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The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment

WENDY LEO MOORE and JOYCE M. BELL

Throughout the post-civil rights era, colleges and universities across the United States have periodically experienced explicitly racist incidents on their campuses. From the hurling of racial slurs at students of color, to the hanging of nooses on campus, to students donning Ku Klux Klan outfits or throwing “ghetto” parties that caricaturize communities of color, these incidents challenge the notion that modern racism has changed to a more subtle form, referred to as color-blind racism. We place these incidents within a broader context of race and institutions, suggesting a connection between overt racist expressions and the more covert elements of neoliberal color-blind racism. Through a critical discourse analysis of news stories about these incidents, the website of the Foundation for Individual Rights in Education, and the controlling legal cases involving racist expression on campuses, we suggest that explicitly racist incidents operate in tandem with neoliberal educational policies and color-blind racism to mark and reinscribe colleges and universities as white institutional spaces.

INTRODUCTION

In February 2016, a group of high school juniors, mostly African Americans from Uplift Hampton, a Dallas high school, visited and toured the Texas A&M University campus. As they were walking their tour, a white woman who was wearing earrings with the design of the confederate flag confronted the students and showed them her earrings, asking them what they thought of them. Then she and several other white women began taunting the students, calling them racial slurs and telling them to “go back where they came from” (Watkins 2016). In response to the incident, the president of Texas A&M University, Michael Young, sent out a mass e-mail calling attention to a newly produced online statement (which he called a white paper) of university policy regarding expressions of racism like this one. The so-called white paper was entitled “Free Speech and the Right to Associate: Legal Issues in the Student/University Relationship.”¹ The document emphasizes the right to freedom of speech and expression, even “offensive” expression like expressions of explicit racism, and emphasizes that “the exercise of free expression that has offensive content can be most powerfully engaged through the use of free speech.” In other words, rather than sanctioning “offensive” speech, colleges and universities should engage in counterspeech. The call for meeting offensive—or, in the case of the focus of this article, explicitly racist speech—with more speech or counterspeech is a common one at colleges and universities coping with racist speech. Yet, as we argue herein, this is a weak remedy to a powerfully exclusionary practice. At the outset, it is important to note that for

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decades there have been comparable incidents of racist expression and activity on college and university campuses across the country, from some of the largest and most prestigious schools to the smallest.

Just a small sampling of racist incidents on college and university campuses throughout the post-civil rights era reveals the nature of this persistent form of racism. For example, in September of 2016, a man wearing a gorilla mask and carrying a banana on a string showed up to a Black Lives Matter rally at East Tennessee State University and walked around thrusting the banana into the faces of African American students participating in the rally (Jaschik 2016). In 2010, at the University of California at San Diego (UCSD), a group of white students organized a party called a “Compton Cookout,” which they claimed was in “celebration” of Black History Month. The invitation was posted publicly on Facebook, asking people to dress and behave in “ghetto” fashion and indicating that chicken, watermelon, and malt liquor would be served. In response to this provocation, black students organized a protest, criticizing this racist depiction of blackness and black culture. The protest sparked an outburst of racist activity at UCSD, including a campus television broadcast in which white students called the black student protestors “ungrateful niggers,” the hanging of a noose from a bookcase in the main library, and the placement of a white pillowcase in Ku Klux Klan (KKK) style over a campus statue (Archibold 2010; Gordon 2010). In 2007 at Hamline University, six white student-athletes dressed for Halloween in what they called “mock African tribal outfits,” donning blackface, black Lycra suits, and Afro wigs. On the morning of November 4, 2008, the day that Barack Obama became the first African American president of the United States, a noose was found hanging from a prominent tree on campus at Baylor University (Hoffstrom 2008).² In the spring of 2002, a white student at Harvard Law School used the law school website to outline the facts of a property case involving racially restrictive covenants and used the term “nigs” to refer to African Americans. After a protest in reaction to this incident, another white male student sent an anonymous e-mail (though he was later identified) to a first-year black woman law student that said, among other things, “We at the Harvard Law School, [are] a free, private community, where any member wishing to use the word ‘nigger’ in any form should not be prevented from doing so.”³ In April 2000 at the University of Iowa College of Dentistry, faculty members received an e-mail message demanding that the school dismiss its minority students within three days, and after that three-day period had passed, students of color in the college received threatening racist e-mails (Leonard 2000). In February 1995 at UC Berkeley’s renowned School of Law, fourteen students of color received letters in their mailboxes calling them “niggers,” “wetbacks,” and “chinks” and suggesting that Boalt was “for whites only” (Koury and Koh 1995). In the fall of 1986 at the Citadel Military College, five white cadets wearing KKK-type garb stormed into the dormitory room of a black freshman, yelling racial epithets and burning a paper cross (UPI 1986).

These examples are illustrative of incidents that have taken place at all types of historically white colleges and universities across the nation, beginning after the legal changes of the civil rights era through which people of color gained entry to these institutions. In 1990, the National Institute Against Prejudice and Violence reported that incidents of “hate speech” on college campuses and universities could be calculated at between 800,000 to one million per year (Matsuda et al. 1993).⁴ Indeed, a 1994 report conducted by the University of Houston Institute for Higher Education Law and Governance noted that US colleges and universities are characterized by a “climate of bigotry” (Agguire 1994). Yet when instances like those discussed above occur, individuals in the media and in the academy often seem surprised, and the discourse around these incidents frames them as “recent trends” or “increasing hostilities”—as something new and/or unique (see

Matsuda et al. 1993). The reality, however, is that racist expressions and activities on historically white college and university campuses have been consistent and relatively regular occurrences throughout the post-civil rights era.

The persistence of these forms of overt and hostile racism in national institutions that are meant to be gateways to upward mobility betrays a contradiction in the broader contemporary popular discourse that racism is a thing of the past that disappeared following the legal changes brought about during the era of the civil rights movement. It is perhaps this contradiction that leads scholars and pundits to frame such incidents as newly emergent, isolated, or surprising. Moreover, incidents of blatant racism on college and university campuses seem to contradict contemporary sociological analyses of the racial dynamics of the post-civil rights era. Contemporary race scholars suggest that while racist structures and hierarchies persist, racist expression typically takes place in a less overt, more subtle manner—what Eduardo Bonilla-Silva (2010) has termed “color-blind racism” (see also Coates 2011; Bobo, Kluegel, and Smith 1997; Carr 1997). Rather than expressing overt hostility, color-blind racist narratives assert a decontextualized commitment to racial equality while simultaneously ignoring or justifying—and thereby reifying—historical and structural racial inequality (Bonilla-Silva 2010; Bell and Hartmann 2007). Color-blind racist discourse, then, often takes place through an espoused commitment to “abstract liberalist” discursive tenets, which profess rhetorical commitment to equality of opportunity and, at the same time, minimize the contemporary relevance of the history of explicit racial oppression as well as contemporary institutional and structural mechanisms that perpetuate racial inequality. Many contemporary scholars of race and education have documented the manner in which color-blind racism has become a dominant discourse in educational institutions in the post-civil rights era (e.g., Moore 2008; Gallagher 2003; Lewis 2003; DiTamaso, Parks-Yancy, and Post 2003; Carr 1997; Feagin, Vera, and Imani 1997). While the concept of color-blind racism provides invaluable theoretical insight into the persistence of racial inequality in the post-civil rights era and its continued manifestations in US institutions, the current scholarship fails to explain adequately the persistence of explicit hostile racist incidents on college and university campuses like the ones described above.

Placing these incidents within the broader context of a racialized social structure characterized by a dominant discourse based on color-blind racism, this research reveals an important connection between these overt and blatant racist expressions and the more tacit and covert racial tenets of color-blind racism. In fact, we suggest that the two forms of racial expression—explicit overt racist expression and covert color-blind racist discourse—work in connection with one another to mark and reinscribe colleges and universities as white institutional spaces. Specifically, we suggest that the explicit nature of incidents of racist expression gives rise to two important discursive frames that together tend to reinforce institutional and structural racial inequities. On the one hand, explicitly racist incidents on college and university campuses create a discursive platform for liberal college communities to publicly reject racism while tacitly delimiting the definition of racism to only explicit expressions of racial hostility. In other words, these racist incidents provide an opportunity for institutional actors to reaffirm a commitment to color-blind principles of equality in their institutions. On the other hand, these incidents create a platform for the color-blind, abstract liberalist construction of freedom of speech advocated by organized free speech absolutists and codified by US courts. More specifically, racist incidents on college and university campuses give rise to a discourse that actively defends the right to racist expression. The discursive frames that arise in conjunction with racist expressions on college and university campuses serve as a mechanism of substantive racial

exclusion, functioning to reproduce the white institutional space that characterizes historically white colleges and universities in the United States.

WHITE INSTITUTIONAL SPACE AND HIGHER EDUCATION

The concept of white institutional space captures how racist social relations become entrenched in and reproduced through US institutions (Moore 2008). As research on residential segregation illustrates, racialized space is one of the mechanisms by which racialized social systems facilitate the reproduction of white power, privilege, and wealth over generations (Powell 1999; Massey and Denton 1993). Moreover, “institutions are fairly stable social arrangements and practices through which collective actions are taken” and thus are powerful mechanisms of social reproduction (Knowles and Pruitt 1969, 5). Therefore, elucidating the ways in which social institutions are racially marked and organized is an essential step in identifying the mechanisms behind the reproduction of racial inequality in the United States (Feagin 2006; Bonilla-Silva 1997; Carmichael and Hamilton 1967).

Lipsitz (2011) discusses the ways in which seemingly race-neutral social spaces become embedded with and reproduce white privilege and power. The reproduction of racialized power dynamics takes place spatially, according to Lipsitz (2011), through what he terms the “white spatial imaginary.” Lipsitz suggests:

The white spatial imaginary idealizes “pure” and homogenous spaces, controlled environments, and predictable patterns of design and behavior. It seeks to hide social problems rather than solve them. . . . This imaginary does not emerge simply or directly from the embodied identities of people who are white. It is inscribed in the physical contours or the places where we live, work and play, and it is bolstered by financial rewards for whiteness (ibid., 209).

Paralleling the concept of color-blind racism, Lipsitz’s conception of the white spatial imaginary reveals how spaces operate in predictable (racialized) patterns and the process by which white abstraction camouflages these patterns, thereby reproducing white privilege and power in these spaces and the racial dynamics of the material rewards garnered from such institutional spaces. The concept of white institutional space works to explicate *how* race privilege and power are produced and reproduced in organizational and institutional settings, exposing the patterned processes of these spaces and thereby shedding light on the mechanisms of that racial reproduction. Attending to the convergence of intersecting structural, cultural, ideological, and discursive mechanisms, the concept of white institutional space illuminates the entrenchment of white privilege in institutional contexts as well as the white normativity that justifies and reproduces that white privilege (Moore 2008).

In constructing a concept of racialized institutional space, it is useful to draw on earlier work that examines the nature of gendered organizations. Joan Acker (1990) articulates the process by which organizational institutions become gendered through an analysis of how “advantage and disadvantage, exploitation and control, action and emotion, meaning and identity are patterned through and in terms of a distinction between male and female, masculine and feminine” (146). Acker’s conceptualization of gendered organizations captures the notion of institutionalized power in terms of who has it and who does not within the organization. Moreover, Acker (2006) indicates that patterns of action, emotion, meaning, and identity embed raced, classed, and gendered organizational norms and values within organizations and that these raced, classed, and gendered

organizational arrangements are normalized as allegedly neutral, creating what Acker terms “inequality regimes.” This framing becomes a useful starting point in the conceptualization of racialized institutional space. Specifically, it provides a theoretical foundation for understanding how power relations and resources (material and ideological) within institutions are organized along racial lines. A nuanced understanding of the racial dynamics of these institutions requires attention to the historical construction of these institutions as exclusively white spaces.

The historical racial exclusion of people of color in the development of institutional settings, such as education, provided the context for the uncontested institutionalization of white norms, values, and cultural representations as well as policies that assume, facilitate, and justify white power within the context of the institution (Moore 2008; Zuberi and Bonilla-Silva 2008; Feagin, Vera, and Imani 1997). Through racist exclusion from major US institutions—including educational, political, and economic institutions—elite whites were able to accumulate the economic, political, and ideological power reaped from these institutions (Feagin 2010; Bonilla-Silva 1997, 2010; Carmichael and Hamilton 1977; Blauner 1972; Knowles and Pruitt 1969). Moreover, as a result of this racist exclusion, white norms, values, and cultural representations became the benchmarks for functionality and success. However, because the dominant ideology framed whiteness as normative, neutral, and nonracialized, the norms, values, and cultural representations that frame these institutions go relatively unexamined (Doane and Bonilla-Silva 2003; Roediger 2002; Bonilla-Silva 1997; Frankenberg 1993). The result has been a deeply embedded, largely unproblematized, hegemonic racial logic, which Feagin (2006, 2009) has called a white racial frame. The white racial frame is “an organized set of racialized ideas, emotions, and inclinations, as well as recurring or habitual discriminatory actions, that are consciously or unconsciously expressed in, and constitutive of, the routine operation and racist institutions of US society” (Feagin 2006, 23; see also Lipsitz 2011; Zuberi and Bonilla-Silva 2008 for a discussion of white logic). A history of racist exclusion facilitated the integration of a frame into these organizations that normalizes and justifies white institutional and structural power without any meaningful input from people of color.

In the context of education, this history of exclusion has obviously meant that for generations whites were able to facilitate the accumulation of the ideological and material rewards of education for whites only. However, this history has also meant the historical construction of a body of knowledge, a curriculum, and curricular models that were produced within and dominated by a white racial frame (Moore 2008; Feagin, Vera, and Imani 1997; Apple 1986, 1990). Yet in educational institutions, the curriculum, organizational assumptions, and policies as well as symbolic elements of the physical space (e.g., architecture, art, portraiture) are routinely constructed as neutral and impartial (i.e., non-racialized) (Moore 2008; Margolis 2001; Feagin, Vera, and Imani 1997; Crenshaw 1994; Apple 1986, 1990). The result is the tacit incorporation of a white racial frame into the contemporary institutions of higher education and, as Acker (2006) points out, institutionalized inequality regimes (Zuberi and Bonilla-Silva 2008; Margolis 2001; Apple 1986, 1990).

The history of racial exclusion in US higher education formed an integrated white racial frame including white norms, values, and cultural representations. This historical process points to a connection between racial demographics and the racialization of institutional space. In fact, the notion of racialized space, particularly in the literature on geographical segregation, generally assumes that demography is the central defining characteristic of racialized space. While statistical underrepresentation of people of color in historically white colleges and universities is certainly a contributing factor in the

reproduction of these institutions as white institutional spaces, it is not a necessary or sufficient element. As Lewis's (2003) research on the racial dynamics of grammar school education reveals, even in schools that are demographically nonwhite spaces, tacit white norms remain in the organization, policy implementation, and curriculum of these educational spaces. Thus, while historical racial exclusion clearly lays a foundation for white institutional space, and contemporary demographic inequality serves in the reproduction of the racial power dynamics in these spaces, there is clearly more that must be considered (see Moore 2008).

Returning to the guiding ideas set forward by Acker's (1990) work on gendered organizations, the concept of white institutional space takes into account not just racial demographics per se but also racialized demographics of power in institutions of higher education (Moore 2008; Feagin, Vera, and Imani 1997). In other words, it considers how institutional power is delimited. For example, are the majority of deans and high-level administrators white while the majority of custodial staff are people of color? Are the majority of tenured faculty white while the majority of teachers of color are untenured lecturers? In the vast majority of historically white institutions of higher education, these racialized patterns of institutional organization of power and lack of power (e.g., exploitation) exist (Mitchell, Wood, and Whitherspoon 2010; Moore 2008; Feagin, Vera, and Imani 1997). Moreover, the actual physical structure of the institution becomes relevant to the issue of power when we view, in what Eric Margolis (2001) calls the hidden curriculum, the portraits reflecting the histories of these institutions lining the walls of corridors and classrooms, images of nearly exclusively white men in positions of power and authority—the pride of these institutions' historical past. Dynamics of power in both physical and institutional structures are thus marked as white.

Focusing on Acker's (1990) attention to "action and emotion" and "meaning and identity" in an institutional context, research on white institutional spaces reveals embedded white norms and cultural practices as well as the justification of ideologies and discourses that serve to minimize the relevance of race and assert the neutrality of these norms and practices. For example, Moore (2008) finds that in elite law schools social events designed (sometimes by students, sometimes by administrators) to provide valuable opportunities for networking are often held at white venues in white neighborhoods. Students of color noted their discomfort with these patterned choices of social networking locations. When administrators and white students were questioned about the reason for the venue selection, respondents replied that the space of the venue was not really important or, in one instance, that there were no cabs available in black neighborhoods where nonwhite venues might be located (Moore 2008). Drawing on white cultural tropes and minimizing the significance of these practices, administrators and students reinforce a white racial frame that allows for the simultaneous domination of white cultural practices and disavowal of the racial significance of that domination.

Moreover, students of color in these institutional settings are confronted by racialized everyday practices (Lipsitz 2011; Moore 2008; Feagin, Vera, and Imani 1997). In the main, these incidents tend to be manifestations of what Bonilla-Silva (2003) describes as color-blind racism—for example, when white students or faculty make assumptions, with no evidence, that a student of color is at a university because of affirmative action and is assuredly less qualified than many white students at the school (Moore 2008) or when a professor notes in a classroom that a "culture of poverty" exists in black communities that makes African Americans less committed to education (Lipsitz 2011; Bonilla-Silva 2003). Thus, meaning and identity are marked around a white norm. Additionally, notions of black (or other nonwhite) inferiority and nonbelonging organize the racial logic and networking activities within the space.

Perhaps the most insidious element of white institutional space is the presence of a dominant discourse that minimizes or ignores the racial dynamics of the culture, structure, and everyday practices of these institutions: the assertion of neutrality accompanied by simultaneous engagement in racialized structures and practices. People of color within these institutional spaces face patterned and systematic racial power structures, cultures, and practices, but the dominant discourse consistently minimizes and individualizes them (Bonilla-Silva 2010; Moore 2008). Through the recursive interaction between the racial organization of these institutions and the abstract liberalist discourse that avows equal opportunity and color blindness, white normativity is “constituted and reconstituted in daily life” within these institutions (Pierce 2003, 53).

In the case of educational institutions, white institutional space was originally constructed in a historical context of racial exclusion and explicit racial oppression. It was subsequently reproduced through an interaction between structures of power, racialized norms, cultural representations, and everyday practices as well as a racial discourse that simultaneously deploys color-blind racist tenets and avows a commitment to abstract conceptualizations of racial equality and neutrality. As noted, much of the entrenchment and reproduction of white institutional space in the post-civil rights era occurs through the practice of color-blind racism (Bonilla-Silva 2010; Moore 2008). This more subtle form of racist practice, which relies on the fact of structural racial inequality, the racial organization of institutions, and white cultural normativity, fits neatly with contemporary racial ideology. Where, then, do the incidents of extreme, overt, and hostile racism—what might be considered traditional Jim Crow racism—fit into a construction of white institutional space? We suggest that outbursts of overt and explicit racial hostility on college and university campuses are not aberrations in institutions otherwise characterized by color blindness. Rather, we argue that these incidents represent a fundamental element of white institutional space, a form of substantive racial exclusion that works in connection with color-blind racist practices to reinforce white power and privilege.

DISCURSIVE MANEUVERS IN WHITE SPACES: THEORETICALLY REFLEXIVE CRITICAL DISCOURSE ANALYSIS

As the concept of white institutional space illuminates, there is an important relationship between discourse and ideology and racist institutional practices and structures (Moore 2008; Bonilla-Silva 1997). Educational institutions, as institutional gateways to upward social mobility, represent an important site for interrogating the discursive mechanisms that facilitate white institutional space (Moore 2008). This research examines the connection between explicitly racist activities and expressions and the dominant color-blind racial discourse and ideology. To accomplish this, we examine three sources of discourse about racist incidents on college and university campuses: print news reports of incidents of racism in college and university communities; the website of the Foundation for Individual Rights in Education (FIRE), an organization that actively advocates for legal protection for racist expression in educational institutions; and US court cases involving college and university policies enacted to control, prohibit, and/or sanction explicitly racist expressions in college communities. Combining these discursive sources, we engage in a critical discourse analysis that interrogates the discursive frames surrounding incidents of public racist expression in college and university communities through a theoretical lens that situates these institutions as white institutional spaces.

Critical discourse analysis focuses on “the relationship between language and society, and the relationship between analysis and the practices analyzed” (Fairclough and

Wodak 1997, 258; see also Van Dijk 1997). The analysis herein engages a reflexive methodological process that begins by analyzing the narratives and storylines (see Bonilla-Silva 2010) created by people who are invested in the process of negotiating, protecting, or contesting overtly racist expressions on college and university campuses and interrogates the ways in which these discourses interact with and facilitate (or challenge) white institutional space. As such, our analysis expands existing social theory, adding nuance to theories of color-blind racial processes in the post-civil rights era as well as to the theoretical conceptualization of white institutional space and the corresponding reproduction of institutional racism (see Burawoy 1998).

We initiated our research by collecting print news media accounts of racist incidents on college and university campuses between 1991 and 2011 using Lexis-Nexis's news search function. We identified 199 incidents of racist activity on college and university campuses during this time. Since there were often several news stories about individual incidents, we counted the total number of incidents and combined all stories for each incident as one discursive text. We focused our analysis on the reported reactions and statements of administration and faculty in response to the racist incidents on their campuses; for purposes of this project, we focused on those in positions of institutional power and knowledge, so we gave less attention to the reactions of students. We selected this time period because it represents a particularly relevant legal moment in the post-civil rights era. It was in the mid-1980s that college and university administrators began to suggest that racist incidents were not subsiding despite the previously widely held belief that such incidents would subside as a result of the inclusion of people of color into previously all-white institutions (Matsuda et al. 1993). As a result, many institutions of higher education began to enact policies against racial and ethnic harassment, a legally recognized form of discrimination prohibited by the 1964 Civil Right Act. By the late 1980s, racial and ethnic harassment policies were being systematically challenged by college and university community members who regarded such policies as illegal violations of their constitutional right to freedom of speech and expression. By 1991, the courts had widely signaled that they would favor broad interpretations of the First Amendment and freedom of speech over broad interpretations of discriminatory racial harassment laws and equal access to education as guaranteed by the Fourteenth Amendment. The time period selected, then, represents a moment in which institutional power brokers (administrators and faculty) were likely to understand the limits on their ability to create policies that sanction racist expressions in the institutional community.

A prominent source of challenges to racial and ethnic harassment policies in higher education has been FIRE, an organization formed to "defend and sustain individual rights at America's colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity."⁵ In order to understand the broader institutional racial meaning making involved in the discourse surrounding racist incidents on college and university campuses, we include an analysis of the narratives created by FIRE constructed to defend the rights of those who wish to publicly engage in racist speech and expression on college and university campuses. FIRE employs a variety of tactics to protect what the organization considers freedom of speech and expression, including direct litigation against campuses that attempt to enact or enforce policies limiting racist speech and expression, targeted media campaigns that criticize colleges and universities in an attempt to coerce administrators to stop activities that FIRE views as limiting racist expression protected by the First Amendment, maintenance of a listing on their website of schools that they claim violate the First Amendment based on their analysis of the infringement of freedom of speech, and the creation of yearly reports that assign freedom

of speech scores to colleges and universities. As a result of their ferocity (and the expensive litigation they pursue), FIRE has become one of the most influential organizations in the nation regarding racist expression on college and university campuses (Archibold 2010). In this way, an analysis of the FIRE website provides an important lens on the abstract individualist framing of campus racism.

While FIRE's discourse represents a clearly partisan perspective on the issue of racist speech and expression on college and university campuses, the organization claims to be acting not merely out of ideological concern or commitment but out of an established legal frame. And indeed, the US courts have ruled in support of a First Amendment absolutist perspective in the case law that has considered racist expression in the higher education community. These cases provide the legal analysis—in essence, the discourse of the state—regarding racist speech and expression on college and university campuses. We analyze this case law with a focus on the racial logic of the court with respect to public expressions of racial hostility on college and university campuses and with respect to the balance between protecting freedom of expression and protecting the right of people of color to have equal access to education free from harassment.

Compiling these data, we analyzed the discursive maneuvers that surround incidents of explicit racist expression on college and university campuses. We situated this analysis within the context of how these discursive maneuvers relate to, problematize, challenge, or reinforce white institutional space. Ultimately, our analysis reveals a connection in these institutions between explicit and hostile racist expression and the more subtle processes of color-blind racism as well as a racial logic that ultimately reinforces the boundaries of white institutional space.

OVERTLY RACIST EXPRESSION: AN ELEMENT OF WHITE INSTITUTIONAL SPACE

In the fall of 2006, two white Texas A&M University students produced a video of a slavery reenactment and posted it on YouTube (Mujtaba 2007). One student painted his face and hands in stark blackface; the other student, whose face was never seen, had a towel hanging from his jeans pocket with the Texas A&M logo printed on it. The video contained scenes of the man in blackface being mock whipped, mock sodomized with a wrench, and verbally brutalized by the man with the Texas A&M towel. He screamed and begged in protest, uttering phrases such as “Please, no more, massa.” Similar to the incidents described in the opening of this article, this action is characteristic of Jim Crow racism, which was most prevalent in the pre-civil rights era of segregation. The persistence of these forms of racist expression in colleges and universities might be interpreted as challenging notions of color blindness. However, in what may first appear to be a disjuncture between contemporary racial ideals and practical reality, we suggest that this expression actually reveals something more fundamental about the reproduction of white power.

Rather than being an anomaly, overtly racist expression on college campuses represents an element of white institutional space with two attendant functions. First, the activities and forms of expression used in these incidents serve as signifiers of the history of racial exclusion and oppression, which was enforced through brutality and violence in the United States. As such, these incidents become a form of symbolic violence that reinscribes notions of inherent inferiority and nonbelonging for people of color through invocation of a historical precedent that reserved access to institutional spaces and their corresponding resources (such as education) for whites only, often by using physical and psychological violence as a deterrent against black challenges to such exclusion. Second, in harking back to a historical form of racism that is widely accepted as unpalatable today, these

forms of racist expression tacitly reinforce the legitimacy of color-blind racist practices. Each incident of overt racial hostility functions as a reminder of the horrors of a racist history that color-blind frames disavow. Consequently, these incidents instantiate *real* racism and simultaneously dissociate real racism from color-blind racist, abstract liberalist institutional practices and discourses. Moreover, the regular, though sporadic, occurrence of incidents of overt racist expression throughout the post-civil rights era provides regular opportunities for liberal communities to rally against racism—as defined in the limited manner of individual expressions of explicit racial hostility—and to demonstrate a rhetorical commitment to abstract equality. By comparison, color-blind racism and color-blind racist institutional practices tend to look less serious and rarely if ever result in the same ire and protest, nor are they often thoughtfully considered as connected to these explicitly hostile racist incidents.

SIGNIFYING RACIAL HISTORY AND REINSCRIBING SYMBOLIC VIOLENCE

When a noose is seen hanging from a tree on a college campus, from a light fixture in a university library, or near the office door of an African American university professor, it connects to a specific historical meaning. The practice of lynching, specifically what Dray (2002) identifies as “spectacle lynching,” was a grotesque but common manner of exerting social control over the entire black community from the antebellum era until at least World War I. Often done in geographically significant locations (e.g., on trees in a central area of town or in a particular community), lynching was not only a mechanism of individual torture: the lynching itself as public spectacle was more important in its symbolism. Most lynchings involved torture far beyond the actual act of hanging by the neck; lynch mobs often first carried out various acts of torture on their victims including vicious physical beatings, rape (including sodomy), or setting them on fire (*ibid.*). Some individuals who were lynched were, in fact, already dead; for others death was imminent. The real significance, then, of lynching was its message to the black community as a whole: this barbarous torture can happen to you if you challenge whiteness or step outside the confines of your racially oppressed position (*ibid.*). As a mechanism of symbolic violence, lynching served as a form of public spectacle torture, which evoked widespread terror that compelled black acquiescence to the racial order without the necessity for direct individual supervision or control.

The noose is directly tied to the brutal history of lynching. Therefore, when placed as an object or image in a public space, the noose signifies the symbolic violence that maintains the power structure—in this instance, the racial order that organizes the social space in the same manner that spectacle lynching did (Bourdieu 1989). So when a noose was placed outside of the office door of an African American professor at Columbia University’s Teachers College in 2007, the spectacle of the noose itself immediately evoked terror and outrage from the African American community at Columbia (Garland 2007). It is never necessary for the person who publically hangs or places an image of a noose in a public space to intend the object or image to have this meaning; in fact, because the noose garners its meaning through its historical connection to the social structure of racial oppression, the communicator’s motive is irrelevant. As a tool of racial oppression, the noose (the essential object needed to hang a body) is a cultural referent, a symbol whose meaning is known as a result of shared knowledge of a social and cultural context (van Dijk 1997): in this instance, the historical practice of lynching black people as a form of symbolic violence and social control.

Similarly, a burning cross and the garb adorned by the Ku Klux Klan signify a history of racial violence and white supremacy. These symbols are all linked to the practice of lynching and other forms of terroristic torture and violent repression aimed at African Americans throughout US history. As Matsuda and Lawrence (1993) note with regard to the symbol of a burning cross, “There is no Black person in America who has not learned the significance of this instrument of persecution and intimidation, who has not had emblazoned on his or her mind the image of Black men’s scorched bodies hanging from trees” (133). Moreover, the word “nigger,” as constructed by white people as an epithet to denote black inferiority and the enforcement of systemic oppression, signifies racial oppression, exclusion, and the potential for violence (Delgado and Stefancic 2004). In 1993, the members of a white fraternity at Rider College invoked this signification of racial oppression, irrespective of their intent, when they held a party called “Dress Like a Nigger Night,” at which fraternity pledges were asked to “dress in a racially demeaning manner and go to the [fraternity] house for a work project” (Associated Press 1993). Because of its connection to the history of white supremacy, the mere utterance of the word in such a context brings about a reification of white power and the notion of black inferiority or servitude.

Such forms of racist expression garner their meaning through their connection and reference both to the often violent oppression of people of color throughout the history of this nation and to the contemporary racial social structure characterized by patterned societal racial inequality—that is, to systemic racism (Feagin 2006). Racist expression on college and university campuses, then, serves as a source of social control and symbolic violence in the same manner as in other social spaces. Hanging nooses, burning mock (or real) crosses, dressing up in Ku Klux Klan garb, performing mock reenactments of the violence of slavery, donning blackface in minstrel fashion, or deliberately enacting caricatured, stereotypical black representations all hark back to a history when the vast majority of institutions (including those of higher education) were “for whites only” and when the boundaries of those institutions were regulated through physical and symbolic violence. When racist speech and expression take place in institutional settings, such as in colleges and universities, these forms of communicative action reinscribe the relations of structural and cultural power that are essential elements of white institutional spaces. This refashioning, reimagining, and reenactment of some of the most sinister elements of Jim Crow racism using contemporary technologies and social forms signifies the continued outsider status and the alleged inferiority of people of color in these spaces. In addition, these spectacles involving the contemporary mobilization of the symbols of Jim Crow signify the continuing potential for symbolic and physical violence against people of color in these spaces despite the date and despite the appearance of color blindness.

INSTITUTIONAL RESPONSE AND THE TACIT SUPPORT OF COLOR BLINDNESS AND WHITE INSTITUTIONAL SPACE

Responding to the 2010 racist incidents at the University of California at San Diego (discussed in the opening of this article), Chancellor Mary Anne Fox said, “I think we would all like to believe that racism was a thing of the ’60s, that it’s now passed us [*sic*]. These incidents suggest it’s not. . . we will not tolerate hate on our campus” (Archibold 2010). This quotation reveals the tendency to both indicate the unusualness of explicit racist expression in the post–civil rights era and the tacit definition of racism as only expressions of racial animus. Moreover, we see that the incident created an opportunity for the chancellor of the university to publicly disavow such racist expression. This reaction represents

the broader pattern of administrative response to the racist incidents we identified. For example, in 2005 at Florida Atlantic University, a racial slur was written on the window of the dean of student affairs, an African American, who publicly stated, "I would hate people to think that this is indicative of the culture we have here, it's just the act of one cowardly racist" (Miller 2005). Likewise, when racist fliers mocking the intelligence of African Americans and utilizing racial epithets were distributed all over campus at Colorado State University, university spokesman Brad Bohlander said, "This is a big campus that embraces diversity, and the information in the flier in no way represents the sentiments of the faculty or staff" (Whaley 2006).

These reactions reveal the need to interrogate more closely the patterned discourse among college and university administration and faculty and the racial meanings they convey about racism, color-blind racist practices, and white institutional space. To reiterate, the concept of color-blind racism elucidates an incongruity between discursive tenets that suggest a commitment to abstract equality and individual rights on the one hand and participation in racialized practices, institutions, and structures on the other (Bonilla-Silva 2010; Moore 2008; Doane and Bonilla-Silva 2003; Gallagher 2003; Carr 1997). A key discursive element of color-blind racist practice is the minimization of racism, and one mechanism for minimizing racism is through the construction of a very narrow and individualistic definition of the concept, constraining its meaning to include only acts committed by identifiable individuals (or groups of individuals) motivated by racial animosity. The reactions of administrators and faculty, like those above, to racist expression on their campuses do this in several ways: first, by naming these incidents as acts of racism and simultaneously suggesting that racism was not the norm in these institutional spaces; and second, and most importantly, by failing in any meaningful way to address color-blind racism and/or broader racist institutional arrangements and history.

The persistent reappearance of overt, explicitly hostile racism on college and university campuses and the corresponding response of administrators and faculty to denounce such racism provides the higher education community with a narrative about what racism is—explicit racial hostility—and creates the illusion that racism is rare and actively opposed in these institutions. In another example, in 1992 when racist graffiti was scrawled inside a residence hall at Rutgers University, then Dean James Reed said publicly, "We are unhappy and disgusted, we regard graffiti of this kind as an attack on the whole community" (Branch 1992). In 2007 when students at the University of Arizona threw a party for Martin Luther King Day in which white students dressed in blackface and "gangsta" style dress, then university President Robert Shelton wrote a letter to the campus community. Shelton noted that acts like the party "only further the very real belief . . . that Arizona is racist, that the University of Arizona is not a welcoming institution and that we are hostile to African Americans. Nothing could be further from the truth" (Swedlund 2007). These reactions are so similar as to indicate a stock response to racist incidents in higher education, yet what is missing from them is any attempt to link these incidents to color-blind racist ideologies and practices or to the racialized institutional arrangements characteristic of white institutional space.

None of the above public responses by administrators connected the incidents of explicitly racist expression on college and university campuses to broader systemic issues. There were no comments, for example, that interrogated the racialized hidden curriculum evidenced in statues and monuments honoring whites, some of whom were Klansmen and/or slave owners. None of the comments discussed the need to address racial disparities in either the general population of these historically white institutions or, more importantly, in institutional positions of power (such as department heads, deans, vice presidents, and presidents). And there was little attempt by administrators and/or faculty to connect these

acts of explicit racial animus to more covert forms of color-blind racism such as discussions of a “culture of poverty” in communities of color or assumptions that students of color were in historically white institutions as a result of affirmative action rather than merit. As a result, these opportunities to stand in opposition to explicit racism fed into color-blind racist ideologies by validating a liberal project that explicitly repudiates Jim Crow racism while (inadvertently) drawing attention away from less overt, subtle racist expressions as well as institutional racist practices and structures.

Just as Durkheim (2004) asserts that deviance and crime serve to illuminate what normative social behavior is for members of society, we suggest that overtly racist expression on college and university campuses provides an example of what racism *is* and thus tacitly delineates what it is *not*. We also suggest that explicit forms of racism work in connection with color-blind racism by serving as the *deviance* that the majority of the college and university community can openly reject and, in so doing, validate their commitment to anti-racism—or, at least, to nonracism—through the celebration of diversity, despite their widespread participation in racialized institutional practices and structures.⁶

We want to note that there certainly are benefits to the public repudiation of racist expression—the public rejection of explicit racist hostility provides an institutionally powerful discursive rebuke for explicit racial hostility and may even create a climate for social action and protest in support of racial equity. Thus, we are not suggesting that the responses of administrators and faculty were a deliberate attempt to evade or cover up color-blind racism or to support the mechanisms of white institutional space. However, looking beyond intent, the failure to connect incidents of racial hostility to these broader elements of racist institutional arrangements functions to reproduce the more subtle mechanisms of white institutional space. Moreover, the widespread public assertions of administrators and faculty that racism on college and university campuses is abhorrent and will not be tolerated are functionally mostly rhetorical.⁷ This is the case because there has been a committed and active movement in the post-civil rights era to protect the right to be racist on college and university campuses. This movement is, as might be expected, characterized by an abstract liberalist color-blind narrative that emphasizes the protection of absolutist constructions of freedom of speech. Unfortunately, it is this color-blind discourse that has informed the US courts in their decisions regarding the balance between equality of access in education and freedom of speech.

INTERINSTITUTIONAL SYMBIOSIS, US LEGAL FRAMING OF “FREE SPEECH,” AND THE INFRASTRUCTURE OF WHITE INSTITUTIONAL SPACE

As discussed in the introduction to this article, a series of explicitly racist incidents occurred at the Harvard Law School during the spring of 2002. In response to those incidents, the Black Law Students Association demanded that the administration take action, including the passage of a racial/ethnic harassment policy. Then Dean Todd Rakoff indicated to reporters that such a policy would be difficult, noting, “I would say that it is clear that we have got a problem or set of problems to address. Some of these are substantive problems—what are the limits of community on one side and free speech on the other?” (Blanks 2002). Rakoff’s comments, although somewhat vague, appeared to set up a dichotomy of competing institutional interests: the value of community on the one hand and of the freedom of speech and expression on the other. When considered within a legal context, however, his comments appear to be less about institutional values and more about the legal rights (and obligations) of people within those institutions. His statement also illustrates the balance between the legal principles of equal educational access and

freedom of speech. Dean Rakoff's reference to these legal issues clearly reflects the framing of these issues by organized advocates of unrestricted freedom of speech exemplified by organizations like FIRE.

FIRE is widely recognized to be one of the most influential organizations of activists concerned with issues of freedom of speech on college and university campuses, particularly where explicitly racist speech is concerned. FIRE works as a watchdog organization, monitoring the policies and practices of colleges and universities as they attempt to restrict racist expressions. The organization pressures colleges and universities both through antagonistic media campaigns and litigation in order to stop policies and practices that might inhibit speech and expression (even in its most gratuitously racist forms). FIRE's discourse represents the archetypal color-blind racist frame. For example, the organization's website proclaims the following:

Freedom of speech is a fundamental American freedom and a human right, and there's no place that this right should be more valued and protected than America's colleges and universities. . . . Liberty cannot exist when people are forced to conform their thoughts and expression to an official viewpoint. Differences of opinion are the natural byproducts of a vibrant, free society. At many of our nation's colleges and universities, however, students are expected to share a single viewpoint on hotly debated matters like the meaning and significance of diversity, the definition of social justice, and the impermissibility of "hate speech." . . . The mission of FIRE is to defend and sustain individual rights at America's colleges and universities.

The language used by FIRE embraces abstract liberalist notions of individual rights and structurally decontextualized liberty. FIRE utilizes the abstract language of individual rights, thereby failing to recognize the relevance of race and racism in these white institutional spaces and privileging a decontextualized right of freedom of speech over the right of people of color to participate equally in these institutions without racist harassment. Moreover, the organization abstractly defines liberty as unconnected to racist social or institutional structures. It decouples racist speech and expression from racial oppression in US history and today—the very social and historical context that gives racist expression (e.g., the noose, the Klan uniform, the word "nigger") meaning.⁸

In addition to asserting these color-blind values, FIRE engages in tactical litigation to prevent colleges and universities from enacting any policies or programs that they view as limiting racist speech or expression. The organization encourages members of university communities who feel their right to free speech has been violated by such restrictions to file a complaint on the FIRE website. As a result of these legal challenges by FIRE and other like-minded legal strategists and organizations, there has been a significant amount of litigation concerning the ability of college and university administrations to enact policies curbing racist expression. Consequently, US courts have largely internalized and codified the discursive frame of organizations like FIRE and have embraced an abstract liberalist approach to racist expression on college and university campuses that values absolute freedom of speech over racially equitable institutions.

In the 1980s and early 1990s, many colleges and universities across the country, generally responding to what they asserted was an increase in racial hostilities in their institutions, attempted to create policies to sanction racist and other hate-motivated activities on campuses (Murray 1997). Most of the policies attempted to establish broad guidelines delineating which behaviors constituted discriminatory harassment (leading to the creation of a hostile academic climate) in the campus community. These policies included targeting and sanctioning actions and expressions motivated by animus based on race, religion, sex, and sometimes sexuality. The policies were almost immediately challenged

by organizations and individuals who, like the creators of FIRE, asserted that such policies violated their right to freedom of speech and expression as guaranteed by the First Amendment.

In 1989, the University of Michigan was the first school to experience a challenge to a harassment policy (*Doe v University of Michigan* 1989). The policy, which the university argued was a response to racist incidents and other hate-based activity on campus, penalized “‘stigmatizing or victimizing’ individuals or groups on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status” (ibid., 853). In *Doe v University of Michigan*, the district court in Michigan stated that, “while the Court is sympathetic to the University’s obligation to ensure educational opportunities for all of its students, such efforts must not be at the expense of free speech” (ibid., 568). In a discursive maneuver that managed to convey a commitment to abstract principles of both nondiscriminatory institutions and freedom of speech, the court noted that the university policy was too broad, prohibiting speech that was protected by the First Amendment.

The next lawsuit came against the University of Wisconsin System, which enacted a policy following the advice of legal scholars, including Richard Delgado, an expert in the area of racist speech and expression (see Matsuda et al. 1993). Attempting to avoid the failure experienced by the University Michigan, the Wisconsin system drafted a policy that applied only to hate-based expressions directed at individuals. The goal was to restrict only that speech and expression which constituted “fighting words,” a form of speech that the US Supreme Court had previously recognized as not protected by the first Amendment (*Chaplinsky v New Hampshire* 1942). So-called fighting words have been defined by the Court as a form of expression that, by their very utterance, inflict injury, are targeted toward a specific individual, and will naturally incite an immediate breach of the peace.⁹ These forms of expression, the Supreme Court concluded in 1942, were not protected by the First Amendment because they are considered to have very slight social value in a marketplace of ideas, and any benefits arising from these expressions are outweighed by the potential social damage (see Tsesis 2010; Murray 1997). With this legal precedent in mind, the creators of the Wisconsin harassment policies attempted to create a policy that sanctioned and penalized only those expressions that fit into the definition of fighting words. Despite this careful crafting, however, the district court in *The UWM Post et al. v Board of Regents of the University of Wisconsin System* (1991, 27) held that the policy was too broad and that, as written and enforced, “the UW Rule does not address the concerns of the . . . fighting words definition. Speech may demean an individual’s characteristics without tending to incite that individual or others to an immediate breach of the peace.” These challenges to harassment policies were important to colleges and universities across the country, for they signified that US courts seemed disinclined to uphold policies that included limitations on racist speech and expression.¹⁰ There remained a possibility, however, that a policy could be constructed that would only prohibit racist expression that fell within the legal definition of fighting words. In 1992, that possibility was defeated by the Supreme Court in the case of *R.A.V. v City of St. Paul* (1992). The *R.A.V.* (1992, 380) case did not involve higher education policies regarding racial/ethnic harassment but an ordinance passed by the city of St. Paul that prohibited the placing of a “symbol, object, appellation, characterization or graffiti . . . which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion or gender.” Such an action was considered a misdemeanor. In an opinion written by Justice Antonin Scalia, the Court invalidated the ordinance despite the city’s assurance (and the state supreme court’s finding) that it limited the enforcement of the ordinance to conduct that would be legally considered fighting

words, which the Supreme Court ruled in *Chaplinsky* (1942) was not protected by the First Amendment. In a decision that was widely viewed to be a message directed toward colleges and universities attempting to create racial harassment policies (see Gould 2001), the Court stated that St. Paul's ordinance, even if limited to fighting words, was unconstitutional because it was "under inclusive" on the basis of content. In other words, the Court noted that while the city could prohibit fighting words in accordance with *Chaplinsky* (1942, 391), it could not prohibit *only* those fighting words that were based on race, color, religion, etc. The Court said,

We conclude that ... the ordinance is facially unconstitutional. Although the phrase in the ordinance, "arouses anger, alarm or resentment in others," has been limited by the Minnesota Supreme Court's construction to reach only those symbols or displays that amount to "fighting words," the remaining, unmodified terms make clear that the ordinance applies only to "fighting words" that insult, or provoke violence, "on the basis of race, color, creed, religion or gender." Displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics.... The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects. (ibid.)

The *R.A.V.* (1992) case, in combination with the lower court cases concerning racial and ethnic harassment policies, elucidates a commitment by US courts to the abstract liberalist legal framing of freedom of speech, an approach to speech that arbitrarily (without any explicit consideration) disconnects racist speech and expression from racist action and social organization. The courts employ the same kind of structurally disconnected, abstract liberalist logic as FIRE—that is, they employ the discourse of color-blind racism. This framing of overt, hostile, and threatening racism as "speech that merely hurts the feelings of those who hear it" (*Correy, et al. v The Leland Stanford Junior University* 1995, 9) and of policies or laws against such expressions as "special prohibitions on those speakers who express views on disfavored subjects" (*R.A.V.* 1992, 391) illustrates a tendency by the US courts to minimize racism and to divorce discussions of the mechanisms of racial oppression from liberalist discourses about individual rights and liberty. In considering policies regarding racist expressions on college campuses, the courts have consistently ignored the long history of racial violence in this country and the connection between forms of racist expression and that history.¹¹

The practical result is a post-civil rights constitutional right to be racist in colleges and universities that administrators may not restrict in any meaningful way.¹² The legal result is that whites can invoke state-centered protection for their racist speech and expression on college and university campuses, whereas students of color have no right to attain higher education free from dehumanizing, oppressive, and tacitly threatening communications. The broader outcome is that US courts have created an interinstitutional symbiosis that reifies color-blind racism and white institutional space. In creating a state protection for explicit racist expression on college and university campuses, the courts protect a powerful mechanism of white institutional space, ensuring that administrative discourse rebuking such racist activities never goes beyond rhetoric.

The Supreme Court's assertion concerning the necessity of free speech absolutism in democratic society is dishonest. The Court's previous allowance of legal restrictions on certain forms of speech (such as fighting words, obscenity, child pornography, and certain instances of fraudulent or libelous speech) illustrates that when a social value is considered important enough, content-based speech restrictions have been and continue to be permitted. Moreover, many other democratic countries in the world that constitutionally protect and respect freedom of speech and expression do, in fact, prohibit some forms of

racist and ethnocentric expression. These restrictions have historically been based precisely on the kinds of structural connections between such expression and the histories of racial violence and oppression discussed above. In fact, after World War II, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, obligating signatories to create sanctions for “direct and public incitement to commit genocide” (see Tsesis 2010, 645). With the lessons of World War II revealing startling connections between rhetorical manipulation and racial/ethnic genocide, many democratic nations responded by enacting criminal and civil penalties for certain forms of expressions of racial/ethnic animus and incitement. For example, the Canadian Supreme Court has prohibited hate speech, noting that the purpose of protections for free speech include “(1) seeking the truth and the common good, (2) promoting self-fulfillment of individuals by allowing them to develop thoughts and ideas as they see fit, and (3) ensuring that the political process is open to all persons” (quoted in Tsesis 2010, 647). Noting that racial/ethnic hate speech is not compatible with these goals, the Canadian Supreme Court has permitted “reasonable” limitations on such forms of speech (Tsesis 2010). In addition, the United Kingdom, Germany, France, and many other Western democracies permit criminal and civil penalties for racist and ethnocentric speech, including speech that creates hatred for an entire race/ethnicity, incites violence, or argues for the mass oppression of racial and ethnic groups (Tsesis 2010; Delgado and Stefancic 2004; Matsuda et al. 1993). Moreover, in Canada, the United Kingdom, and Germany, government policies have been created with special regard to such forms of hate speech on college and university campuses to prevent racist and xenophobic ideologies from “taking root” in these settings (Tsesis 2010, 646).

In the United States, however, the courts have prohibited such government interventions with regard to racist expression. Thus, while administrators may engage in a discursive disavowal of explicit and overt racism on campus, they must acknowledge (either publicly or in the privacy of administrative meetings) that they are, in fact, legally required to tolerate racist expression from the campus community.

CONCLUSION

The legal initiatives and changes resulting from the civil rights movement of the 1950s and 1960s were thought to have created equality of opportunity for access to institutions such as colleges and universities. The Fourteenth Amendment to the Constitution, which requires equal protection of the law, and the 1964 Civil Rights Act, which in Title VI requires that public educational institutions not permit racial discrimination, should guarantee people of color the right to participate meaningfully in US colleges and universities. Unfortunately, throughout the post-civil rights era, this meaningful participation has been thwarted by invidious racist activities in these institutions. Instead we see continued examples of expressions and activities that evoke a history of racial oppression, violence, and terrorism, reifying the boundaries of white institutional space and functioning to limit the meaningful participation of people of color. Powerful activists, such as the members of FIRE, have fought for legal protections for those who engage in such racism, and the US courts have codified a color-blind racist discourse protecting the rights of racist speakers over the rights of people of color in colleges and universities.

Our data demonstrate an ironic use of the dominant discourse of color-blind abstract liberalism as a mechanism for protecting explicitly racist expression through the deployment of the First Amendment protection of freedom of speech and expression. College and university administrators engage in a neoliberal “marketplace of ideas” philosophy

framed by a First Amendment absolutist rhetoric that fails to meaningfully recognize the historical racist context of these expressions and activities. As our analysis reveals, the notion of a counterspeech response to racist expressions is problematic and ineffective because the symbols of racist violence in this country attach to a history of white domination, and there exists no parallel racially equitable context that can be as easily referenced through public expressions. Moreover, institutional responses to explicitly racist incidents function to camouflage the more covert, deeply embedded institutional practices that privilege white institutional power and tend to reproduce unequal white access to the material benefits accruing from these institutions. This research reveals an important symbiotic connection between explicitly hostile racist expression on college and university campuses and the more subtle color-blind racism typical of the post-civil rights era. In doing so we have extended the theoretical work on color-blind racism to facilitate an explanation for the continued significance of traditional Jim Crow racism on college and university campuses and, just as importantly, to illustrate one mechanism by which the boundaries of white institutional space are protected and reproduced in institutions of higher education.

More importantly, we believe that this research indicates that a meaningful analysis of equal access to higher education in this country calls for an interinstitutional examination of racist expression and its connection to racial violence and oppression. As we note, many other democracies that value and privilege the right of freedom of expression and speech have also placed limits on particular forms of racist and xenophobic speech because they see a clear connection between unchecked racist speech and the societal institution of racist policies. Institutions of higher education seem to be a logical space in which to begin a project that (1) interrogates the right of free speech in the context of connections between speech and expression and social context and structure, critically examining the neoliberal notion of a marketplace of ideas in which all ideas have equal weight; and (2) exposes the neoliberal legal logic of First Amendment absolutism in the context of the actual substantive harm done to students of color at historically white institutions of higher education. While there is not space in this piece to delineate the parameters of a racially equitable construction of the First Amendment in relationship to racist speech and expression on college and university campuses, we have provided a structurally contextualized analysis of these forms of expression as well as some examples of policies and laws in other social democracies that we view to be more thoughtful than current US law and policy. We hope that analyses such as ours will spark new debates and lead to policies that will bring about more racially equitable college and university campuses in this country.

NOTES

1. http://provost.tamu.edu/essentials/pdfs/FreeSpeech_August2016.pdf.
2. This article also refers to several other incidents on other campuses. Barack Obama's presidential race led to widespread bursts of racist expression on college campuses across the country.
3. This e-mail was not reprinted in full in any news account of the incident, but these particular quotations from the e-mail were reported in the *Harvard Law Record*, the law school newspaper (Blanks 2002); the *Harvard Crimson*, the main Harvard University newspaper (Steinhardt 2002); and the *New York Times* (Lewin 2002).
4. These incidents took place all across the country, at all kinds of institutions—from elite Ivy League colleges and universities to local community colleges. We did not find any substantive difference in the type of institution of higher education in which racist incidents took place. We do note, however, that in our research we learned of incidents of racist expression on college

and university campuses that were not written about in either college news or local/national news outlets. This being the case, we assume that the numbers of incidents could be exponentially higher, and so we see no reason to assume any structural or institutional changes since the timing of the study of the National Institute Against Prejudice and Violence—the figure of 800,000 to 1 million per year seems likely to remain the norm.

5. See the FIRE website at <http://thefire.org/about/mission/> (accessed December 24, 2012). For example, when one of the authors served on a university committee that was assigned to create a policy in reaction to several racist incidents on campus, she discovered that university administrators and lawyers at her institution were unwilling to put forth any policy for a vote until it was vetted and approved by members of FIRE. We had contacted administrators at the other institutions to investigate the policies of peer institutions, and they too followed similar procedures.
6. We do not suggest that individuals are intentionally rallying against overt racism as a cover for their intentional participation in color-blind racism. In fact, we suggest that intentionality is not relevant with regard to the reproduction of white institutional space; rather, the institutional and structural outcomes of patterns of behavior are relevant. Complex patterns of behavior imply that individual actors may be acting with variable levels of consciousness and intent motivating their behavior (i.e., some may be acting without intentionality or without consciousness of the implications of their behavior, while others may be acting with complete intentionality).
7. We do not suggest here that administrators do not want to seek punitive measures against community members who engage in racist expression on college and university campuses—instead, we illustrate that it is not legal to do so. While we are aware of situations in which students who have engaged in racist expression have been asked to accept sanctions, perhaps even leaving the institution, this occurs only on a voluntary basis because the law is clear that the institution cannot take action against them, as we discuss in the next sections.
8. <https://www.thefire.org/campus-rights/> (accessed February 10, 2017).
9. The “fighting words” doctrine was initially constructed by the US Supreme Court in the *Chaplinsky* (1942) case but was narrowed in *Cohen v California* (1971), which noted that fighting words had to be directly expressed to a particular individual (rather than comprising a general statement), and in *Gooding v Wilson* (1972), which specified that the utterances in and of themselves had to have an immediate tendency to provoke a breach of the peace.
10. The following relevant cases involve harassment policies that were challenged for their attempts to regulate hate speech: *Correy et al. v The Leland Stanford Junior University* (1995); *Dambrot et al. v Central Michigan University* (1993); *Doe v University of Michigan* (1989); *The UWM Post et al. v Board of Regents of the University of Wisconsin System* (1991).
11. In *Virginia v Black* (2003), Justice Sandra Day O’Connor made precisely the kind of structural argument we discuss herein. Justice O’Connor’s opinion noted a long history between cross burning and the violent torture and oppression of African Americans in this country’s history and specifically in the history of Virginia, the state that passed the law prohibiting the intentionally intimidating display of a burning cross. Moreover, Justice Scalia, author of the *R.A.V.* (1992) decision, did not disagree that under *R.A.V.* the government could ban the display of cross burning with intent to intimidate. (Justice Scalia was, in fact, willing to go further than Justice O’Connor in this case and hold that the mere public display of a burning cross could provide prima facie evidence of intent to intimidate). However, it remains unclear what this holding means in the context of a broader context—the *Black* case hinged on the fact that the Virginia law was incredibly narrow, banning only cross burning specifically because of the racist history of the burning cross in the country and the state. Whether and how this contextualized form of decision would cover other forms of racist speech and expression, and thus what it might mean for a project of trying to sanction racist expression on college and university campuses, remains an open question—even more so because Justice O’Connor, the author of *Black*, is no longer on the Court.
12. Note that the Court subsequently held that conduct motivated by racial animus could be sanctioned (even with heightened or special sanctions) in *Wisconsin v Mitchell* (1993). In *Virginia v Black* (2003), the Court indicated that it might permit the regulation of a very narrowly defined form of racist expression—namely, the intentionally intimidating display of a burning cross.

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