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ESSAY

Introduction to the special issue on empirical methods and critical race theory

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Critical Race Theory (CRT) can be understood as an attempt to examine how race and racism are central rather than peripheral to law and legal thinking. Rather than viewing the long and ongoing story of race in American law as a series of unfortunate aberrations to an otherwise fair and impartial legal system, CRT sees racial subordination and the marginalization of other disempowered groups as foundational to how law and democracy are organized and function in society. With this intervention comes other commitments such as rejecting law's presumed neutrality; a dissatisfaction with traditional Civil Rights approaches to racial equality; understanding how identity traits such as race and sex intersect and constitute one another; and taking the inherently political nature of legal scholarship seriously (Crenshaw et al. 1995). This framework has been both widely celebrated and consistently attacked since its emergence in the 1980s by people both inside and outside the academy (Rosen 1996). In many ways, CRT is the proverbial millennial that seems forever young but, in reality, is now middle aged.

Over the years, CRT has been brought into conversation with other academic fields. At the 2012 Law and Society Annual (LSA) Meeting in Honolulu, Hawaii, a group of scholars attempted an early introduction of CRT to the empirical methods used by the broader sociolegal community. The panel was an important step in a series of efforts to structure more meaningful exchanges between critical race and law and society scholars. A working group focused on this enterprise had formed after an initial call from Professor Laura Gomez to make race a more meaningful component of law and society research (Gomez 2004). Premised on that call and its claims regarding the dearth of race work in leading sociolegal journals, one of us conducted an empirical study that confirmed this point (Obasogie 2007). In 2010 and 2011, Professors Obasogie and Joan Williams secured grant money from UC Law San Francisco to bring critical and sociolegal scholars together for two small working group meetings that produced frank conversations and the sharing of work between CRT law scholars and social scientists

(Obasogie 2013:185). The ongoing project formed by the group came to be called the empirical methods and CRT (eCRT) working group.

The Hawaii LSA Annual Meeting panel took place just prior to the first eCRT public conference and symposium held at the University of California, Irvine, in 2012. The panel included several junior and senior scholars with backgrounds in CRT and Law and Society scholarship. During an audience exchange that questioned the benefits to be gained for CRT from greater inclusion of social science methods, one CRT scholar took issue with the description and framing of the panel that was included in the program. In response, they paraphrased a line from "A Soldier's Play" – a Pulitzer Prize winning play about a racially segregated Army unit set in Louisiana in 1944 – which stated words to the effect that for those who are marginalized, conforming oneself to mainstream sensibilities rarely yields any material benefit. Their broader concern was the panel's framing that implied eCRT was created for respectability purposes, i.e. to make CRT seem less threatening and more acceptable to the social sciences, thereby seemingly "improving" critical scholars' work by embracing known, intellectually comfortable empirical methods that might position critical work as part of mainstream academia. CRT does not need a relationship with social science to validate its claims regarding racial inequality. This has never been eCRT's intent and could not be further from our goals. If anything, eCRT complicates traditional social science theories and methods as a way to *deepen* critiques of the scientific method. Our work seeks a way forward that allows empirical work to ethically reorient itself and move away from its histories of producing racial violence and legitimizing racial subordination, with the hope of moving towards a just and inclusive future (Baker 1998; Black 2003; Gould 1996; Kevles 1985; Rafter 1998; Zuberi and Bonilla-Silva 2008).

Nevertheless, the perception articulated at this early meeting reflects some of the challenges associated with putting critical race perspectives in conversation with empirical methods. From its inception, eCRT's vision has always been bi-directional and mutually beneficial – that is, "to pursue race scholarship that is both theoretically sophisticated and empirically robust" (Obasogie 2013:185). The outsider origins of critical theory and empiricism's hegemony in the social sciences raise legitimate concern that the two perspectives might not meet on equal footing (Butler 2018). But the effort has been committed to finding ways to bring theory and method together in new and exciting ways that push race conversations in new directions without compromising the integrity or normative goals that CRT brings to the table.

Since the Hawaii meeting, a shifting group of empirical and critical scholars within the loosely formed eCRT working group have continued to meet[1], publish public symposia, and present at Law and Society Association Annual Meetings. Until this special issue, however, there has not been a significant exploration of eCRT work within the pages of leading sociolegal journals such as the *Law and Society Review* (*LSR*) and *Law and Social Inquiry*. A part of the difficulty is that sociolegal and critical scholars continue to correctly identify a disjuncture around matters such as perceptions that scientific research has aided in the development of racial stratification (Zuberi and Bonilla-Silva 2008); an insufficient engagement with race theory within disciplinary studies (Bonilla-Silva 1996:465); and critical scholars struggling to accept how "neutrality" is constructed in social science research (Carbado and Roithmayr 2014:157). Placing such difficulties to one side, we applaud the current editors for their willingness to make eCRT scholarship – which by design has been conceived as broad and having

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fairly porous boundaries (Barnes 2016) – the subject of a special issue. Doing so helps to answer Laura Gomez's challenge in her LSA Presidential address for members to do better sociolegal work centered on the study of race (Gomez 2012).

During the selection and editing of the work in this special issue, we saw tensions similar to those that arose between empirical and critical race scholars during the early eCRT workshops. Some of the tension mimicked concerns voiced at the 2012 LSA meeting in Hawaii that this effort might lead to preferences for articles that emphasized a narrow vision for what counts as being properly within the field of law and society over more critical visions that attempt to introduce the field to more aspirational examples of what it could be by embracing more human-centered explorations into how race, power, and racial power are constructed in law and society. Mindful of guidance from *LSR* editors concerning an emphasis on why a particular piece might be of interest to law and society scholars, the Special Issue editors embraced this project as an opportunity to go beyond what typically appears in the *Law & Society Review* to produce a uniquely transformative collection of articles.

We provide this history to suggest that while we appreciate this opportunity and are very proud of the collection that appears here, the process of selecting and editing articles has not been seamless. This is not for personal reasons. We trust that even when we have disagreed, the *LSR* editors' questions and decisions were informed by principled beliefs and included efforts to accommodate the special editors' perspectives. In what is a common criticism of majority institutions in CRT literatures, the difficulty evinced is one of a structural misalignment. *LSR*, and likely many other disciplinary journals, subscribe to orthodoxies, the providence of which CRT scholars are bound to question. Much of the work we found to be potentially exciting and publishable included theoretical commitments that produced limits for or critiques of empirical data within the project. Though we pushed back against excluding some of these pieces, ultimately, a number of them are not included in this special issue.

While part of this introduction is designed to point out the innovations in the set of works collected here, we also feel the obligation to make clear our view that carving out a space for work of this nature in sociolegal journals is a work in progress. To be clear, an eCRT-focused special issue of *LSR* marks significant progress in publishing more thoughtful and theoretically informed research around race. Race scholars, however, continue to face barriers to access and inclusion that have long existed for the Association and *LSR*. These are the types of barriers that have also been the subject of CRT scholarship.

First, for example, the leadership of the Law and Society Association has long professed its commitments to improving the diversity within its membership and an openness to a variety of intellectual traditions. Early CRT narratives spoke to the challenges of diversifying legal academia (Delgado 1989) and opening closed scholarly publication networks (Delgado 1984). We note then with some disappointment that this collection of articles does not feature work by a more racially diverse set of scholars or broader engagement with humanist disciplines and approaches. This disappointment is somewhat tempered by the fact that a number of the authors are junior and/or publishing in *LSR* for the first time. Part of the critical tradition has revolved around the importance of "voice" – shaped, in part by experiences of social marginalization tied to identity – to scholarship production (Bell 2007; Johnson 1994). We look forward to the day when those discourses and greater representation will be a feature of enterprises such as this one.

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Second, a special issue such as this will likely remain a project of limited engagement and impact until *LSR* article selection de-emphasizes publishing work designed to appeal to a particularly insular group of scholars with specific methodological commitments. Again, part of the CRT tradition is understood as one of discursive disruption (Brazant 2024). As such, only when we expose the *LSR* readership to race work that is original, robust, and complex while challenging received wisdom will we facilitate the shared goal of propelling eCRT and law and society scholarship forward.

It is a difficult task to know how much to say in moments like these because we want to reflect the accomplishments and challenges that permeated this publication process. We can only trust that readers will accept our narrative in the spirit in which it is offered – to improve such collaborations in the future. We also want to reiterate that we are grateful to *LSR* for the opportunity and are incredibly excited about the pieces that appear within the issue. They are briefly described below, with our goal being to point out each project's particular innovation or synergy between the sociolegal and critical work. We are very pleased that the pieces move beyond consideration of only well-known critical theories such as "interest convergence" (Bell 1980) or "intersectionality" (Crenshaw 1991). An important characteristic of this set of articles is that they include significant engagements with critical scholarship and theory that are diverse and in a manner that does not treat race as an "easily measurable independent variable" (Gomez 2004:455). Rather, they embrace Professor Gomez's challenge to do more sophisticated race work (Gomez 2004) – empirical work that operationalizes race in a manner that captures the "complexity of race as a social reality that changes in different historical and social contexts" (Barnes 2016:450).

The issue begins with an exceptional piece that is certain to help both critical and sociolegal scholars. In *What is Perceived When Race Is Perceived and Why It Matters for Causal Inference and Discrimination Studies*, scholars Issa Kohler Hausman and Lilly Hu deftly explicate how causal inferences related to race turn on effects of the perceptions of race that are treated as disparate treatment. They trouble this assumption by deploying critical and sociolegal studies of racial cognition to theorize that perceptions of race are actually co-constituted via other "decision-relevant features" (Hausman and Hu, this issue). Their work suggests that scholars and others they identify as causal inference practitioners invest in isolating the causal effects of racial perception, without sufficiently identifying a "sociological theory of what race is and … a normative theory of what is fair and just treatment in light of what race is" (Hausman and Hu, this issue). This work is rich, provocative and accomplishes at least two goals germane to CRT. First, it cautions researchers to be both attentive to operating definitions and notions of fairness in causal work linked to race. It also suggests to critical scholars that they should be more skeptical of empirical studies of race and causality that are not subject to this type of meaningful interrogation.

Professors Hendricks and Ortiz's look at the spatial distribution and enforcement of parking tickets in Chicago, which includes tracking fines and harsher punishments for non-payment. In *When Turnips Bleed: the Racial Duality of Predatory Ticket Debt*, they discern that activity or "hot spots" and "cold spots" largely reflect where tickets are issued. When, however, one assesses the communities that suffer the greatest types and amounts of punitive consequences of ticketing, a different picture emerges. Specifically, their data indicate, "[M]any of the predominantly Black neighborhoods located on the south and west sides flip from cold spots of ticketing to hot spots of tickets-turned-intensified punishment" (Hendricks and Ortiz, this issue). In some

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ways, this research confirms a racialized predation narrative that has been identified in recent critical work in the context of policing (Carbado 2022) and tax sales of property (Atuahene 2025). Here, the authors' empirical analysis of the neighborhoods suggest ticketing implicates a broad population but that "penal fines and fees, the debts that come with these sanctions nevertheless devastate Black and Latinx communities" (Hendricks and Ortiz, this issue). In essence, the project finds that the same tickets are having heightened punitive consequences for Black and Latinx residents. The engagement between these outcomes and CRT is that but for findings such as this, the problem of ticketing would not be considered to be one that is racialized. Within U.S. constitutional law, disparate racial impact without discriminatory intent is often not addressable. Moreover, as the authors point out, racially disproportionate punishment may be treated as a function of the difference between responsible and non-responsible offenders rather than race. CRT suggests why and how race matters in systems that seek to obscure racial meaning. This article uncovers and significantly problematizes a circumstance where race is operative but is not being acknowledged as such.

Academic Copaganda, written by a group of University of Chicago sociologists led by Professor Robert Vargas, invites us to explore a controversial but essential question: what role do academics play in obscuring, limiting, and marginalizing the claims made by advocates concerned about police and policing? Vargas et al. examine the funding patterns of major grant makers that support social science research on policing and find that the studies receiving the most media attention following George Floyd's killing in 2020 constitute a form of *copaganda*, or the use of the social sciences to further police interests. In coming to this finding, the authors embrace a beautiful synthesis of critical theory and empirical methods by deploying a content analysis that helps us understand not only how funders shape debates about important questions concerning public policy, but also how academics wield their credibility to stifle social justice work. Revealing how some scholars adopt police sensibilities to produce work that counters social movements adds to the growing literature on the hidden barriers that limit social movements against police use of force.

Theories targeting subordination based on multiple forms of difference, such as intersectionality and anti-essentialism (Harris 1990), were early contributions of CRT and Feminist Legal Theory. There were, however, also criticisms that early CRT scholarship "appeared to assume that 'people of color' were all congenitally heterosexual" (Valdes 1999:1280). Including and accounting for "queerness" as a category and lens of analysis in eCRT discourses was part of the goal of *BLASÉ: Deviant Lawyers and the Denial of Discrimination*. In this article, Swethaa Ballakrishnen uses sixty ethnographic interviews with minority law students and early career legal professionals to assess with nuance the subjects' experience with institutional discrimination. Paying particular attention to genderqueer subjects due to their inhabiting ambiguous sociolegal categories, Ballakrishnen identifies systematic slights related to identity that they term "blasé discrimination" (Ballakrishnen, this issue). Unlike say, micro-aggressions and other common but negatively viewed practices, blasé discrimination is treated as ordinary and relatively unproblematic. Slights of this kind are not necessarily viewed as inflicting structural violence because the conduct – such as mis-gendering or failing to use a preferred pronoun – relates to identities regarded as "ambiguous and inarticulable within normative categories" (Ballakrishnen, this issue). Borrowing from queer and critical theories, Ballakrishnen marks the outline of a "QueEr-CRT"

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approach to addressing the experiences of non-normative identities. The goal is to produce research designs that focus on deviance, subject position, outsider jurisprudence and critical inequality research. This study makes a contribution to exposing areas that are undertheorized and the work that remains for critical and sociolegal scholars in explicating the lived experiences of persons who are multiply-different, across diverse localities.

Hana Brown's *Challenging the Indian Child Welfare Act* draws upon a dataset of legal documents to analyze efforts to overturn the 1978 Indian Child Welfare Act that ended forced removal of Native American children from their families and tribes. Brown frames the issue of Native American child welfare as being tightly tied to broader conversations about tribal sovereignty; since the adoption of the Act, white settlers have tried to undermine it as a proxy for questioning the legal legitimacy of tribal governments and to normalize settler colonialism and assimilationist policies. Brown links CRT with settler colonial theory in her examination of the legal documents supporting the campaign to overturn the Indian Child Welfare Act, which reveals how colorblindness anchors much of the legal claims concerning the Act's alleged affront to Equal Protection norms. In doing so, Brown makes a remarkable contribution to the legal mobilization literature by showing how CRT can add theoretical insights and complexities that draw attention to the linkages between indigenous groups and broader trends within legal thought that twist Equal Protection norms to suppress racial minorities.

Prevailing Over the Penology of Racial Innocence by Marisa Omori, Alessandra Early, and Luis Torres continues the inquiry into how academics can participate in legitimizing racial subordination by the choices and framings used to explore racialized socio-legal phenomena. Omori, Early, and Torres focus on the issue of sentencing to unearth (1) "how treating unequal structural conditions *impartially* minimizes racial inequality"; (2) "how *isolating* racism occurring in a 'single moment' inherently minimizes racial inequalities that are systemic and occur through multiple stages"; and (3) "how *individual* frameworks of analysis might minimize racial inequality, especially because racism also occurs at an organizational and structural level" (Omori, Early, and Torres, this issue). For the authors, these dynamics within the sentencing data they analyze demonstrate an example of what Murakawa calls the presumption of "racial innocence" in socio-legal literature (Murakawa 2019: 473), where empirical methods rearticulate deeply embedded forms of racial subordination as blameless happenstances that somehow coincidently impact people of color. Using Critical Race sensibilities to highlight the masking patterns of this work provides yet another important framework to see how academic research can inhibit the public's ability to understand how law is being used to subordinate communities of color.

Finally, in *Police Talk in the Jury Room: the Production of Race-Conscious Reasonable Doubt Among Racially Diverse Jury Groups*, authors Lynch and Laguna use an innovative study of jury deliberations as a means to engage the critique of colorblindness as a form of racial justice – a framework that has historically occupied a large space in critical discourses (Culp 1994; Gotanda 1991). The project evaluates how mock jury groups assess law enforcement testimony during their deliberations of a scenario involving a federal drug conspiracy. The authors' quantitative data reveals that the presence of a Black juror as well as having a black defendant lead to increases in skepticism of law enforcement testimony. Their qualitative data evinced the ways that Black jurors introduced narratives of racialized policing. The increases in skepticism that result

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from Black defendants and jurors matter because negative discussions of law enforcement testimony are associated with shifts toward acquittal. Importantly, the data suggest that jurors are articulating a form of "race-conscious reasonable doubt" (Lynch and Laguna, this issue), which suggests they recognize the role of racism in policing and the criminal legal system. This work will be of significant interest to critical legal scholars and criminal justice practitioners alike for its critique of colorblindness and its revelations regarding juror behavior. The article not only supports the importance of empaneling diverse juries. It also suggests that while judges may espouse notions of colorblindness that are ahistorical and defy reason, jurors do not necessarily embrace such beliefs. Findings such as this imply that addressing race bias in the criminal justice system may be furthered more by efforts to educate citizens rather than courts on the continuing impact of race on police behavior.

Once again, we are thankful to the *LSR* editors for creating this opportunity for a Special Issue on this topic and deeply appreciate the incredible contributions made by the scholars who shared their work. CRT remains a vibrant field of intellectual thought, and law and society continues to provide a useful theoretical and methodological toolkit for measuring the impact that legal doctrine has on people, communities, and organizations. We hope that this Special Issue will inspire scholars to imagine additional opportunities for expanding race scholarship at the intersection of CRT and socio-legal studies. Similarly, we hope the Law and Society Association views this Special Issue as an investment in building trust, forging new partnerships and creating greater space for ongoing scholarly explorations of this kind.

Conflict of interest: None.

Note

1. The UC Irvine conference and workshop were followed by workshops at the University of Iowa (2013), University of Denver (2014), Fordham University (2014), University of Wisconsin (2015), Yale University (2016), Northwestern/American Bar Foundation (2017), the University of Virginia (2018), and Boston University (2019).

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