

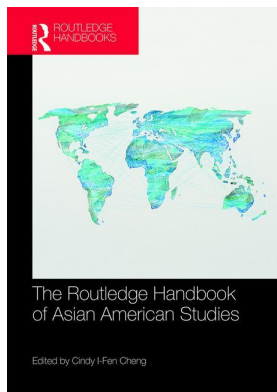
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ON THE ASIAN AMERICAN QUESTION

Joshua Chambers-Letson

The Racial Bourgeoisie

In April of 1990, Mari Matsuda took the podium at a fund-raising banquet for the Asian Law Caucus (ALC). ALC is a progressive, grassroots group of lawyers committed to serving the most vulnerable members of the Asian American community. At the time, Matsuda was an unsurprising choice for the keynote. She was emerging as a central figure in what was coming to be known as the critical race theory [CRT] movement and she would later go on to become the first Asian American woman to receive tenure at a U.S. law school at UCLA in 1998. However, by her own admission her address was an “unconventional fund-raiser talk” that moved “beyond the platitudes of fund-raiser formalism [in order to] talk of something that has been bothering me and that I need your help on” (1996, 150, 149). Barely a moment into her speech, Matsuda turned to an unlikely source of inspiration, paraphrasing Karl Marx’s characterization of the nineteenth-century bourgeoisie as an economic class “who were deeply confused about their self-interests . . . emulat[ing] the manners and ideology of the big-time capitalists . . . the ‘wannabes’ of capitalism. Struggling for riches, often failing, confused about the reason why, the economic wannabes go to their graves thinking that the big hit is right around the corner” (150). Noting that Marx limited his thinking to economic class, Matsuda pointedly asked, “Is there a racial equivalent of the economic bourgeoisie?” before answering, “I fear there may be and I fear it may be us.”

To make her case, Matsuda historicized the economic success experienced by some Asian immigrants and their descendants. These successes, she argued, are often repackaged and returned to Asian Americans in the form of the model minority myth. On the one hand, Matsuda was concerned that the dominant culture’s deployment of the model minority myth exploits narratives of Asian American success to deny the systemic subordination, disenfranchisement, and elision of Asian Americans. As she argued, it is through the framing of Asian Americans as a model minority that the successes of some “are used [by the dominant culture] to erase our [community’s] problems and to disavow any responsibility for them” (152). On the other hand, because the model minority myth has always been an anti-black, anti-Native American, and anti-Latino fantasy fostered by the interests of white supremacy, it positions Asian Americans squarely between the white ruling class and other racialized groups. Framing her address as “a plea to Asian Americans to think about the ways in which our communities are particularly

susceptible to playing the worst version of the racial bourgeoisie role” (150), Matsuda asked Asian Americans to defy the lure of identification with the ruling class. If Asian Americans are shuttled between the privilege of belonging (as the model minority) and continued experiences of exclusion and subordination, she called upon us to insist that “we will not be used” to forward the ideology of the dominant culture. The irony of Matsuda’s performance is clear: this is a scene in which a then untenured, radical, woman of color feminist addresses a room full of the economic bourgeoisie (lawyers and members of the business community) in order to warn them that they were at risk of becoming *like* the bourgeoisie (i.e. a “racial bourgeoisie”).

Matsuda knew what she was doing. One does not invoke the Marxian critique of the bourgeoisie without being perfectly aware that, despite the term’s waning popularity, it remains applicable to the very class of people comprising her audience. And though she may have rhetorically softened the blow by describing Marx’s figuration of the economic bourgeoisie as a nineteenth-century, European formation, she does more than enough work in the speech to show how the term continues to be relevant to the economic and racial cast of characters of the late twentieth-century U.S. Thus, as much as Matsuda’s performance was an insurgent act, it was also an earnest and auto-critical plea for “successful” members of the Asian American community to leverage our contingently privileged positions to work against the interests of the dominant culture. Of course, one is unlikely to succeed in convincing members of the ruling class to work against the system that makes their existence as a class possible.

I begin with this extended description of Matsuda’s performance at the ACL fundraiser to introduce a critical exploration of similar tensions and contradictions within the critical race theory movement. Just over a quarter-century after the commencement of the CRT movement, I believe it is important to explore CRT’s limits for those of us who, inspired by CRT, remain committed to the struggle for racial and economic justice. I understand CRT to be a radical legal movement that seeks to bring about greater conditions of racial and economic justice through a dual movement of legal critique and strategic utilization of the law.

In this chapter, I ask how the paradox of Matsuda’s performance—which asks the bourgeoisie to betray their own class interests by making a break with their interpellation *as* bourgeoisie—is significant of an internal contradiction within the CRT movement. CRT is founded upon a turn to the law and the discourse of civil rights. Throughout this chapter, I argue that the law functions as an apparatus that assures the maintenance of the dominant order through the reproduction of dominant social relations. As Karl Marx and Fredrich Engels famously accused the ruling class of the nineteenth century, “Your jurisprudence is but the will of your class made into a law for all” (487). Law transforms the will of the ruling class into a disciplinary, regulative, and universal norm (see: Lemons and Chambers-Letson 2014). Within capitalism, the law plays a critical function in securing the capitalist relations of production by protecting the regime of private property. As Marxist philosopher Louis Althusser writes, “All law, since it is in the last instance the law of *commodity* relations . . . is by essence . . . inegalitarian and bourgeois” (2014, 61). U.S. law, written by and on behalf of white, propertied men, meets the burden of this indictment. Race slavery, the subordination of women, and the dispossession and genocide of native peoples, for example, were not anathema to the legal order established by the U.S. Constitution so much as the U.S. Constitution was designed to protect and support these very practices (see: Lyons and Mohawk 1992; Irons 1999; Marshall 2001). The turn to the law for emancipation from exploitation and domination, then, poses critical problems when law may itself serve as the scaffolding and reproductive engine of structural injustice in the U.S.

Taking up Matsuda’s question about what role Asian Americans might play in the struggle for racial and economic justice, this chapter playfully appropriates the title of one of Marx’s

seminal early writings (“On the Jewish Question”) to focus “on the Asian American question.” Assuming that in the U.S. race and class are inextricable from each other, yet not entirely commensurable with each other, this chapter explores whether, in spite of its significant and radical potential to facilitate greater conditions for racial and economic justice, CRT is a project that remains limited to what Marx describes as “*civic, political* emancipation” (1978, 26). The problem with political emancipation, for Marx, is that it atomizes the subject into an “*independent and egoistic* individual,” without casting off the structural conditions that continue to produce her subordination, exploitation, and alienation. As we shall see, political emancipation relies upon the regime of law and civil rights. These formations ultimately reify, reproduce, and secure the rule of the dominant culture. As such, the following critique of CRT is not meant as an Oedipal attack on an intellectual tradition that continues to be a promising and radical tool in the struggle against racism, so much as it is an attempt to think the potentiality of CRT alongside its limits.

Critical Race Theory: An Incomplete Genealogy

One could proffer a series of genealogies to the CRT movement. As Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas wrote in their introduction to the seminal anthology of CRT writing, CRT emerged from the seeming successes *and* failures of the civil rights movement: “However compelling the liberal vision of achieving racial justice through legal reform overseen by a sympathetic judiciary may have been in the sixties and early seventies, the breakdown of the national consensus for the use of law as an instrument for racial redistribution rendered the vision far less capable of appearing even merely pragmatic” (1995, xvii). This breakdown resulted in “rearguard attacks on the limited victories” of the civil rights era as U.S. law was increasingly returned to its role as a structural support for a racially stratified capitalist state that masquerades as a free and egalitarian democracy.

Richard Delgado and Jean Stefancic narrate the origins of CRT similarly: “Realizing that new theories and strategies were needed to combat the subtler forms of racism that were gaining ground, early writers such as Derrick Bell, Alan Freeman, and Richard Delgado . . . put their minds to the task” (2001, 4). Delgado and Stefancic note that the movement was consolidated as such when “the group held its first conference at a convent outside Madison, Wisconsin, in the summer of 1989,” but noticeably disappear the contributions of women of color from the movement’s origin story.

In a preface to her published remarks from this conference, Matsuda (1996, 47) provides an expanded account of the movement’s genesis:

Professor Kimberlé Williams Crenshaw began calling what radical law professors of color were doing “critical race theory” when she organized a retreat at a Spartan, convent in the summer of 1989. It was “critical” both because we criticized and because we respected and drew on the tradition of postmodern critical thought then popular with left intellectuals. It was “race” theory because we were, both by personal circumstance and through our understanding of history, convinced that racism and the construction of race were central to an understanding of American law and politics. As legal theory, critical race theory uncovers racist structures within the legal system and asks how and whether law is a means to attain justice.

In this important passage Matsuda emphasizes Crenshaw’s critical role in the formation of the movement, offering an antidote to Delgado and Stefancic’s inadvertent centering of male

scholars in CRT's history. It also provides a concise definition of CRT as a legally grounded, critical enterprise that interrogates and critiques the centrality of racism to the nation and its laws.

CRT scholars and legal practitioners drew inspiration from a series of contemporary intellectual movements: critical legal studies, radical legal feminism, and continental theory (including postmodern and poststructural theory). Critical legal studies emerged from the legal realist movement of the early twentieth century. As summarized by Wendy Brown and Janet Halley, legal realists forwarded the "point that law is politics by other means" (2002, 19). Legal realists sought to undo the dominant insistence that there is a distinction between law as a technical, rational discourse and the discourses of power, politics, and morality. Building upon this tradition, critical legal theorists employed the often-competing lessons of Marxism and deconstruction to expand the critique of the law as an ideological force that shapes and maintains dominant power structures. They offered substantive critiques of liberalism while pointing to the inescapable legal indeterminacy caused by interpretive (and thus political) gaps that accompany juristic decision and the application of the law (see: Kennedy 2002). For critical legal scholars influenced by Marxism, law is a technology for the reproduction of the relations of production under capitalism. For those rooted in the tradition of deconstruction, critical legal theory is a means for analyzing how it is that legal discourse is mobilized to signify meaning as it produces material effects in the world (see: Derrida 1989–1990). Drawing on both schools of thought, radical legal feminism performs a structural analysis of patriarchy in order to theorize the systemic and historical elements that result in the social construction of patriarchy alongside the subordination and oppression of women (see, e.g.: MacKinnon 1979, Cornell 1999).

Inspired by and departing from these traditions, critical race theorists explore the structural production of race and racism in and by U.S. law. They demonstrate the centrality of racial formation to U.S. American politics, law, and social culture and respond to what Cornel West describes as "the relative silence of legal radicals—namely critical legal studies writers—who 'deconstructed' liberalism, yet seldom addressed the role of deep-seated racism in American life" (1995, xi). Recognizing the key role that the law plays in the construction of race, critical race theorists have produced an influential body of literature that forwards a series of important contentions regarding the social construction of race in the U.S. For example, scholars such as Derrick Bell were able to show how seeming victories for people of color (famously symbolized by the landmark ruling *Brown v. Board of Education*) are often structured by and conditional upon the convergence of the economic interests of the white ruling class and the nation-state (1995). Some, like Ian Haney-Lopez, mapped the production of "white" as a salient and privileged category in and through U.S. law (1996). Crenshaw demonstrated the differential effects of the intersection of seemingly discrete social formations—such as race and gender—arguing for broader coalitions across race, class, and gender (1995). Finally, others, including Matsuda, Patricia Williams and Robert S. Chang, demonstrated how legal discourse assumes/produces a neutral, universal subject that is in fact provincial and particular (white, landed, male). Doing so, they agitated for the inclusion of personal narrative and legal storytelling that would not only disrupt and displace this universal subject, but also open up legal discourse to the marginalized and minoritized voices and perspectives previously silenced by and in the law (Williams 1991, Matsuda 1995, Chang 1999, 61–75). CRT authors advanced structural theories of how law supports racist ideology, from the avowedly discriminatory regime of Jim Crow to the performance of microaggressions and other seemingly undetectable forms of racial discrimination in the sphere of everyday life. In turn, CRT developed effective, practical tools for challenging the law as it does so.

What if He's *Not* All Right? Critical Asian American Legal Theory

The condensed and cursory genealogy I have thus far provided runs the risk of eliding critical components, lines of flight, and points of divergence that occur under the umbrella of what we are calling critical race theory. By narrating the movement thus, I in no way intend to offer a comprehensive definition of CRT so much as I want to tease out some of the critical perspectives and contributions commonly associated with CRT. Indeed, the movement's emphasis on critique opened the movement itself to a series of auto-critical maneuvers that would expand the range of thought contained within it.

Asian Americanist legal critics, such as Robert S. Chang (2004), argued that the movement itself needed to rethink the black–white axis that structured much of the early work in the field. This was not because the black–white axis is not critical to racial formation in the U.S., but instead because the near exclusive focus on this axis obscures other, comparative forms of racialization that structure racial reality across the racial spectrum. Arguing that “one problem . . . with critical race theory is that while it has made the powerful claim that race matters, it has yet to show how different races matter differently” (1999, 46), Chang asserts that “one of the tasks of Asian American legal studies is to break the silence that surrounds our [Asian Americans] oppression” (60). But while Chang's approach insists on the importance of antiracist coalitions, his analysis focuses largely on the points of connection and structural similarities between Asian Americans and other racialized groups (especially African Americans and Latinos). Less attention is given to the Asian American question posed earlier by Matsuda: what are we to do with the cases in which Asian Americans serve as agents of the dominant ideology and, thus, contribute to the ongoing subordination and exploitation of other minoritarian subjects?

As an example of the failure of dominant strands of CRT to include Asian American perspectives, Chang gestures to a then recently published dossier on the Los Angeles Uprising of 1992 in a prominent legal journal. In his analysis of the dossier, Chang rightly notes that the journal's contributors failed to take seriously the violence against ethnic Korean shopowners. During what is known in the Korean American community as *Sa-i-Gu* (referring to the dates of the rebellion), an estimated \$400 million dollars in damage was inflicted upon Korean-owned businesses in LA's Koreatown. As Chang notes, the “omission [of Korean voices from the special issue] foreclosed the possibility of reaching a greater understanding for the existence of racial tensions, how they have been fostered by legal decisions, and what might be done to bridge the differences” (2004, 60). Chang's book valiantly attempts to think through the problem of how to build this bridge.

In a critical passage, Chang offers a reading of a famous scene in Spike Lee's *Do the Right Thing*, presenting the scene as a portrait of what such a bridge might look like. In this scene, a “largely black and Latina/Latino crowd gathered in front of [a] Korean immigrant's store” (1999, 131) with the express intent to destroy it. Chang offers a nuanced reading of the scene that traces the uneasy affinities and points of solidarity between Sonny (Steve Park), the Korean shop owner, and the black residents of the Brooklyn neighborhood where his store is located. While Chang acknowledges the incommensurable nature of the characters' relationships to each other, in the end he celebrates the transcendence of these differences with a description of the scene's resolution. Sonny expresses a cross-racial identification when he declares to the black crowd, “I no white! I black! You, me, same!” Ultimately, the character Coconut Sid (Frankie Faison) defuses the racially charged rage towards Sonny by declaring, “The Korean is all right, he's all right.” To this, Chang romantically muses, “We need more moments like this” (132).

While I am compelled by much of Chang's argument, I fear that he is too quick to subsume Asian Americans to a place of racial equivalence with other racialized groups (as signified by

being “all right”). Doing so, he does not place enough sustained critical pressure on the role that Asian Americans sometimes play in brokering and maintaining the racial and economic subordination of other groups. Is it possible that the rage directed towards Sonny is not solely determined by anti-Asian animus, but is also an expression of class rage? Might the tragic scapegoating of Korean merchants during *Sa-i-Gu* be heard as an attempt to express rage towards the overlapping conditions of racial and economic hierarchy produced within racial capitalism? If this is true, any hope for forging a productive racial affinity across race can only be effective after an honest accounting of the relations of economic privilege and exploitation that divide differently racialized groups from each other.

Put thus, it is not incidental that the rage in this paradigmatic scene from *Do the Right Thing* (or during *Sa-i-Gu*, for that matter) was directed towards Korean *businesses*. Sonny is a character that serves a duly representative role: certainly he can be understood as representing Korean immigrants (and by extension Asian Americans), but he is also a representative of the class of small merchants that Marx described as the petite bourgeoisie. As a lower order of capitalists, the petite bourgeoisie may be closer in many ways to the working poor than to the upper middle class (*haute* bourgeoisie) or the wealthy capitalist classes. But the petite bourgeoisie’s economic interests are determined and forwarded by bourgeois economic ideology, often resulting in their adherence to and defense of dominant economic and racial ideology.

The tragedy of *Sa-i-Gu* was compounded by the fact that the capitalist mode of production in the U.S. often ties class to race and immigration status (Lowe 1996, 1–36; Hong 2006). Because of this, one of the only viable ways for racialized immigrants to survive and often provide for their family is to adopt capitalist ideology and join the ranks of the petite bourgeoisie. Before *Sa-i-Gu*, it was the convergence of racism and capitalism that produced a situation in which Korean business owners, themselves exploited by the capitalist mode of production and subject to U.S. American racism, took on a role as the dominant culture’s middle-men in the ongoing exploitation and subordination of other racialized subjects. As Korean merchants increased their presence in largely poor, black South Central Los Angeles neighborhoods, this racialized merchant class became the front line representing capitalist industry. Such stores based their profits (however modest) on the exploitation of largely Latino/a and Asian immigrant labor, unpaid and gendered domestic labor (figured in Lee’s film by way of Kim (Ginny Yang), Sonny’s wife), as well as the necessary consumption of an often poor, working-class, black customer base. During *Sa-i-Gu*, Korean businesses throughout the Los Angeles region became scapegoats for the exploitative conditions wrought by the capitalist relations of production. This surge of violence was as much an effect of structurally fostered anti-Asian racism as it was a response to the shopowners’ status as visible and accessible members of the petite bourgeoisie. To be clear, my intention is not to blame the victims of *Sa-i-Gu*, but instead to cast light on the complicated matrix of race and class hierarchies that provided the context in which the violence of the event erupted.

As the case of *Sa-i-Gu* suggests, if Asian Americans want to produce the mode of racial affinity that Chang desires, we must do more than critique the acts of racism, domination, and exploitation perpetuated against us and other groups. When we find ourselves in a position of relative racial and economic privilege, we must be willing to force a break with the very ruling ideology that affords us this position of privilege. Only by criticizing and moving away from our role in the exploitation of others can we find an affinity with others. This is an impossibly difficult thing to demand, as represented by a fictional account of the uprising in Paul Beatty’s novel *The White Boy Shuffle* (Beatty 1996). In a key passage, Ms. Kim, a biracial Black-Korean storeowner, burns down her own shop during *Sa-i-Gu* in an act of solidarity with members of the uprising (133). Satirical though it may be, Ms. Kim’s performance of solidarity with the

members of her community involved in the uprising, over those of the merchant class to which she also belongs, is significant of the difficult choices to be made in the forging of cross-racial affinity.

Reflecting this challenge, Matsuda's work offers an expanded account of class as she thinks the struggle for racial justice in relation to the history of class struggle. At first, Matsuda's address to the ALC *pretends* to place the question of class to the side, as she relegates Marx's concern with class to "nineteenth-century Europe." But then she pivots: "Living in twentieth-century America, in the land where racism found a home, I am thinking about race" (150). Here, race and class seem rhetorically divided from each other, separated as they are by a century and an ocean. But I understand this to be a pretense because the remainder of Matsuda's analysis goes to great lengths to situate the history of Asian American racialization within the history of class struggle.

Matsuda paints a portrait of racial capitalism's exploitation of the surplus labor population produced by the first waves of Chinese and Japanese immigrants during the nineteenth and early twentieth centuries. She also describes the way capital deployed racism in order to pit differently racialized laborers against each other. To make this case, she argues that Asian immigrants and Asian Americans became a kind of symbolic scapegoat for working-class rage at the decaying and exploitative labor conditions wrought by capitalism:

From out of this decay come a rage looking for a scapegoat, and a traditional American scapegoat is the Oriental Menace . . . From the Workingman's Party that organized white laborers around an anti-Chinese campaign in California in 1877, to the World War II internment fueled by resentment of the success of Issei farmers, to the murder of Vincent Chin, and to the terrorizing of Korean merchants in ghetto communities today, there is an unbroken line of poor and working Americans turning their anger and frustration into hatred of Asian Americans.

Matsuda (1996, 154)

The rage is just, she contends. It is the direction of this rage towards Asian Americans that is the problem: "Every time this happens, the real villains—the corporations and politicians who put profits before human needs—are allowed to go about their business free from public scrutiny, and the anger that could go to organizing for positive social change goes instead to Asian bashing." Systemic racism becomes a tool of the ruling class as it fosters division amongst the oppressed classes at the ground level. In turn, the oppressed direct their rage towards each other, rather than towards the structural conditions and members of the ruling class who are responsible for the exploitation and domination of the oppressed.

Isn't this part of the problem represented by Sonny or Ms. Kim? Racial capitalism produces conditions that often yoke racialized and immigrant subjects to a class position that forces their entry into the petite bourgeoisie at the expense and exploitation of other racialized minorities. How, then, can we produce a form of political affinity across race if we do not simultaneously undertake the dismantling of the economic relations productive of racially differentiated exploitation and subordination? Do we not need a more complete program for emancipation, which would free us both from the collusive abstractions of race and class? And can CRT, committed as it is to the law, achieve this end? It is at this point that we must return to the question of political emancipation. Doing so, we can explore the limits of the CRT project, and the difficulty CRT has in breaking with the dominant legal ideology, which serves as both its object of critique and its instrument for change.

Against Political Emancipation, or That One Time Patricia Williams Couldn't Get into Benetton

The law, though a central locus for class struggle, is ultimately an apparatus that serves, protects, and effects the reproduction of the dominant order. As a discourse of and committed to the law, I submit that CRT can only lead to forms of political emancipation. Put differently, because the law is a state apparatus that reproduces and reifies the ruling ideology, complete emancipation ultimately requires emancipation from the law itself. CRT is unable or unwilling to do this. To set up and defend this claim, let us return briefly to Marx's theorization of political emancipation.

For Marx, political emancipation reduces the subject to a civil order determined by bourgeois interests by relying upon the law, and civil rights in particular, to achieve its end. Civil rights, or the rights of citizens (or "man"), protect the subject's universal right to "equality, liberty, security, property" (42). But in the end this regime of rights affects the individuation and privatization of social life and the protection of private property above all else. Marx argues that within a bourgeois legal order, liberty is constructed as the "right to do everything which does not harm others . . . [and] is not founded upon the relations between man and man, but rather upon the separation of man from man"; property, in turn, "is the right of self interest . . . form[ing] the basis of civil society"; equality becomes an empty signifier with "no political significance" as it is "only the equal right to liberty as defined above; namely that every man is equally regarded as a self-sufficient monad"; and so finally security, which protects the integrity and private property of these "self-sufficient monads," becomes "the *assurance* of its egoism" (42–43). Political emancipation, which is achieved through the assertion of civil rights, effects the further alienation of mankind from itself because the "so-called *rights of man* . . . are simply the rights of a member of civil society, that is, of egoistic man, of man separated from other men and from the community" (42).

I should note, here, that the Marx we are working with is still very much a Marx under the influence of Hegel (see: Struik 1964, 31–39, Althusser 1990, Berardi 2009, 35–41). He still understands the world as perfecting itself through a historical process. As such, the young Marx yearns for the impossibility of a transcendent and universal "humankind," achieved through the abolition of alienation from human experience. In spite of the lingering imprint of idealist humanism upon his thought, the young Marx still offers us an effective critique of civil rights discourse and, by extension, the project of political emancipation. In short, while he concedes that political emancipation can assure the liberation of *some* individuals through the law, he insists that political emancipation ultimately leaves in place, reifies, and contributes to the expansion of the legal technologies that reproduce and effect the continued domination and exploitation of many others.

Let us think this problem in relationship to the question of CRT. It's not that critical race theorists have a naïve conception of the law. In Matsuda's essay on "Critical Race Theory," for example, she proffers a nearly Marxian definition of the law as "an instrument of political power used to privilege ruling elites" (1996, 52). The problem, however, is that law is not merely a tool that is "used" by the ruling class. This is because, as I have argued, law is a key state apparatus that contributes heavily to the reproduction of the relations of production within capitalism (see also: Althusser 2014, 57–69). Law is not merely a tool "used to privilege" the ruling class, it is a central apparatus for the reproduction of class relations as such.

Matsuda argues that there is another element to the law, however, rooted in the optimistic possibility of change through legal means: "The struggle against racism is historically a struggle against and within law. The hard-won victories of that struggle demonstrate the duality of law:

law as subordination and law as liberation” (1996, 52). If I am placing pressure on CRT’s engagement with law, I must emphasize that I am not refuting the deployment of legal means in the service of a struggle for radical transformation. What I object to is the formulation of the law as a source of *liberation*. There is a radical difference between reform and emancipation and that difference demands to be parsed.

Certainly, law has always been used as a locus of class struggle and social transformation. As Althusser (2014, 112–113) observes in his description of nineteenth- and twentieth-century class struggle, for example:

The possibility, for the party of the working class, to intervene in revolutionary (non-reformist) fashion in the ‘play’ of the system of the . . . [dominant culture/ideology], rests on the possibility of *circumventing* the law *even while respecting it* . . . [I]t is a question . . . of invoking the constitutional law recognized by the bourgeoisie itself so as to make it produce effects of agitation and propaganda favouring overt struggle against the bourgeoisie’s politics.

For Althusser, a revolutionary utilization of or negotiation with the law must always presuppose the law’s ultimate *circumvention*.

Althusser’s position echoes that of Marxist revolutionary Rosa Luxemburg, who argued at the turn of the twentieth century that the struggle for emancipation must only engage in legal reform insofar as it presupposes a revolutionary end (Luxemburg 2004, 157). To mistake legal reform *as* an emancipatory end is to abandon the cause altogether:

He who pronounces himself in favor of the method of legal reforms in place of and as opposed to the conquest of political power and social revolution does not really choose a more tranquil, surer and slower road to the same goal. He chooses a different goal. Instead of taking a stand for the establishment of a new social order, he takes a stands for surface modification of the old order. [original italics]

For both Althusser and Luxemburg, law can only *intervene* in the sets of relations produced by and reproductive of the dominant classes. Ultimately, reformist efforts cannot sublimate, transcend, or overcome the exploitative and unjust conditions wrought by the dominant culture because of the law’s critical role in reproducing and securing dominant social (and property) relations. Thus, while law may function as a *locus* of emancipatory struggle, it cannot achieve emancipation as such. In order to be emancipated from the limits of the “old order” (which is secured and reproduced by law), we must ultimately be emancipated from the law itself.

Considered thus, my worry is that CRT affords too great a *respect* for the law while placing too little emphasis on *circumventing* it. Indeed, as Matsuda asserts, in CRT law is *the* privileged site for liberation: “A just world is one that heals the wounded among us, that brings back the lost and the wasted, that elevates all human beings to their highest potential. The only way to do this is through a substantive conception of rights” (1996, 53). But now the “only way” to emancipate oneself is to subject oneself to the regime of rights that, as we observed vis-à-vis Marx, is precisely that which forecloses emancipation *from* the exploitative conditions of racial capitalism. In spite of its radical intent, CRT runs the risk of being trapped within the ideology of the ruling class. It inadvertently effects the reproduction of the ruling ideology, by way of its adherence to a discourse of rights, rather than achieving emancipation from it.

To expand this argument, let's turn to another example in the form of a famous passage from Patricia Williams' groundbreaking volume *The Alchemy of Race and Rights* (1991). Before I begin, I want to explain the tone of the following critique. Williams' book is a classic text of the CRT movement and remains one of the most incisive, nuanced, and necessary meditations on the relationship between race, law, and life in the U.S. I will perform a rather unflinching critique of a passage from the book for two reasons. First, as the reader will see, the *scene* of the passage is paradigmatically bourgeois (in the classical sense). My interrogation of this scene is *not* meant to single Williams out, so much as I intend for it to function as a form of auto-critique. Both Williams and I share the relative (though at times tenuous and contingent) economic privilege bestowed upon middle-class academics of color. Second, I turn a critical edge to this passage largely because Williams' book is characterized by a genius so strong that it will have no difficulty weathering the harshness of my engagement with it.

In an important chapter, Williams tells a story that she has called upon throughout her career in order to illustrate the experience of racial microaggression and to evidence the lived effects of racial discrimination (44–51). While Christmas shopping in NY's Soho neighborhood, which was at that time becoming increasingly affluent, Williams passes a Benetton store. She sees a sweater in the window and attempts to enter the store to buy it for her mother. Equipped with a buzzer, a young, white employee in the store dismissively denies Williams entrance. In the face of an overt act of racial discrimination, Williams justifiably flies into a self-described "rage" (45–46).

Through the story, Williams illustrates how the experiences of discrimination are embedded into the daily life of people of color. She also recounts how law school audiences and law journal editors have responded to the story: they objected to and censored her use of personal narrative as well as her insistence that race functioned as a determining factor in the event. Williams' chapter thus deploys the story to document the ground-level experience of discrimination. It also teaches a critically important lesson regarding the presumed *neutrality* of legal discourse as it is commonly used to render racism and structural discrimination invisible.

At the same time, the narrative perfectly demonstrates the way in which critical race theory, as a discourse rooted in bourgeois legal ideology, runs the risk of reproducing and affirming the dominant ideology as such. After all, in the story Williams isn't excluded from just any store, she is excluded from Benetton. That is, she is excluded from a then trendy, upscale, and elite (which is to say economically exclusive) fashion emporium. Indeed, Williams explicitly identifies the negation of middle-class privileges, which in this case includes the ability to bestow the "gift" of her consumption, as one of the injuries produced by the event: "In this weird ontological imbalance, I realized that buying something in that store was like bestowing a gift, the gift of my commerce, the lucre of my patronage. In the wake of my outrage, I wanted to take back the gift of appreciation that my peering in the window must have appeared to be" (45). It is not only Williams' abstract liberty that is negated, here, because liberty is reduced to her right, as a privileged member of the middle class, to enter into the free market as a free and unrestrained consumer.

If the buzzer system is predicated upon the racist logic that excludes Williams because she was black, the economic system that makes high-end retail stores possible regularly presupposes the exploitation and exclusion of the poor and working class altogether. The political emancipation of Williams from the effects of systemic racism may allow for her to shop in upscale boutiques by protecting her *right* to enter and consume a store's luxury items, a right that largely exists because of her elite economic status. But it most certainly won't provide this right for everyone. It won't provide it for the poor, who can't afford the store's commodities in the first place. It also won't provide it for those who labor to produce luxury commodities at often depressed wages. And it most certainly won't provide access for the over 1,100 workers

who died on 24 April 2013 in the collapse of the poorly maintained Rana Plaza factory in Bangladesh: a source for some of Benneton's production (Greenhouse 2013).

By protecting the regime of private property and capitalist relations of production, the law protects and makes possible these examples of exploitation and exclusion. Yet, like Matsuda, Williams (164–165) remains committed to the legal discourse of rights as a source of emancipatory transformation:

The task for Critical Legal Studies, then, is not to discard rights but to see through or past them so that they reflect a larger definition of privacy and property: so that privacy is turned from exclusion based on self-regard into regard for another's fragile, mysterious autonomy; and so that property regains its ancient connotation of being a reflection of the universal self. The task is to expand private property rights into a concept of civil rights, into the right to expect civility from others.

We need to hold to the most radical and important provision of Williams' assessment, which theorizes a revolutionary inversion of the concepts of privacy and property. But we also need to go one step farther. Williams teaches us that we must "see through or past" the legal discourse of rights, but insists that we should not discard them in the process. In turn, I would suggest that it is precisely by "seeing through or past them" that we would come to sublimate and transcend the concept of civil rights altogether.

Where Matsuda argues that a just world—in which all wounds are healed and the lost are returned to us—can only come about through the expansion of civil rights in general, Williams suggests that it is the reformation and expansion of the conjoined rights to privacy and property, in particular, that offers our best hope of living with each other. As I have argued vis-à-vis Marx, civil rights ultimately produce the privatization, individuation, and reduction of the singular being to her status as a "civil" (consuming) subject. Above all other things, law and civil rights protect the regime of private property, which presupposes conditions of alienation and exploitation. By valorizing and committing itself to the law, CRT contents itself with political emancipation, and forecloses the possibility of general emancipation.

Conclusion

To be clear, my argument is not that CRT is limited to a project of political emancipation because it focuses *too much* on race. Rather, I am arguing that CRT relies too much upon the law, limiting CRT's ability to effectively overturn the systemic conditions productive of race/racism and class/exploitation. Because of its commitment to the law and civil rights, at its best CRT may only be able to produce political emancipation from some of the effects of racism. At its worst, it inadvertently facilitates the expansion and reification of the dominant ordering of the world in which the production of race and class are mutually implicated.

In writing this, I do not mean to dismiss or discount the contributions of the CRT movement. On the contrary, I believe the work of the authors I have discussed should be *essential* reading for all of us committed to the project of emancipation. But as much as we must study the extraordinary contributions of the CRT movement, we must also read against its limits. The promise of the CRT movement lies in its radicality: its willingness to work within the structure of law to destroy some of the legal technologies that make racism a lived reality. Its weakness is its commitment to the law and civil rights as ends unto themselves. In the end, emancipation will require freedom *from* the law as we know it, insofar as law serves, *in the last instance*, to reproduce the *inegalitarian and bourgeois* ideology of racial capitalism.

If we are to take seriously Matsuda's call for Asian Americans to resist the lure of serving as the racial bourgeoisie, we must be willing to critique the bourgeois tendencies that underpin the CRT movement. We must continue to learn from CRT's capacity to imagine radical strategies geared towards emancipation from racism, while remembering that there will be no emancipation until we are *all* freed from related and systemic forms of racial and economic exploitation, subordination, and domination. A vision of a just world is not one in which the elite among us have access to Benetton, where some of us attain security for our private property, or where some achieve freedom from the experience of other people's racism without changing the conditions that produce racism in the first place. In the end, these are the best outcomes afforded by legal or political emancipation. It is not enough for the relatively privileged few to take refuge in the precarious oasis of security and private accumulation, protected as it is by a wall of civil rights. What we must struggle for is a world in which we are all free from the dominant ideology, which necessarily entails freedom from the subjectifying discourses and effects of the law itself.

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