our battles regardless of how many times we may have told those stories or fought those battles before.

The secret of our success is that we never, never give up.
Wilma Mankiller⁹²

89. Gerald P. López, *Changing Systems, Changing Ourselves*, 12 HARV. LATINO L. REV. 15, 33 (2009).

90. *Id.* at 35.

91. Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse* 17 HARV. WOMEN’S L.J. 185, 214 (1994); Professor Montoya explains: [the way the bloc quote below is set up looks odd to me]

Stories told by those on the bottom, told from the “subversive-subaltern” perspective, challenge and expose the hierarchical and patriarchal order that exists within the legal academy and pervades the larger society. Narrative that focuses on the experiences of Outsiders thus empowers both the storyteller and the story-listener by virtue of its opposition to the traditional forms of discourse.

Id. at 214-15 (citations omitted).

92. *Wilma Mankiller Quotes*, A-Z QUOTES, https://www.azquotes.com/author/9385-Wilma_Mankiller (last visited Apr. 14, 2024).

Appendix

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 - a. *Defining Documents in American History: Native Americans (1451-2017)* 23 (Michael Shally-Jensen, PhD ed., 2017) (“The colonists eventually arrived at Jamestown, about thirty miles from the mouth of the James River, on May 13, 1607, and it was at this site that they built their fort.”).
 - b. See generally Tore T. Petersen, *The Military Conquest of the Prairie: Native American Resistance, Evasion, and Survival, 1865-1890* (2016).
2. Slavery (1619-1865)
 - a. Mary Elliott & Jazmine Hughes, *A Brief History of Slavery That You Didn't Learn in School*, NY Times (Aug. 19, 2019), <https://www.nytimes.com/interactive/2019/08/19/magazine/history-slavery-smithsonian.html> (“Sometime in 1619, a Portuguese slave ship, the São João Bautista, traveled across the Atlantic Ocean . . . The freedom promised by the proclamation — and the official legal end of slavery — did not occur until the ratification of the 13th Amendment on Dec. 6, 1865.”).
3. Abolitionist Movement (1828-1865)
 - a. *Timeline of the Abolitionist Movement*, Gilder Lehrman Institute of American History (2012), <https://www.gilderlehrman.org/sites/default/files/inline-pdfs/Timeline%20of%20the%20Abolitionist%20Movement.pdf> (“1828: New York State abolishes slavery . . . 1865: Thirteenth Amendment is added to the Constitution, which abolishes slavery.”).
4. Pro-Slavery Movement (1830-1870)
 - a. Encyclopaedia Britannica, *Abolitionism Southern Defense of the “Peculiar Institution,”* (Encyclopaedia Britannica Eds. 2024) <https://www.britannica.com/topic/abolitionism-European-and-American-social-movement/Southern-defense-of-the-peculiar-institution> (“the South intensified its system of slave control, particularly after the Nat Turner Revolt of 1831.”).
 - b. *The Enforcement Acts of 1870 and 1871*, U.S. S., https://www.senate.gov/artandhistory/history/common/gen_eric/EnforcementActs.htm (“In response [to violence

against African Americans from the Ku Klux Klan], Congress passed a series of enforcement Acts to end such violence and empower the President to use military force to protect African Americans.”).

5. Emancipation & 1st Reconstruction (1865-1877)
 - a. *Reconstruction Timeline*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/reconstruction-timeline/> (last visited Feb. 24, 2024, 1:00 PM) (“1863 January 1: President Abraham Lincoln signs the Emancipation Proclamation . . . 1877 March 4: Reconstruction policies officially end.”).
6. 1st Retrenchment: Jim Crow & Lynchings (1865-1968)
 - a. *Jim Crow Laws*, History.com (Jan. 22, 2024), <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> (“Jim Crow laws were a collection of state and local statutes that legalized racial segregation . . . the laws—which existed for about 100 years, from the post-Civil War era until 1968 . . . The roots of Jim Crow laws began as early as 1865.”).
 - b. See generally Amy Kate Bailey & Stewart E Tolnay, *Lynched: The Victims of Southern Mob Violence* (2015).
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 - a. *The Progressive Movement and U.S. Foreign Policy, 1890-1920s*, U.S. Department of State, <https://2001-2009.state.gov/r/pa/ho/time/ip/108646.htm> (last visited Feb. 24, 2024, 1:30 PM) (“In the 1890s, the Progressive movement also began to question the power of large businesses and monopolies . . . In the 1920s, the Progressive movement began to be supplanted by several different movements.”).
8. Lost Cause Movement (1890s-Present)
 - a. *Memorialization of Robert E. Lee and the Lost Cause*, Nat’l Park Serv., (Sept. 14, 2021), <https://www.nps.gov/arho/learn/historyculture/memorialization-of-robert-e-lee-and-the-lost-cause.htm>.
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 - a. Michael S. Green, *Legal Realism as Theory of Law*, 46 William & Mary L. Rev. 1915, 1917 (“The legal realist movement flourished back in the 1920s and 30s, primarily at Yale and Columbia law schools and at Johns Hopkins’s short-lived Institute of Law.”).

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 - a. David Wolitz, *Alexander Bickel and the Demise of Legal Process Jurisprudence*, 29 Cornell J. of L. and Pub. Pol’y 153, 154. (2019) (“The Legal Process School dominated the elite legal academy during the decade running roughly between 1953 and 1963 . . .”).
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 - b. Paul H. Ruben, Law & Economics (1960s): <https://www.econlib.org/library/Enc/LawandEconomics.html>
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 - a. *Modern Civil Rights Movement*, Nat’l Hist. Educ. Clearinghouse, <https://teachinghistory.org/history-content/beyond-the-textbook/24318#:~:text=The%20modern%20Civil%20Rights%20Movement,with%20the%20assassination%20of%20Dr> (last visited Feb. 14, 2024).
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 - a. <https://www.history.com/news/feminism-four-waves-4-waves>: (1) 1848-1820; (2) 1963-1980s; (3) 1990s -- ; (4) Present Day
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 - a. Sarah Jones, *The Pinkertons Still Never Sleep*, in *The New Republic* (5/23/18), available at: <https://newrepublic.com/article/147619/pinkertons-still-never-sleep?ref=guide.unitworkers.com>
 - b. <https://www.bloomberglaw.com/external/document/X8JDHS00000000/labor-relations-professional-perspective-right-to-work-laws-and->
15. Religious Right Movement (1950s-Present)
 - a. <https://firstamendment.mtsu.edu/article/religious-right/>
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- a. *Second Wave Feminism: Collections*, GALE, <https://www.gale.com/primary-sources/womens-studies/collections/second-wave-feminism> (last visited Feb. 24, 2024, 2:00 PM) (“The second wave feminism movement took place in the 1960s and 1970s and focused on issues of equality and discrimination.”).
17. 2nd Retrenchment: Backlashes, affirmative action, gerrymandering, voting rights restrictions (1965-2013)
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18. Julian Maxwell Hayter, *Civil Rights Legislation Sparked Powerful Backlash that’s Still Shaping American Politics*, PBS, (Feb. 16, 2023) <https://www.pbs.org/wnet/preserving-democracy/2023/02/16/civil-rights-legislation-sparked-powerful-backlash-thats-still-shaping-american-politics/> (“For nearly 60 years, conservatives have been trying to gut the Voting Rights Act of 1965, the crowning achievement of the Civil Rights Movement The 2013 Supreme Court decision in *Shelby County v. Holder* seemed to be the death knell for the Voting Rights Act.”).
 - a. Affirmative Action 1961 - 2022
19. *Affirmative Action Policies throughout History*, Am. Ass’n for Equity and Diversity, https://www.aaed.org/aaed/History_of_Affirmative_Action.asp (last visited Feb. 15, 2024).
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 - b. Jacey Fortin, *Critical Race Theory: A Brief History—1980s* (NY Times) <https://www.nytimes.com/article/what-is-critical-race-theory.html>
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29. See Marc T. González et al., *Latina and Latino Critical Legal Theory: LatCrit Theory, Praxis and Community*, 12 Rev. Direito e Práx., Rio de Janeiro 1316 (2021).
 - a. Critical Race Feminism—1995
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 - a. Queer legal theory—1979

31. *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* 91 (Martha Albertson Fineman et al. eds., 2009) (“The prolific discourse emergent between the 1979 and 1997–8 symposia is described below, perhaps somewhat simplistically, as the ‘first stage’ of sexual orientation legal scholarship to denote the evolutionary nature of critical knowledge and scholarly consciousness.”).
 - a. Asian Pacific American Critical Theory—1993
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33. *Middle East Critique*, Taylor & Francis Online, <https://www.tandfonline.com/action/journalInformation?show=aimScope&journalCode=ccri20> (last visited Feb. 25, 2024, 3:40 PM) (“Middle East Critique provides a forum to develop intellectually innovative perspectives on and through key political, social, economic, and cultural aspects of the contemporary Middle East/West Asia and North Africa.”) (indicates that the journal’s first volume was published in 1992).
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 - b. Barack Obama, The White House, <https://www.whitehouse.gov/about-the-white-house/presidents/barack-obama/> (last visited Feb. 21, 2024).
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 - a. Jenny Beth Martin, Keynote Address at the Conservative Political Action Conference (Mar. 4, 2016) (“It was seven years ago last week . . . that the modern Tea Party Movement was born. Now we’re just regular people . . .”).
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 - a. *George Floyd: Timeline of Black Deaths and Protests*, BBC, <https://www.bbc.com/news/world-us-canada-52905408> (last visited Feb. 21, 2024).
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 - a. *Donald Trump*, The White House, <https://www.whitehouse.gov/about-the-white-house/presidents/donald-j-trump/> (last visited, Feb. 21, 2024).
40. Right-Wing Extremist Movement (2016-Present)
 - a. <https://www.csis.org/analysis/rise-far-right-extremism-united-states>
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 - a. <https://hbr.org/2023/10/are-we-seeing-a-revival-of-union-power>
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