

**Imperial Identities:
Reproductions of Whiteness at the *California Law Review* (1)**

by Donna Maeda

(Note: Click here to see resources on whiteness and constructions of race and privilege.)

I. Introduction: (The Lack of) "Diversity" at the *California Law Review*

On November 4, 2002, the Diversity Editor and an Articles Editor resigned from the *California Law Review* (CLR). On January 27, 2003, I resigned from the Senior Notes and Comments Editor position and from membership on the journal. On February 10, 2003, the membership voted not to renew the Diversity Editor position.

The Diversity and Articles Editors left after a series of events that highlighted internal discord around the issue of "diversity" on the journal. On October 7, 2002, the journal's internal newsletter, "The Week in Review," contained multiple items that trivialized and ridiculed the Diversity Editor and efforts by her and others to address the lack of diversity on the journal. A series of document exchanges, meetings, and personal conversations followed the distribution of this newsletter. These events provide a snapshot of the racial dynamics at CLR; they also provide insight into connections between the racial demographics of the journal's membership, the lack of knowledge about certain areas of law, the inability to make substantial changes at the journal in these areas, and the reproduction of racial hierarchies at the journal.

A. Background

The Boalt Hall graduating classes of 1995, 1996, and 1997 consisted of 60% white students.(2) 59% of the people who registered for the Write-On Competition to become members of CLR were white, as were 65% of those who turned in the Write-On. 78% of CLR's membership for those classes were white. 10% of those graduating classes, 11% of those who registered for the competition, 8% of those who turned in packets, and 2% of membership were Black. Respective numbers for Latinos/as were 14%, 14%, 8%, and 4%. Respective numbers for Asian American students were 15%, 15%, 18%, and 16%. Numbers for Native American students were 1%, 1%, 0%, and 0%.

In the class of 2001, 70% of Boalt students were white, as were 80% of those who registered for the CLR competition, 80% of those who turned in packets, and 81% of those who were members. Numbers for Black students were 4% of the class, 4% of those who registered, 2% of those who turned in packets, and 0% of members. Numbers for Latinas/os were 7%, 4%, 1%, and 1%. Asian American numbers were 18%, 12%, 17%, and 17%. Numbers for Native Americans across the board were 0%.(3)

For the Boalt class of 2002, 75% of the class was white while 84% of CLR's membership was white. 3% of the class and 2% of the Review was Black. 6% of the class and 0% of CLR was Latina/o. 13% of the class and 14% of CLR was Asian American. 1% of the class was Native American and 0% of the class was from that group.(4)

For the current year's graduating class, 70% of the class and 79% of CLR is white; 3% of the class and 0% of CLR is Black; 7% of the class and 4% of CLR is Latina/o; 19% of the class and 17% of CLR is Asian American; and 1% of the class and 0% of CLR is Native American.(5)

The numbers given above are inadequate to describe "race" at the *California Law Review*. While the percentages say something about the racial categorization of members and the numerical overrepresentation of white students on the *Review*, they cannot express the ways that whiteness overwhelms the atmosphere of the journal. Neither can the sheer percentages tell the story of how ideological whiteness shapes ways that articles, notes, and comments are read, evaluated, and edited,⁽⁶⁾ nor how this ideology contributes to the reproduction of whiteness in relationships between law and society.

B. Participation and Analysis

The events of Fall 2002 were shaped by the wider context of *CLR*'s history and position at a major, elite law school. My analysis of race in this paper will be based on my observations and experiences as a 2L member and as a Senior Editor of the journal during my 3L year as well as an examination of documents that came out of the events of the Fall. The paper will argue that the events that transpired this Fall semester were symptoms of the journal's failure to deal with its history of racial exclusion; it will also argue that the journal thus continues to participate in the construction of legal knowledge that sustains racial hierarchies in contemporary U.S. society.

II. The Events

"The Week in Review" is an internal journal newsletter that gives information about events, deadlines, and other items of interest to members. It has been the primary vehicle for disseminating basic information to members for the past two years. This year the Managing Editor handed the newsletter over to two members who not only wrote up the information but also used the weekly to express their brand of humor, primarily targeting their friends for ridicule. In the October 7 edition, the two, who will be called Writer 1 and Writer 2, moved for the first time beyond skewering their friends. Instead, the edition focused on ridiculing the Diversity Editor and others involved with her work. On the first page, the newsletter contained four specific references to diversity-related work (out of a total of nine items on that page). One item mentioned that the "long awaited, eagerly anticipated, widely celebrated Diversity Concept Paper did not appear in our boxes 'by the end of the week' as promised."⁽⁷⁾ Another item asked "Did you know . . . our Diversity Editor is white" and thanked a member for "pointing this out to the general membership."⁽⁸⁾ The second page contained two cartoons ridiculing the Diversity Editor. This second page of the usually-single-page newsletter contained no useful information for members.

Several responses by members immediately followed the distribution of the newsletter. I wrote an open letter to the co-editors, raising concerns about the use of the members' newsletter to ridicule diversity work on the journal. Another member wrote an email to the entire membership raising concerns about the lack of professionalism illustrated by the newsletter. The Diversity Editor also responded on the same day by distributing a letter to the membership about her experiences on *CLR* and her reaction to the newsletter. Her letter expressed the alienation and discomfort she had felt since joining the journal because of her class background and public interest orientation in law school. She also addressed the marginalization of her work as Diversity Editor. A 2L member who has been outspoken in support of diversity efforts and whose photograph had appeared in the same newsletter in a "humorous" item wrote an email message to all members commenting on the fear of change

that she saw. A 3L member wrote a mass email response that noted the newsletter writers' own categorization in identity groups so they would "hardly be 'afraid of diversity.'" This same member also wrote an email inviting everyone to a pizza party in the office and a Happy Hour at a bar, concluding, "Just a heads up in advance, so that we, as a community, can be reminded of the fact that CLR is fun and HAPPY and that we all, deep down, want to eat pizza and drink each other [sic] because we are a cool group of people from all backgrounds."

The standing Tuesday Executive Committee (ExComm)(9) meeting the next day was changed to an open meeting for all members to express thoughts and reactions to these events. Gabriela Gallegos, the Editor-in-Chief, facilitated the meeting. In the meeting, several people stated that diversity had not been attacked and that the newsletter had been a matter of bad humor and poor judgment. One member said that other humorous attacks in the newsletter had not received such expressions of concern and that the current objections "smack of self-interest." Many members, including 2Ls, talked about how alienating *CLR* is. Several members said that they do not feel *CLR* provides a safe space to speak openly. At the meeting, Writer 1 said that the intention was humor, not thwarting diversity attempts. Writer 2 stated that the newsletter "will no longer be used as a tool of evil and oppression if it was ever intended to do so." Gabby attempted to place the events at *CLR* into a broader context by speaking to the need to change its culture in order to bring the journal out of the 1950s. She talked about the need to recognize how such events undermine the integrity of the journal, to understand why some people feel so uncomfortable as members, and to see how the problem is part of *CLR*'s institutional history.

At the meeting, two "sides" emerged. One, supporting the Diversity Editor, expressed anger at how she was treated and the undermining of efforts to address diversity. The other side supported the authors of the newsletter. Members on this side wondered why the newsletter created such a negative reaction. The meeting itself was very tense and filled with anger.

After the open meeting, ExComm met for five hours to discuss what steps needed to be taken. The first person to speak stated that it was extremely possible that no matter what was done, *CLR* was likely to lose a large number of members. During this meeting, ExComm not only discussed the open meeting and possible responses but also went through an emotional process of its own. Although no members of ExComm had previously been resistant to the idea of diversifying *CLR*, there is a wide range of understandings about the racial environment on the journal. ExComm members uniformly found the newsletter a matter of bad judgment. However, members disagreed about the strength of the response that should be taken. The variation mirrored previous positions taken regarding possible measures to diversify the membership of the journal, as well as perspectives about the effects that the current lack of diversity has on decisions about what is published by *CLR*.

In the end, ExComm decided to suspend Writer 2's membership for the remainder of the semester and to demote Writer 1. ExComm also decided to elevate the Diversity Editor to a position on ExComm and to give her two 2L staff members to assist with her work. One ExComm member volunteered to draft a letter to the membership with this information. After feedback and revision from other ExComm members, the letter would be printed, signed by all, and distributed to the journal membership.

After the letter was printed but before it was signed, a member of the Editorial Board (who is not an ExComm member) saw the letter and expressed very serious concerns about its contents. She stated that ExComm had overstepped its powers under *CLR*'s bylaws when it decided to create a new Executive Committee position without a vote by the Editorial Board. After a morning of impromptu meetings with other concerned individuals as well as a flurry of emails and telephone calls among ExComm members, the Editor-in-Chief decided that we would invite the Diversity Editor to participate in both open and closed

sessions of ExComm meetings and to draft a structural resolution (which would be voted on) to elevate the position to ExComm. This version of the letter was signed by all ExComm members and distributed to the journal membership.

Two days later, Gabby and I wrote a draft of a letter to the Boalt community. Knowledge about the events and copies of "The Week in *Review*" had become known in the larger community. The draft acknowledged the internal issues at *CLR* and their broader implications. Using language from the letter to the *CLR* membership, the draft apologized for the damaging effects to individuals and groups at Boalt. The draft also mentioned responsibility to the standards of respect of the larger Boalt community. The draft outlined diversity efforts at the *Review* and announced the decisions made by ExComm that week. In the last paragraph, the draft expressed a commitment to using the events to "build a stronger community with a more welcoming environment" and ended by stating "We realize that we have failed to participate meaningfully with issues of diversity in the past. We recognize that this discussion of diversity is important to the entire Boalt community. We welcome other groups within this community whose members are not adequately represented in *CLR* to contribute to these efforts."

Immediately after this draft was circulated to other ExComm members, emails came back with objections, statements of concern, and calls for postponing any response to the wider community. One ExComm member wrote that such a letter would "sensationalize" the events; he suggested letting events fade from people's memories. He also suggested that everyone with personal connections to people and organizations outside of *CLR* let non-members know that matters were being handled internally. No ExComm member (besides Gabby and me) approved the letter.

The next Monday, three new documents were placed in all *CLR* members' boxes. One was a photocopy of a section of the *Review*'s bylaws, entitled "Membership."¹⁰ The person who anonymously distributed these sections highlighted text in the Article dealing with "Suspension or Termination of Membership. A member may be suspended or terminated based on the good faith determination by the editorial board." However, the distributor did not highlight the parenthetical that immediately follows: "(or the Executive Committee established under Section 8.13 of these Bylaws, as described below) that the. . ." (highlighting started again) "member has failed in a material and serious degree to observe the Corporation's membership requirements." The distributor also did not include Section 8.13, which states: "Executive Committee of the Board of Editors. The Executive Committee shall have authority to exercise such authority as may from time to time be delegated by the full editorial board. . . ." Section 8.14 states: "Delegation to Executive Committee of Responsibility Regarding Membership Suspensions and Terminations. Until and unless the editorial board revokes such delegation of responsibility, the Executive Committee shall be responsible for matters regarding the suspension or termination of memberships under Section 4.4 of these Bylaws."¹¹ Interestingly, the distributor photocopied the page with Section 8.14 with "under Section 4.4 of these Bylaws" highlighted and attached this text in front of Article 14, Section 4.4.

Also distributed in members' boxes that day was an anonymous one-page flyer entitled "TAKE BACK CLR FROM THE UPCOMING POLITICAL COUP." This flyer focuses on the attention to diversity by criticizing the support for a Structural Resolution to elevate the Diversity Editor to an ExComm position:

Don't get bullied into something you don't agree with. VOTE WITH WHAT YOU FEEL IN YOUR HEART. You won't be a racist – and you won't even be labeled as such – if you vote against the structural resolution to beef up the Diversity Editor position (which no other major Law Review in the country has). . . . Certain people on law review are trying to get this passed through, in a hurry,

because the time is right ... much like President Bush and his aching to go to war with Iraq. . . . Above all, we need to decide if the Week in Review was an appropriate catalyst for the not-well-thought-out resolution that is being shoved down our throats.

This flyer ends with an emphatic statement referring to the writers of the newsletter: "THEY MADE A MISTAKE. THEY LEARNED A LESSON. STOP LYNCHING THEM."

The third document placed in our boxes that day was a signed letter by a 3L member. This letter states, "Nobody I have talked to has been able to tell me where in the Review there is an attack on Diversity." According to the author, those who see such an attack "are reading far too much into [the Review]. Whether this is based on emotions running high, some form of revenge, individual political agendas or something else, I hazard to guess and don't want to." The author states that the disciplinary measures have "potential negative effects . . . on the authors and on the *California Law Review*." The letter also includes a statement that "the authors were burned at the stake for a supposed attack on Diversity."

ExComm could not agree on any further actions and, as a result, did nothing further about the specific events. The following ExComm meeting was tense as I stated dissatisfaction with an approach that appeared to do nothing to address the context of the events. We decided to hold another open meeting for further discussion.

Prior to that meeting, the Coalition for Diversity (12) at Boalt wrote an open letter to *CLR* expressing concern about the events and reframing the issue to redefine "diversity" as "desegregation." Indeed, the Coalition was inspired by the *CLR* events to organize an entire "Desegregation Week" at Boalt. The day of that next *CLR* meeting, the Diversity Editor and an Editorial Board member tendered their resignations from the journal. At that meeting, several members expressed severe concerns about any statement to the Boalt community. At the meeting, several members expressed deep concerns about "loyalty," since Gabby and I are known to be active members of the Coalition.(13)

Another meeting was held on November 15, over a month after the newsletter was distributed. This meeting was led by two 2L members who have mediation and/or facilitation experience. The general membership was especially open and appreciative (visibly so) of the white male student leading the session. Members continued to call for more data on diversity and wondered *if* there is a problem. The single Latino member of the 2L class stated that we are looking at the issue from the wrong angle. He pointed out that the results of membership selection show that diversity policy has failed.

After these events, several Editorial Board positions were open on the journal. Although Writer 1 had volunteered to work to minimize negative reactions to ExComm's decisions about his position, he did not do so. This negatively affected the transition in his department. The Editorial Board member who resigned was not replaced. As for the Diversity Editor position, the writer of one of the documents described above ran for Diversity Editor against an Asian American female. He was elected by the 3L membership to be the new Diversity Editor for the remainder of the year.

In addition to the meetings described above, I had many individual interactions with members about the events during the Fall. As he was attempting to save his position, Writer 1 called me to discuss his actions over the telephone. I also received a lengthy email message from a 3L member responding to my initial open letter about "The Week in Review." The author, who is female and white, states,

"I have always felt diversity should be a priority in all walks of life. . . . I have to say that this IS in line with the *CLR* that I've seen. . . . [T]he disagreement is generally over the DEGREE of importance that should be given to diversity of authorship and membership. . . . Unlike other journals at Boalt, *CLR* does not

have a common or overriding viewpoint to which all members sign onto. Rather, this is a general readership journal that is meant to provide a forum for all viewpoints (from members and authors), even those that are disagreeable, if they are well researched and analyzed. . . . [T]he membership has not decided that diversity would be THE most important goal. . . . I would not expect the entire *CLR* membership to automatically [place it high on the priority list]. . . . I respect other people's viewpoints too much to steamroll them like that."

This author also states that no one "had a warm, fuzzy feeling" at *CLR* and expresses skepticism "if the discomfort felt by members results from some underlying racism."

Two other members specifically sought me out (separately) to talk to me about the events. Not surprisingly, these conversations were much deeper and richer than meetings or one-way email messages. While each of these conversations were tense at the beginning, we were able quickly to move beyond shallow representations of various positions regarding the events specifically and "diversity" more broadly. Each of the persons stated what they believed I stood for, given what they had heard from other members. I was able to explain myself more fully—and also to give them information about other things that have been said to me personally that I had not felt comfortable repeating in public. For example, the Diversity Editor (who is white) told me that a member once told her that she/he could listen to her but that they couldn't hear the same words from Gabby or me. The reactions of the 2 members in private conversation about these kinds of comments ranged from "that's terrible that someone could say that" to "it's incredible that someone could say that." The two members were also able to express their concerns in greater detail so that I could understand their views. I was able to explain how I thought the lack of "diversity" on *CLR* harms the quality of the journal because of gaps in people's understanding of issues when they read certain articles, notes, and comments.(14) In both of these conversations, each of us agreed that these are much more complex and difficult issues than appeared on the surface. We also agreed that the issues need greater attention—and that the quality of *CLR*'s conversations actually diverted attention from the real issues.

As the above explanation of events indicates, "diversity" holds a problematic position at the *California Law Review*. The problem of diversifying *CLR* does not lie in overt, explicit denials of the importance of diversity or statements that the journal should not be diverse. Rather, the problem lies in an inability (or refusal) to confront the reasons for the current lack of diversity—or the diversion of concern by questioning what diversity means, along with the erasure of particular kinds of absences on the journal. The next section will look more closely at how the events and the conversations about them illustrate these problems.

III. Contexts

The events of the Fall 2002 semester did not suddenly raise the issue of diversity. In many ways, the context for the events was set by the journal's historical lack of diversity, its decision in February 2001 to create a Diversity Editor position (requiring yearly renewals) (15), and the election of the first woman of color as Editor-in-Chief in March 2002. After Gabby won the Editor-in-Chief election, other members known to be supportive of diversity efforts ran for other leadership positions. During the election forum, in which candidates make statements and answer questions, people were regularly asked about diversity. One Latino member, who ran for both Articles Editor and Book Review Editor, stated very matter-of-factly that he was interested in working on diversity on the journal because it was a problem that there were no Black people in the room.(16) Several members reacted in a visibly negative manner to his statement. Members were heard talking about the attempts by

the Coalition to "take over" *CLR*. In the end, several of the people who were committed to addressing "diversity" as a priority were elected: Gabby and I were elected to ExComm positions, another was elected as an Articles Editor, another as Diversity Editor, and another member as a Projects Editor. The person who had been most straightforward about the problem lost altogether.

During this current year, the question of diversity has elicited many reactions. When someone stated that it is a problem that we have had only one Black member in three years, the reaction by several people was "I feel like s/he just called me a racist." Others have often stated that some members are "jamming diversity down our throats." During a discussion about recruitment efforts directed at identity-based organizations and journals, a white *CLR* member mentioned concern about members of certain groups recruiting from their own organizations. After Gabby agreed that all members should help out with recruitment efforts, the sole Latino member of the 2L class stated that it makes a difference when members of identity organizations who are also *CLR* members recruit in those organizations, stating that it helps when we can say "we're doing both." This member also mentioned that it is a problem that there are so few members of color that such targeted recruitment is difficult. He added that the current Diversity Editor "is great, but she is white." The Diversity Editor nodded in agreement, indicating her understanding of the problem. That one statement created a stir and became one of the items in the October 7th edition of "The Week in Review."

As a member of ExComm and as a Senior Editor, I have been involved in many meetings and conversations that illustrate the negative effects of the lack of diversity, especially regarding historically underrepresented groups. In conversations about a paper submitted to the journal about race, language, and minority status in contract law, editors could not fathom the connection between race and language. Some wondered why the author focused on Spanish- and Asian-language minority groups rather than all communities that do not speak English as their primary language. When I tried to explain that people in the U.S. who speak these languages have different experiences than people who speak French,⁽¹⁷⁾ I was met with blank looks of non-understanding.

In a conversation about another piece about relationships between trade and immigration law and policy along the U.S./Mexico border, similar problems surfaced. The author gave extensive background to the current state of problems in this relationship. The author provided a great deal of historical information, as well as details about U.S. policies. Even though editors had just criticized another author who wrote about race and law for not giving sufficient background for a *CLR* audience, they criticized this author for providing detailed background. When I pointed out the discrepancy and asked what people thought the proper balance should be, there was no response. Then one editor stated that she had a bigger problem with the author's analysis section. She said that the author provides so much background, including information about people being smuggled across the border in crates and ranchers shooting people, but when the author reached the analysis section, there was a huge gap. The editor said that the author included a section that made suggestions for U.S. policy regarding "these communities." ⁽¹⁸⁾ The editor continued by stating that the author *assumes* the U.S. should be doing something for these communities. The lack of consciousness about the presumption of the rightness of the marginality of border communities and the sheer dehumanization of persons from these communities was shocking.

IV. Whiteness as Neutrality and Universality: The Morality of the Status Quo

In the Notes and Comments conversations, in ExComm meetings, and in general *CLR*

discourse, the presumption behind all discussions about “diversity,” “race,” and “minorities” is that whiteness occupies the “neutral” position.

In both discussions about attempts to plan and implement diversity measures on *CLR* prior to the explosive events and responses to these events, assertions of neutrality has served to direct efforts away from any effective measures to diversify membership. ExComm members have taken what they call the “middle position” between “two factions.” For some ExComm members, this means taking an “objective” stance between pro-diversity members and those who do not support such efforts. Yet at the same time, the claim abounds that no one was “against” diversity—or even that everyone is “for” it. The personal email message to me described above (19) was an example of the argument that everyone is pro-diversity but not everyone sets it as such a high priority. This “objective” position is used to support the notion that people working toward diversifying the journal are biased, are failing to respect the “diverse” opinions of members, and are “steamrolling” or jamming diversity down everyone’s throats. Because *CLR* is a general interest journal, taking a position on an issue such as diversity is thought to be taking an advocacy stance rather than a neutral one. Even after ExComm went through its long process through which it concluded that something must be done so that such problems would not happen again, assertions of neutrality have abounded. The ExComm member who most stridently objected to the letter to the Boalt community and the possibility that the letter would “sensationalize” events (20) also noted that we all had to “give up something” in order to find a workable solution. As noted above, that ExComm member suggested letting matters lie so that memories about the events would fade.

In this context, anyone speaking from a race-conscious perspective is automatically “biased.” Speaking from a position shaped by experiences of being raced, from understandings and analyses of the ways that race operates in the United States, is necessarily “non-neutral” or “non-objective.” Thus anyone whose perspective has been shaped by the need to learn about race from living a life driven by racialized experiences cannot inhabit the normative position of the neutral *CLR* subject who stands between pro-diversity and not-pro-diversity standpoints.

Because the experience of living a racialized existence—and the accompanying need to confront issues of race tends to fall on people of color in the contemporary U.S., the supposedly “neutral” position in *CLR* is a position of whiteness. Persons who cannot step “outside” of race, either because of the ways their perceptions are shaped by experience or because of what is imputed onto their raced existence on *CLR*, cannot possibly inhabit that neutral position.(21) The supposedly neutral position can thus only be inhabited by members who possess whiteness. This presumes that “white” is not a race; white people are simply human while others are raced. This hides the racial privilege that provides the ability not to acknowledge or recognize the reality of white racial experience. It would be a useful and interesting exercise for *CLR* members to imagine what a “neutral” position looks like on the journal—and then to imagine that position being asserted by a white person in a room full of Black people. Would that position still seem “neutral”? What does it mean that it is “neutral” in the *CLR* room but not so in the room full of Black people? Is it then really about neutrality or about who is and is not in the room? As Critical Race Theorist Cheryl Harris writes, in such moments, whiteness is a property whose possession gives heightened value to its holders.(22) Those who do not possess the property of whiteness lie outside the realm of normative value. Issues and perspectives associated with this outside position are not only non-neutral, but hold lesser value.

This devaluation of non-neutral, non-white positions exemplifies social critic Cornel West’s conception of contemporary white supremacy.(23) For West, white supremacy is not only found in organizations such as the Ku Klux Klan. Rather, the cultural devaluation of Blackness in modern America supports practices and institutions that reproduce racial

hierarchies in mainstream society. When perspectives of people of color on *CLR* are marginalized as “non-neutral,” the value of such perspectives for the journal is placed at a lower position than the normative position of neutrality/whiteness. When an editor on *CLR* rejects a piece by asserting that making policy suggestions for a situation where people are dying in smuggled containers or at the end of ranchers’ shotguns assumes too much about what should be of concern to the U.S. government, that editor gives lowered value to lives subordinated by the racial dynamics of the politics of the U.S./Mexico border. The “neutral,” supposedly non-raced position that can question whether the ending of lives on the border ought to be addressed is actually a particularized perspective shaped by an unacknowledged racialized social position that implicitly gives heightened value to whiteness.

The assumptions about neutrality also operate to universalize whiteness.⁽²⁴⁾ By marginalizing race-conscious perspectives to the point of erasing their significance, the enforced normativity serves to universalize non-race-consciousness. Not knowing about, not understanding racial dynamics and not seeing cultural assumptions about the status of differently-raced groups enforces a pseudo-universal base of knowledge for the journal. This pseudo-universality also serves to support and enforce ignorance when it comes to racial matters. In an elitist law review, lack of knowledge about nearly all areas of legal scholarship is considered to be a flaw that must be remedied. However, when it comes to the area of race and law, ignorance is valued rather than understood to be a lack. Knowledge about the workings of race, as noted above, is considered to be a matter of bias, non-neutrality, and non-objectivity, which all hold negative value.

Reactions to references used in documents during the Fall’s events illustrate the extent to which *CLR* members have embraced ignorance about race. Many students, especially students of color (including both members and non-members of *CLR*), had strong negative reactions to the use of the word “lynching” in relation to the disciplinary measures imposed by ExComm. Many *CLR* members could not understand the objection to that word or the power of that symbolic reference. The sole Latino 2L member of *CLR* spent nearly an hour trying to explain to a white member the power of that symbol. Students of color and some white students have attempted to explain the impact of the history of lynching—and, especially, the extreme difference between the dynamics of discipline on the journal and the reign of violent terror imposed on racially subordinated communities. Many *CLR* members denied the significance of that history in relation to the use of the particular word, “lynching,” in this context. Similarly, the Coalition for Diversity’s attempt to contextualize definitions of “diversity” within the history of desegregation movements has been dismissed with scorn by many *CLR* members. The “neutral” *CLR* position has held that “diversity” needs to be defined—and that the many forms of diversity already on the journal need to be celebrated. This “neutral” position about diversity fails to acknowledge the actual histories of exclusion that are reflected in the particular groups that are most underrepresented on *CLR*. That is, *CLR* might have members with many different shoe sizes or hair colors, but the particular absence of significant numbers of Black, Latino, and Native American students reflects particular histories of exclusion in American institutions, especially elite ones like law reviews. Through the erasure of racial dynamics in our history and current dynamics of racial power, many *CLR* members who object to diversity being “jammed down their throats” and who wonder whether the racially skewed demographics of the journal are a problem fail to connect our problematic past with our problematic present.

In this context, *CLR*’s status quo takes on a normative position of neutrality as a matter of morality. Neutrality and objectivity are moral norms on the journal. Bias, non-neutrality and non-objectivity are morally flawed positions. Yet the failure to acknowledge the whiteness at the center of what can stand as neutrality and objectivity moralizes a certain racial dynamic by masking its operation and by re-naming racial knowledge as “bias” that

forces, imposes, and steamrolls differing "opinions." This re-assignment of power ignores the ideological power that is deployed through the language of neutrality. That the majority of 3L members elected as Diversity Editor a person who espouses this form of neutrality, based on ignoring the operations of race, tells much about the power of this discourse.

V. Processes of Conservatism: Bylaws, Structural Resolutions, and "Tradition"

The power of the asserted "neutral" position lies not only in ideas but also the ability to shape processes and decisions at the journal. On *CLR*, those who assert such neutrality have effectively used the journal's bylaws and structural resolution process to maintain the status quo.

As noted above,⁽²⁵⁾ someone anonymously placed into all members' boxes photocopied selections of the organization's bylaws with highlighted sections regarding responsibility for decisions about membership termination and suspension. Although the specific delegation of responsibility is not clear in the bylaws, the distributor used selective highlighting and ordering of text to present a position that ExComm had overstepped its authority in the actions it took regarding Writers 1 and 2. This gesture used a common strategy on *CLR*: the bylaws, which, as any legal text, can be interpreted in numerous ways, are called upon to sustain the status quo and to stymie any attempts to make substantial changes on the journal. Although the bylaws can be interpreted more liberally, members routinely resist any move that looks like a substantial change, either out of fear that the bylaws might be violated or as the result of specific threats to disrupt the journal by contentious maneuvering around interpretive issues. As a result, nearly every effort to make changes are sent through a structural resolution process. For most decisions, a majority of a quorum must vote for proposed changes. Members effectively slow down changes by calling on the structural resolution process. Structural resolutions must be written, presented in an open forum for debate, and voted on. Quorum must be reached and a majority of the votes must ratify the changes. Because of the time involved, this process is typically undertaken only once per year, although a vote can be called at any time. Members skillfully use this process not simply to enhance democratic decision-making on the journal, but to undermine proposed resolutions with counter proposals designed to divide votes or divert sufficient numbers in order to prevent changes.

In addition, "the way it has been done in the past" holds extremely high value on the journal. Great attention is paid to what we "can't do" based on recollections of past processes. For example, two members of ExComm suggested that 2L members be allowed to vote for the new Diversity Editor since everyone on the journal had gone through the extremely disruptive events of the Fall semester. Every other ExComm member objected to 2L participation in the election because only 3L members had elected the current Editorial Board and because only 3L members voted to ratify the substitute Senior Executive Editor. The past processes held extremely high value over other considerations for the particularity of the issues raised in the Diversity Editor election.

In addition, most *CLR* members agree that participation by all members in discussions and voting holds very high value. When it comes to the question of "diversity," most members fail to acknowledge that the absence of persons from particular groups (the very problem itself) negatively affects the ability of the journal to have adequate discussions about the issue.

On *CLR*, strategic use of bylaws, the structural resolution process, what might be called "tradition," and the failure to acknowledge the consequences of particular absences control decisions about what the journal ought to be. These conservative mechanisms not only

control processes of change, but also shape all discourse about what the law review is. The past thus fully informs and constrains what the future might be. Rather than imagining what the law review should be, given its historical, demographic, and social setting, members look to formal processes that mask the realities of those contexts. Because of the relative absence of historically underrepresented groups, the formal processes, as well as the focused attention on finding a "neutral" position within the membership itself, serves to perpetuate the overwhelming whiteness of the journal.

VI. Conclusion

The overwhelming whiteness of the *California Law Review* shapes not only the alienating experiences of its marginalized "minority" members, but also the ideological construction of the legal content and the meaning of "law review." The comfort with ignorance about race, sustained by the enforcement of whiteness as neutrality and as universality, ensures the maintenance of a racial status quo on the journal. Because of the position of elite law reviews in the legal world, this racial status quo has consequences that reach beyond the fifth floor of Simon Hall at Boalt. This reinforcement of whiteness on a major U.S. law review needs constant critique. Ongoing efforts to change the *California Law Review* require at least the pressure of the gaze from outside in order to hold its members accountable for the damage that racial superiority continues to wreak as the *Review* participates in the construction of legal knowledge.

NOTES

1. This is a revised version of a paper submitted for the "Law of Non-Profit and Public Interest Organizations" course, taught by Professor Michael Hone (a *CLR* alumnus), at Boalt Hall School of Law, December 2002.
2. All of the figures in this paragraph come from Amy DeVaudreuil, "*California Law Review* Diversity Concept Paper," Sept. 29, 2002, p. 4.
3. *Id.* at 7.
4. *Id.* at 8.
5. *Id.*
6. Articles are pieces written by law professors and practitioners. Casenotes are short pieces written by students that analyze the legal argument of one case. Comments are longer student works that address broader legal issues.

10. Bylaws of *California Law Review* Incorporated, a California Nonprofit Public Benefit Corporation, Article IV, p. 2.

11. *Id.* at Article VIII, pp. 26-27.

12. The Coalition is a group that has a long history at Boalt. It has worked for diversity not only in the student body, but also on the faculty. It most recently became very active when Boalt was in the process of interviewing scholar Daniel Farber for a faculty position. Farber has written sensationalistic criticisms about feminist jurisprudence and Critical Race Theory, using a particularly problematic form of identity politics. That hire galvanized the Coalition, which has been very active during the past three years. The actions around Farber's hire continue to affect attitudes among administrators, faculty, and students at Boalt regarding the Coalition.

13. When Gabby and I were elected to ExComm positions (and others assumed to be affiliated with the Coalition also ran for positions), many CLR were concerned about the Coalition attempting to "take over" CLR. Gabby has heard references to "Gabby's Coup" by CLR members. See *infra* Part III.

14. See *infra* Part III.

15. See "*California Law Review* Diversity Concept Paper," *supra* note 1, at p. 1.

16. There was one Black member in the class before ours. There were no new Black members in our class in CLR.

17. In my explanation, I deleted reference to Black people who speak French and who experience astonished reactions by people who are unfamiliar with Francophone African and Caribbean nations.

18. These comments are documented in the memo sent to the author of this paper.

19. See *supra* Part II.

20. See *supra* Part II.

21. For example, when a white CLR member says that she can listen to Amy but cannot hear the same words spoken by Gabby or me, those of us who are raced by that speaker cannot be or appear "neutral."

22. Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993).

23. See, e.g., CORNEL WEST, RACE MATTERS, 17-18. Although West focuses on the particular social and cultural dynamics that devalue Blackness, in an organization such as CLR that devalues all "non-white" issues and marginalizes all "non-white" perspectives, his point about racial supremacy can be applied to a broader range of groups.

24. Thanks to Alex Lee for helping me to understand this dynamic between "neutrality" and universality.

25. See supra Part II.

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