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## Critical Race Theory

Contributors: Andrew Valls

Editors: David S. Clark

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Critical race theory (CRT) is a school of legal thought that focuses on the intersection between race and the law—how each shapes and is shaped by the other. It emerged in the late 1980s as an outgrowth of the engagement of legal scholars of color with the critical legal studies (CLS) movement. Critical race theorists generally agree with scholars in CLS that the law is not neutral, objective, or determinate and that it functions to “legitimize social power in the United States”; however, CRT departs from CLS in emphasizing that race and racism function “as central pillars of hegemonic power” (Crenshaw et al. 1995: xxii). As such, while CRT shares many features with CLS, such as its left-leaning ideological tendency, it defines itself in contradistinction to CLS as well as to mainstream thought on race and civil rights in the law.

Although CRT as a self-conscious movement dates from the late 1980s, its practitioners see their work as part of a tradition that began with the writings of Derrick Bell in the 1970s. In a series of articles, Bell questioned some of the assumptions of the civil rights movement and the legal strategies employed on behalf of black plaintiffs in civil rights litigation. For example, in “Serving Two Masters,” Bell argued that lawyers for black plaintiffs in desegregation cases were pulled in two directions. One was toward arguing for integration, an ideal embraced by the organizations and donors that sponsored the litigation, while the other was toward their clients, the black plaintiffs themselves, whose interests may have lain in greater educational opportunities and resources rather than simply integration. Similarly, in “*Brown v. Board of Education*” Bell argued that the *Brown* decision, like all moments of progress toward racial justice, depended not on moral or legal argument, but rather on the fact that it served the interests of whites.

## Central Tenets

Bell was instrumental in establishing the “critical” attitude of CRT toward mainstream thought on race by questioning some of the sacred cows of the civil rights movement: the value of integration and the power of moral suasion and legal argument. Another central tenet of CRT appears in Bell's writings—the idea of the permanence of racism. Bell and other critical race theorists argue that many participants in and supporters of the civil rights movement were too optimistic about the prospects for overcoming racism in American society.

The mainstream view, according to this line of thought, is to see racism as an aberration in American law and society. Alternatively, critical race theorists argue that racism is the normal condition of the American legal and social systems, deeply embedded in them, and that there are no reasonable prospects for removing racism from social and legal institutions in the foreseeable future. This pessimism about eliminating racism and its legacies from American society is partly a result of the lack of progress toward racial justice that many critical race theorists perceive in the decades following the civil rights movement.

On the whole, then, critical race theorists have a distinctive perspective on the state of the law and of American society as they relate to race. Where others see the civil rights movement and its legal achievements as a triumph for racial justice that demonstrates the fundamentally fair nature of American law and society, critical race theorists take a very different view. They see the civil rights movement largely as a triumph for white America, whose interests were no longer served by segregation. Similarly, while many observers see much progress toward racial equality in the post-civil rights era, critical race theorists see little progress. Progress has taken place, they argue, only to the degree and in the forms that serve white interests.

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## Policies

From this diagnosis of the state of racial justice in American society and law, CRT advances a distinctive set of prescriptions. Though pessimistic about the prospects for achieving racial justice, critical race theorists nevertheless argue for a number of policies and approaches to civil rights issues. First, they are generally supportive of race-conscious policies such as affirmative action. While the U.S. Supreme Court takes a very close look at the use of race in public policy (racial classifications receive “strict scrutiny”), critical race theorists argue that race consciousness is necessary and a compelling governmental interest in combating what they see as the inherent racism in many institutions and practices.

While some see affirmative action as an unjustified departure from a race-neutral norm, critical race theorists see ostensive race-neutral criteria such as “merit” as, in fact, racially biased against African Americans and other ethnic or racial minorities. Hence, raceconscious policies such as affirmative action are not departures from a race-neutral norm, but are required to offset the effects of racially biased norms that merely have the superficial appearance of race neutrality.

Many critical race theorists, such as Richard Delgado, Gary Peller, and Jean Stefancic, also have expressed support for another form of race-consciousness in public policy and institutional design: drawing on earlier critiques of integration, they have argued for the support of institutions dominated and controlled by minority communities. They advance two kinds of arguments in support of minority-dominated institutions: first, the institutions express and reproduce a distinctive minority culture and identity; and, second, such institutions provide a haven for minorities within a hostile and oppressive society.

In addition, some critical race theorists, such as Mari Matsuda, have argued for reparations for historical wrongs, particularly for “black reparations” to be paid to African Americans. They argue that the many violations of the rights of African Americans under both slavery and Jim Crow laws continue to disadvantage African Americans today. Hence, present-day African Americans are entitled to compensation for the accumulated and continuing disadvantage from which they suffer. Such reparations can take many forms, including race-conscious policies and support for minority institutions.

## Methodology

Two methods are associated with CRT and distinguish it from other schools of legal thought and scholarship: the use of a “victim's perspective” and the use of narrative. In an early article, Alan Freeman argued that most antidiscrimination law implicitly takes on the perspective of a perpetrator, focusing on intention and individual actions in determining whether discrimination has taken place. It is more appropriate, he argued, to take the victim's perspective in examining discrimination claims. To the victim, intention does not matter as much as effect. Discrimination may take place unintentionally and as the result not of an individual act, but of many factors working

together. Mainstream antidiscrimination doctrine, then, cannot see institutional racism and has the effect of strengthening it. Similarly, Matsuda has argued that understanding racial injustice requires “looking to the bottom,” that is, adopting the perspective of those who are at the bottom of the racial hierarchy.

To convey this perspective, CRT often relies on narrative and storytelling. Sometimes, as with Bell and Delgado, the stories involve fictional characters who engage in dialogue with each other on the nature of racism and the prospects of various remedies. In other cases, authors such as Patricia Williams have relied on the first-person perspective and have reported their own personal experiences as a way of deriving or illustrating their points. In either case, critical race theorists favor storytelling, as opposed to the third-person, detached perspective usually adopted in legal scholarship. This “objective” posture of most legal writing implies an impartiality that many critical race theorists see as an illusion—one that serves to reinforce dominant perspectives and interests. By relying on narrative, critical race theorists both convey their epistemological position and attempt to demonstrate their substantive claims about race and the law.

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## Critics and the Theory's Future

This narrative aspect of CRT, among others, has generated several criticisms of the school of thought. While critical race theorists have argued that mainstream legal scholarship has ignored their contributions and that these contributions are of particular value because of the distinctive perspective that scholars of color bring to issues of race, their detractors have questioned both lines of thought. For example, Randall Kennedy has suggested that the lack of attention to the work of CRT may reflect the low quality of its legal scholarship, and he has denied that scholars of color have special access to knowledge of oppression. More generally, CRT opponents decry the substitution of argument with narrative and charge critical race theorists with essentialism—the notion that all members of a group share a particular attribute, perspective, or interest. Critical race theorists, in turn, have responded to these

criticisms, and the ensuing debates have further sharpened the issues and positions involved in CRT.

From its initial focus on legal issues pertaining primarily to African Americans, CRT has developed in several directions. First, it has become a model for “critical” study of other minority groups, such as Latinos/as (LatCrits) and gay men and lesbians (QueerCrits). Second, CRT has combined with other perspectives and dimensions of inequality—most prominently in the synthesis with feminist theory to form critical race feminist theory. Third, CRT has become an interdisciplinary movement, influencing scholarship in literary studies, philosophy, and the social sciences. Finally, CRT is “going global,” turning its insights on group inequality to analysis of global inequalities. In all of these ways, CRT continues to grow in influence and reach, its themes and analyses shaping the discourse on power and social inequality in an ever-expanding array of contexts. At the same time, other perspectives will no doubt continue to challenge its modes of analysis and its conclusions.

AndrewValls

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*See also*

- [Affirmative Action Programs](#)
- [Critical Race Feminist Theory](#)
- [Discrimination, Sociology of](#)
- [Equality](#)
- [Essentialism](#)
- [Feminist Legal Studies](#)
- [Narrative](#)
- [Postmodernism](#)
- [Queer Theory](#)
- [Race and Ethnicity](#)
- [Relativism, Cultural](#)
- [Slavery](#)

Further Readings

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