

Critical Race Theory and the Constitutionality of Hate Speech Regulation

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Extract 1: Kimberlé Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas, 'Introduction', in Crenshaw, Gotanda, Peller and Thomas (eds), *Critical Race Theory: The Key Writings that Formed the Movement* (New Press, 1996) xiii-xv

Critical Race Theory embraces a movement of left scholars, most of them scholars of color, situated in law schools, whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole ... Although Critical Race scholarship differs in object, argument, accent, and emphasis, it is nevertheless unified by two common interests. The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure and professed ideals such as the 'rule of law' and 'equal protection'. The second is a desire not merely to understand the vexed bond between law and racial power but to *change* it ... Critical Race Theory – like the Critical Legal Studies movement with which we are often allied – rejects the prevailing orthodoxy that scholarship should be or could be 'neutral' and 'objective'. We believe that legal scholarship about race in America can never be written from a distance of detachment or with an attitude of objectivity. To the extent that racial power is exercised legally and ideologically, legal scholarship about race is an important site for the construction of that power, and thus is always a factor, if 'only' ideologically, in the economy of racial power itself. To use a phrase from the existentialist tradition, there is 'no exit' – no scholarly perch outside

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