



TEXAS A&M UNIVERSITY

School of Law

TAMU Law Answers Webinars

Conversations in Law & Social Justice Webinar Series

“Moving Forward Post-Insurrection”

Presented February 11, 2021

Panelists:

- **Sameer Ashar**, Clinical Professor of Law, University of California, Irvine School of Law (Moderator)
- **Luis R. Fraga**, Professor of Political Science at the University of Notre Dame
- **Felipe Hinojosa**, Associate Professor of History at Texas A&M University
- **Erika Wilson**, Professor of Law at UNC School of Law

Disclaimer: While some of the panelists are attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

TRANSCRIPT of webinar video at <https://youtu.be/ImFZC5uCPTM>

- Welcome to the Texas A&M School of Law's webinar, "Moving Forward Post-Insurrection." Today's webinar will kick off the spring 2021 TAMU Law Answers "Conversations in Law and Social Justice" webinar series.

And we have a number of upcoming webinars. Two weeks from now, we have one on mental health justice. In March, we will do one on leadership and mentoring the next generation of lawyer-leaders, followed by an update on the family separation issues related to immigrant youth. And we will then proceed with two other webinars, one on training social justice lawyers and farmworker employment justice.

All of our webinars are every other Thursday and they are at noon Central time. You can register for these webinars at [TAMULawAnswers.info](https://tamulawanswers.info). Today's webinar is co-sponsored by [Texas A&M School of Law](#) and the [Network for Justice](#), which is part of the American Bar Foundation's Project, "The Future of Latinos in the United States." And upcoming seminars are also going to-- webinars, sorry-- are also sponsored by the [American Bar Association's Commission on Hispanic Legal Rights and Responsibilities](#).

I have the great pleasure today of introducing some wonderful speakers that have agreed to be part of this very timely conversation. We have Professor Sameer Ashar, who's our moderator. He's a clinical professor at the University of California, Irvine School of Law. We have Professor Luis Fraga, who is at the University of Notre Dame and is part of the Department of Political Science.

We also have Associate Professor of History at Texas A&M, Felipe Hinojosa. And we have Professor Wilson, Erika Wilson, at the UNC School of Law, who is also joining us. Now, we don't go through a whole lot of bios for these accomplished guests. We have linked their bios and their information on the webinar. We're very excited to have them all involved. And as you will see in the conversation, their experience and expertise is really going to be the highlight of today's conversation.

Some of the panelists are attorneys, and they will be discussing legal issues and law, generally, but nothing in this webinar should be considered as legal advice. If there's an issue where an attendee needs legal assistance, they should consult with their own legal advisor to address their unique circumstances.

One other thing before I hand it over to Professor Ashar is if you have any questions, after the initial presentations, there will be a question and answer session. Please type in your questions as they come up in the Zoom Q&A feature at any time, and the panelists will address the submitted questions as time allows.

So with that, I'm going to thank again the panelists for joining us, and I'm going to turn it over to Professor Ashar so you can help us think about what have we learned since the January 6th insurrection and what lessons do we have in terms of social justice causes and conversations? So thank you all.

- Thanks, Luz. I really appreciate being a part of this panel. And it feels even more urgent-- it already felt urgent, but in light of all the new footage that's being released in Washington, DC over the last few days as a part of the impeachment case just over and over again brings home the urgency of the question that's before us and what to do about the threat of white nationalism with the risk that it could tear our country apart.

And so I'm so pleased to have perspectives from political scientists, historians, and legal scholars to try to help inform the debate. Obviously, we're still processing. I mean, we're still all processing even just the last four years, let alone what happened on January 6th. But I think the panelists have, sort of, scholarly tools that they've used to analyze both in the past and the present and they can help us think in more careful, nuanced, and deeper ways about the forces that we're facing.

So I wanted to launch the conversation. I was going to ask Luis, our political scientist, to kind of help launch our conversation, and ask you, Luis, how are the insurrectionists part of a longer line of right-wing movements in the United States going back at least a couple of centuries, and what

are the continuities and discontinuities of this group of insurrectionists with past far-right-wing movements?

- Sameer, thank you very much and thank you to Texas A&M Law for putting this together. Under the premise that looking back provides us a rich foundation for being able to move forward and think about what we might do, I thought I would start by simply suggesting that we understand what has happened more recently, the last four years, and of course, what happened on January 6th of this year as part of a longer trend of a political and social movement-- a political and social movement that has its origins in Reconstruction and especially post-Reconstruction, that has its origins in efforts to try to deny access, opportunity, voting, influence, representation of African-American communities that had, because of the three Civil War amendments, become very, very effective participants in the American political process. Hundreds of thousands of those who were former slaves after the Civil War voted. Hundreds were elected to public office, and all of that changed with the removal of Union troops in 1877 and the resurgence of Southern identity and Southern resentment against the progress that had been made.

If one then jumps-- and this is a quick jump-- but if one jumps to then a second major development that I think helps us understand where we are today, which was the development of the John Birch Society in the 1950s. It had two primary premises-- one, it had the premise of being very anti-communist and very suspicious of communism. McCarthyism comes to mind here. But it also had a very strong premise of promotion of states' rights. That was consistent with a suspicion of federal government and its efforts to try to use its authority to push states to treat its citizens, especially African-Americans, more fairly.

If one understands that John Birch Society, it was then manifested, I think, and the sentiments of the John Birch Society were very much manifested in the mid-1960s in the nomination of Barry Goldwater as a, if you will, extreme conservative from the West. Very important to understand how national these issues are-- from the West, in 1964, as a Republican candidate for President of the United States. He was, of course, not successful. But it showed how, at least, the Republican Party, as then constituted-- as then constituted, could put up a candidate who had views that some considered-- many considered-- even within the Republican Party as extremely conservative and right-wing.

Move forward, then, to the evolution of-- quickly move forward to the evolution of Richard Nixon's Southern strategy and the way in which the Republican Party decided that it could enhance its electoral gains by pushing white supporters of segregation, white supporters of states' rights, white supporters of suspicions of greater national government power, to support Republicans rather than Democrats precisely at the time when the federal government, under the leadership of Lyndon Johnson and, to some degree, earlier, President Kennedy, the extent to which the federal government had become not a completely active but a more active participant in trying to guarantee the rights of African-Americans and later other ethnic-racial minorities.

It then culminates in the nomination and election and eight years of governance of Ronald Reagan and the support he received. You remember that Ronald Reagan used to say that government was not the solution, government was the problem. That position-- again, Ronald Reagan from California, a Westerner, a Western extreme-- although by today's standards, some would call him-- some would call him a moderate. I would not. I would say an extreme conservative as well, who in a sense, legitimated that sentiment because of the level of office that he held, and the positions that he took, and the policy positions that he took as well.

Now, then move to the Tea Party and the way in which the Tea Party and the evolution of the Tea Party was an attempt by some, again, within the Republican Party, to present a more conservative and extreme conservative position. And I think it's fair to say that the positions of many of the supporters of the Tea Party and elected officials who gained their positions because of the way in which they embraced the Tea Party, led to the type of expression of dissatisfaction with the electoral process, dissatisfaction with politics as it traditionally occurred, and that was part, a very significant part, of what led to the election of Donald Trump. And I think his leadership position as head of the Republican Party and as president of the United States then led to the type of suspicion of government action and especially of any opposition that led to the sort of event that we saw on January 6th. And my point, to conclude very quickly, is that we have to understand that what happens in contemporary times happens because of earlier efforts to try to legitimate these views-- to legitimate these views that has very-- legitimate these views in American popular discourse that has very deep roots-- very deep roots-- in American society.

- I wanted to zero in on one-- well, you date the sort of historical analysis back to Reconstruction, which sounds just right, at least in U.S. history. But the sort of dialectic or relationship between anti-Blackness in American law and governance and anti-immigrant fervor, and in more recent, in the last 50 years-- well, 30 to 50 years-- kind of anti-Latinx fervor, which finds its full expression in Trump's, sort of, ascent within the Republican Party. Just in the last four years, anti-immigrant sentiment and policy has been a core, kind of, pillar of the Trump administration.

What's the relationship between anti-Blackness and anti-immigrant, anti-Latinx fervor? How does it mutate? How does it come to the surface and then go get submerged again? What are your thoughts on that?

- My-- my thought is, at least to me, very clear. We have a long history of anti-immigrant fervor, just like we have a long history of anti-African-American sentiment. It goes back to the Alien and Sedition Acts of the late 1700s. It goes back to the development of the Know Nothing party in the early 1830s.

And which immigrant groups were the targets? Starting in the 1930s, Latino immigrants or Mexican immigrants were a target of national policy through repatriation efforts under the Hoover and, later, Roosevelt administrations. It continued under a renewed effort in the Eisenhower administration in the 1950s with-- this was the actual term used, the formal term

used-- "Operation Wetback" to try to repatriate many Mexicans and, as happened, many Mexican-Americans. Perhaps not by design-- some would say by design-- to have that be part of how American national identity was enhanced.

The way that I relate the two together is simply through an understanding that immigrants become part of how Americans, especially many white Americans, understand the power of racial hierarchy, and the power of racial privilege, and the power of white resentment to mobilize forces. As well, it shows the way in which that sentiment is reflected in national policy.

When we think of then what happens with Trump, and under the direction and advice of his primary advisor on these issues, Stephen Miller, what we see is that Latinos and Latino immigrants and Muslim immigrants and other immigrants-- immigrants from Haiti, for example, become explicit-- and Central America-- become explicit targets of exclusion. The term that I like to use, and I'll conclude with this point, a term that is used in some political science and sociological literature is that some immigrant groups, especially those of color, can always be considered perpetual foreigners. Regardless of their formal citizenship status, regardless of how many generations they are in the United States, they can quickly become identified as "not American" or "not American enough." to be considered legitimate. In the way that African-Americans, throughout so much of their history in this country, have been considered less than full citizens.

- Right. Got it. Thank you. Thank you, Luis. Felipe, you've just published a new book called Apostles of Change on the church takeovers by the Young Lords in four American cities in 1969 and 1970. How do you understand, specifically, the role of religion in the social movements that have led to the insurrection on January 6th? What's-- what's-- how does religion fit in this sort of social movement ideation?

- Well, let me just start off by saying that religion is everywhere. It's ubiquitous. It fits in like a glove in terms of thinking about everything that Luis has just described in terms of that long history of exclusion and white supremacy.

You know, I think it's hard to-- especially as you just noted at the beginning, with the new videos that we are watching as the impeachment trial proceeds, that this was, in many ways, a Christian insurrection. This was a religious movement-- crosses being held up. We see that these insurrectionists inside of the Senate chamber took a moment-- they were not fearful at all-- they stopped, they took a moment to pray. They removed their head coverings. You see the shaman removing his head covering in one of the videos to take time to pray.

These are folks that have believed right from the beginning that God is on their side and that the kind of defense of these American ideals, according to them, are supplanted or defended or undergirded by a very specific theology that the United States has really adhered to. And I think just to think about it in this way is that when we talk about this insurrection, it's a question of nationalism. It's a question of white supremacy. And it's a question of white Christianity.

You know, the American Enterprise Institute just came out with their findings on just how divided the country was, and I was listening to the report just this morning that found that three in five white evangelicals still believe that Biden was voted in-- that it was an illegitimate election. No religious group more so than white evangelicals takes as much pride in being American as they do, that white evangelicals are much, much more likely to believe in conspiracy theories, in QAnon, and all of this sort of madness that has emerged on social media. And that white evangelicals, more so than any other religious group, are actually fearful of a Biden administration-- scared in terms of what might come and even try going to the extreme of their sense of losing the American way and going to the extreme of having to enact violence in order to defend-- in order to defend that.

That's very, very sort of-- it-- it ties into the history of white Christianity in this country. In the 1920s, that had that long history as Luis was mentioning-- in the 1920s, KKK members were very much tied with the church. They would go in and give announcements and give testimonies and give-- and invite parishioners out to Klan rallies.

In Houston, in the 1960s as Houston was experiencing suburban growth and development, inner-city white churches were dealing with the question of leaving the city and moving to the suburbs and the question of integration and white pastors actually standing at the doors of the church prohibiting African-Americans from coming in or even becoming members of these churches. So this is, you know, it's sort of-- religion is everywhere, and yet it's almost ignored in these-- sometimes in these conversations. It's very rare to see as much as these religious symbols were up everywhere that for whatever reason, it's not put together in that particular way.

- I guess it's just assumed, like it's in the water, and we don't think about separating it out. So in your book and your scholarly work, you talk about the confrontations of left social movements with the church to try to force the church to take positions that would be favorable to people who were its constituents. Do you see anything analogous happening in the current moment between left social movements and the church? Is there a viable religious left that is in part an answer to what you just laid out?

- Absolutely. I don't buy into the argument that somehow there was a decline of the religious left in the 1970s or in that era of retrenchment in the years after the Civil Rights movement. People of faith have been active at the grassroots level. And I think part of the problem has been that the religious left is often misconstrued, often misidentified. And it's almost a similar problem in the sense that when we do see these sort of movements emerge-- that these religious and progressive movements emerge-- that oftentimes, we're not talking enough about how faith and religion are influencing these progressive movements for justice and radically, obviously, radically, radically different ways.

There is a viable movement. You look at the Reverend William Barber and the resurgence of the Poor People's Campaign; Sister Nancy Pimental in South Texas, in terms of looking and working with families that have been separated on the border. It's-- the problem is that there's-- instead of

thinking about a religious left as sort of a national movement, it really has historically been a very sort of grassroots movement. And that's a benefit and that's also a curse in terms of understanding and how we see the religious left.

What I write about in 1969 are barrio kids, activist radicals that were imagining a new society that grew up, many times, in Catholic and Protestant and Pentecostal homes, and were going to the church to find what society was not offering. You know, 1969 was a turbulent year. Nixon is moving back on Johnson's war on poverty. He's going to strip the dollars that are going to those federal programs. And communities are legitimately concerned in terms of what will happen and what resources would be offered.

And these occupiers, these activists, these radicals, these dreamers go into these churches and begin to establish health clinics, food pantries. They're reading poetry out loud. They're doing educational classes. They're allowing welfare organizations to come in and strategize in terms of what's going to be the agenda for the 1970s.

And, if anything, the religious left-- the kind of hope that it offers us is looking at how we can be sort of pragmatic in terms of what we're going to need in the coming years to push back against this type of religious extremism-white supremacy that has become-- I hesitate to even say extremist because it has become mainstream, unfortunately.

- Yeah. Yeah, thank you, Felipe. Erika, I wanted to bring you into the conversation. You've authored a forthcoming article on Harvard Law Review entitled "Monopolizing Whiteness" about the value of all-white schools and the inadequacy of equal protection theory in eroding white privilege.

So let's talk squarely about whiteness. What's the basis of the seeming siege mentality that the insurrectionists showed and demonstrated? How has whiteness been challenged in the last decade and why do we see now this violent reaction by white nationalists?

- Yeah, thank you for that, because I think in order to understand any of this, we have to start with the construction of whiteness. So I'm going to share my screen because I want to share a couple of photos that I think will help us to better navigate this conversation.

OK. Can you all see the slides?

- Yes.

- OK. So the first thing to note, I would say, is that in order to understand the siege mentality, we have to understand--

- We can see your presenter's view. Is that what you want to share, or do you want to share just this screen?

- I will stop it. OK. Now-- how about now?

- Yeah, now we're seeing.

- OK. But the first thing that we have to understand is that the siege mentality is very much rooted in white supremacy. And so we throw around the term white supremacy a lot. And I think the layperson, when they hear white supremacy, they think of people in sheets burning crosses, et cetera. And certainly, that's a form of white supremacy, and we saw some of that out there with the insurrectionists.

But I want to give us a more precise definition of white supremacy because I think that this definition is at the root of all that we're seeing. And that definition is a political, economic, and cultural system in which whites overwhelmingly control power and material resources and in which white dominance and non-white subordination exists across an array of institutions and social settings. So it's this idea that whiteness is at the top of a racial hierarchy, so to speak.

And so looking at this from a law professor perspective, I always say that the law orders and structures are societal norms, expectations, and property rights. And so that siege mentality, I think, is a function of a two-fold reality. The first is that the law orders and structures, societal norms, expectations, and property rights that are grounded in this notion of white supremacy.

So for much of the country's history, as Luis has talked about, the law operated to essentially codify white supremacy in all of our institutions. It did so in ways that categorized-- that gave whites both material and symbolic expectations of superiority. And so what did that look like? It started-- I think you have to go back even further. The construction of whiteness actually started with the laws that made Africans enslaved, right? We actually had laws that said if you are raised as a black or African, you're enslaved. If you are raised as white, you are free.

And so that's where we see the first initial valuation of whiteness. Even after the end of enslavement, the law continued to operate in that manner, limiting black participation in American life, creating Jim Crow laws, et cetera. It also did so through its immigration laws, right? Our first Immigration and Naturalization Act of 1790 by law-- by the text of the law-- limited citizenship to free whites. Subsequent immigration laws continue to prefer white people-- the 1882 Chinese Exclusion Act, the Immigration and Naturalization Act of 1924, which had racialized quotas.

And so the combination of all of these things-- the race-conscious immigration laws, the construction of whiteness in order to justify enslavement of Africans-- helped to entrench a sense of white supremacy and superiority. And also, most importantly, I think, fed into notions of whites that the only true American is white and that all others, no matter how you got here, are not real Americans.

So in the last four decades, I will say, and I put up the sign of the "No dogs, Negroes, and Mexicans" because this was not that far ago. I pulled this slide and this was a sign that was up in the 1940s. It's to give you some perspective on that. These are signs that my mother saw-- my

mother growing up in Jim Crow Arkansas, my father growing up in Jim Crow Louisiana. This was a way of life for them.

And so, in the last four decades, I would say, the white expectations have been upset in terms of what that hierarchy is going to look like. A lot of this, what we saw at the Capitol stemmed from feelings about the election of the first non-white president in Barack Obama, right? This was the catalyst for the Tea Party and a lot of the things that followed.

And so what we saw, in terms of the mentality of the insurrectionists, was this reclaiming what they felt like they were entitled to have, to grapple for a resetting of the way our laws are going to look. Trump definitely had a different agenda and they wanted to continue that agenda because they thought building a wall, right, would get us back to an all-white scenario where there are not as many folks of color. This idea of even questioning Obama's true citizenship because, again, only whites can be true Americans.

And so the last two slides I'll show just-- this symbolic-- this picture was particularly symbolic for me, in terms of understanding the siege mentality. Because here we have the Confederate flag that never breached the Capitol during the Civil War actually being flown proudly in the Capitol by the insurrectionists. And then we also have another point that I think is pretty prescient is that at some point, the insurrectionists were actually removing the American flag in order to put up the Trump flag. This idea of a white savior who was going to return them to a free time of whiteness, right?

And all of this, I think, is rooted in the backlash-- critical race theorists call it reform-retrenchment, right? We have reforms that integrated people of color born to the American system. The retrenchment was-- retrenchment always follows that. In this case, the retrenchment was the election of Trump after the election of President Obama and all of the very myopic policies that followed.

- Can I ask you, Erika, if we take the critical race theory sort of framework of reform and retrenchment, what happens after retrenchment? Or is there no after? Is it-- and how long does retrenchment last? And how bad does it get?

Do you have thoughts on that, particularly with this new administration that's now in office? Is the Biden administration a part of the retrenchment or a part of lukewarm reform that will lead to even further backlash and siege mentality?

- Well, I would say it's important to understand that the retrenchment-- the reform-retrenchment theory suggests that racial progress is not linear, that we're not going to keep going up and getting better, but that we're going to have peaks and valleys, and that the valleys will always dip us back to the baseline of white supremacy. So the retrenchment lasts as long as it needs to last to get us back to an acceptable baseline of white supremacy.

And so from that perspective, I do think with the Biden administration, we'll see some peaks of what look like reform. But we also have to be very careful because the thing about reform-retrenchment is that when you get the retrenchment, it takes you so far back that if you come up just a little bit, you think that's reform. So you never get to a place of linear progression but continued dips, ups, and downs. So one of the things that we must be particularly diligent about with the Biden administration is not accepting performative acts as a form of progress, and instead really digging in for substantive changes that will-- look, the only way we undo this is to continue to press for anti-subordinating policies that don't take us back to the baseline of white supremacy.

- And what's ironic is that it's the performative acts that probably inspire the greatest reaction without offering actual redistribution of power across racial lines. So in some ways, they are-- I mean, that's the danger of liberalism, I guess, or liberal legalism within the legal context.

Luis, what do you think? Do we live in an age of white reaction and retrenchment and do you see any way out of this cycle in the near term? You're muted. You're muted, Luis.

- What concerns me the most is the way in which this is happening at a time of very significant demographic shift in the population of the United States. And as Latinos continue to grow, as Asians continue to grow, as Latinos and Asians make coalitions with progressive whites and with African-Americans, as African-Americans become more and more significant components of statewide electorates, as we saw in Georgia, I see the possibility that-- and this is me playing, if you will, psychotherapist a bit-- I see the white retrenchment, I see the white racism, I see the calls to white supremacy as being driven by a white insecurity, a sense that whites are no longer going to be in charge.

And that insecurity reaches the point of not trusting traditional institutions of government, traditional institutions of government accountability, as we saw on January the 6th, and that as long as those changes continue, those demographic changes continue, if a leader appears who can effectively capture that sense of insecurity, as former President Trump was able to do, then I think America is vulnerable to the possibility that the progress that was made can be limited virtually overnight, very quickly, especially when there is majority support on the Supreme Court, majority support in the House or majority support in the Senate to complement the presence of that person, perhaps, in the White House.

I think that's part of the thinking of the impeachment managers and the Democratic majority in the House to try to gain a conviction of President Trump and then by simple majority vote, be able to say he can no longer run for office, is to at least remove one person from the possibility of being able to access that sense of white insecurity that makes them feel as Professor Wilson and Professor Hinojosa were saying, that makes them feel like this country is no longer theirs and that somehow other people are now in control, other people are now in charge.

- Thank you, Luis. Felipe, I wanted to turn back our gaze on the left. And the short dialogue between myself and Erika talked about this dynamic, a performativity versus actual

redistribution of power. You've studied the Young Lords, who put forth a 13-point program and plan that was a sort of a radical vision of what American society could look like. Do you think that there is a radical vision that might take us away from the cycles of lukewarm or kind of short-term reform in exchange for deep retrenchment and backlash? Is radical vision one path away from that cycle?

- You know, I think what the Young Lords presented, not only to their neighborhoods and the boroughs of New York City or the island of Puerto Rico but to the entire country, even to the entire world, is that you have to have these bold visions. You have to have radical visions in order to bring about real change. These are folks that were not simply interested in doing something simply for the performative aspects, but in trying to really upend the capitalist system.

And I think it behooves us more than ever now to really sort of take seriously the calls. If we're looking back historically at the folks that have pushed us to think about critiquing capitalism, to think about the failures of capitalism, to think about the possibilities that community development bring and the possibilities that when you're able to put forth a plan for access to health care for everyone, when you're able to put forth a plan for battling and pushing back against this hunger epidemic that-- news is reporting something like 30% of school kids are in a hunger crisis now, and schools are transforming into food pantries and so forth.

When you have these folks, the Young Lords in New York City and Mexican-American Youth Organization in Houston and other places across the country, hopefully, it helps us to rethink our vision or our idea of what these radicals were thinking about. I think oftentimes, they don't get the credit that they deserve in terms of putting forth this vision. And maybe they're thought of as irresponsible. Maybe they're thought of as loud or whatever it might be. But actually, they were paving the way forward in terms of the failings of capitalism and the possibilities of a socialist society, at least according to what the Young Lords were arguing.

And so, more than anything, I think today-- you know, and as a historian, I have to be steeped in hope. And I do see that we're at the beginning stages. I mean, I got to Texas A&M in 2009, and I remember a huge Tea Party rally just that year in response to the election of President Obama. And I remember being floored by that. I'd never seen anything like that as blatant and as clear and as out there as it was, and to just see it kind of develop and to grow, whether or not Trump is around or not, you know what I mean?

And so that process is going to continue, which means on the other side, in terms of having this vision, we have to be clear of what it is that we want. And I think looking at the Civil Rights era, looking at Latinx and Black radicals who were pragmatic, came up with breakfast programs, all of these new things that we're going to need more of as, you know, the economy continues to take hits in the wake of this pandemic. But then also in trying to build coalitions, as Luis was mentioning, with progressive whites or with different racial and ethnic minorities. That's going to be supremely important. And I think the Young Lords and other groups like them give us a route to look at that and how to do that, even in today's highly polarized environment.

- Thank you, Felipe. Erika, before we open up to Q&A, I wanted to come back to you. You and I are both-- we're in law. The question of-- you talked about how law structures white supremacy and racial hierarchy.

So are there ways in which to challenge the current structures of law, of legal structure, in order to redistribute power across race and class lines to the extent to which Young Lords, Black Panthers, and then their analogous groups in the current context, like the Dream Defenders and Black Lives Matter and a number of other groups, Mi Gente, are trying to be the heirs to the radical groups that Felipe was just talking about. How can the law be altered to allow for that kind of flourishing and potentially larger structural change?

- Yeah, so it's exactly right that the law does shape our expectation, norms, and property rights. So I think the law actually has a vital role to play here. And one of the first things that the law needs to do in order to be effective here is to change our lens when we think about equality and inclusiveness. Often we will point to anti-discrimination law. We have a Civil Rights Act. We have a Voting Rights Act.

But part of the critique of those structures of law is that they're very much wedded to an anti-differentiation, anti-discrimination principle under the guise that as long as we stop treating people-- we shouldn't treat people differently based on race or ethnicity, and if we stop doing that then everything will take care of itself. But that's just not true. As I noted, we've had a long history of race-conscious laws that created white supremacy.

In order to undo that or level the playing field, so to speak, we need laws that effectuate anti-subordination. What I mean by anti-subordination is laws that actually push to foment true substantive equality for traditionally marginalized groups. And so it's not politically popular, but to treat everyone the same is not to foment substantive equality. We know that there are substantial wealth gaps. We know that there are substantial gaps in power, so how do we address that from a legal framework perspective?

We have to enact some laws that are reparatory in nature. We have to enact some laws that take the sting out of our capitalist system. I'm with Professor Hinojosa on the idea that a critique of capitalism is very much necessary.

But thinking pragmatically, some of the ways that we can combat that are to push for laws that help to-- within our unfortunate capitalist system, help to make sure that people, particularly traditionally marginalized people, aren't drowning-- things like the minimum wage laws, for example, pushing for more jobs programs, you know, that the possibility of creating jobs to help us combat climate change and global warming. All of these things need to be on the table and they need to be on the table under just the ideology or perspective of trying to foster anti-subordination rather than anti-differentiation or anti-discrimination.

- Erika, I was just wondering you could spend a minute just talking about antitrust law because you've written about that most recently. And just-- no one would connect antitrust law,

necessarily, in mainstream political dialogue to racial reconstruction. I was just wondering if you could say a word about that.

- Right. So in my most recent scholarship, one of the things that I've done is to look at the Sherman Act, which is the law that is used to address monopolization. And so one of the reasons I wanted to do that is because when we talk about inequality, particularly for subordinated groups, we talk about it from the perspective of differential treatment, but we don't talk about it from the perspective of whites.

And so one of those things I talk about it, in the context of education, but I think it cuts across many other areas, is that the flip side of subordination for marginalized groups can be monopolization-- white monopolization and hoarding of resources and opportunities. And so I suggest that antitrust law has certain frameworks embedded within the doctrine that might be useful for us to look at in order to understand how to address monopolization. How do we undo monopolies? How do we create systems that allow for more robust participation by all?

- Right, thank you. I appreciate that. I wanted to open it up to Q&A. If you have questions, please post them in the Q&A feature. We have a couple of questions and so I'm just-- I'm going to pose it to the panel. And please feel free to take the lead in answering.

So the first question is-- well, you know I'm going to-- I'm going to-- there was a question that was responded to, but I'm just going to put it out there in more general terms. There's a question about white supremacist statues on university campuses. There's a question specifically about something that was an incident at Texas A&M. How do you think about this movement to take down Confederate statues and hold universities accountable, particularly public universities. What role does that play in the fight against white retrenchment, white supremacy, and the things that are happening in our current context, the social movements that underlie the insurrection?

- So I'm happy to take a stab at this because I teach at a public university that's dealing with and has dealt with this very issue. And so I go back to my prior definition of white supremacy, this idea that it's a political, economic, and cultural system that perpetuates ideas of white dominance. And so, when you think about public institutions putting up statues or monuments to Confederates who were attempting to maintain a very overt system of white supremacy, it does something-- it says something about our culture and it perpetuates a particular dynamic in terms of who belongs and who does not belong.

So I do think when you have public institutions, there is an obligation to not propagate that history. So the counter-argument that we've often gotten at my university is well, we can't undo history and you can't rewrite history. But I think it's important that we reframe the debate. This is not about undoing or rewriting history. There are plenty of figures in history for whom we don't build statues or monuments to.

It's the valorization of a particular kind of history that feeds into or continues to perpetuate white supremacy. Certainly, we can continue to teach this history. We can put these kind of

monuments in museums, but they don't have to be in the public space in ways that continually let or send the message to groups-- other groups, people of color, in particular-- that you are not-- that this space is not for you or that this space is valorizing a particular history that tried to subordinate you.

- I completely agree. And I think, just to follow up really quick, on everything that Professor Wilson just mentioned, is something we're going through here at Texas A&M with the Sul Ross statue and some of the protests that happened over the summer last year. The other thing that I would just add to that is that if you walk around our campus, at least at Texas A&M here in College Station, there are no other visions of what this history has been all about. There are no other statues to Cesar Chavez or Martin Luther King or other representatives of radical democratic movements that are representative of the demographic shifts.

The student body has worked-- and faculty and staff, as well-- for over 25 years to get a statue for Matthew Gaines, the Texas senator, ex-slave, Baptist preacher that signed the note that made Texas A&M possible in 1876 during Reconstruction. He was a senator during Reconstruction. So and that, just having a statue of Matthew Gaines, took over 25 years to finally get approved and funded and all of that. I think it says something about the absence of some of those statues when you have a very prominent Confederate one and an unwillingness from an institution to think about different ways of acknowledging our history and some of our other leaders that have made positive changes.

- Yeah, there's another question that just popped up with regard to the sort of personnel that administer the university and you extend that to faculty and the kinds of under-representation that continues to be extended in the current context, and that is are universities home-- part of the retrenchment or are they part of something else? Are they part of some radical rethinking of the way things are and the potential of extending radical democratic enfranchisement to the broadest possible groups of people?

But I wanted to shift. There's kind of two related questions, specifically about Hispanic and African-American male support for Trump and then a broader question about the way in which white supremacy uses conservative people of color often as tokens in order to rebut accusations of white supremacy and white retrenchment. I was wondering if any of you would like to comment on this very real dynamic on the right and within white supremacist movements.

- I'll take a stab at it. Certainly, it's the case that there have always been some African-Americans and even more Latinos who have been sympathetic to conservative views and Republican views. Part of that may be driven by concerns related to reproductive rights. Part of that may be related to conservatism related to immigration.

But what we know for sure is that there are patterns out there and those patterns have African-Americans in general-- in general, not everywhere, in general-- supporting more conservative candidates at 5%, maybe. Maybe 10% in some instances. For Latinos, it's closer to 25%.

In fact, if you look back to as long as we've had data on Latinos and voting in presidential elections, at least according to the measures used-- and there's a lot of controversy within political science as to whether appropriate sampling techniques were used and measures and so forth-- but if you take the data at its face value, about 28.4% of Latinos have supported any Republican who has run for president of the United States, so you have to understand any increase or decrease in light of what these averages are.

It's not related, as best we can tell from the data, to socioeconomic status. It seems to be related more to some components of ideology. And it's not equitably distributed across the country. For Latinos, of course, we know that people of Cuban origin have a different traditional distribution of Democrat and Republican support, more Republican than any other group. But even among the Latino Democratic supporters, there's higher support in New York and New Jersey than there is in Texas and California. So the idea that there's diversity is important to understand.

But the overall pattern is one of a 2 to 1, 3 to 1 higher level of support for Democrats consistently. And for African-Americans, it's much more high than that. So when people say increase, they have to understand and explain how much of an increase, whether or not that increase is consistent over time.

For Latinos, you have to start at that base. I use 25% as a base Republican support. For African-Americans, I use a 5% to 10% base of support and see if it goes up and down from that.

- I just-- I would add one more thing to that that I think is important, exactly right. There's also a gender component to it. There was the question asked, particularly about African-American and Latinx men. And so I think we've talked about white supremacy, but we haven't talked about patriarchy and the way that some patriarchal ideology espoused by conservatism, Trumpism in particular, is more likely to appeal to the male demographic, across race.

So I think in this conversation, we also have to not neglect the work of talking about what it is that patriarchy does in terms of pressing a certain notion of relation-- gender relationships and how that might influence what is happening in terms of support for various candidates.

- There may be ways in which Trump is appealing to a kind of patriarchal element across race lines, right?

- Yes.

- And so-- yeah. So point very well taken, Erika. The idea of intersectionality-- Kim Crenshaw's conception of intersectionality-- has to be integrated into our understanding, as opposed to just taking a unitary race lens, which really will not give us all the answers that we need in order to move forward.

I wanted to-- there was a question that was asked by one of the registrants about the tension between free speech and racial incitement. And-- and I think this goes to also to social media,

most likely as well. The way in which white supremacy is taking form in the current context is at least partly dependent on speech that's being disseminated through social media. And so, how do you-- how do you think about the tension between free speech rights and racial incitement? Is this just something that we have to live with, the fact that there will be white supremacist speech on our computer screens, in front of us, in front of our children, and kind of being extended and radiated across generations?

- I'm not a legal scholar, so I'll let the legal folks talk about First Amendment rights. But I will say that it's important to make a distinction between free speech and lying. And when the facts demonstrate that what you're saying is completely untrue, not a matter of opinion, but when your description of a circumstance, when your description of data, when your description of, perhaps, an electoral process that happened recently, is objectively, from any perspective, wrong, as demonstrated time and time and time again, I think that might be a circumstance where a restriction on freedom of speech is appropriate because what you're not doing is expressing your opinion. What you're doing is misleading-- misleading the public. And I understand this is a very complex area and a complex issue, but I do see a fundamental difference between the two.

And I think social media companies have to take more responsibility for limiting: one, the misleading, and two, limiting hate. This has happened all around the world. When social media has been used to attack people of different religions, of different ethnic origins in Asia and Africa and other places. So this is not just a U.S. phenomenon. It's something that I think social media companies have a responsibility to help us think through.

- I mean, this might be an instance in which monopoly law can be used in its original conception, potentially for the state to regulate. OK, thank you so much to the three of you for this great discussion. I'm going to turn it back to Luz.

- And thank you, Professor Ashar, for all your help in bringing this conversation forward. And thank-- thank you to all of you who joined us today. If you'd like to join us again, we'll be back in two weeks. The recording-- some folks have asked about the recording of this particular webinar, and it will be up probably in about a week and a half in the same place where you registered, which is [TAMULawAnswers.info](https://www.tamulawanswers.info). so thank you again for the panelists for all your insights and for your leadership in the conversation, Sameer.

- Thank you. Bye-bye.

- Bye-bye.

- Thank you.