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Jean Stefancic

University of Alabama - School of Law, jstefancic@law.ua.edu

Richard Delgado

University of Alabama - School of Law, rdelgado@law.ua.edu

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CRITICAL RACE THEORY: AN INTRODUCTION
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Richard Delgado
Jean Stefancic

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Critical Race Theory

An Introduction

SECOND EDITION

Richard Delgado and Jean Stefancic

FOREWORD BY ANGELA HARRIS



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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 persons 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 persons 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-sales 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 Resumé, N.Y. Times, Dec. 5, 2009.) The 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 ear-*

lier hesitates, knowing that her parents are undocumented aliens 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 interested 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, context, group- and self-interest, and even feelings and the unconscious. Unlike traditional civil rights, 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.

During the past decade, critical race theory has splintered. Although the new subgroups, which include a well-developed Asian American jurisprudence, a forceful Latino-critical (LatCrit) contingent, and a feisty queer-crit interest group, continue to maintain relatively good relations under the umbrella of critical race theory, meeting together at periodic conferences and gatherings, 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. Scholars of Middle Eastern and

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South Asian background address discrimination against their groups, especially in the aftermath of 9/11. (See, e.g., Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 Cal. L. Rev. 1259 [2004].) On the diffusion of critical race theory to other disciplines and nations, see section E in this chapter.

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. It also incorporated skepticism of triumphalist history, and the insight that favorable precedent, like *Brown v. Board of Education*, tends to deteriorate 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 nationalism and group empowerment.

D. Principal Figures

Derrick Bell, visiting professor of law at New York University, is the movement's intellectual father figure. Still active

as we write, Bell teaches, writes occasional law review articles and books, delivers speeches, and keeps a major casebook current. The late Alan Freeman, who taught at the State University of New York at Buffalo law school, wrote a number of foundational 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, Charles Lawrence, Mari Matsuda, and Patricia Williams are major 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; Latinos include Ian Haney López, Kevin Johnson, Laura Gomez, Margaret Montoya, Juan Perea, and Francisco Valdes. Emerging black scholars include Devon Carbado, Cheryl Harris, and Angela Onwuachi-Willig. The reader will find their ideas discussed frequently throughout this primer. The movement counts a number of fellow travelers and supporters who are white, notably Tom Ross, Stephanie Wildman, Nancy Levit, Robert Hayman, Jean Stefancic, and andre cummings. (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 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,

and alternative and charter schools. See, e.g., *Foundations of Critical Race Theory in Education* (Edward Taylor & Gloria Ladson-Billings eds., 2009). 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, scholars of American studies, and even health care specialists use critical theory and its ideas. Unlike some academic disciplines, critical race theory contains an activist dimension. It tries not only to understand our social situation but to change it; it sets 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 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, ordi-

nariness, 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, 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, that do 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 Caucasians (psychically), large segments of society have little incentive to eradicate it. Consider, for example, Derrick Bell’s shocking proposal (discussed 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 that which 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 many 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. 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 monitoring and repression. In one age, Middle Eastern people are exotic, fetishized figures wearing veils, wielding curved swords, and summoning genies from lamps. In another era, 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 a 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 antiessentialism, the voice-of-color thesis holds that because of their different histories and experiences with oppression, black, American Indian, Asian, and Latino/a 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 expres-

sions of racism are less frequent than in the past. Moreover, many Euro-Americans consider themselves to have black, Latino/a, 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.

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 (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. Poverty, however, has a black or brown face: black families command, on the average, about one-tenth 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, these and additional themes characteristic of critical race jurisprudence. Chapter 2 presents four large themes in critical race theory—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.

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 non-black 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 and critical Asian writers.

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 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, criminal justice, racial profiling, merit, affirmative action, poverty, and globalization. A concluding chapter hazards some predictions on the country's racial future and CRT's role in that future.

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.