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DERRICK BELL: GODFATHER PROVOCATEUR

*andré douglas pond cummings**

I. INTRODUCTION

Professor Derrick Bell, the originator and founder of Critical Race Theory, passed away on October 5, 2011. Professor Bell was 80 years old. Around the world he is considered a hero, mentor, friend and exemplar. Known as a creative innovator and agitator, Professor Bell often sacrificed his career in the name of principles and objectives, inspiring a generation of scholars of color and progressive lawyers everywhere.¹ Bell resigned a tenured position on the Harvard Law School faculty to protest Harvard's refusal to hire and tenure women of color onto its law school faculty. For the past twenty years, Professor Bell taught at the New York University Law School.

Professor Bell's writings seized my imagination while in law school and appeared to me as if "manna from heaven" as a second year student.² Bell's scholarship, including his widely influential books *Faces at the Bottom of the Well: The Permanence of Racism* and *And We Are Not Saved: The Elusive Quest for Racial Justice* resonated intellectually with me like nothing I had ever encountered before.³ His desire to disaggregate legal

* Professor of Law, West Virginia University College of Law. J.D., Howard University School of Law. Significant portions of this tribute essay were first published in *A Furious Kinship: Critical Race Theory and the Hip Hop Nation*, 48 U. LOUISVILLE L. REV. 499 (2010). I am grateful to Michael Nissim-Sabat, West Virginia University Class of 2013 for his excellent research assistance. I respectfully offer this tribute to Derrick Bell as my humble acknowledgement of the enormous influence he has had in the legal academy, in U.S. legal discourse, and in my own personal life and intellectual pursuits. Of course, as usual, the politics and errata of this piece belong exclusively to me.

1. See, e.g., Patricia Mangan, *Harvard Prof Extends Protest on Hiring*, BOSTON HERALD, Mar. 5, 1992, at 10 (Bell commenting that because Harvard only engages in a "perpetuation of elitism" by hiring white males, and that "my leave protest reflects my refusal to accept any longer a subordinate faculty status"); James Traub, *For Whom the Bell Tolls*, THE NEW REPUBLIC, Mar. 1, 1993, at 17 (highlighting that Bell had a "flair for the dramatic exit," including his exit from Harvard because he wanted a "diversity of voices and backgrounds"); Fox Butterfield, *Old Rights Campaigner Leads a Harvard Battle*, N.Y. TIMES, May 21, 1990, at 18 (Mr. Bell vowing to leave unless Harvard appointed a black woman for tenure because "of the law school's 60 tenured professors, only three are black and five are women").
2. Exodus 16:4-35.
3. DERRICK A. BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); DERRICK A. BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

scholarship from its traditional moorings and introduce legal storytelling, narrative, parables and fiction as new and bold forms of legal writing was groundbreaking and dramatically changed the legal academy.

I believe that Bell's groundbreaking narrative style struck a cord with me because I grew up in Southern California listening to the narrative storytelling of groundbreaking hip hop artists. In "A Furious Kinship: Critical Race Theory and the Hip Hop Nation,"⁴ I endeavor to parallel Professor Bell's influence as the patriarch of Critical Race Theory with the influence of Chuck D and Public Enemy, one of the most important socially conscious hip hop artists and groups to ever emerge. In true Professor Bell fashion, when I had occasion to tell him of my vision of this influential parallel of powerful voices in person, he seemed genuinely delighted by this narrative connection, encouraging me to continue the exploration. Professor Bell will be deeply missed, though his influence will live on for generations.

As my tribute to Professor Bell, I now endeavor to piece together portions of "A Furious Kinship," so as to pay homage to one of the most influential legal minds to pass through the twentieth century. Part Two will examine the parallels between Critical Race Theory and hip hop. Part Three will examine the work of Derrick Bell and Chuck D and compare how these voices of power similarly inspired a generation.

II. SHARING A PARALLEL UNIVERSE

Two explosive movements were born in the United States in the 1970s. While both foundings were humble, they grew to become global phenomena that have profoundly changed the world. Founded by prescient agitators, these two movements were borne of disaffect, disempowerment, and near desperation—a desperate need to give voice to oppressed and dispossessed peoples. America in the 1970s bore witness to the founding of two furious movements: Critical Race Theory and HIP HOP.

Critical Race Theory was originally founded as a response to what had been deemed a stalled civil rights agenda in the United States. Driven primarily by law professors of color, Critical Race Theory targeted the law by exposing the racial inequities supported by U.S. law and policy.⁵ Hip hop, on the other hand, was founded by budding artists, musicians, and agitators in the South Bronx neighborhood of New York City, primarily driven by young African American disaffected youth, as a response to a faltering music industry and abject poverty.⁶ While these two move-

4. andré douglas pond cummings, *A Furious Kinship: Critical Race Theory and the Hip-Hop Nation*, 48 U. LOUISVILLE L. REV. 499 (2010).

5. See William F. Tate IV, *Critical Race Theory and Education: History, Theory, and Implications*, 22 REV. RES. EDUC. 195 (1997), available at <http://www.jstor.org/stable/1167376>; see also *Introduction to CRITICAL RACE THEORY: THE CUTTING EDGE* xv–xix (Richard Delgado & Jean Stefancic eds., Temple Univ. Press 2d ed. 2000) [hereinafter *THE CUTTING EDGE*]; Laurence Parker, *Critical Race Theory and Africana Studies: Making Connections to Education* 2–3 (The Cavehill Philosophy Symposium, Working Paper 2008), available at <http://www.cavehill.uwi.edu/fhe/histphil/Philosophy/CHiPS/2008/papers/parker2008.pdf>.

6. See JEFF CHANG, *CAN'T STOP WON'T STOP: A HISTORY OF THE HIP-HOP GENERATION* 58–65 (St. Martin's Press 2006); see also Melissa Castillo-Garstow, *Latinos in Hip Hop*

ments appear significantly separated by presentation, arena, and point of origin, they share startling similarities. Among the many similarities between Critical Race Theory and hip hop, are the use of narrative in response to racism and injustice in a post-civil rights era, a fundamental desire to give voice to a discontent brewed by silence, and a dedication to the continuing struggle for race equality in the United States.

A. Launch

When many of the founding members of Critical Race Theory met in 1989 at a workshop at the St. Benedict Center in Madison, Wisconsin,⁷ launching a global academic movement was not likely at the forefront of their minds. Meeting together as law professors of color was more about support and survival within the white male-dominated legal academy than about spawning a movement that would change the conversation on race in America. Similarly, when DJ Kool Herc and Africa Bambaataa began spinning records on turntables in the parks of the South Bronx and rhyming over the instrumental hooks, launching a global cultural and musical movement was not their likely objective. The roots of both launches were humble, unassuming, and sparsely witnessed. Truly, the beginning of CRT and the origination of hip hop both sprang from the creative and aggressive minds of a few forward-thinking progressives that simply *had* to find a forum by which to express very different ways of communicating, thinking, writing, and philosophizing.

From the movement's inception, Critical Race theorists championed storytelling and narrative as valuable empirical proof of reality and the human experience, while rejecting traditional forms of legal studies, pedagogy, and various forms of civil rights leadership.⁸ Hip hop, at its root, is narrative in form; the best, most recognizable hip hop artists use storytelling as their most fundamental communicative method.⁹ Further, early hip hop culture and rap music rejected the traditional legal, judicial, and educational systems, decrying—often in journalistic fashion—the sta-

to Reggaeton, *LATIN BEAT MAGAZINE*, March 2005, available at http://findarticles.com/p/articles/mi_m0FXV/is_2_15/ai_n13557237/ ("From the earliest days, hip hop has not just been about music, but also included other cultural expressions of the neighborhoods of origin such as graffiti art, break dance, and the DJ mix tape scene. Those early stages of development took place primarily within the Puerto Rican and African American communities of the South Bronx, where those two cultures lived and worked together.").

7. See Angela Harris, *Foreword* to RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* xvii, xix (Richard Delgado & Jean Stefancic eds., Temple University Press 2d ed. 2000).
8. See John O. Calmore, *Airing Dirty Laundry: Disputes Among Privileged Blacks—From Clarence Thomas to "The Law School Five,"* 46 HOW. L.J. 175, 179 (2003) (citing Cornel West, *Foreword* to *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1996)).
9. See Davey D, *The History of Hip Hop 3*, DAVEY D'S HIP HOP CORNER (Mar. 22, 2012, 3:30 a.m.), <http://www.daveyd.com/rapphist3.html> [hereinafter *History of Hip Hop 3*]; see also S.H. Fernando, Jr., *Back in the Day: 1975-1979*, in *THE VIBE HISTORY OF HIP HOP 13* (Alan Light ed., 1999); see also Tom Terrell, *The Second Wave: 1980-1983*, in *THE VIBE HISTORY OF HIP HOP 43* (Alan Light ed., 1999).

tus-quo.¹⁰ In the same vein, Critical Race theorists rejected the straight-white-male perspective and privilege then (and still) pervasive throughout the legal academy, proposing instead a much different approach to teaching, writing, legal learning, and perspective-sharing within the law school classroom.¹¹ For some thirty years now, hip hop artists have advocated for a concept which is perhaps most jarring for traditional society: a thorough disrespect for, and disregard of, the rule of law, particularly in connection with criminal law and punishment.¹²

The striking similarities between CRT and hip hop begin with the intellectual underpinnings of both movements. Both CRT and hip hop serve the dual purpose of providing a race-based interdisciplinary theoretical framework for analyzing laws, policies, and administrative procedures that have a deleterious impact on racial minorities. As studies have shown:

[Y]outh utilize hip hop music in multiple and overlapping ways, engaging hip hop music as both a pedagogy that centers the perspectives of people of color and a framework to examine daily life. Specifically, youth use[] hip hop discourse to make sense of the ways race operates in their daily lives; to more broadly understand their position in the U.S. racial/ethnic hierarchy; and to critique traditional schooling for failing to critically incorporate their racialized ethnic/cultural identities within official school dialogues and curricula in empowering ways.¹³

Hip hop reinforces the basic insights of Critical Race Theory, including the notion that racism is a normal and relentless fact of daily life.¹⁴ In addition, personal experience and narrative storytelling are used extensively and creatively to challenge the existing social construction of race. Both CRT and hip hop recognize that white elites will tolerate or encourage racial advances for blacks only when such advances promote white self-interest.¹⁵ In response to the inevitable cultural marginalization, African Americans have utilized hip hop lyrics to discredit and disempower the white cultural elite. Hip hop serves as white America's introduction to the rest of minority society, exposing traditional America

10. See RUSSELL A. POTTER, *SPECTACULAR VERNACULARS: HIP-HOP AND THE POLITICS OF POSTMODERNISM* 132 (1995); see also Paul Butler, *Let's Get Free: A Hip Hop Theory of Justice* 124 (2009).

11. See andré douglas pond cummings, "Lions and Tigers and Bears, Oh My" or "Redskins and Braves and Indians, Oh Why": *Ruminations on McBride v. Utah State Tax Commission, Political Correctness, and the Reasonable Person*, 36 CAL. W. L. REV. 11, 27–28, 30 (1999) (detailing the white male perspective that pervades judicial decisionmaking in the United States).

12. See andré douglas pond cummings, *Thug Life: Hip Hop's Curious Relationship with Criminal Justice*, 50 SANTA CLARA L. REV. 515, 515–16 (2010).

13. Isaura Pulido, "Music Fit for Us Minorities": *Latinas/os' Use of Hip Hop as Pedagogy and Interpretive Framework to Negotiate and Challenge Racism*, 42 EQUITY & EXCELLENCE IN EDUC. 67, 68 (2009).

14. See THE CUTTING EDGE, *supra* note 5, at xvi–ii; Parker, *supra* note 5.

15. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980), reprinted in KIMBERLÉ CRENSHAW, *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 20 (Kimberlé Crenshaw et al. eds., 1996).

to life in the inner-city. Chuck D began using his voice in hip hop as a revolutionary mechanism to politicize youth and as a tool for consciousness, education, and awareness of the common stereotypes of the day. Due to hip hop's bold and unapologetic representation of the culture of inner-city youth to mainstream America, the public eventually had no choice but to listen and consider a different reality.¹⁶

Many Critical Race theorists believe that a principal obstacle to genuine racial reform in the U.S. is the majoritarian mindset: an experientially limited bundle of presuppositions, received wisdoms, and shared cultural understandings that persons in the majority bring to discussions of race.¹⁷ To analyze and challenge these power-laden beliefs, many CRT pioneers employed counterstories, parables, chronicles, and anecdotes aimed at revealing the contingency, cruelty, and self-serving nature of majoritarian rule.¹⁸ Similarly, hip hop revolves around storytelling. In educating the hip hop generation, Grandmaster Flash and the Furious Five recorded *The Message*; Public Enemy famously recorded *Fight the Power*, *Don't Believe the Hype*, *Black Steel in the Hour of Chaos*, and *911 Is a Joke*; N.W.A. notoriously released *Fuck Tha Police* and *100 Miles and Runnin'*; Tupac Shakur released *Brenda's Got a Baby*, *Keep Ya Head Up*, and *Changes*; Ice Cube released the explosive *AmeriKKKa's Most Wanted* featuring *Endangered Species (Tales from the Darkside)* and later *Dead Homiez*; KRS-One released an entire album he styled *Edutainment* featuring *Love's Gonna Getcha*. Each release represented an urban tale, a story intimately known by the authors/artists; likewise, each was an effort to educate and enlighten the hip hop generation. Particularly, these stories illuminated the inequities and discrimination inherent in a criminal justice system that, to this day, systematically targets and disproportionately imprisons minority and urban youth.¹⁹

Like the seminal hip hop recordings mentioned above, CRT founders dropped narrative intellectual missives in their early countercultural legal writing. In educating the legal academy and the world in general about the deeply entrenched racism underlying American institutions, Derrick Bell wrote the profound *The Space Traders*, *Serving Two Masters*, *Minority Admissions and the Usual Price of Racial Remedies*, and *The Interest Convergence Theory*; Richard Delgado published the explosive *The Imperial Scholar* and *A Plea for Narrative*; Kimberlé Crenshaw authored the inspired *Race, Reform, and Retrenchment*; Charles Lawrence published the groundbreaking *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*; Mari Matsuda wrote *Looking to the Bottom*; and Neil Gotanda published *A Critique of 'Our Constitution Is Color-Blind.'*²⁰ Each publication represented an effort on the part of the CRT pioneers to educate and enlighten the civil-rights generation, emerging scholars of color, and the

16. See Glenn Collins, *Rap Music, Brash and Swaggering, Enters Mainstream*, N.Y. TIMES, Aug. 29, 1988, at C15, available at <http://www.nytimes.com/1988/08/29/arts/rap-music-brash-and-swaggering-enters-mainstream.html?pagewanted=all&src=pm>.

17. See THE CUTTING EDGE, *supra* note 5, at xvii.

18. See *id.*

19. See cummings, *supra* note 12, at 516–17.

20. These works are further discussed *infra*.

rest of the legal world to the inequities and discrimination inherent in a legal system that systematically disadvantages minorities in the U.S.

Both CRT and hip hop found a post civil rights era voice and used this voice to express fiery and furious critiques of a system that was, and still is, fundamentally unfair. Without doubt, both movements also found an audience that was yearning for a vehicle to speak truth to power. Hip hop was a source of validation and acknowledgment for a generation that had been shut out and shut down. CRT served a similar function for a professional movement that had become frustrated with America's failure to live up to its promise of equality and social justice. Together, these two movements converged in extraordinary ways.

B. Backlash

At inception, both CRT and hip hop were attacked by detractors who were intent on destroying each movement. Taking different paths, the vitriolic backlashes represented not just fundamental disrespect for African American and minority expression, but also deep-seated, irrational fear and unadulterated loathing of unfamiliar self-expression. The loathing, disrespect, and backlash against both movements proved eerily similar.

In the 1980s, as hip hop began to expand its reach into suburban America through youth, and as hip hop artists and groups began to wield political power and deliver countercultural messages that resonated with those youth, an aggressive and hostile backlash emerged.²¹ The fearful response from law enforcement, activist groups, and government agencies came soon after seminal releases by Public Enemy, N.W.A., Boogie Down Productions and KRS-One, and Ice-T.²² Hip hop openly and brazenly defied traditional laws and challenged the status quo across the board.²³

21. See cummings, *supra* note 12, at 521-52. "Despite intense criticism and attempts to discredit and eradicate hip hop music, including aggressive attacks launched by the FBI, CIA, local law enforcement across the United States, Tipper Gore, and C. Delores Tucker, hip-hop has not just survived, but has influenced and dominated a generation - the hip-hop generation. . . . Simply stated, hip-hop music and its counter culture exploded upon U.S. and global consciousness." *Id.* at 522-23 (citations omitted).

22. See *id.*; see also *Encyclopædia Britannica's Guide to Black History: hip-hop*, BRITANNICA.COM, <http://www.britannica.com/blackhistory/article-9117537> (last visited Apr. 6, 2012) (discussing hip hop as a "cultural movement" and examining the evolution of "gangsta rap" and its beginnings).

23. See BOOGIE DOWN PRODUCTIONS, *BY ALL MEANS NECESSARY* (Jive Records 1989); BOOGIE DOWN PRODUCTIONS, *CRIMINAL MINDED* (B-Boy Records 1987); ICE-T, 6 *In The Mornin'*, on DOG 'N THE WAX (YA DON'T QUIT-PART II)/6 *IN THE MORNING* [single 1986]; N.W.A., *STRAIGHT OUTTA COMPTON* (Ruthless/Priority Records 1988); PUBLIC ENEMY, *FEAR OF A BLACK PLANET* (Def Jam Records 1990) [hereinafter *FEAR OF A BLACK PLANET*]; PUBLIC ENEMY, *IT TAKES A NATION OF MILLIONS TO HOLD US BACK* (Def Jam Records 1988) [hereinafter *IT TAKES A NATION*]; see also Andre L. Smith, *Other People's Property: Hip-Hop's Inherent Clashes with Property Laws and its Ascendancy as Global Counter Culture*, 7 VA. SPORTS & ENT. L.J. 59, 69-73 (2007) (discussing early hip hop's civil disobedience in the form of house parties and park performances held without required permits or paying for electricity, unlicensed radio sta-

Despite intense criticism and myriad attempts at eradication,²⁴ hip hop not only survived, but also flourished and exacted a dominant influence over a generation.²⁵ While the initial backlash against hip hop proved ineffective, present-day criticism continues. This criticism must be recog-

tions known as “pirate stations” playing hip hop across the country, music sampling, and illegal production and distribution of records and tapes).

24. See BAKARI KITWANA, *THE HIP HOP GENERATION: YOUNG BLACKS AND THE CRISIS IN AFRICAN AMERICAN CULTURE* 4 (2002). Kitwana defines “hip-hop generationers” as “those young African Americans born between 1965 and 1984 who came of age in the eighties and nineties and who share a specific set of values and attitudes. “At the core are our thoughts about family, relationships, child rearing, career, racial identity, race relations, and politics.” *Id.* Borrowing Kitwana’s definition, I adopt the idea here that the hip hop generation is indeed those individuals born between the years of 1965 and 1984, but seek to expand the definition to include also those individuals strongly influenced by the hip hop movement who are Latino, White, Asian, Polynesian, etc., i.e., “hip-hop generationers” of color or of urban influence. See also RUSSELL A. POTTER, *SPECTACULAR VERNACULARS: HIP-HOP AND THE POLITICS OF POSTMODERNISM* 95 (1995) (“In 1994, the reaction against this particular genre reached a crisis point in the form of congressional hearings instigated by Dr. C. Delores Tucker. Dr. Tucker . . . took offense to ‘gangsta’ rap lyrics, and organized a series of protests in the Washington, D.C. area. . . . Unlike Tipper Gore and her dormant Parents’ Music Resource Center, Tucker wanted more than warning labels; she demanded an outright ban on ‘gangsta’ rap records.”); EMMETT PRICE, *HIP HOP CULTURE* 74–75 (2006) (discussing the Tipper Gore-led formation of the Parent’s Music Resource Center with its goal of banning explicit material on recordings in rap, rock, and heavy metal music, and the Recording Industry Association of America’s introduction of a uniform labeling system for records with explicit content reading “Parental Advisory—Explicit Lyrics.”); Christian D. Rutherford, Note, “*Gangsta*” Culture in a Policed State: The Crisis in Legal Ethics Formation Amongst Hip-Hop Youth, 18 NAT’L BLACK L.J. 305, 305 (2004–2005). Damien Cave et al., *50 Moments that Changed the History of Rock & Roll: N.W.A. Outta Compton in 1989*, ROLLING STONE, Jun. 24, 2004, available at http://www.rollingstone.com/artists/nwa/articles/story/6085509/nwa_outta_compton_in_1989 (last visited July 14, 2010) (“N.W.A—Niggaz With Attitude—put Los Angeles on the hip-hop map by combining funk rhythms with staccato rhymes that condemned racist cops and offered a nihilistic chronicle of drug dealing, casual street violence and crack ho’s. . . . The FBI sent a letter to N.W.A.’s record company, Priority, six months after the album’s release, accusing the label of selling a record that encouraged violence against law enforcement.”); Steve Hochman, *Compton Rappers Versus the Letter of the Law: FBI Claims Song by N.W.A. Advocates Violence on Police*, L.A. TIMES, Oct. 5, 1989, available at http://articles.latimes.com/1989-10-05/entertainment/ca-1046_1_law-enforcement (highlighting how the FBI sent a threatening letter to NWA for its Straight Outta Compton’s infamous “F**k Tha Police” because “the law enforcement community take exception to such” references to violence and assault”); James LeMoyne, *Lime-light Nothing New for Sheriff in Rap Case*, N.Y. TIMES, Jun. 26, 1990, New York Edition at A12, available at <http://www.nytimes.com/1990/06/26/us/lime-light-nothing-new-for-sheriff-in-rap-case.html> (discussing Broward County, Florida, Sheriff Nick Navarro’s “successful effort to have 2 Live Crew’s sexually explicit record album ‘As Nasty as They Wanna Be’ declared the first legally obscene record in America”); The Internet Movie Database, Biography for Ice-T, <http://www.imdb.com/name/nm0001384/bio> (last visited Apr. 6, 2012) (“[Ice-T’s] most infamous song, the heavy metal ‘Cop Killer,’ was one of the major battle[s] in the cultural wars of the 1990s, in which cultural conservatives enlisted the Moses of the right wing, Charlton Heston, to get Ice-T dropped from his then-label, Sire/Warner Bros.”).
25. See BAKARI KITWANA, *WHY WHITE KIDS LOVE HIP HOP: WANKSTAS, WIGGERS, AND WANNABES, AND THE NEW REALITY OF RACE IN AMERICA* 4 (2006) (defining the Hip Hop Generation); see also BUTLER, *supra* note 10, at 123–24 (discussing the “hip-hop nation”).

nized²⁶ and reconciled with hip hop's messages of empowerment and self-realization.²⁷

Similarly, when Critical Race Theory emerged and began to find genuine traction in the legal academy, the critical backlash from the establishment was acerbic and intense. Of course, those invested and entrenched in protecting traditional legal scholarship criticized the emerging CRT scholarship as ungrounded, overly passionate and polemic, and neither academic nor intellectual.²⁸ The traditional academy sought to expose the narrative tradition of CRT as non-scholarly, unempirical, unrepresentative, and untrustworthy.²⁹ In addition, opponents of the movement criticized CRT as promoting a "myth" that people of color share a specific or

26. See BUTLER, *supra* note 10, at 144 ("One serious deficiency in hip-hop is its endemic sexism and homophobia. Can any credible theory of justice be based on a culture that routinely denigrates more than half the population? The answer must be 'no.' For hip-hop to command the moral authority that, at its best, it deserves, it must address subordination within the hip hop nation. The problem besmirches hip-hop's extraordinary aesthetic achievement and detracts from its important evaluation of criminal justice. Hip-hop music and videos, especially, contain the kind of depictions of gender and sexuality that we might expect of adolescent boys.").

27. The devastating misogyny, homophobia, and violence prevalent in some hip hop works to deter many from hearing and feeling the transformative messages contained in thousands of hip hop anthems and lyrics. See generally Edward G. Armstrong, *Gangsta Misogyny: A Content Analysis of the Portrayals of Violence Against Women in Rap Music, 1987-1993*, 8(2) J. CRIM. JUST. & POPULAR CULTURE 96 (2001). The hip hop nation must confront, debate, and challenge those messages that serve to injure minority communities. That debate is beyond the scope of this particular tribute, although not beyond the scope of the many presentations and panels delivered in connection with this topic. As discussed meaningfully and often at every presentation connecting this theme, the corporatization of hip hop is often considered one of the primary drivers behind the blatant 1990s shift away from revolutionary groups and messaging toward the "thug life" and female objectification messaging delivered by most major record label artists. See andré douglas pond cummings, Akilah Folami, D. Aaron Lacy, and Kamille Wolff, Panel Presentation at LatCrit Conference, American University Washington College of Law: The Hip Hop Movement at the Intersection of Race, Class and Culture: Hip Hop Music's Effect on Life, Liberty and the Pursuit of Happiness (Oct. 2, 2009) (panel discussion exploring the misogyny and promotion of violence in hip hop, the reasons behind the messaging and potential strategies to combat the corporate message). One leading scholar suggests that major record label corporate executives made a conscious decision in the mid-1990s to purposely "select" the thug image as the face of hip hop in order to promote sales to white urban youth, while attempting to squelch the revolutionary messages delivered by many prominent artists during that period. See andré douglas pond cummings, Akilah Folami, D. Aaron Lacy, and Kamille Wolff, Panel Presentation at the Annual Association for the Study of Law, Culture and the Humanities Conference, Brown University: Hip Hop and the Law (Mar. 19, 2010) (panel discussion exploring the impact of hip hop on U.S. law and culture, particularly addressing the corporatization of hip hop in the 1990s).

28. See DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* 12 (1997) (exploring "the mechanisms that allow the radicals to abandon common sense and adhere to a set of basically implausible beliefs"); see also Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1745-46 (1989); but see Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665, 666-67 (1993).

29. See generally FARBER & SHERRY, *supra* note 28; Kennedy, *supra* note 28, at 1787.

unified voice, and therefore should not be recognized as fundamentally important on issues of race.³⁰

The crucial element of Critical Race Theory's aggressive storytelling and narrative tradition is that it invites the legal academy to "construct a new world" by "combining elements from the story and current reality."³¹ However, legal academia resisted the invitation to construct a different reality with great vigor.³² The opposition from the traditional academy was extremely critical and, more than likely, expected.³³ During the firestorm of early criticism, Critical Race scholars contended that the movement was in its infancy, and still defining itself.³⁴ Some CRT scholars wondered aloud about the critics' "rush to judgment" and openly questioned the motives of those making such caustic attacks so soon after the budding of the new movement.³⁵

Notwithstanding the early acerbic critiques and backlash, both hip hop and CRT shook off the criticism and controversy and continued to offer powerful alternatives to mainstream legal scholarship and contemporary music. Critical Race Theory rejected the critique and scorned the invitation to ground its relevance in traditional "accepted" methodologies. True to its purpose and the power of its narrative, CRT scholars endeavored to produce scholarship and advocate for the oppressed and voiceless and did so. They continue to do so today—unapologetically. CRT's slow burn continues today, as evidenced by its powerful movement across disciplines and a deep legitimacy gained through its urgency and adherents. Hip hop similarly rebuffed the backlash, and its artists created the most powerfully relevant and critical music of their generation. Critical Race Theory and hip hop both continue to grow in influence and reach. There are valid and important exceptions to this growth, but acknowledging the weaknesses of each movement does not undermine

30. See FARBER & SHERRY, *supra* note 28, at 12; see also Kennedy, *supra* note 28, at 1787.

31. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2415 (1989).

32. See generally Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 814–15 (1993) ("Related to the lack of evidence for the existence of a distinct voice of color, we have found little exploration of the content of such a voice."); Kennedy, *supra* note 28, at 1778 ("But what, as a function of race, is 'special' or 'distinct' about the scholarship of minority legal academics? Does it differ discernibly in ways attributable to race from work produced by white scholars? If so, in what ways and to what degree is the work of colored intellectuals different from or better than the work of whites?").

33. See *supra* note 28, 32.

34. See Richard Delgado, *The Inward Turn in Outsider Jurisprudence*, 34 WM. & MARY L. REV. 741, 766 (1993).

35. *Id.* In 1993, Richard Delgado explained that Critical Race Theory, having sprung up in 1989, only consisted of four or five books and just 200 articles. He then offered: "Yet, a number of authors . . . wish to rush to establish criteria to evaluate the scholarship. Why?" Professor Farber, an outspoken opponent of Critical Race Theory, opined in 1994: "As of yet, no clear consensus exists about the defining characteristics of CRT." Daniel A. Farber, *The Outmoded Debate over Affirmative Action*, 82 CALIF. L. REV. 893, 903 (1994).

the critical importance of both.³⁶ To the contrary, active acknowledgment and analysis of criticisms borne from experientially diverse narratives—often encompassing those of the status quo—only emphasize the inclusionary foundational principles upon which both movements were founded.

C. Founders

The launch of Critical Race Theory shares a parallel universe with hip hop's inception, and the backlash against hip hop mirrors the initial academic rejection of CRT. Still, a more intriguing parallel exists between the voices of the individual founders of Critical Race Theory and hip hop's early pioneers. In significant ways, the early themes delivered by CRT pioneers and the political critiques offered by hip hop founders, while different in delivery and context, are powerfully similar in theme, tone, and effect. Millions of Americans, and eventually hundreds of millions of human beings worldwide, were inspired, moved, and *changed* by the similar messages dropped by CRT scholars and hip hop poets. Perhaps the most important critical race provocateur is Professor Derrick Bell. Arguably, the leading voice in politically conscious hip hop music is Public Enemy's front man Chuck D. Both men furiously challenged status quo America and emerged victorious.

III. DERRICK BELL AND CHUCK D

Professor Derrick Bell shares a distinctive kinship with Chuck D and the hip hop supergroup Public Enemy. When Professor Bell wrote and delivered the ominous *The Space Traders*, he narrated a future odyssey that still brings chills today. Describing an apocalyptic racial encounter with space aliens, Professor Bell—in prophetic fashion—described a nation that would ultimately willingly sacrifice its entire African American population in exchange for fiscal and environmental stability in the twenty-first century.³⁷ Reading *The Space Traders* today is both thrilling and devastating as Bell accurately predicts the continuing racism and discrimination that continues more than thirty years after CRT's founding. Upon release, Bell's bold and shocking critique resonated as pure and true with minority academics, and inspired a generation of scholars to critically examine a civil rights movement that had been hailed as revolutionary just a decade earlier.

In describing the mythical sacrifice of African Americans to space aliens in *The Space Traders*, Professor Bell wrote:

Though seldom acknowledging the fact, most business leaders understood that blacks were crucial in stabilizing the economy with its ever-increasing disparity between the incomes of rich and poor. They recognized that potentially turbulent unrest among those on the bottom was deflected by the continuing efforts of poorer whites to ensure that they, at least, remained ahead of

36. See BUTLER, *supra* note 10, at 144. See also Donald F. Tibbs, *From Black Power to Hip Hop: Discussing Race, Policing, and the Fourth Amendment Through the "War on" Paradigm*, 15 J. GENDER, RACE & JUST. 47, 78-79 (2012).

37. Derrick Bell, *The Space Traders*, in BELL, *FACES AT THE BOTTOM*, *supra* note 3, at 158-94.

blacks. If blacks were removed from the society, working- and middle-class whites—deprived of their racial distraction—might look upward toward the top of the societal well and realize that they as well as the blacks below them suffered because of the gross disparities in opportunities and income.³⁸

In shining light on such economic disparity in the United States, and in his astute observation that the economy crumbles without placement of African Americans at the bottom of the economic totem pole, Bell provides a withering critique of the economic elite and challenges people of color to fight against the status quo and resulting pecking order.

Additionally, in *The Space Traders*, Professor Bell channels those white Americans that would expel all African Americans from the United States:

The Framers intended America to be a white country. The evidence of their intentions is present in the original Constitution. After more than a hundred and thirty-seven years of good-faith efforts to build a healthy, stable interracial nation, we have concluded—as the Framers did in the beginning—that our survival today requires that we sacrifice the rights of blacks in order to protect and further the interests of whites. The Framers' example must be our guide. Patriotism, and not pity, must govern our decision. We should ratify the amendment and accept the Space Traders' proposition.³⁹

In *The Space Traders*, Professor Bell sought to capture and expose the latent hostility against African Americans held by many whites in the United States. This exposition, while surprising to some, sounded honest and familiar to many, particularly those minorities and others that lived and worked in the nation's crosshairs of the criminal justice system and dominant legal regime.

In an even more dramatic fashion, Professor Bell developed and introduced his "Interest Convergence Theory" as perhaps his most explosive contribution to the early Critical Race Theory revolution:

Translated from judicial activity in racial cases both before and after *Brown v. Board of Education*, this principle of "interest convergence" provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites. However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites.

It follows that the availability of fourteenth amendment protection in racial cases may not actually be determined by the character of harm suffered by blacks or the quantum of liability proved against whites. Racial remedies may instead be the outward manifestations of unspoken and perhaps subconscious judicial conclusions

38. *Id.* at 181.

39. *Id.* at 187–88.

that the remedies, if granted, will secure, advance, or at least not harm societal interests deemed important by middle and upper class whites.⁴⁰

Professor Bell's "Interest Convergence Theory" squarely accused the white male privileged judiciary and legislators of only supporting equality for African Americans when it dovetailed with and supported the interests that advanced white privilege. Basing his "Interest Convergence Theory" on *Brown v. Board of Education*,⁴¹ Bell posited that the *Brown* decision was not intended to provide equal opportunity to blacks, but rather to improve the United States' image in the 1950s as the "bellwether" nation of equality to Third World nations, in particular to those that supported communism.⁴² This is certainly a devastating accusation for those that hail *Brown v. Board of Education* as America's acknowledgment and realization of its racist history and its first effort to remedy its hateful and discriminatory past.

Just as Professor Bell's intensely provocative teaching and writing created a firestorm of controversy and recognition, similarly, when Chuck D and Public Enemy released *It Takes a Nation of Millions to Hold Us Back*, *Fear of a Black Planet*, and *Apocalypse '91: The Enemy Strikes Black*, they introduced a new social critique of racism in America with the explosive tracks *Fight the Power*, *Don't Believe the Hype*, *Can't Truss It*, *Black Steel in the Hour of Chaos*, and *Prophets of Rage*, amongst so many others.⁴³ Before Public Enemy, hip hop had flirted with social commentary and critical relevance,⁴⁴ but when Chuck D, Flavor Flav, Terminator X, and Professor Griff joined together to narrate the American experience from an inner-city African American perspective, they blew the roof off hip hop. In stark, narrative fashion, Chuck D described continuing racism in America and exposed fans and listeners to the institutional nature of continuing discrimination and inequality in vibrant, rebellious, violent, and furious tones.

Fight the Power, arguably Public Enemy's most celebrated artistic contribution, and the theme to Spike Lee's controversial motion picture *Do the Right Thing*,⁴⁵ was an anthem call to listeners and fans around the world, challenging young people to resist, question, protest, and demand equality:

[F]rom the heart;
It's a start, a work of art;

40. Bell, *supra* note 3, at 523.

41. 347 U.S. 483 (1954).

42. See Mary L. Dudziak, *Desegregation As a Cold War Imperative*, 41 STAN. L. REV. 61, 61 (1988).

43. See FEAR OF A BLACK PLANET, *supra* note 23; IT TAKES A NATION, *supra* note 23; PUBLIC ENEMY, APOCALYPSE '91: THE ENEMY STRIKES BLACK (Def Jam/Columbia Records 1991) [hereinafter "APOCALYPSE '91"].

44. See GRANDMASTER FLASH & THE FURIOUS FIVE, THE MESSAGE (Sugar Hill Records 1982); see also GRANDMASTER & MELLE MEL, *White Lines (Don't Don't Do It)*, on WHITE LINES (DON'T DON'T DO IT)/MELLE MEL'S GROOVE [SINGLE] (Sugar Hill Records 1983).

45. See DO THE RIGHT THING (40 Acres and a Mule Filmworks/Universal Pictures 1989).

To revolutionize, make a change nothin's strange; People, people
 we are the same?
 No we're not the same;
 'Cause we don't know the game;
 What we need is awareness, we can't get careless;
 You say what is this?;
 My beloved, let's get down to business;
 Mental self defensive fitness;
 (Yo) Bum rush the show;
 You gotta go for what you know;
 To make everybody see, in order to fight the powers that be;
 Lemme hear ya say;
 Fight the Power.

. . . .

Elvis was a hero to most;
 But he never meant shit to me you see;
 Straight up racist, that sucker was
 simple and plain;
 Motherfuck him and John Wayne;
 'Cause I'm black and I'm proud;
 I'm ready and hyped plus I'm amped;
 Most of my heroes don't appear on no stamps;
 Sample a look back, you look and find;
 Nothing but rednecks for 400 years if you check.⁴⁶

For millions of Americans today, the familiar strains of *Fight the Power* still resonate as they once did; as a "call to arms" to those that expect the United States to eventually live up to its promise of equal protection and the principle that all people are created equal. Additionally, as hip hop inspired a global footprint, *Fight the Power* became an international anthem of revolution and discontent.⁴⁷

Further, in the stark critique of America's military and prison industrial complex, *Black Steel in the Hour of Chaos*, Chuck D narrated:

I got a letter from the government the other day;
 I opened and read it, it said they were suckers;
 They wanted me for their Army or whatever;
 Picture me givin' a damn—I said never;
 Here is a land that never gave a damn;
 About a brother like me and myself because they never did;
 I wasn't wit' it, but just that very minute;
 It occurred to me, the suckers had authority
 Public Enemy servin' time—they drew the line y'all;
 To criticize me for some crime, Nevertheless;
 They could not understand that I'm a Black man;

46. PUBLIC ENEMY, *Fight the Power*, on DO THE RIGHT THING SOUNDTRACK (Motown Records 1988); lyrics available at <http://www.lyricsdepot.com/public-enemy/fight-the-power.html>; video available at http://www.youtube.com/watch?v=M_t13-0Joyc (last visited Mar. 6, 2012).

47. See Smith, *supra* note 23, at 66.

And I could never be a veteran;
 On the strength, the situation's unreal;
 I got a raw deal, so I'm goin' for the steel.

They got me rottin' in the time that I'm servin';
 Tellin' you what happened the same time they're throwin';
 Four of us packed in a cell like slaves—oh well;
 The same motherfucker got us livin' in his hell;
 You have to realize, that it's a form of slavery organized;
 Under a swarm of devils, straight up—word 'em up on the level;
 The reasons are several, most of them federal.⁴⁸

In *Black Steel in the Hour of Chaos*, Public Enemy sought to expose the U.S. military as an institution that had been historically served by people of color but had never served people of color fairly, or with equal consideration. In addition, *Black Steel* characterized the American penal system as one that perpetuates discrimination against minorities and acts as a form of modern "slavery organized" against African Americans and people of color.⁴⁹ In 1989, these charges were not just blistering, they were also widely disseminated and deeply felt within the black community.

Further, in true activist form, Public Enemy released *Apocalypse '91: The Enemy Strikes Black*,⁵⁰ featuring the most overtly political messages of the era. *The Enemy Strikes Black* featured *Can't Truss It* (excoriating slavery and continuing discrimination), *Nighttrain* (vilifying thieves and drug dealers), *A Letter to the New York Post* (striking back at ultra-negative stories and publicity about hip hop in general and Public Enemy in particular), *Get the Fuck Outta Dodge* (indicting U.S. law enforcement for profiling and brutality), and the explosive *By the Time I Get to Arizona*.⁵¹ In *By the Time I Get to Arizona*, Public Enemy directly confronted Arizona Governor Evan Mecham (who was later impeached)⁵² and the State of Arizona for its refusal to honor Martin Luther King, Jr., by declining to create a holiday in January, as 48 of the 50 states had previously done. Public Enemy and Chuck D refused to play concerts in the state, encouraged a nationwide boycott, and then penned these rhymes:

Read between the lines;
 Then you see the lie;
 Politically planned;
 But understand that's all she wrote;
 When we see the real side;
 That hide behind the vote;
 They can't understand why he the man;

48. *Black Steel in the Hour of Chaos*, on IT TAKES A NATION, *supra* note 23, lyrics available at <http://www.lyricsdepot.com/public-enemy/black-steel-in-the-hour-of-chaos.html>, video available at http://www.youtube.com/watch?v=ZM5_6js19eM&ob=av3e (last visited Mar. 22, 2012).

49. *Id.*

50. APOCALYPSE '91, *supra* note 43.

51. *Id.*

52. See, e.g., Associated Press, *Evan Mecham, Ousted Governor, Dies at 83*, N.Y. TIMES, Feb. 23, 2008, available at <http://www.nytimes.com/2008/02/23/us/23mecham.html>.

I'm singin' about a King;
 They don't like it;
 When I decide to mic it;
 Wait, I'm waitin' for the date;
 For the man who demands respect;
 'Cause he was great, come on;
 I'm on the one mission;
 To get a politician;
 To honor or he's a goner;
 By the time I get to Arizona.⁵³

Public Enemy's emergence as a U.S. cultural phenomenon and eventual global heavyweight cannot be overstated. In the late 1980s and early 1990s, Public Enemy was an incredibly important fixture on the American pop culture landscape. Millions of African American, Latino, Asian, and white children, teenagers, and young adults memorized the most explosive of Chuck D's lyrics, and internalized the political messages espoused by this seminal group.

Derrick Bell and Chuck D, from their different worlds, delivered shared realities and messages. Professor Bell, in *The Space Traders*, describes a fantasy world where white citizens literally barter over the continued existence of African Americans. Bell's description is cold, stark, and inevitable. By framing whites' ultimate decision to expel African Americans as a reasoned conclusion (i.e., sacrifice them to save us), he makes the connection to reality more strongly than if he had stepped out of his narrative to punctuate his point (i.e., this is exactly how blacks are being treated today). Chuck D, in *Black Steel in the Hour of Chaos*, similarly constructs a fantasy world of prison break using the same intense, stark, inevitable narration. In spinning his prison industrial complex narrative, Chuck D relies upon potent political statements to connect the fantasy of this particular prison tale with the racial reality faced by urban youth. Both *The Space Traders* and *Black Steel in the Hour of Chaos* consciously use hyperbole that is slowly brought into focus, until suddenly a reader or listener recognizes the reality of the narrative (i.e., this is *my* life), making for a powerful indictment of the entire American power regime.

Further connecting Professor Bell's gravity with that of Chuck D and Public Enemy is the historical analyses both rely upon, as evidenced in Bell's "Interest Convergence Theory" and many of Chuck D's rhymes on *Apocalypse '91*, particularly in *Can't Truss It*. In his "Interest Convergence Theory," Bell draws on the long American tradition of racial convenience that has prevented significant advancement toward equality and social justice. Public Enemy draws on a historical depth that is juxtaposed against the modern inner city that they experience. In *Can't Truss It*, Chuck D traces the changing historical indicia of oppression, and does so through an authoritative, stark voice. This voice is similar to Bell's au-

53. *By the Time I Get to Arizona*, on APOCALYPSE '91, supra note 43, lyrics available at <http://www.publicenemy.com/index.php?page=page5&item=4&num=92>, video available at http://www.youtube.com/watch?v=zrF0b_f7ubw (last visited Mar. 22, 2012).

thoritative, observational voice. Both recite, with solemnity, the truth of the matter—continuing oppression of people of color.

Critical Race Theory patriarch Derrick Bell and socially conscious rap pioneer Chuck D both delivered their messages with an intent to educate, inspire, and motivate change. Their stance was often professorial, deeply motivated by a desire to teach and inform. Chuck D famously called hip hop the “Black CNN,” as Public Enemy was intent on informing, exposing, and educating.⁵⁴ Chuck D seized the opportunity to transform the hip hop message, ultimately ushering in a generational revolution, simply by grabbing a microphone and delivering powerful, intellectual messages of defiance and purpose. Similarly, Derrick Bell famously critiqued a stalled Civil Rights Movement, exposing the weaknesses in a movement that had been hailed as thoroughly triumphant. Intent on inspiring through protest, resignation, explosive writing, and inspired mentoring, Professor Bell seized the opportunity to change the law and America’s system of legal education. Professor Bell and Public Enemy set forth parallel critiques of American mores and traditions, that were stark, bold, and biting. These critiques powerfully influenced a generation and subsequently changed the world.

IV. CONCLUSION

While he was still alive, I shared with Professor Bell the above parallel that I believe exists between both Critical Race Theory and hip hop, specifically between his authoritative voice as founder of CRT and that of Chuck D, the lion king of socially conscious hip hop. As we talked, Professor Bell’s eyes sparkled with what I took to be a mixture of bemusement and excitement. He strongly encouraged me to continue this exploration and to publish what he deemed an important message for the emerging generation of law school students and lawyers.

Members of the hip hop generation will deeply feel the message of import delivered by Chuck D and Public Enemy, as described above. Law students who study and embrace Critical Race Theory will understand the gravity of Derrick Bell’s writings and the wide-ranging influence of his life. When Derrick Bell’s influence is compared to that of Chuck D, the hip hop generation will understand the depth of this homage.

Derrick Bell lived a life of enormous import. His example, messages, and writings literally changed the course of the law as it is understood and taught. Professor Bell was fearless and bold. He cared little for the status quo conventions of the legal academy. Derrick Bell stands as the Godfather of Critical Race Theory, and the embodiment of the term provocateur.

54. Laura Barton, “*Rap Is Elitist*,” THE GUARDIAN, May 7, 2003, G2 at 6, available at <http://www.guardian.co.uk/music/2003/may/07/artsfeatures.popandrock> (“Chuck D rapped about the problems blighting the black community, and memorably described hip-hop as ‘the black CNN.’”); see also cummings, *supra* note 12, at 532.