

Chapter Title: Introduction

Book Title: Critical Race Theory (Third Edition)

Book Subtitle: An Introduction

Book Author(s): Richard Delgado and Jean Stefancic

Published by: NYU Press. (2017)

Stable URL: <https://www.jstor.org/stable/j.ctt1ggjjn3.6>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



NYU Press is collaborating with JSTOR to digitize, preserve and extend access to *Critical Race Theory (Third Edition)*

JSTOR

## CHAPTER I

### Introduction

*Think of events that can occur in an ordinary day. A child raises her hand repeatedly in a fourth-grade class; the teacher either recognizes her or does not. A shopper hands a cashier a five-dollar bill to pay for a small item; the clerk either smiles, makes small talk, and deposits change in the shopper's hand or does not. A woman goes to a new-car lot ready to buy; salespeople stand about talking to each other or all converge trying to help her. A jogger in a park gives a brief acknowledgment to an approaching walker; the walker returns the greeting or walks by silently.*

*You are a white person—the child, the shopper, the jogger. The responses are all from white people and are all negative. Are you annoyed? Do you, for even a moment, think that maybe you are receiving this treatment because of your race? Or might you think that all these people are merely having a bad day? Next suppose that the responses are from people of color. Are you thrown off guard? Angry? Depressed?*

*You are a person of color and these same things happen to you, and the actors are all white. What is the first thing that comes to your mind? Do you immediately think that*

*you might be treated in these ways because you are not white? If so, how do you feel? Angry? Downcast? Do you let it roll off your back? And if the responses come from fellow people of color, then what do you think? Suppose the person of color is from a group other than your own?*

*Sometimes actions like these stem from mere rudeness or indifference. The merchant is in a hurry; the walker, lost in thought. But at other times, race seems to play a part. When it does, social scientists call the event a “microaggression,” by which they mean one of those many sudden, stunning, or dispiriting transactions that mar the days of women and folks of color. Like water dripping on sandstone, they can be thought of as small acts of racism, consciously or unconsciously perpetrated, welling up from the assumptions about racial matters most of us absorb from the cultural heritage in which we come of age in the United States. These assumptions, in turn, continue to inform our public civic institutions—government, schools, churches—and our private, personal, and corporate lives.*

*Sometimes the acts are not micro at all. Imagine that the woman or minority standing alone and ignored at the car lot eventually attracts the attention of a salesperson. They negotiate, and she buys a car. Later she learns that she paid almost a thousand dollars more than what the average white male pays for that same car. (See Ian Ayres, *Fair Driving*, 104 Harv. L. Rev. 817 [1991]; Michael Luo, “Whitening” the Résumé, N.Y. Times, Dec. 5, 2009.) A fourth-grade teacher, shortly before beginning a unit on world cultures, passes out a form asking the children to fill out where their parents “are from.” The bright child who*

*raised her hand earlier hesitates, knowing that her parents are undocumented entrants who fear being discovered and deported.*

### *A. What Is Critical Race Theory?*

The critical race theory (CRT) movement is a collection of activists and scholars engaged in studying and transforming the relationship among race, racism, and power. The movement considers many of the same issues that conventional civil rights and ethnic studies discourses take up but places them in a broader perspective that includes economics, history, setting, group and self-interest, and emotions and the unconscious. Unlike traditional civil rights discourse, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.

After the first decade, critical race theory began to splinter and now includes a well-developed Asian American jurisprudence, a forceful Latino-critical (LatCrit) contingent, a feisty LGBT interest group, and now a Muslim and Arab caucus. Although the groups continue to maintain good relations under the umbrella of critical race theory, each has developed its own body of literature and set of priorities. For example, Latino and Asian scholars study immigration policy, as well as language rights and discrimination based on accent or national origin. A small group of American Indian scholars addresses indigenous people's rights, sovereignty, and land claims. They also

study historical trauma and its legacy and health consequences, as well as Indian mascots and co-optation of Indian culture. Scholars of Middle Eastern and South Asian background address discrimination against their groups, especially in the aftermath of 9/11. (See, e.g., Khaled A. Beydoun, *Between Indigence, Islamophobia and Erasure: Poor and Muslim in “War on Terror” America*, 105 Calif. L. Rev. \_\_\_\_ [2016]. On the diffusion of critical race theory to other disciplines and nations, see chapter 7.)

### *B. Early Origins*

Critical race theory sprang up in the 1970s, as a number of lawyers, activists, and legal scholars across the country realized, more or less simultaneously, that the heady advances of the civil rights era of the 1960s had stalled and, in many respects, were being rolled back. Realizing that new theories and strategies were needed to combat the subtler forms of racism that were gaining ground, early writers, such as Derrick Bell, Alan Freeman, and Richard Delgado, put their minds to the task. They were soon joined by others, and the group held its first workshop at a convent outside Madison, Wisconsin, in the summer of 1989. Further conferences and meetings took place. Some were closed sessions at which the group threshed out internal problems and struggled to clarify central issues, while others were public, multiday affairs with panels, plenary sessions, keynote speakers, and a broad representation of scholars, students, and activists from a wide variety of disciplines.

### *C. Relationship to Previous Movements*

As the reader will see, critical race theory builds on the insights of two previous movements, critical legal studies and radical feminism, to both of which it owes a large debt. It also draws from certain European philosophers and theorists, such as Antonio Gramsci, Michel Foucault, and Jacques Derrida, as well as from the American radical tradition exemplified by such figures as Sojourner Truth, Frederick Douglass, W. E. B. Du Bois, César Chávez, Martin Luther King, Jr., and the Black Power and Chicano movements of the sixties and early seventies. From critical legal studies, the group borrowed the idea of legal indeterminacy—the idea that not every legal case has one correct outcome. Instead, one can decide most cases either way, by emphasizing one line of authority over another or interpreting one fact differently from the way one’s adversary does. The group also incorporated skepticism of triumphalist history and the insight that favorable precedent, like *Brown v. Board of Education*, tends to erode over time, cut back by narrow lower-court interpretation, administrative foot dragging, and delay. The group also built on feminism’s insights into the relationship between power and the construction of social roles, as well as the unseen, largely invisible collection of patterns and habits that make up patriarchy and other types of domination. From conventional civil rights thought, the movement took a concern for redressing historical wrongs, as well as the insistence that legal and social theory lead to

practical consequences. CRT also shared with it a sympathetic understanding of notions of community and group empowerment. From ethnic studies, it took notions such as cultural nationalism, group cohesion, and the need to develop ideas and texts centered around each group and its situation.

#### *D. Principal Figures*

The late Derrick Bell, formerly at Harvard Law School but serving as visiting professor of law at New York University when he died in 2011, became the movement's intellectual father figure. Most famous for his interest-convergence thesis, Bell authored many of CRT's foundational texts.

Alan Freeman, who taught at the State University of New York at Buffalo Law School, wrote a number of leading articles, including one that documented how the U.S. Supreme Court's race jurisprudence, even when seemingly liberal in thrust, nevertheless legitimized racism. Kimberlé Crenshaw, Angela Harris, Cheryl Harris, Charles Lawrence, Mari Matsuda, and Patricia Williams were major early figures, as well. Leading Asian scholars include Neil Gotanda, Mitu Gulati, Jerry Kang, and Eric Yamamoto. The top American Indian critical scholar is Robert Williams; prolific Latinos of a critical persuasion include Laura Gomez, Ian Haney López, Kevin Johnson, Gerald Lopez, Margaret Montoya, Juan Perea, and Francisco Valdes. Influential black scholars include Paul Butler, Devon Carbado, Lani Guinier, and Angela Onwuachi-Willig. The reader will find their ideas discussed frequently throughout this primer.

The movement counts a number of fellow travelers and writers who are white, notably andré cummings, Nancy Levit, Tom Ross, Jean Stefancic, and Stephanie Wildman. (See also the discussion of critical white studies in chapter 5.)

### *E. Spin-Off Movements*

Although CRT began as a movement in the law, it has rapidly spread beyond that discipline. Today, many scholars in the field of education consider themselves critical race theorists who use CRT's ideas to understand issues of school discipline and hierarchy, tracking, affirmative action, high-stakes testing, controversies over curriculum and history, bilingual and multicultural education, and alternative and charter schools. (See, e.g., *Foundations of Critical Race Theory in Education* [Edward Taylor, David Gillborn & Gloria Ladson-Billings eds., 2d ed. 2015].) They discuss the rise of biological racism in educational theory and practice and urge attention to the resegregation of American schools. Some question the Anglocentric curriculum and charge that many educators apply a “deficit theory” approach to schooling for minority kids.

Political scientists ponder voting strategies coined by critical race theorists, while women's studies professors teach about intersectionality—the predicament of women of color and others who sit at the intersection of two or more categories. Ethnic studies courses often include a unit on critical race theory, and American studies departments teach material on critical white studies developed by CRT writers. Sociologists, theologians, and health care

specialists use critical theory and its ideas. Philosophers incorporate critical race ideas in analyzing issues such as viewpoint discrimination and whether Western philosophy is inherently white in its orientation, values, and method of reasoning.

Unlike some academic disciplines, critical race theory contains an activist dimension. It tries not only to understand our social situation but to change it, setting out not only to ascertain how society organizes itself along racial lines and hierarchies but to transform it for the better. On the spread of critical race theory to other countries, such as Australia, Brazil, India, New Zealand, South Africa, and the United Kingdom, see chapter 7.

### *F. Basic Tenets of Critical Race Theory*

What do critical race theorists believe? Probably not every writer would subscribe to every tenet set out in this book, but many would agree on the following propositions. First, racism is ordinary, not aberrational—“normal science,” the usual way society does business, the common, everyday experience of most people of color in this country. Second, most would agree that our system of white-over-color ascendancy serves important purposes, both psychic and material, for the dominant group. The first feature, ordinariness, means that racism is difficult to address or cure because it is not acknowledged. Color-blind, or “formal,” conceptions of equality, expressed in rules that insist only on treatment that is the same across the board, can thus remedy only the most blatant forms of discrimination, such as mortgage redlining or an immigration dragnet in

a food-processing plant that targets Latino workers or the refusal to hire a black Ph.D. rather than a white college dropout, which stand out and attract our attention.

The second feature, sometimes called “interest convergence” or material determinism, adds a further dimension. Because racism advances the interests of both white elites (materially) and working-class whites (psychically), large segments of society have little incentive to eradicate it. Consider, for example, Derrick Bell’s shocking proposal (discussed in chapter 2) that *Brown v. Board of Education*—considered a great triumph of civil rights litigation—may have resulted more from the self-interest of elite whites than from a desire to help blacks.

A third theme of critical race theory, the “social construction” thesis, holds that race and races are products of social thought and relations. Not objective, inherent, or fixed, they correspond to no biological or genetic reality; rather, races are categories that society invents, manipulates, or retires when convenient. People with common origins share certain physical traits, of course, such as skin color, physique, and hair texture. But these constitute only an extremely small portion of their genetic endowment, are dwarfed by what we have in common, and have little or nothing to do with distinctly human, higher-order traits, such as personality, intelligence, and moral behavior. That society frequently chooses to ignore these scientific truths, creates races, and endows them with pseudo-permanent characteristics is of great interest to critical race theory.

Another, somewhat more recent, development concerns differential racialization and its consequences. Critical

writers in law, as well as in social science, have drawn attention to the ways the dominant society racializes different minority groups at different times, in response to shifting needs such as the labor market. At one period, for example, society may have had little use for blacks but much need for Mexican or Japanese agricultural workers. At another time, the Japanese, including citizens of long standing, may have been in intense disfavor and removed to war relocation camps, while society cultivated other groups of color for jobs in war industry or as cannon fodder on the front. In one era, Muslims are somewhat exotic neighbors who go to mosques and pray several times of day—harmless but odd. A few years later, they emerge as security threats.

Popular images and stereotypes of various minority groups shift over time, as well. In one era, a group of color may be depicted as happy-go-lucky, simpleminded, and content to serve white folks. A little later, when conditions change, that very same group may appear in cartoons, movies, and other cultural scripts as menacing, brutish, and out of control, requiring close supervision. In one age, Middle Eastern people are exotic, fetishized figures wearing veils, wielding curved swords, and summoning genies from lamps. Later, after circumstances change, they emerge as fanatical, religiously crazed terrorists bent on destroying America and killing innocent citizens.

Closely related to differential racialization—the idea that each race has its own origins and ever-evolving history—is the notion of intersectionality and antiessentialism. No person has a single, easily stated, unitary identity. A white feminist may also be Jewish or working class

or a single mother. An African American activist may be male or female, gay or straight. A Latino may be a Democrat, a Republican, or even black—perhaps because that person’s family hails from the Caribbean. An Asian may be a recently arrived Hmong of rural background and unfamiliar with mercantile life or a fourth-generation Chinese with a father who is a university professor and a mother who operates a business. Everyone has potentially conflicting, overlapping identities, loyalties, and allegiances.

A final element concerns the notion of a unique voice of color. Coexisting in somewhat uneasy tension with anti-essentialism, the voice-of-color thesis holds that because of their different histories and experiences with oppression, black, American Indian, Asian, and Latino writers and thinkers may be able to communicate to their white counterparts matters that the whites are unlikely to know. Minority status, in other words, brings with it a presumed competence to speak about race and racism. The “legal storytelling” movement urges black and brown writers to recount their experiences with racism and the legal system and to apply their own unique perspectives to assess law’s master narratives. This topic, too, is taken up later in this book.

### *G. How Much Racism Is There in the World?*

Many modern-day readers believe that racism is declining or that class today is more important than race. And it is certainly true that lynching and other shocking expressions of racism are less frequent than in the past. Moreover, many Euro-Americans consider themselves to have black,

Latino, or Asian friends. Many enjoy watching black or Latino entertainers and sports figures and listening to rap music. Still, by every social indicator, racism continues to blight the lives of people of color, including holders of high-echelon jobs, even judges. Police-community encounters are daily reminders that this continues to happen.

I concede that I am black. I do not apologize for that obvious fact. I take rational pride in my heritage, just as most other ethnics take pride in theirs. However, that one is black does not mean . . . that he is anti-white. . . . As do most blacks, I believe that the corridors of history in this country have been lined with countless instances of racial injustice. . . .

Thus a threshold question which might be inferred from defendants' petition is: Since blacks (like most other thoughtful Americans) are aware of the "sordid chapter in American history" of racial injustice, shouldn't black judges be disqualified per se from adjudicating cases involving claims of racial discrimination?

*Federal Judge Leon Higginbotham, in refusing to disqualify himself from hearing a case, Commonwealth v. Local Union 542, International Union of Operating Engineers, 388 F. Supp. 155, 163, 165 (E.D. Pa. 1974)*

Studies show that blacks and Latinos who seek loans, apartments, or jobs are much more apt than similarly qualified whites to suffer rejections, often for vague or spurious reasons. Even highly placed black or Latino lawyers or executives may attract suspicion while riding a commuter train or upon arriving at their offices earlier than usual. The prison population is largely black and brown; chief executive officers, senators, surgeons, and university

presidents are almost all white. In recent years, almost all Oscar-winning actors have been white. Poverty, however, has a black or brown face: black families command, on the average, about one-thirteenth of the assets of their white counterparts. They pay more for many products and services, including cars. People of color lead shorter lives, receive worse medical care, complete fewer years of school, and occupy more menial jobs than do whites. A recent United Nations report showed that African Americans in the United States would make up the twenty-seventh-ranked nation in the world on a combined index of social well-being; Latinos would rank thirty-third. Studies using the Implicit Association Test (IAT) show that a large percentage of American citizens harbor negative attitudes toward members of groups other than their own. Why all this is so and the relationship between racism and economic oppression—between race and class—are topics of great interest to critical race theory and are covered later in this book.

### *H. Organization of This Book*

*Critical Race Theory: An Introduction* addresses, in simple, straightforward language, the foregoing and additional ideas characteristic of critical race jurisprudence. Chapter 2 presents four large themes in that body of thought—interest convergence or material determinism, revisionist interpretations of history, the critique of liberalism, and structural determinism.

Chapter 3 takes up storytelling, counterstorytelling, and the narrative turn in general; chapter 4 addresses the twin

themes of intersectionality and antiessentialism. It also considers cultural nationalism and its opposite—the idea that minorities should attempt to assimilate and blend into mainstream society. Do immigrants weaken American solidarity and identity?

Does American racial thought contain an implicit black-white binary, an unstated dichotomy in which society comes divided into two groups, whites and blacks, so that nonblack minority groups, such as Filipinos or Puerto Ricans, enter into the equation only insofar as they are able to depict themselves and their problems by analogy to blacks? Chapter 5 explores this issue, as well as whiteness studies. Social scientists have long put minority groups under the lens, examining their culture, intelligence, motivation, family arrangements, music, and much more. Recently scholars on both sides of the color line have switched perspective and are examining whites as a group. One topic that critical white studies addresses is whether such a thing as white privilege exists and, if so, what it consists of. Chapter 5 also looks at the scholarship of other racial groups such as LatCrits, critical Asian writers, feminists, and LGBT theorists.

As the reader might imagine, critical race theory has come in for its share of criticism. Chapter 6 examines the main challenges that writers from both the Left and the Right have leveled at this approach to civil rights. It also includes responses to those objections. Chapter 7 describes critical race theory's current situation. It also ponders a few of the issues on the movement's agenda, including hate speech, campus climate, criminal justice, racial profiling,

merit, affirmative action, poverty, immigration, national security, and globalization. A concluding chapter hazards some predictions on the country's racial future and CRT's role in it.

The reader will find in each chapter questions for discussion and a short list of suggested readings. We include hypotheticals and classroom exercises where we think these will promote understanding. We also excerpt passages from judicial decisions illustrating the influence of critical race theory. At the end, we include an extensive glossary of terms, including many that are not found in this book.

## QUESTIONS AND COMMENTS FOR CHAPTER 1

1. Is critical race theory pessimistic? Consider that it holds that racism is ordinary, normal, and embedded in society and, moreover, that changes in relationships among the races (which include both improvements and turns for the worse) reflect the interest of dominant groups, rather than idealism, altruism, or the rule of law. Or is it optimistic, because it believes that race is a social construction? (As such, it should be subject to ready change.)
1. And if CRT does have a dark side, what follows from that? Is medicine pessimistic because it focuses on diseases and traumas?
2. Most people of color believe that the world contains much more racism than white folks do. What accounts for this difference?
3. Is race or class more important in determining one's life chances?
4. Why have scholars in the field of education, particularly, found CRT's teachings helpful?
5. Is racism essentially a cognitive error—a product of ignorance or lack of experience—and so correctable through teaching and learning?
6. If you are a community activist, what lessons from this chapter could you apply to your daily work?
7. Have you read any books, published before 1989 perhaps, that were works of critical race theory, even if they were not designated as such?

## SUGGESTED READINGS

- Ayres, Ian, *Pervasive Discrimination: Unconventional Evidence of Racial and Gender Discrimination* (2003).
- Bell, Derrick A., *Race, Racism, and American Law* (6th ed. 2008).
- Bonilla-Silva, Eduardo, *Color-Blind Racism and the Persistence of Racial Inequality in America* (3d ed. 2009).
- Carbado, Devon W. & Mitu Gulati, *Acting White: Rethinking Race in “Post-Racial” America* (2013; repr., 2015).
- Cho, Sumi & Robert Westley, *Critical Race Coalitions: Key Movements That Performed the Theory*, 33 U.C. Davis L. Rev. 1377 (2000).
- Critical Race Studies in Education Association, <http://www.crseassoc.org/> (official website).
- Critical Race Theory: The Cutting Edge (Richard Delgado & Jean Stefancic eds., 3d ed. 2013).
- Critical Race Theory: The Key Writings That Formed the Movement (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995).
- Critical Race Theory in Education: All God’s Children Got a Song (Adrienne D. Dixson, Celia D. Rousseau & Jamel K. Donnor eds., 2d ed. 2016).
- Curry, Tommy, Will the Real CRT Please Stand Up? 2 The Crit: J. Crit. Legal Stud. 1 (2009).
- Delgado, Richard, Liberal McCarthyism and the Origins of Critical Race Theory, 94 Iowa L. Rev. 1505 (2009).

- Edelman, Benjamin G., Michael Luca & Daniel Svirsky, Racial Discrimination in the Sharing Economy (Harvard Business School Working Paper, Jan. 6, 2016).
- Gelber, Katharine & Luke McNamara, The Effects of Civil Hate Speech Laws: Lessons from Australia, 49 Law & Society Rev. 631 (2015).
- Haney López, Ian F., The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 Harv. C.R.-C.L. L. Rev. 1 (1994).
- Moschel, Mathias, Law, Lawyers and Race: Critical Race Theory from the United States to Europe (2014).
- Omi, Michael & Howard Winant, Racial Formation in the United States (3d ed. 2014).
- Perea, Juan F., Buscando América: Why Integration and Equal Protection Fail to Protect Latinos, 117 Harv. L. Rev. 1420 (2004).
- Race and Races: Cases and Resources for a Diverse America (Juan Perea, Richard Delgado, Angela Harris, Jean Stefancic & Stephanie Wildman eds., 3d ed. 2015).
- Race Is . . . Race Isn't: Critical Race Theory and Qualitative Studies in Education (Laurence Park, Donna Deyhle & Sofia Villenas eds., 1999).
- Trubek, David, M., Foundational Events, Foundational Myths, and the Creation of Critical Race Theory, or How to Get Along with a Little Help from Your Friends, 43 Conn. L. Rev. 1503 (2011).