A Decade Later: The Attack Against Critical Race Theory in Defense of Reason

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A little over a decade ago, law professors Daniel Farber and Suzanna Sherry released *Beyond All Reason: The Radical Assault on Truth in American Law*.¹ Their book was a call to war, a siren for all serious-minded legal scholars to tend arms specifically against a then quickly expanding legal theory movement known as Critical Race Theory (“CRT”). Although ostensibly against “radical multiculturalism” *per se*, i.e. an umbrella purportedly covering the theory of such varied groups as radical feminists, gay and lesbian theorists, legal deconstructionists, etc., the bulk of this attack focused on Critical Race theorists² and the latter’s reliance on postmodern theory (e.g., the suggestion that law and its operative concepts are social constructs sometimes masking unequal power relations)³ and a then burgeoning interest in narrative/storytelling as a potentially truth-yielding tool for legal theory and practice.

Once the siren began blaring, reactionary voices came out in full force and in incredibly brutal and anti-ruminative argumentative garb. Undergirding most of these reactionary attacks was the three part charge (not mere suspicion) initiated by Farber and Sherry that minority legal scholars subscribing to “radical multiculturalism” and its postmodern scaffold were 1). intellectually weak if not downright stupid, 2). racist hypocrites (anti-Semitic to be exact), and 3). extra-stupid for not seeing the anti-Semitic implications of CRT. This cluster charge was repeated over and over by most

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² Favorite targets included Derrick Bell, Mari Matsuda, Catherine Mackinnon, Patricia Williams, Kimberle Crenshaw, Richard Delgado, et. al.
³ See Suzanna Sherry, *The Sleep of Reason*, 84 Geo. L.J. 453, 454 (1996) (“the first ripple came from French postmodernists whose ideas were quickly adopted in the 1980’s by legal academics on the left … critical legal scholars, radical feminists, critical race theorists, and gay and lesbian theorists began to attribute the Enlightenment epistemology to powerful straight white men, to suggest that others might have different and equally valid epistemologies, and to argue for a sort of epistemological pluralism”).
reactionary legal academics in agreement with Farber and Sherry, the only marked
difference being one in the degree of acid and vitriol employed.

It must be said that there was little that was actually new in the general tenor of
this reaction by “concerned” legal academics. The great culture wars initiated by
feminists and multiculturalists (i.e., pragmatically driven reformists – bilingual education
proponents, strict affirmative action voices, etc.) most pointedly in the 1970’s, had
already witnessed a comprehensive relaxation of argumentative decency rules by the late
1990’s. Especially given the increased ubiquity of subversive French philosophers
Michel Foucault⁴ and Jacques Derrida since the latter’s now famous series of lectures on
“deconstruction” at John Hopkins University in 1967, all concerned conservatives and
“true” liberals were repeatedly being invited to take swings at this dangerous hanging
party of French adorned piñatas.

By the time Beyond All Reason came out, the general perception was that
postmodernism and all its infected progeny were, if not quickly bleeding to death, dead
already.⁵ For those with a minimal awareness of 20th Century intellectual history, the
legal academy’s attack on French-infected legal theory was arguably the last (and very,
very late) arriving echo of a predominantly anti-French intellectual pogrom that had
begun the minute French Existentialism (Sartre, Camus, etc.) crossed the Atlantic Ocean
after WWII.

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⁴ For a recent, highly praised summation of Foucault’s ideas see Todd may, THE PHILOSOPHY OF
FOUCAULT (2002).
⁵ Of course, philosophers such as recently deceased Richard Rorty refused to give up the fight. See Richard
Rorty, To The Sunlit Uplands, LONDON REVIEW OF BOOKS, Oct. 31, 2002, at 22 (“to argue that what
we call the search for objective truth is not a matter of getting your beliefs to correspond better and better
to the way things really are, but of attaining intersubjective agreement, or of attempting to cope better with
the world around us, you are likely to find yourself described as a Danger to the Health of Society … you
will be accused of asserting something so counter-intuitive that only a lack of intellectual responsibility can
account for your behavior”).
Although the pugnacious tenor fueling both Farber and Sherry’s text and its champions was indistinguishable from that behind similar attacks against postmodernism across academia, the attack against CRT was particularly special. More than anything, it was unique in its incredibly craft-less mix of degrading, cruel bile (esp. its name-calling) and the utter intellectually vacuity it tried pawning off as reason. From loud ad hominem yelps to irresponsible and pathetically buttressed accusations of racism, both Beyond All Reason and its champion reviewers are neon reminders of what can go wrong when shamelessly emaciated logic, feigned indignation, unsupported moralizing, and the absence of the most basic of intellectual virtues come together.

A cluster of illustrative examples should suffice as at this point:

--According to George Will, Critical Race theorists should be ashamed of their shoddy reasoning and their constantly “playing the race card”\(^6\)

-- Jeffrey Rosen chimes in by condemning the gluttonous penchant CRT members tend to have for “vulgar racial essentialisms”\(^7\)

-- Seventh Circuit Judge Richard Posner, with a rare abhorrence for subtlety, claims that given all the “goofy ideas and irresponsible dicta” one can find in most CRT, the latter is without a doubt, “the lunatic core of radical legal egalitarianism”\(^8\)

-- Farber and Sherry begin by warning their readers that the diverse list of legal theorists to be discussed all share and display “an abandonment of moderation and a dearth of common sense”\(^9\)


\(^9\) See Farber and Sherry, supra note 1 at 5.
-- CRT denials/skepticism of truth and objectivity, rather than rational or sound, merely indicate that CRT members are simply “highly paranoid”\(^{10}\)

-- Another champion remarked that Faber and Sherry’s masterwork is “an overdue criticism of *intellectual imposters* who once were a *lunatic fringe* but now lay siege to the most basic tenets of Western Enlightenment”\(^{11}\)

-- given the *irrationality* of most CRT claims, one can conclude that rather than a genuine indictment of the epistemological/political foundations of American law and its operative concepts, all CRT is really after are “new standards that will guarantee racial proportionality” and *nothing more*\(^{12}\)

-- Ninth Circuit Judge Alex Kosinski asks in the title of his review of Farber and Sherry’s text, “Are radical multiculturalists *poisoning* young legal minds?” … later making the alarmist charge/claim that if CRT members are right, “if truth does not exist, if there is no objective reality, then meaningful discourse is impossible and the hope of a just and equal society a hoax.”\(^{13}\)

-- given how *inherently unreliable* storytelling and stories are, any promotion of either of these can only signal an embarrassing “rejection of the linearity, abstraction, and scientific objectivity of rational argument”\(^{14}\)

\(^{10}\) *Id.* at 133.


\(^{12}\) *Id.* at 72-94.

\(^{13}\) *See* Alex Kosinski, *Bending The Law: Are Radical Multiculturalists Poisoning Young Legal Minds*, NEW YORK TIMES, Nov. 2, 1997 at Sec. 4 p. 8. Of course, there is spectacular irony in Kosinski and other Farber/Sherry supporter rhetoric’s reliance on the metaphor of “poisoning” to describe CRT’s overall intellectual effect, esp. given its long history as a *baseless* charge in the history of Western thought. From Socrates in Plato’s dialogues to persecuted Jewish intellectuals in Hitler’s Germany to tortured and assassinated political leaders/intellectuals in Pinochet’s Chile, the charge of “poisoning young minds” and a concomitant reliance on the metaphor of poison have consistently served as reliable indicators of brutal, often tortuous suppression of political thought throughout Western history. How Farber/Sherry and their supporters consistently missed this is strange if not truly comical.

\(^{14}\) *Id.* at 39.
-- CRT employment of narrative/storytelling generally tends to feature a “careless treatment of factual issues … inattention to facts … and casualness about truth”\(^\text{15}\)

-- CRT’s alchemy of postmodern theory and a methodological reliance on storytelling results, as David Hyman claims in his *Lies, Damned Lies, and Narrative*, in CRT’s *deplorable inability to “tell truth from fabrication”*\(^\text{16}\)

Before continuing one is justified in asking: why now, why come out swinging ten years later, what good can it do, what happened to CRT, what happened to its critics, or the debate in general, haven’t we moved beyond these concerns already? There are many ways to frame what has taken place over the past decade. I choose the following: as a typical CRT response, members such as Richard Delgado and Patricia Williams responded to the pogrom initiated by Farber and Sherry by highlighting its nastiness, the barely veiled violence behind most of its charges, and its overall dialogue-crippling bomb-tossing. Few confronted its charges of anti-intellectualism (as will be made clear below, a risible irony, to say the least) or anti-Semitism head on. Apart from a general response reacting to its overall nastiness, most CRT members simply stepped back slowly and quietly until they were sufficiently removed from their attackers, preferring to continue with their business once the hectoring had died down.

\(\text{\textsuperscript{15} Id at 40.}\)
\(\text{\textsuperscript{16} See David A. Hyman, 73 IND. L.J. 797, 799 (1998).}\)
In the last decade, CRT has flourished exponentially across academia as a whole and within the initial group/movement itself (from its incorporation by education theorists to the break-out of new CRT-related movements e.g., the LatCrit movement). More importantly, the overall number of minority legal scholars appears to have increased with a concomitant, continued outpouring of new theory. Most tellingly, all indications seem to suggest that the most notable upshot of the war initiated by Farber and Sherry has been an increasingly segregated legal academy, where one has radical theorists continuing their work on one side of the building, having been minimally frightened or philosophically coerced by the assault ten years ago, and smug reactionaries on the other, many under a bloated delusion that the merit of their arguments must have had some “salutary” effect after all.

I must admit, however, that fiddling with this portrait or searching for a more fitting one is not my concern. Taking sides or fleshing out the overall merits of both or either side doesn’t concern me either. My focus will be very specific. The attack initiated by Farber and Sherry, along with the energetic support it received immediately, needs comprehensive analysis. It is necessary to detail the various wings of that attack, highlighting its vitriol, and the shut down effect it seems to have had and apparently continues to hold in legal academia. More importantly, it is the utter absence of

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17 See Nancy Levit, Critical of Race Theory, 34 Geo. L. J. 36 (1999) (“This highly charged language is not relegated solely to the popular press accounts of legal theory, but is sifting into respectable academic texts … these critiques of critical theories … span the continua of reason and civility, what they share however, is a tendency to caricature feminist, gay, and critical race theory, and to preempt the possibility of public dialogue … suggesting a breakdown in civility of academic discourse and an extraordinary tolerance of intolerance.”).
important intellectual virtues glaringly displayed in much of the attack contra CRT that needs addressing.

In one significant regard, it was a race/ethnic clash – with primarily traditional/liberal Jewish legal theorists on one side and non-white minorities on the other – the key nexus of the Farber/Sherry contra CRT debate being a spectacular charge of anti-Semitism. It is this charge of anti-Semitism, its purportedly metalhard rational shape, and the unreflective general acceptance of both the charge and its argumentative support that holds an illuminating key to that small historical moment. More specifically, it was the charge of anti-Semitism along with an absolutely necessary culling and manipulation of anti anti-Semitism sentiment that proved most effective in precluding cross-theoretical dialogue.

Without a doubt, this charge along with all the lit-torch parading that followed, is arguably one of the most disturbing displays of what the historically important Jewish political theorist Leo Strauss repeatedly derided as the reductio ad hitlerum (playing the anti-Semitism card). Examining this should help us determine whether “these fits of spite

18 See Roderick M. Hills Jr., Book Review, CONSTITUTIONAL COMMENTARY, Spring, 1998 at 185 (“Beyond All Reason attacks the radical multiculturalist strain in legal academia, not because it is untrue but because it has bad -- anti-Semitic – consequences”).
19 Id. at 190 (“Beyond All Reason focuses entirely on the rhetorical consequences of radical multiculturalism rather than reflecting on its intellectual merits … they do not really address multiculturalism’s central conceit that it unsparingly unmasksthe reality behind notions like objectivity and impartiality … Farber and Sherry abstain from challenging the tenets of radical multiculturalism on their merits”).
20 See Francis J. Mootz III, Book Review: Between Truth and Provocation, 10 Yale J.L. & Humn. 605, 615 (1998) (“Farber and Sherry argue that radical multiculturalism leads to undesirable (anti-Semitic) results and should be rejected on pragmatic grounds … bizarre, given their recurring theme that the radicals are to be faulted primarily for abandoning the quest for truth in order to achieve desirable political ends”).
21 See Leo Strauss, NATURAL RIGHT AND HISTORY, 67 (1950).
are a part of the necessary conflict of major intellectual movements that are required to advance the collective knowledge” or whether “the debate is (was) overly personal.”

**The Attack**

The general wave of attack against CRT can arguably be traced back to 1984 when then Dean of Duke Law School Paul Carrington, fearing the rising influence of postmodern theory in the work of new minority scholarship (and in the Critical Legal Studies movement in particular), stated that these “nihilist teachers … had an ethical duty to depart the law school.” The charge of *nihilism* against postmodernism and any theory significantly dependant on has an old ring to it. It was and remains a blanket charge repeatedly used to dismiss or shut down any theoretical challenge that focuses on the operation and foundation of concepts of “truth”, “history”, “neutrality”, “objectivity”, “reason”, and more specifically, “The Enlightenment”, within specific fields of inquiry. This goes back, at least, to attacks against ostensibly subversive French and German philosophy in the 1940’s.

To give a quick, cursory, yet brilliantly illuminative example: when Sartre’s specific brand of Existentialism was introduced after WWII, charges of nihilism were rampant. To claim or repeat, as Nietzsche had done, that *God is dead* had radical ramifications. Simply put, Sartre’s early theory rides on the belief that there is no transcendent authority figure or super-natural moral code that can be consistently relied upon as a guide for our moral lives. There is no God and there is no Platonic styled

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mind-independent cluster of absolute moral principles. Given the absence of what have historically been perceived as absolutely necessary moral constraints and keys to moral motivation, one simple interpretation (but the most unfairly ubiquitous of all) is that nihilism is all we are left with, a do as you wish type of morality or politic.

I sketch the account above to highlight a move that is typical in many critiques of theory that seeks to flesh out (either historically or conceptually) traditional concepts of Western Enlightenment, again, specifically, objectivity, truth, reason, and knowledge. It is an incredibly thin but effective move. And one promiscuously relied upon by Farber/Sherry and their crew of intellectually unsophisticated scalpers.

We should resist being slaves of simplistic relativisms or equally simplistic absolutisms ... whichever way our temperaments pull us, we should at least know what there is to be said on the other side.

Until the end of his life, Sartre vigorously contested grave misinterpretations of his overall moral position. Sartre offered both a descriptive and a supervening normative picture of the moral human condition. There is the descriptive claim that there is no mind-independent (whether God or a transcendent moral guidebook) anchor for our moral lives. Then there is his prescriptive picture, a picture utterly ignored once

24 And again, this type of conceptual archeology has been philosophically championed since, at the very least, Nietzsche’s era. See Friedrich Nietzsche, THE WILL TO POWER, 220 (1967 Trans.) (“one must no longer accept concepts as a gift, nor merely purify and polish them, but first make and create them, present them and make them convincing … hitherto one has generally trusted one’s concepts as if they were a wonderful dowry from some sort of wonderland … what is needed above all is an absolute skepticism toward all concepts”).

his descriptive picture takes hold and becomes fashionable. Rather than a command to abandon hope, adhere to simple moral relativism or nihilism, Sartre claimed that the moral anchor historically projected onto the heavens actually resides in each individual.

In other words, rather than chuck moral responsibility to the wind, given the absence of any mind-independent moral authority, Sartre highlighted how imperative it was that each individual confront the extremely heavy task of fashioning a workable, yet robust, morality of the self – one substantially grounded in respectful consideration of others. Rather than “God is Dead” equaling any general abandonment of moral responsibility, this bit of existentialism ushers in a thicker cluster of individual moral duties. And this was and remains largely ignored, especially by critics of French thought in general.

Assuming this skeleton is too skimpy or unsophisticated, the point I wish to make is still (hopefully) clarified in the example above. To call into question moral or epistemological authority, to question the formation and justification of dominant norms or conceptual machinery, is a task never necessarily linked to nihilism, relativism, or an abandonment of intellectual work and responsibility. To make this inference, especially when done with minimal reflection or intellectual charity, is glaring sophistry, crass rhetoric. More importantly, it is utterly unpardonable intellectual laziness. Ironically, although most critics of existentialism, post-structuralism, and postmodernism, take such descriptive and philosophical queries as only possibly leading to nihilism or extreme relativism, it is usually the very opposite. Behind this move lies a bit of rampantly common logical slippage, a convenient category mistake.
It is precisely this type of intellectual slothfulness that comprehensively sullies both Farber and Sherry’s texts and the quasi-arguments of its hyped-up supporters. As Nancy Levitt highlights, over and over, one finds this kind of simple-Simon slippage in CRT critiques, a consistent example being the argument that: e.g. “if we view systems of merit only as social constructs, no objective reality can exist … these are necessarily the problems of a constructivist theory … we must, traditionalists insist, either accept mainstream definitions of merit or risk the abyss of nihilism.”

Lest this come off as simply a reactionary ad hominem against Farber, Sherry and friends, I’ll let their texts and arguments do the talking. The remainder of this paper will address what is hoped will be a sufficiently representative pool of the attack contra CRT, numerically outlined, but in no particular order of priority.

Come on Feet! (From Black Film pioneer Melvin Van Peeble’s classic Sweet Sweetback’s Badass Song … specifically the scene where the movie’s hero, Sweetback, is running from the police through late 60’s L.A. after fighting back in justified political rage to dehumanizing police brutality … a jarring first in American film)

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26 An early, embarrassing example of such brutal slippage is offered by Sherry herself. See Sherry, supra note 3 at 480 (“the more radical of the social constructivists accept – and even embrace – the inevitable consequence of their theory that there is no knowledge, just power”). Whether searching through the texts of sophisticated or naïve social constructionists (even if we generously grant Sherry such a blunt collapsing), I personally have never heard or read any say that there is no knowledge. Again, to point out, e.g., the social roots of things passed off as (objective) knowledge is never to negate the existence of the former. And it is precisely the brutal and often oppressive, both physical and theoretical, effects/consequences of things passed off as objective knowledge that makes them very real and targets for critical thinkers, be they CRTs or grass-roots feminist activists in Mexico, India, or Ann Arbor, Michigan.

27 See Levitt, supra note 17 at 42.
I have met Professor Delgado. He is as pale as I am, has sharply etched features in a long face, speaks unaccented English, and, for all that appears upon casual acquaintance, could be a direct descendant of Ferdinand and Isabella … Delgado’s whiteness lends an Evelyn Waugh touch to critical race theory.28

1). We start small. From Farber and Sherry’s text to responses by highly regarded judges and legal academics, the attack against CRT initiated by Beyond All Reason is embarrassingly littered with ad hominem arguments, none more pathetic than Seventh Circuit Judge Richard Posner’s attack CRT, specifically the work of Richard Delgado. Supposedly, upon meeting the latter in person, Posner found that Delgado bore few marks of Brownness, let alone Blackness. Given that Delgado lacked what British Novelist Martin Amis refers to (in his Time’s Arrow) as a “heavy cargo of otherness”, clearly, Posner reasons, CRT and Delgado’s arguments are rationally vacuous and insincere. But … one is left wondering, what on earth does the tone of Delgado’s skin have to do with the rational scaffolding of his and CRT’s arguments in general?

This is an unbelievably ugly bit of ad hominen.29 Along with the embarrassing employment of such a basic logical fallacy, it is what is revealed if we move in a bit more that ranks most offensive. As a Jewish intellectual, Posner should know better. In order

28 See Posner, supra note 8 at 42. Lest it be missed, there is something doubly sinister in Posner’s gesture at the novelist Evelyn Waugh here. It is one thing to employ Waugh – who novelist Anthony Powell once famously dubbed Britain’s bitchiest ironist -- to point out the supposed irony behind Delgado’s whiteness, but it is quite another to employ a writer also famous for his glaring imperialist racism and unsparing condemnation of native political unrest in India and Africa. Utterly savage wit on Posner’s part, to say the least.
29 Posner should have followed his friend Suzanna Sherry a bit closer. See Sherry, supra note 3 at 455 (“reason stands on its own: neither the identity of the speaker nor her institutional role should be relevant to the persuasiveness of an argument”).
to piece together such a pathetic *ad hominem* attack, Posner had to unwittingly usher in a simple cluster of Mexican-minority stereotypes, a batch that can only bang the gong of deeply entrenched racist intuitions. Essentially: if you are not dark enough, shut up!

That is comparable to claiming that given the comparatively comfortable status of Jews from here to Israel, any continued harping *contra* anti-Semitism is unjustified. Since you are and have been doing so well, continued righteous gesturing at the holocaust is unjustified, further signaling how unfairly over-privileged the holocaust stands as a paradigm of evil. But maybe that is too generous.

Posner’s attack may be simpler at heart, something akin to: if you don’t have the nose, natural proclivity for cheapness, or grand relative you heard was in a camp, then you have no right to speak contra *anti-Semitism*. Either way, there is absolutely no possible construction of Posner’s attack against Delgado, no matter how charitable we may feel, that can give it even a semi-positive spin. That attack was cheap, intellectually lazy, mean, personal, and logically embarrassing. There is and always should be a gap between the speaker and the logical/rational content of said speaker’s arguments.

2). The bulk of *Beyond All Reason* attacks the varied manifestations of postmodernist theory in CRT. In particular, CRT’s interrogation of the supposed objectivity of dominant notions of merit, equality, rule of law, and or what passes for truth in contemporary legal theory and practice is summarily dismissed as either naïve irrationalism or irresponsible nihilism. But neither is the case. Again, to *question* and attempt to *describe* as thoroughly and honestly as possible the rational foundation (e.g. objectivity or verifiable veracity) of dominant legal norms and their attendant
concepts/metaphors/divisions is a radically different project than that of prescribing what to do or think. In others words, for example, to question or highlight the construction of certain norms and/or concepts is never necessarily to claim that such norms/concepts should be either chucked aside or comprehensively dismissed.

To assume or crassly infer nihilism or relativism from a historically, politically, and culturally attuned attempt to describe (while engaging in sincere cross-disciplinary dialogue) certain notions and norms is to engage in vulgar exercises of the historically deplored (going back to David Hume’s classic, Of Human Understanding) lifting of ought from is, the unfair projection of disfavored prescriptions onto what is only sincerely attempting to be a comprehensive and rationally defensible description of controlling social ideas (sometimes historical ala Karl Mannheim or Michel Foucault, at other times strictly conceptual ala Wittgenstein or post-Nazi era Lon Fuller type of conceptual analysis). As we saw in the Sartre example above, to philosophically question our intuitions about the objectivity or truth of purportedly non-human, objective, mind-independent moral guides or motivators has as much necessarily (again, logically) to do

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30 See Gary Gutting, MICHEL FOUCAULT’S ARCHEOLOGY OF SCIENTIFIC REASON, 36 (1989) (“following Nietzsche’s strategy in The Genealogy of Morals, Foucault hoped to disrupt our comfort in contemporary ideas by revealing their genesis in the mire of contingent conceptual transformation, historical conflict, and political struggle … Foucault is best read as making very specified claims about the nature and genesis of certain institutions of inquiry, rather than advancing a universalizable theory of knowledge, justification or truth ”).

31 For a great discussion of how this move is bandied about in the natural sciences, see Ian Hacking, THE SOCIAL CONSTRUCTION OF WHAT?, 20 (1999) (“Richard Dawkins quipped that nobody is a social constructionist at 30,000 feet … the comment is clever, but inept … the social constructionists’ claim is not that scientific propositions are false, nor that artifacts built with them are unreliable … their target is not the logical truth of scientific propositions, but the social sources of the propositions’ credibility and of scientific authority … showing an important discovery – quarks, microbes – to be socially constructed is not supposed to make us skeptical about quarks or microbes … it is instead a standing invitation to rethink the idea that science is a bastion of objective knowledge, or the scientist the guardian of the most important truths about the world, truths which the laity should receive with pious reverence.”).

32 See Richard Delgado, Rodrigo’s Book of Manners: How to Conduct a Conversation on Race –Standing, Imperial Scholarship, and Beyond, 86 Geo. L.J. 1051, 1055 (1998) (“they point out, for example, that we emphasize the role of history and context in evaluating whether legal rules are fair, which we do, although I don’t see how it follows that we are cultural relativists who reject all truth whatsoever”).
with the promotion of nihilism as it does with the peddling of Strict Scientology or rigidly quilted Southern American Baptism.

To respond with charges of nihilism or extreme relativism to such conceptual archeology, without first minimally divorcing the is from the ought being targeted, is a vulgar brand of illogical inference and, in this case, a quick way of silencing potentially subversive voices. But neither Farber or Sherry, nor any of their theoretical fellow travelers, can or should be blamed for initiating this move. As we saw above, this is an old move, a cost effective way to dismiss theories that itch. It’s the lowest token of its equally abhorrent argumentative cousin, the slippery slope, where it is commonly found acceptable to skip causal steps in a big, usually morally redolent, argument. If you question truth or objectivity in general or in their varied instantiations as qualifiers, you are necessarily calling for extreme relativism, and we all know how bad and evil that is. This logically fallacious stain can be spotted up and down Farber and Sherry’s text along with those of its champions.

3). What is really curious, however, is how a year after the publication of Beyond All Reason (1997), while explicitly relying more than most CRT theorists on Foucault and especially Derrida, law professor Pierre Schlag releases The Enchantment of Reason – a hard, relentless indictment of law/lawyer/judges’ over-reliance on a generally unexplained cluster of concepts vaguely referred to as “reason.”33 One important string

33 See Joanne Conaghan, Book Review, 57 U. Miami L. Rev. 543 (2003) (“Schlag is taking the legal academy by storm … he is also taking it to task … Schlag has exhorted legal scholars to ‘lay down the law’ -- and he does not mean legislate -- to cease making normative prescriptions to policy makers and judges and to acknowledge that their reason has become enchanted, rendering them both delusional and cognitively impaired, trapped within an enchanted legal world populated with magical entities linked by magical thinking.”).
of Schlag’s attack focuses on what he refers to as American law’s *noble scam*.\(^{34}\)

According to Schlag, basic reason and logic, most would agree, can help explain and justify a general faith in the rule of law (it just clicks with our intuitions). But, asks Schlag, what justifies our faith in reason itself? According to our deconstructionist here, arguments that do not live up to Reason’s standards are precisely ones being used to justify law’s reliance and faith in reason. And it is precisely here where law’s enchantment with reason turns sketchy and brutally coercive.\(^{35}\)

The “scam” outlined by Schlag is pulled off by trying to justify reliance on Reason with any of the following vacuous yet -generally successful- pushy arguments: a). reason *should* be embraced because it enables important and well-established legal theorists to establish the correctness of one’s most cherished beliefs or b). reason *should* be embraced because humans give reasons for their judgments all the time and *that many* people can’t be wrong or c). one *should* embrace reason because only scoundrels and pigs reject it.\(^{36}\) Each of these, of course, is little more than a rickety cart of blatant question begging.

So what is the supposed upshot of this scam and the immense amount of work and vigilance Schlag details is necessary to maintain it? Well … “reason is made to posit whatever is necessary for law to *seem* reasoned and rational, but since law cannot be brought into conformity with reason, it is reason that is brought into conformity with the law … the result being that reason collapses into what it claims to oppose: dogma, faith,


\(^{35}\) *Id.* at 43, 54 (“reason is univocal … adhering to a monistic aesthetic, it imposes a unitary conceptual matrix on a pluralistic world … it is thus inescapably hierarchical and, in substituting one for many competing visions of law, its operations, and effects is closely implicated in the exercise and abuse of power … ironically, as reason becomes deified it becomes denatured – less and less capable of checking its own operations”).

\(^{36}\) *Id.* at 33-37.
prejudice, and company … rendering reason a captive to whatever material and social forces predominate … reason and thus law itself become vehicles for the rule of the dominant forms of life.”

Reception and reviews of Schlag’s text were strangely deferential … most seeming to suggest that if he wasn’t completely accurate in his critique of the varied fetishizations of reason within (especially) legal academia, he was at the very least, on to something that merited serious consideration. But again, why the difference in treatment and reception between CRT texts and the incredibly French informed, Enchantment of Reason? 

To be legally trained is to undergo a serious reduction of one’s cognitive possibilities.

As one of Schlag’s reviewers has noted, “Schlag’s admonishments to his peers are mercilessly candid and resolute … he depicts the American Legal Scholar as shallow and dissolute, replete with fear, dread, avoidance, desperation and deceit … they have committed the worst sin imaginable: they have made it their collective purpose to conceal the presence of an imposter in their midst through disingenuous appeals to truth, goodness and fate … bewitched and befuddled by the charms of a mere simulacrum of reason, legal scholars consequently miss much and see little; their minds closed, their gaze averted, their insights warped and stunted within the disciplinary frame

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37 Id. at 17, 92 (the argument in this section of Schlag’s text can be outlined as follows: again, reason in law is a sham …. it cannot be anything but a sham and given how in our liberal society reason is the basis of law’s authority, liberal machines of law are and always will be shams … the rule of law is rule by the beliefs of those in power, reason being power’s rhetorical cover).
38 See Leif Carter, The Enchantment of Reason (Review), THE LAW AND POLITICS BOOK REVIEW, Feb. 1999, at 80 (“readers must know their Derrida, Foucault, Lyotard, and Nussbaum as well as their H.L.A. Hart, Dworkin, and Sunstein to follow the argument”)
39 See Schlag, supra note 34 at 143-44.
they have contrived for themselves.” Schlag’s attack is relentless and broad both in
terms of its targets and the theoretical armament it depends on. So, again, why the
incredibly different reception, especially given Schlag’s specific attack against reason?
One possible explanation is that Schlag’s attack is primarily, if not exclusively,
thetical. More than anything, there is little materially at stake here. His critique is
and remains philosophical throughout.

But most importantly, as Joanne Conaghan and others have pointed out, none of
his attack is born out of social concern. As Conaghan has acutely noted, “I cannot help
but be struck by Schlag’s total lack of engagement with feminist and critical race
scholarship.” And even more revealing is the fact that in Schlag’s work, “the material
world and its corporeal inhabitants are missing … it is an ideational investigation
unencumbered by the messiness and unpredictability of bodies or the dreary cataloguing
of material disadvantage and suffering … his is strictly a study of intellectual moves, of
the rhetorical tricks and Nobel Scams passed off as legal reasoning.” For all its
soundness and possible theoretical flaws, there is nothing in Schlag’s work that licenses
labeling it as “multiculturalist” let alone “radically multiculturalist,” and this is crucial.

40 See Conaghan, supra note 33 at 544.
41 See Adrien Katherine Wing, GLOBAL CRITICAL RACE FEMINISM FOR THE TWENTY-FIRST
CENTURY, 6 (2002) (“we wholeheartedly embrace critical race praxis as well … since many of us come
from disenfranchised communities of color, we feel compelled to ‘look to the bottom,’ to involve ourselves
in the development of solutions to our people’s problems … we cannot afford to adopt the classic,
detached, ivory tower model of scholarship when so many are suffering, sometimes in our own extended
families … we do not believe in praxis instead of theory, but believe that both are essential to our people’s
literal and figurative future”). See also Mari Matsuda, Looking to the Bottom: Critical Legal Studies and
Reparations, Harvard Civil Rights and Civil Liberties Review 22, 327 (1985) (“when notions of justice and
injustice are examined not from an abstract position but from the position of groups who have suffered
through history … we discover a new epistemological source for critical scholars: the actual experience,
history, culture, and intellectual tradition of people of color in America … looking to the bottom for ideas
about law will tap a valuable source previously overlooked by legal philosophers”).
42 See Conaghan, supra note 33 at 547.
43 Even as a strictly theoretical exercise, many were also bothered by Schlag’s refusal to seriously engage
CRT qua theory. Regarding this glaring omission, see Duncan Kennedy, Review: The Enchantment of
Although primarily targeting both CRT’s theoretical reliance on French-based critique/archeology of American law’s dominant concepts and norms and its philosophical turn to narrative, the Faber/Sherry camp insists on collapsing all of CRT theory and its voices as multiculturalisms. This is crucial, given that their most universal complaint is that all CRT is really after is a material, hard redistribution of either public benefits or academic positions at both the podium and in the university auditorium. And this is something that could only be gleaned from Schlag’s text with extreme difficulty. In other words, the latter’s threat remains abstract, philosophical. CRT’s threat, however is perceived as materially real (jobs, tuition aid, addition/subtraction of classroom texts. etc.).

To argue, as many have done, against the unfairness or intellectual sloppiness inherent in the collapsing and labeling of all the varied voices of CRT as (radical) multiculturalists is unnecessary and, ultimately, unwittingly beneficial to the anti-CRT camp. Explaining this brings us directly to the two garish faces of the anti-Semitism charge.

4). Both wings of the anti-Semitism charge are instantiations of very simple, intellectually indefensible consequentialism. Rather than born, at any level, directly from the broad, varied, and often sophisticated arguments proffered by CRT, the anti-Semitism charge is a product of very forced gleanings or inferences. We will take one wing at a time.

Reason, 3 U. of Miami L.R. 57 (2003) (“I am not sure why such producers of po-mo legal theory, whether law professors or not, ignore one another”).
A curious charge, since I don't know anyone in the crit camp who would say those things … Farber and Sherry put words in our mouths, then take us to task for what they think we must be saying.  

The first wing is the simplest and most meretricious. The argument goes as follows: CRT is anti-Semitic when it rejects the validity of merit. Although at various points, Farber, Sherry, and their buddies bring up how this attack on merit also signals an attack on Asians\(^\text{45}\) it is very clear that their sole concern here are Jews. This is crucial, given the continued, overwhelming, often times eclipsing, rhetorical power gestures at anti-Semitism continue having in American culture. Any remaining doubts about this conclusion would have to address the fact that Farber and Sherry title the chapter (Ch. 3) most bluntly raising this charge as, strictly, *Is the Critique of Merit Anti-Semitic?* (also, the fact that the bulk of this stretched-out inference comprehensively omits any serious discussion of Asian-Americans would need addressing).

Again, Farber and Sherry: CRT holds that merit is a mechanism for justifying existing social inequalities, i.e. a mechanism that ensures that people of color are disproportionately excluded from positions of prestige and power. \(^\text{46}\) But if is this actually the case, then what about groups that are disproportionately *included*, Jews for example? According to Faber and Sherry, one natural explanation is that Jews are succeeding strictly on their merits. *But* (and here is the first of many false “aha” moments), “though there are several benign readings of this explanation, none are

\(^{44}\) See Delgado *supra* note 32 at 1059.

\(^{45}\) See Farber & Sherry, *supra* note 1 at 57-60.

\(^{46}\) *Id.* at 53-57.
available to the radical multiculturalists, because the radicals deny the possibility of objective merit.47

Given the necessary preclusion of such a benign explanation, CRT is necessarily left to rely on less acceptable, sometimes overtly, racist explanations. The examples given are: that Jews are part of a powerful conspiracy controlling American society, that American culture embodies Jewish values, that non-Jewish American elites are using Jews “to assuage their own guilt and responsibility and corroborate the meritocratic myth”48 and, finally, that Jews are incredibly skillful at mimicking American norms, i.e. that “they are parasitic, unimaginative imitators who succeed on the backs of the truly deserving.”49

Many have taken on this wing of the charge, mostly addressing the outer orbit constellation of "if not benign, then … racist” arguments listed above. Edward L. Rubin summarizes his engagement with these as follows (the length of this quote is unavoidable, given the sharpness of its conclusion):

Critical race theory’s critique of merit does not contain any particular implications about Jews … it addresses social conditions in America, it asserts that our nation’s entire history is pervaded by racial distinctions that divide its population into a dominant, privileged majority and a subordinated disadvantaged minority … all the mechanisms of oppression, exclusion, and disadvantage, therefore, are designed to distinguish between people by their color, rather than on some other basis, such as class or religion … Jews are a religious minority and suffered mightily for that status in a European culture in which the social fault lines and the mechanism of oppression were often defined in religious terms … but in the U.S., Jews have been able to function as part of the white majority … this may make them culpable as whites, but it does not make them exceptionally culpable because they are Jews … the fact that they have been unusually successful is not of any particular consequence for critical race theory.50

47 Id. at 60.
48 Id. at 65.
49 Id. at 64.
After much of the back and forth drama between CRTs and the anti-CRTs had died down a bit, Farber and Sherry came out with a final response.\textsuperscript{51} While still holding on firmly to the belief that “the Jewish situation presents an irresolvable dilemma for radical multiculturalists,”\textsuperscript{52} Farber and Sherry seemed particularly, smugly actually, dismayed by the fact that many CRTs avoided such an important issue/question. In a section titled \textit{Dodging the Dilemma} (with a subsection titled, \textit{No Explanation is Necessary}), they complain that “the simplest way to avoid an intractable intellectual dilemma is simply to refuse to think about it” and that “several of their [our] critics have advocated this defense.”\textsuperscript{53} After rattling off a short list of such intellectual weaklings/cowards, they end with the cry that any “intellectually serious critique of society cannot simply refuse to confront inconvenient but highly visible counterexamples.”\textsuperscript{54}

\textit{They are not quite yet at the point of acknowledging the flaws in their reductionist social theories … faced with a compelling counterexample, they are reduced to the usual last efforts to save a failed paradigm by ignoring adverse evidence or rationalizing it away.}\textsuperscript{55}

Now \textit{this} is comedic irony at its best. First of all, and I will show why in a bit, intellectual responsibility dictates that one avoid the garishly vacuous, the “what isn’t there.” One can argue, as Delgado does above, that behind the anti-Semitism charge lies

\textsuperscript{51} See Daniel A. Farber and Suzanna Sherry, \textit{Beyond All Criticism}, 6 Minn. L. Rev. 1735 (1999).
\textsuperscript{52} \textit{Id.} at 1740.
\textsuperscript{53} \textit{Ibid.}
\textsuperscript{54} \textit{Ibid.}
\textsuperscript{55} \textit{Ibid.}
nothing but cheap, crude puppeteering, i.e. the tossing of a racist voice and content onto CRT. But, why? One can point to and air out the repugnant stench of the glaring straw man argument being dragged out here. But, again, why? More soundly, one can detail how logically insulting the consequentialism being peddled here actually is: why pull (so irresponsibly … Leo Strauss would be disgusted) such a morally over-charged inference out of one hat of a theoretical camp so varied in content, theory, and pragmatism that to latch on so slavishly to the concern with academic posts and, say, grades or test scores, betrays a bit more than simply “missing the point.”

*Be cruel in your quest for the truth, ruthless in your honesty, savage in your irreverence.*\(^{56}\)

If some critical race theorists have avoided this supposed *dilemma*, it is because worse than simply being a *false* dilemma, it is not a dilemma at all. If some critical race theorists have avoided such a powerful *counterexample* to an essential CRT *paradigm* (exactly what “paradigm” is challenged here? -- even if we were to play nice and grant Farber and Sherry some sense here – the question stands? Say they are right, how is raising a counterexample to one corner of the theoretical unfolding of “merit” the bringing down of a paradigm that has so successfully, contextually undressed everything from “whiteness” in the law, education, politics, to “rights”, to “hate speech”, to “the rules of logic”, etc.) it is because both the charge and its target are mythic, uncharitable rhetorical constructions.

In order for this bit of the anti-Semitism charge to have any non-illusory weight one must first accept some crass reductions on the part of Farber, Sherry, and friends.

The only way their argument can have any weight whatsoever is if we are willing to collapse **all** of CRT into one of its strictly pragmatic strains, i.e. multiculturalism. There is cheap manipulation taking place here. First, one can arguably claim that, at least here in the States – and especially since the publication of Allan Bloom’s classic 1987 conservative, anti-multiculturalism text, *The Closing of the American Mind* – of the multiple, varied senses the term *multiculturalism* has had, the most intuitively entrenched focus on pragmatic prescriptions and/or material realities.

*Boutique multiculturalism is the multiculturalism of ethnic restaurants, weekend festivals, and high profile material flirtations with the other … a boutique multiculturalist may find something of value in rap music and patronize (pun intended) soul-food restaurants, but he will be uneasy about affirmative action and downright hostile to an afrocentrist curriculum.*

In other words, to speak of multiculturalism in general is, in one significant regard, to speak of hard/real numbers or social *praxis*: of faculty members, of students, both white and of color, of texts, etc. Even if we focus on Stanley Fish’s favorite target, *boutique multiculturalism* (i.e. the open embrace of otherness up until it materially threatens us directly, say when your post at Columbia Law School may be in jeopardy), the cotton candy multiculturalism attacked here is necessarily corporeal, very real (here, being multiculturalist means being white and wearing a dashiki, eating out in a Dominican restaurant *where the natives live*, memorizing hard core hip hop lines to say you are down, only dating color “you know, ‘cause you gotta have some flava”, etc.).

To take on any segment of this wing of the anti-Semitism charge is to unwittingly grant it a foundational argumentative value that it absolutely lacks. To parade about as if

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this charge has any standing whatsoever is embarrassing, mean and incredibly uncharitable. To repeat, the charge only works if all CRT is lumped and labeled as multiculturalism. If there is any question about whether this is what is meant by “multiculturalism”, one must remember, as so far cited throughout, that Farber, Sherry, and company’s most common complaint is that although intellectually bankrupt, all CRT is really after is hard, material redistribution of seats, positions, jobs, benefits, etc.

The charge not only is devoid of any definition of multiculturalism, but it also necessarily rides on an avoidance of the theoretical arguments offered for the varied lot of multiculturalisms actually promoted by CRT, and an incredibly disrespectful elision of the 95% of CRT not overtly concerned with “multiculturalism.” It becomes clear then, that there really is method to such brutal collapsings. The minute one first encounters the collapsing, lumping, and labeling of all CRT into/as “multiculturalism” in Beyond All Reason, is precisely the point where one must realize that what is to follow must be taken with great skepticism, (intellectual disgust entering immediately upon realizing that these machinations are meant to buttress an over-righteous and shameless trotting out of the Jewish card).

Finally, we address the second wing of the anti-Semitism charge: that to question or philosophically attack the Enlightenment and/or any of its chief tenets is to necessarily invite all pre-Enlightenment social horrors; more specifically, brutal, unchecked anti-Semitism. This charge, of course, is meant for all postmodernists but Critical Race theorists in particular. Over and over again, the following unsupported conclusion is
dragged out: “Attacks on the Enlightenment and on the norms and techniques of
objective science, have long been associated with anti-Semitism.”

This wing merits little direct analysis. It is impossible, actually. Neither the
Enlightenment nor any of the supposed norms or techniques mentioned are ever defined.
Reason itself, and what Farber and Sherry mean by the term is never made clear.
Overall, their use and skimpy attempts to define any of these concepts in need of so much
protection, is vague at best. To glean or attempt to dig for any consistent sense of any of
these terms in Beyond All Reason is to engage in a futile exercise. But that is fine. We
can rely on a much more logically defensible example of their favorite type of argument,
logical inference. Again: If you attack the Enlightenment and/or any of its chief pillars,
you are necessarily requesting the ushering in of the most barbaric token of anti-
Semitism, pre-Enlightenment anti-Semitism. And here is where Farber and Sherry’s
argumentative machinations should have come to a halt.

To put it simply, the second wing of the anti-Semitism charge is the most
intellectually embarrassing and incredibly irresponsible whipping out of the Jewish
ethnicity card to be found throughout Beyond All Reason and in texts such as Sherry’s
own The Sleep of Reason, which itself ends with a highly melodramatic rehearsing of this
anti-Enlightenment = anti-Semitism charge. More than anything, this charge betrays an
incredible, unpardonable ignorance of some of the most important political thinkers of
the Twentieth Century, i.e. members of the Frankfurt School and the incomparable Isaiah
Berlin. These were seminal Jewish thinkers who were not only some of the most
powerful critics of the Enlightenment in Western thought, but they were especially
victims, direct victims, of the varied brutal realities of anti-Semitism. In fact, it is

58 See Farber and Sherry, supra note 1 at 70-71.
precisely their anti-armchair philosophizing, their having faced the cruelty, torture and loss of loved ones to anti-Semitism that informed their varied anti-Enlightenment philosophical arguments and texts. To somehow suggest that these most strident, historically important critics of the Enlightenment, an Enlightenment most believed facilitated the most annihilating version of anti-Semitism, is not only incredibly irresponsible, but absolutely incoherent.

The Frankfurt School was composed of Jewish political thinkers that fled Nazi Germany to New York in the late 1930’s, their two most prominent voices being Max Horkheimer and Theodore Adorno.\(^59\) While relying heavily on Marxist tools of analysis, in the mid-1940’s, and in direct response to the horrors of Nazi Germany, their work turned from being primarily a critique of capitalism \textit{per se}, to a thorough attack of the Enlightenment and its particular championing of Reason. The two key works from this era are Horkheimer and Adorno’s \textit{Dialectic of Enlightenment} (1944) and Adorno’s \textit{Minima Moralia} (1951). In their analysis of Reason, the rationality of Western civilization appears as a fusion of domination and of technological rationality, ultimately facilitating the machinery and \textit{justification} of the Holocaust.\(^60\)

Without a doubt, one of the loudest Twentieth century critics of the Enlightenment was the incomparable liberal political theorist, Isaiah Berlin. In fact, the coining of the term \textit{Counter-Enlightenment} is often attributed to him. It is a term Berlin


\(^{60}\) See Rubin, \textit{supra} note 51 at 536 (“they treat the enlightenment as a process that has occurred over the entire course of European History, a process that transformed the magical or mythical world into a rational or scientific one … for Horkheimer and Adorno, the Enlightenment represents an oppressive form of enslavement … by treating the natural world as a set of interchangeable objects, rather than individualized entities with force and meaning, the Enlightenment creates a mode of thought that ultimately allows human beings to be treated in a similarly instrumental manner … truth and reason become means of convincing people to accept the instrumentalities of their oppression”).

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used to describe a movement running from the late 18th century up until Hitler’s Germany against the rationalism and universalism that were essential pillars of the Enlightenment.

His widely read article *The Counter-Enlightenment* was published in 1973, both it and the term receiving wide currency and international appreciation after its re-printing in the collection titled *Against the Current* (1981).61 Berlin’s strongest point is that the surprising and unexpected consequence of the long historical intellectual revolt against the Enlightenment has been a robust pluralism, which, according to Berlin, owes much more to Enlightenment’s enemies than it does to its proponents.62

*I am interested in critical attacks which lead to knowledge than simply in repeating and defending the commonplaces of and about the Enlightenment … it can be tedious to assert again and again that John Stuart Mill was right against Hobbes … if you believe in liberal principles and rational analysis, then you must take account of what the objections are, and where the cracks in your structures are, where your side went wrong: hostile criticism, even bigoted opposition, can reveal truth … Hatred can sharpen vision as much as love … nothing is more fatal in ethics or politics than a few simple ideas, as universal keys, however noble, fanatically held.63

Along with his thorough critique of the Enlightenment, Berlin also (and again, largely due to his Counter-Enlightenment stance) produced the seminal political philosophy distinction between positive and negative liberty, a distinction first introduced

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61 See Isaiah Berlin, THE PROPER STUDY OF MANKIND, 250-251 (1997) (“systems are mere prisons of the spirit, and they lead not only to distortion in the sphere of knowledge, but to the erection of monstrous bureaucratic machines, built in accordance with the rules that ignore the teeming variety of the living world, the untidy and asymmetrical inner lives of men, and crush them into conformity for the sake of some ideological chimera unrelated to the union of spirit and flesh that constitutes the real world … what is this much lauded reason with its universality, infallibility, overweening claims, certainty, self evidence but an ens rationis, a stuffed dummy which howling superstition has endowed with divine attributes”).

62 Quoting Berlin, see Ramin Jahanbegloo, CONVERSATIONS WITH ISAIAH BERLIN, 68 (1991) (“its most important influence on European thought is the belief that science and reason do not have all the answers, that to some central questions of value – ethical, aesthetic, social, political – there can be more than one valid answer”).

63 *Id.* at 70-71.
In his 1951 essay *Two Concepts of Liberty* and which is still a centerpiece in contemporary debates on liberalism between John Rawls, Jurgen Habermas, and Charles Larmore. To suggest, to any degree, that Isaiah Berlin because of his seminal anti-Enlightenment stance, is unwittingly endorsing barbaric anti-Semitism is insulting. Even worse, such a charge is disturbing, given that “no account of his life can leave out the persecution and loss of many close relatives in both the Nazi Holocaust and under Soviet Tyranny.” As many of his philosophical biographers have pointed out, because of his intimate knowledge and suffering at the hands of various anti-Semiticisms, “there is an authentic quality in what he says about the great issues of our time which is often lacking in the writings of mere academics … unlike many intellectuals, Berlin had close links with public life … he was both a privileged observer of and active participant in major events of the day … his wartime dispatches from Washington and his intimate association with Chaim Weizmann during the period leading up to the foundation of the State of Israel are just two of the better known instances.” It should be plain, by now, that simply bringing out the Jewish ethnicity card and lazily laying out the charge that anti-Enlightenment = anti-Semitism is not just silly, but at times, as in the case of Isaiah Berlin, roundly irresponsible.

We end on a hopeful note. A few years ago, the great British philosopher Bernard Williams passed away, leaving behind what some believe to be the first philosophy classic of this century, his *Truth and Truthfulness* (2007). It is a difficult text, extremely

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64 *Id.* at xxiv.
subtle, and highly pertinent to academic areas (especially those of Law and Politics) that witnessed the brutal culture wars between traditional/conservative voices and critical theorists skeptical of truth, knowledge claims, and objectivity. More than anything, Williams’ farewell text is a gracious and caring attempt to diagnose what actually took place and where it is we presently stand.

Along with highlighting the brutal shutdowns in horizontal dialogue between what he labels with a bit of irony “the deniers” and “the common sense camp”65 (what I have attempted fleshing out qua legal theory in this paper), Williams points out how the most saddening thing about that period was the utter absence of basic intellectual virtues. Things like intellectual charity, sincerity, authenticity, and accuracy both in understanding an opponent’s position and in one’s portrayal of the other and oneself, all went out the window. All of these, according to Williams are absolutely necessary, if our pursuit – whether joint or individual – for “truthfulness” is to ever have any value.

Much recent work in philosophy has focused on the intellectual virtues.66 One way to read this development is that it is an acknowledgement that the only way to recuperate from the savage culture wars that ravaged academia during the end of the last century is to begin by rebuilding the most fundamental structures that were destroyed, the basic intellectual virtues that are absolutely necessary for continued, productive development in the academic areas that suffered the most.

65 See Bernard Williams, TRUTH AND TRUTHFULNESS, 10, 45 (2007) (“their counterarguments, though fine as far as they go, don’t go far enough … although their objections may show that wholesale denials of truth are absurd, they fail to engage the deeper concerns that exercise the deniers … these concerns involve well founded worries about the status of claims outside the sphere of plain or everyday truths … claims such as those found in interpretative historical, legal and political narratives”).

Ultimately, my aim in this paper was to show how, beginning with Farber and Sherry’s 1997 text, a general abandonment of basic intellectual virtues (again, charity, sincerity, and intellectual respect for the other and her position/argument/ethos) took hold during the battles between CRT (the “deniers,” in our case) and the anti-CRT camp (the “common sense” folk). I guess it is hoped that by remembering and detailing the brutality of that small intellectual moment, such an abandonment of basic intellectual virtues will be avoided in the future. Whether such an abandonment still holds latent reign, remains an open question.