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Just what is critical race theory and what's it doing in a *nice* field like education?

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Critical race theory (CRT) first emerged as a counterlegal scholarship to the positivist and liberal legal discourse of civil rights. This scholarly tradition argues against the slow pace of racial reform in the United States. Critical race theory begins with the notion that racism is normal in American society. It departs from mainstream legal scholarship by sometimes employing storytelling. It critiques liberalism and argues that Whites have been the primary beneficiaries of civil rights legislation. Since schooling in the USA purports to prepare citizens, CRT looks at how citizenship and race might interact. Critical race theory's usefulness in understanding education inequity is in its infancy. It requires a critique of some of the civil rights era's most cherished legal victories and educational reform movements, such as multiculturalism. The paper concludes with words of caution about the use of CRT in education without a more thorough analysis of the legal literature upon which it is based.

Introduction

Almost five years ago a colleague and I began a collaboration in which we grappled with the legal scholarship known as "critical race theory" (Delgado, cited in Monaghan, 1993). So tentative were we about this line of inquiry that we proceeded with extreme caution. We were both untenured and relatively new to our institution. We were unsure of how this new line of inquiry would be received both within our university and throughout the educational research/scholarly community. Our initial step was to hold a colloquium in our department. We were pleasantly surprised to meet with a room filled with colleagues and graduate students who seemed eager to hear our ideas and help us in these new theoretical and conceptual formulations.

That initial meeting led to many revisions and iterations. We presented versions of the paper and the ideas surrounding it at conferences and professional meetings. Outside the supportive confines of our own institution, we were met with not only the expected intellectual challenges, but also outright hostility. Why were we focusing only on race? What about gender? Why not class? Are you abandoning multicultural perspectives? By the fall of 1995 our much discussed paper was published (Ladson-Billings & Tate, 1995). We have, however, held our collective intellectual breaths for almost a year because, despite the proliferation of critical race legal scholarship, we have seen scant evidence that this work has made any impact on the educational research/scholarly community. Thus, seeing critical race theory (CRT) as a theme in an educational journal represents our first opportunity to "exhale."

It had been a good day. My talk as a part of the "Distinguished Lecture" Series at a major research university had gone well. The audience was receptive; the questions were challenging, yet respectful. My colleagues were exceptional hosts.

I spent the day sharing ideas and exchanging views on various phases of their work and my own. There had even been the not so subtle hint of a job offer. The warm, almost tropical climate of this university stood in stark contrast to the overly long, brutal winters of my own institution. But it also had been a tiring day – all that smiling, listening with rapt interest to everyone’s research, recalling minute details of my own, trying to be witty and simultaneously serious had taken its toll. I could not wait to get back to the hotel to relax for a few hours before dinner.

One of the nice perks that comes with these lecture “gigs” is a decent hotel. This one was no exception. My accommodation were on the hotel’s VIP floor – equipped with special elevator access key and private lounge on the top floor overlooking the city. As I stepped off the elevator, I decided to go into the VIP lounge, read the newspaper, and have a drink. I arrived early, just before the happy hour, and no one else was in the lounge. I took a seat on one of the couches and began catching up on the day’s news. Shortly after I sat down comfortably with my newspaper, a White man peeked his head into the lounge, looked at me sitting there in my best (and conservative) “dress for success” outfit – high heels and all – and said with a pronounced Southern accent, “What time are y’all gonna be servin’?”

I tell this story both because storytelling is a part of critical race theory and because this particular story underscores an important point within the critical race theoretical paradigm, i.e. race [still] matters (West, 1992). Despite the scientific refutation of race as a legitimate biological concept and attempts to marginalize race in much of the public (political) discourse, race continues to be a powerful *social* construct and signifier (Morrison, 1992):

Race has become metaphorical – a way of referring to and disguising forces, events, classes, and expressions of social decay and economic division far more threatening to the body politic than biological “race” ever was.

Expensively kept, economically unsound, a spurious and useless political asset in election campaigns, racism is as healthy today as it was during the Enlightenment. It seems that it has a utility far beyond economy, beyond the sequestering of classes from one another, and has assumed a metaphorical life so completely embedded in daily discourse that it is perhaps more necessary and more on display than ever before. (p. 63)

I am intrigued by the many faces and permutations race has assumed in contemporary society. Our understanding of race has moved beyond the bio-genetic categories and notions of phenotype. Our “advanced ideas” about race include the racialization of multiple cultural forms. Sociologist Sharon Lee (1993) suggests that “questions of race have been included in all U.S. population censuses since the first one in 1790” (p. 86). Although racial categories in the U.S. census have fluctuated over time, two categories have remained stable – Black and White. And, while the creation of the category does not reveal what constitutes within it, it does create for us a sense of polar opposites that posits a cultural ranking designed to tell us who is White or, perhaps more pointedly, who is *not* White!

But determining who is and is not White is not merely a project of individual construction and/or biological designation. For example, in early census data, citizens of Mexican descent were considered White, though over time, political, economic, social, and cultural shifts have forced Mexican Americans out of the White category. Conversely, Haney López (1995) pointed out that some groups came to the USA and

brought suit in the courts to be declared White. Omi and Winant (1993) argue, however, that the polar notions of race as either an ideological construct or as an objective condition both have shortcomings. That is, thinking of race strictly as an ideological concept denies the reality of a racialized society and its impact on people in their everyday lives. On the other hand, thinking of race solely as an objective condition denies the problematic aspects of race – how to decide who fits into which racial classifications.

Our notions of race (and its use) are so complex that even when it fails to “make sense” we continue to employ and deploy it. I want to argue, then, that our conceptions of race, even in a postmodern and/or postcolonial world, are more embedded and fixed than in a previous age. However, this embeddedness or “fixed-ness” has required new language and constructions of race so that denotations are submerged and hidden in ways that are offensive though without identification. Thus, we develop notions of “conceptual whiteness” and “conceptual blackness” (King, 1995) that both do and do not map neatly on to bio-genetic or cultural allegiances. Conceptual categories like “school achievement,” “middle classness,” “maleness,” “beauty,” “intelligence,” and “science” become normative categories of whiteness, while categories like “gangs,” “welfare recipients,” “basketball players,” and “the underclass” become the marginalized and de-legitimated categories of blackness.

The creation of these conceptual categories is not designed to reify a binary but rather to suggest how, in a racialized society where whiteness is positioned as normative, *everyone* is ranked and categorized in relation to these points of opposition. These categories fundamentally sculpt the extant terrain of possibilities even when other possibilities exist. And, although there is a fixedness to the notion of these categories, the ways in which they actually operate are fluid and shifting. For example, as an African American female academic, I can be and am sometimes positioned as conceptually White in relation to, perhaps, a Latino, Spanish-speaking gardener. In that instance, my class and social position override my racial identification and for that moment I become “White.”

The significance of race need not be overly debated in this paper. But, as Toni Morrison argues, race is always already present in every social configuring of our lives. Roediger (1991) asserts, “Even in an all-white town, race was never absent” (p. 3). However, more significant/problematic than the omnipresence of race is the notion that “whites reach the conclusion that their whiteness is meaningful” (Roediger, p. 6). It is because of the meaning and value imputed to whiteness that CRT becomes an important intellectual and social tool for deconstruction, reconstruction, and construction: deconstruction of oppressive structures and discourses, reconstruction of human agency, and construction of equitable and socially just relations of power. In this paper, then, I am attempting to speak to innovative theoretical ways for framing discussions about social justice and democracy and the role of education in reproducing or interrupting current practices.

I hope to provide a brief synopsis of Critical Race Theory¹ and discuss some of its prominent themes. Then I will discuss its importance to our understanding of the citizen in a democracy, its relationship to education and finally some cautionary implications for further research and study. As is true of all texts, this one is incomplete (O’Neill, 1992). It is incomplete on the part of both the writer and the reader. However, given its incompleteness, I implore readers to grapple with how it might advance the debate on race and education.

What is Critical Race Theory?

Most people in the USA first learned of critical race theory (CRT) when Lani Guinier, a University of Pennsylvania Law Professor, became a political casualty of the Clinton administration. Her legal writings were the focus of much scrutiny in the media. Unschooled and unsophisticated about the nature of legal academic writing, the media vilified Guinier and accused her of advocating “un-American” ideas. The primary focus of the scorn shown Guinier was her argument for proportional representation.

Guinier (1991) asserted that in electoral situations where particular racial groups were a clear (and persistent) minority, the only possibility for an equitable chance at social benefits and fair political representation might be for minority votes to count for more than their actual numbers. Guinier first proposed such a strategy as a solution for a postapartheid South Africa. Because Whites are in the obvious minority, the only way for them to participate in the governing of a new South Africa would be to insure them some seats in the newly formed government.

Guinier made a similar argument in favor of African Americans in the USA. She saw this as a legal response to the ongoing lack of representation. Unfortunately, her political opponents attacked her scholarship as an affront to the American tradition of “one person, one vote.” The furor over Guinier’s work obscured the fact that as an academic, Guinier was expected to write “cutting-edge” scholarship that pushed theoretical boundaries (Guinier, 1994). Her work was not to be literally applied to legal practice. However, in the broad scope of critical race legal studies, Guinier may be seen as relatively moderate and nowhere near the radical the press made her out to be. But, her “exposure” placed critical race theory and its proponents in the midst of the public discourse.

According to Delgado (1995, p. xiii), “Critical Race Theory sprang up in the mid-1970s with the early work of Derrick Bell (an African American) and Alan Freeman (a white), both of whom were deeply distressed over the slow pace of racial reform in the United States. They argued that the traditional approaches of filing *amicus* briefs, conducting protests and marches, and appealing to the moral sensibilities of decent citizens produced smaller and fewer gains than in previous times. Before long they were being joined by other legal scholars who shared their frustration with traditional civil rights strategies.

Critical race theory is, thus, both an outgrowth of and a separate entity from an earlier legal movement called critical legal studies (CLS). Critical legal studies is a leftist legal movement that challenged the traditional legal scholarship that focused on doctrinal and policy analysis (Gordon, 1990) in favor of a form of law that spoke to the specificity of individuals and groups in social and cultural contexts. Critical legal studies scholars also challenged the notion that “the civil rights struggle represents a long, steady, march toward social transformation” (Crenshaw, 1988, p. 1334).

According to Crenshaw (1988), “Critical [legal] scholars have attempted to analyze legal ideology and discourse as a social artifact which operates to recreate and legitimate American society” (p. 1350). Scholars in the CLS movement decipher legal doctrine to expose both its internal and external inconsistencies and reveal the ways that “legal ideology has helped create, support, and legitimate America’s present class structure” (Crenshaw, p. 1350). The contribution of CLS to legal discourse is in its analysis of legitimating structures in the society. Much of the CLS ideology emanates from the work of Gramsci (1971) and depends on the Gramscian notion of “hegemony” to describe the continued legitimacy of oppressive structures in American society.

However, CLS fails to provide pragmatic strategies for material social transformation. Cornel West (1993) asserts that:

... critical legal theorists fundamentally question the dominant liberal paradigms prevalent and pervasive in American culture and society. This thorough questioning is not primarily a constructive attempt to put forward a conception of a new legal and social order. Rather, it is a pronounced disclosure of inconsistencies, incoherences, silences, and blindness of legal formalists, legal positivists, and legal realists in the liberal tradition. Critical legal studies is more a concerted attack and assault on the legitimacy and authority of pedagogical strategies in law school than a comprehensive announcement of what a credible and realizable new society and legal system would look like. (p. 196)

CLS scholars critique mainstream legal ideology for its portrayal of U.S. society as a meritocracy but failed to include racism in its critique. Thus, CRT became a logical outgrowth of the discontent of legal scholars of color.

CRT begins with the notion that racism is “normal, not aberrant, in American society” (Delgado, 1995, p. xiv), and, because it is so enmeshed in the fabric of our social order, it appears both normal and natural to people in this culture. Indeed, Bell’s major premise in *Faces at the bottom of the well* (1992) is that racism is a permanent fixture of American life. Thus, the strategy becomes one of unmasking and exposing racism in its various permutations.

Second, CRT departs from mainstream legal scholarship by sometimes employing storytelling to “analyze the myths, presuppositions, and received wisdoms that make up the common culture about race and that invariably render blacks and other minorities one-down” (Delgado, 1995, p. xiv). According to Barnes (1990) “Critical race theorists... integrate their *experiential knowledge* (emphasis added), drawn from a shared history as ‘other’ with their ongoing struggles to transform a world deteriorating under the albatross of racial hegemony” (pp. 1864–1865). Thus, the experience of oppressions such as racism or sexism has important aspects for developing a CRT analytical standpoint. To the extent that Whites (or in the case of sexism, men) experience forms of racial oppression, they may develop such a standpoint. For example, the historical figure John Brown suffered aspects of racism by aligning himself closely with the cause of African American liberation.² Contemporary examples of such identification may occur when White parents adopt transracially. No longer a White family, by virtue of their child(ren), they become racialized others. A final example was played out in the infamous O. J. Simpson trials. The criminal trial jury was repeatedly identified as the “Black” jury despite the presence of one White and one Latino juror. However, the majority White civil case jury was not given a racial designation. When Whites are exempted from racial designations and become “families,” “jurors,” “students,” “teachers,” etc. their ability to apply a CRT analytical rubric is limited. One of the most dramatic examples of the shift from non-raced to CRT perspective occurred when Gregory Williams (1995) moved from Virginia where he was a White boy to Muncie, Indiana, where his family was known to be Black. The changes in his economic and social status were remarkable, and the story he tells underscores the salience of race in life’s possibilities. The primary reason, then, that stories, or narratives, are deemed important among CRT scholars is that they add necessary contextual contours to the seeming “objectivity” of positivist perspectives.

Third, CRT insists on a critique of liberalism. Crenshaw (1988) argues that the liberal perspective of the “civil rights crusade as a long, slow, but always upward pull”

(p. 1334) is flawed because it fails to understand the limits of current legal paradigms to serve as catalysts for social change and its emphasis on incrementalism. CRT argues that racism requires sweeping changes, but liberalism has no mechanism for such change. Rather, liberal legal practices support the painstakingly slow process of arguing legal precedence to gain citizen rights for people of color.

Fourth, and related to the liberal perspective, is the argument posed by CRT that Whites have been the primary beneficiaries of civil rights legislation. For example, although under attack throughout the nation, the policy of affirmative action has benefited Whites, a contention that is validated by the fact that the actual numbers reveal that the major recipients of affirmative action hiring policies have been White women (Guy-Sheftall, 1993). One might argue, then, that many of these White women have incomes that support households in which other Whites live – men, women, and children. Thus, these women's ability to find work ultimately benefits Whites, in general.

In contrast, let us look at some of the social benefits African Americans have received due to affirmative action policies. Even after 20 years of affirmative action, African Americans constitute only 4.5% of the professorate (Hacker, 1992). In 1991 there were 24721 doctoral degrees awarded to U.S. citizens and noncitizens who intended to remain in the USA, and only 933 or 3.8% of these doctorates went to African American men and women. If every one of those newly minted doctorates went into the academy, it would have a negligible effect on the proportion of African Americans in the professorate. In addition, the majority of the African Americans who earn PhDs earn them in the field of education, and of that group, most of the degrees are in educational administration where the recipients continue as school practitioners (Hacker, 1992).

Thus, CRT theorists cite this kind of empirical evidence to support their contention that civil rights laws continue to serve the interests of Whites. A more fruitful tack, some CRT scholars argue, is to find the place where the interests of Whites and people of color intersect. This notion of “interest-convergence” (Bell, 1980, p. 94) can be seen in what transpired in Arizona over the Martin Luther King, Jr. Holiday commemoration.

Originally, the state of Arizona insisted that the King Holiday was too costly and therefore failed to recognize it for state workers and agencies. Subsequently, a variety of African American groups and their supporters began to boycott business, professional, and social functions in the state of Arizona. When members of the National Basketball Association and the National Football League suggested that neither the NBA All-Star Game nor the Super Bowl would be held in Arizona because of its failure to recognize the King Holiday, the decision was reversed. Hardly anyone is naive enough to believe that the governor of Arizona had a change of heart about the significance of the King Holiday. Rather, when his position on the holiday had the effect of hurting state tourist and sports entertainment revenues, the state's interests (to enhance revenue) converged with that of the African American community (to recognize Dr. King). Thus, converging interests, not support of civil rights, led to the reversal of the state's position.

In a recent compilation of CRT key writings (Crenshaw et al., 1995) it is pointed out that there is no “canonical set of doctrines or methodologies to which [CRT scholars] all subscribe” (p. xiii). But, these scholars are unified by two common interests – to understand how a “regime of white supremacy and its subordination of people of color have been created and maintained in America” (p. xiii) and to change the bond that exists between law and racial power.

In the pursuit of these interests, legal scholars, such as Patricia Williams (1991) and Derrick Bell (1987; 1992), were among the early critical race theorists whose ideas

reached the general public. Some might argue that their wide appeal was the result of their abilities to tell compelling stories into which they embedded legal issues.³ This use of story is of particular interest to educators because of the growing popularity of narrative inquiry in the study of teaching (Carter, 1993; Connelly & Clandinin, 1990). But, just because more people are recognizing and using story as a part of scholarly inquiry does not mean that all stories are judged as legitimate in knowledge construction and the advancement of a discipline.

Lawrence (1995) asserts that there is a tradition of storytelling in law and that litigation is highly formalized storytelling, though the stories of ordinary people, in general, have not been told or recorded in the literature of law (or any other discipline). But this failure to make it into the canons of literature or research does not make the stories of ordinary people less important.

Stories provide the necessary context for understanding, feeling, and interpreting. The ahistorical and acontextual nature of much law and other “science” renders the voices of dispossessed and marginalized group members mute. In response, much of the scholarship of CRT focuses on the role of “voice” in bringing additional power to the legal discourses of racial justice. Indeed, Delgado (1990) argues that people of color speak with experiential knowledge about the fact that our society is deeply structured by racism. That structure gives their stories a common framework warranting the term “voice.” Consequently, critical race theorists are attempting to interject minority cultural viewpoints, derived from a common history of oppression, into their efforts to reconstruct a society crumbling under the burden of racial hegemony (Barnes, 1990).

The use of voice or “naming your reality” is a way that CRT links form and substance in scholarship. CRT scholars use parables, chronicles, stories, counterstories, poetry, fiction, and revisionist histories to illustrate the false necessity and irony of much of current civil rights doctrine. Delgado (1989) suggests that there are at least three reasons for “naming one’s own reality” in legal discourse:

1. much of “reality” is socially constructed;
2. stories provide members of outgroups a vehicle for psychic self-preservation; and
3. the exchange of stories from teller to listener can help overcome ethnocentrism and the dysconscious (King, 1992) drive or need to view the world in one way.

The first reason for naming one’s own reality involves how political and moral analysis is conducted in legal scholarship. Many mainstream legal scholars embrace universalism over particularity. According to Williams (1991), “theoretical legal understanding” is characterized, in Anglo-American jurisprudence, by the acceptance of transcendent, acontextual, universal legal truths or procedures. For instance, some legal scholars might contend that the tort of fraud has always existed and that it is a component belonging to the universal system of right and wrong. This world-view tends to discount anything that is nontranscendent (historical), or contextual (socially constructed), or nonuniversal (specific) with the unscholarly labels of “emotional,” “literary,” “personal,” or false (Williams, 1991).

In contrast, critical race theorists argue that political and moral analysis is situational—“truths only exist for this person in this predicament at this time in history” (Delgado, 1991, p. 11). For the critical race theorist, social reality is constructed by the formulation and the exchange of stories about individual situations (see, for example, Matsuda, 1989). These stories serve as interpretive structures by which we impose order on experience and it on us (Delgado, 1989).

A second reason for the naming one's own reality theme of CRT is the psychic preservation of marginalized groups. A factor contributing to the demoralization of marginalized groups is self-condemnation (Delgado, 1989). Members of minority groups internalize the stereotypic images that certain elements of society have constructed in order to maintain their power. Historically, storytelling has been a kind of medicine to heal the wounds of pain caused by racial oppression. The story of one's condition leads to the realization of how one came to be oppressed and subjugated, thus allowing one to stop inflicting mental violence on oneself.

Finally, naming one's own reality with stories can affect the oppressor. Most oppression, as was discussed earlier, does not seem like oppression to the perpetrator (Lawrence, 1987). Delgado (1989) argues that the dominant group justifies its power with stories, stock explanations, that construct reality in ways that maintain their privilege. Thus, oppression is rationalized, causing little self-examination by the oppressor. Stories by people of color can catalyze the necessary cognitive conflict to jar dysconscious racism.

The "voice" component of CRT provides a way to communicate the experience and realities of the oppressed, a first step in understanding the complexities of racism and beginning a process of judicial redress. For example, the voice of people of color is required for a deep understanding of the educational system. Delpit (1988) argues one of the tragedies of the field of education is how the dialogue of people of color has been silenced. Delpit begins her analysis of the process-oriented versus the skills-oriented writing debate with a statement (or story) from an African American male graduate student at a predominantly white university who is also a special education teacher in an African American community:

There comes a moment in every class where we have to discuss "The Black Issue" and what's appropriate education for Black children. I tell you, I'm tired of arguing with those White people, because they won't listen. Well, I don't know if they really don't listen or if they just don't believe you. It seems like if you can't quote Vygotsky or something, then you don't have any validity to speak about your own kids. Anyway, I'm not bothering with it anymore, now I'm just in it for a grade. (p. 280)

The above comment and numerous other statements found in Delpit's analysis illustrate the frustration of teachers of color that is caused by being left out of the dialogue about how best to educate children of color. Further, Delpit raises several very important questions:

How can such complete communication blocks exist when both parties [Black and Whites] truly believe they have the same aims? How can the bitterness and resentment expressed by educators of color be drained so that all sores can heal? What can be done? (p. 282)

Critical race theory and citizenship

One of the places to begin understanding CRT is to examine how conceptions of citizenship and race interact. Although connections of CRT and citizenship are numerous and complex, in this paper I will attempt to detail only one of the central

connections that is important in understanding the relationship of this scholarship to educational issues. That central connection is the “property issue” (Ladson-Billings & Tate, 1995). CRT scholars assert that the USA is a nation conceived and built on property rights (Bell, 1987; Harris, 1993). In the early history of the nation only propertied White males enjoyed the franchise. The significance of property ownership as a prerequisite to citizenship was tied to the British notion that only people who *owned* the country, not merely those who *lived* in it, were eligible to make decisions about it.⁴

The salience of property often is missed in our understanding of the USA as a nation. Conflated with democracy, capitalism slides into the background of our understanding of the way in which U.S. political and economic ideology are entangled and read as synonymous. But it is this foundation of property rights that make civil rights legislation so painfully slow and sometimes ineffective. Civil rights are wedded to the construction of the rights of the individual. Bell (1987) argues that “the concept of individual rights, unconnected to property rights, was totally foreign to these men of property,” (p. 239) in his explanation of how men who expressed a commitment to liberty and justice could uphold the repression of African Americans, the indigenous peoples who inhabited the land, and women.

African Americans represented a particular conundrum because not only were they not accorded individual civil rights because they were not White and owned no property, but they were constructed *as* property! However, that construction was only in the sense that they could be owned by others. They possessed no rights of property ownership. Whites, on the other hand, according to Harris (1993), benefited from the construction of whiteness as the ultimate property. “Possession – the act necessary to lay basis for rights in property – was defined to include only the cultural practices of Whites. This definition laid the foundation for the idea that whiteness – that which Whites alone possess – is valuable and is property” (p. 1721).

This thematic strand of whiteness as property in the USA is not confined to the nation’s early history. Indeed, Andrew Hacker’s (1992) exercise with his college students illustrates the material and social value the students place on their possession of whiteness. Hacker uses a parable to illustrate that although the students insist that “in this day and age, things are better for Blacks” (p. 31), none of them would want to change places with African Americans. When asked what amount of compensation they would seek if they were forced to “become Black,” the students “seemed to feel that it would not be out of place to ask for \$50 million, or \$1 million for each coming Black year” (p. 32). According to Hacker:

And this calculation conveys, as well as anything, the value that white people place on their own skins. Indeed, to be white is to possess a gift whose value can be appreciated only after it has been taken away. And why ask so large a sum? The money would be used, as best it could, to buy protection from the discriminations and dangers white people know they would face once they were perceived to be black. (p. 32)

Thus, even without the use of a sophisticated legal rhetorical argument, Whites know they possess a property that people of color do not and that to possess it confers, aspects of citizenship not available to others. Harris’s (1993) argument is that the “property functions of whiteness” (p. 1731) – rights of disposition, rights to use and enjoyment, reputation and status property, and the absolute right to exclude – make the American dream of “life, liberty, and the pursuit of happiness” a more likely and attainable reality for Whites as citizens. This reality also is more likely to engender feelings of loyalty and

commitment to a nation that works in the interests of Whites. Conversely, Blacks, aware that they will never possess this ultimate property, are less sanguine about U.S. citizenship.

Patricia Williams (1995) explains these differential notions of citizenship as being grounded in differential experiences of rights because “one’s sense of empowerment defines one’s relation to law, in terms of trust–distrust, formality–informality, or right–no rights (or ‘needs’)” (pp. 87–88). An example of this differing relation (in this case to commerce) was shared in one of my classes. We were discussing McIntosh’s (1990) article on “White privilege.” One White woman shared a personal experience of going into a neighborhood supermarket, having her items rung up by the cashier, and discovering that she did not have her checkbook. The cashier told her she could take her groceries and bring the check back later. When she related this story to an African American male friend, he told her that was an example of the privilege she enjoyed because she was White. Her White property was collateral against the cart full of groceries. She insisted that this was the store’s good neighbor policy, and the same thing would have happened to him. Determined to show his friend that their life experiences were qualitative different, the young man went shopping a few days later and pretended to have left his checkbook. The young woman was standing off to the side observing the interaction. The same cashier, who had been pointed out by the woman as the “neighborly one,” told the young African American man that he could push the grocery items to the side while he went home to get his checkbook. The White woman was shocked as the African American male gave her a knowing look.

These daily indignities take their toll on people of color. When these indignities are skimmed over in the classrooms that purport to develop students into citizens, it is no wonder students “blow off” classroom discourse. How can students be expected to deconstruct rights, “in a world of no rights” (Williams, 1995, p. 98) and construct statements of need “in a world of abundantly apparent need?” (p. 89)

African Americans, thus, represent a unique form of citizen in the USA – property transformed into citizen. This process has not been a smooth one. When Chief Justice Taney concluded in the *Dred Scott* decision that African Americans had no rights that Whites were required to respect, he reinscribed the person-as-property status of African Americans. Later in *Plessy v. Ferguson* the high court once again denied full citizenship rights to African Americans as a way to assert White property rights – rights to use and enjoy and the absolute right to exclude.

Even the laudable decision of *Brown v. Board of Education* comes under scrutiny in the CRT paradigm. Lest we misread *Brown v. Board of Education* as merely a pang of conscience and the triumph of right over wrong, it is important to set *Brown* in context. First, historically the *Brown* decision helped the USA in its struggle to minimize the spread of communism to so-called Third World nations. In many countries, the credibility of the USA had been damaged by the widely broadcast inequitable social conditions that existed in the USA in the 1950s. Both the government and the NAACP lawyers argued the *Brown* decision would help legitimize the political and economic philosophies of the USA with these developing nations (Bell, 1980).

Second, *Brown* provided reassurance to African Americans that the struggle for freedom and equality fought for during World War II might become a reality at home. Black veterans faced not only racial inequality, but also physical harm in many parts of the South. And, the treatment of African Americans after the war in concert with the voice of African American leaders such as Paul Robeson may have greatly influenced the *Brown* decision. Robeson argued:

It is unthinkable... that American Negroes [*sic*] would go to war on behalf of those who have oppressed us for generations... against a country [the Soviet Union] which in one generation has raised our people to the full human dignity of mankind. (in Foner, 1978, pp. 17–18)

According to Bell (1980), it is not unreasonable to assume that those in positions of power would recognize the importance of neutralizing Robeson and others who held similar views. Robeson's comments were an affront to the "national interests." Thus, racial decisions by the courts were pivotal in softening the criticism about the contradiction of a free and just nation that maintained a segment of its citizenry in second-class status based on race. Finally, there were White capitalists who understood that the South could be transformed from an Agrarian society to an industrialized sunbelt only when it ended the divisive battle over state-supported segregation. Here, segregation was read as a barrier obstructing the economic self-interest of U.S. profit makers.

At this writing, the electorate of California have passed Proposition 209, calling for an end to "preferential treatment" in state employment and state university admission policies based on race or gender. The trope of preferential treatment has help create a perception that ending affirmative action will lead to a more fair and equitable society, while, in reality, the proposition will be used to instantiate the hierarchical relations of power that once again privilege whiteness as the most valued property. Citizenship for people of color remains elusive.

Critical race theoretical approaches to education

Thus far in this paper I have attempted to explain the meaning and historical background of critical race theory in legal scholarship and the role of property rights in understanding citizenship. However, educators and researchers in the field of education will want to know what relevance CRT has to education. The connections between law and education are relatively simple to establish. Since education in the USA is not outlined explicitly in the nation's constitution, it is one of the social functions relegated to individual states. Consequently, states generate legislation and enact laws designed to proscribe the contours of education.

One of the earliest legislative attempts was Massachusetts' "old deluder Satan" act that required citizens of the state to provide education for its children to insure they received moral and religious instruction. In the modern era the intersection of school and law provided fertile ground for testing and enacting civil rights legislation. Thus, the landmark *Brown* decision generated a spate of school desegregation of Central High School in Little Rock, Arkansas, the New Orleans Public Schools, the University of Mississippi, the University of Alabama, and the University of Georgia. By the 1970s, school desegregation/civil rights battles were being fought in northern cities. The fight for school desegregation in Boston schools was among the most vicious in civil rights annals.

One recurring theme that characterized the school/civil rights legal battles was "equal opportunity." This notion of equal opportunity was associated with the idea that students of color should have access to the same school opportunities, i.e. curriculum, instruction, funding, facilities. as White students. This emphasis on "sameness" was important because it helped boost the arguments for "equal treatment

under the law” that were important for moving African Americans from their second-class status.

But what was necessary to help African Americans to “catch up” with their White counterparts? Beyond equal treatment was the need to redress past inequities. Thus, there was a move toward affirmative action and the creation of African Americans and other marginalized groups as “protected classes” to insure that they were not systematically screened out of opportunities in employment, college admission, and housing. If we look at the way that public education is currently configured, it is possible to see the ways that CRT can be a powerful explanatory tool for the sustained inequity that people of color experience. I will use the areas of curriculum, instruction, assessment, school funding, and desegregation as exemplars of the relationship that can exist between CRT and education.

Curriculum

Critical race theory sees the official school curriculum as a culturally specific artifact designed to maintain a White supremacist master script. As Swartz (1992) contends:

Master scripting silences multiple voices and perspectives, primarily legitimizing dominant, white, upper-class, male voicings as the “standard” knowledge students need to know. All other accounts and perspectives are omitted from the master script unless they can be disempowered through misrepresentation. Thus, content that does not reflect the dominant voice must be brought under control, *mastered*, and then reshaped before it can become a part of the master script. (p. 341)

This master scripting means stories of African Americans are muted and erased when they challenge dominant culture authority and power. Thus, Rosa Parks is reduced to a tired seamstress instead of a long-time participant in social justice endeavors as evidenced by her work at the Highlander Folk School to prepare for a confrontation with segregationist ideology. Or, Martin Luther King, Jr. becomes a sanitized folk hero who enjoyed the full support of “good Americans” rather than a disdained scholar and activist whose vision extended to social justice causes throughout the world and challenged the USA on issues of economic injustice and aggression in Southeast Asia.

The race-neutral or colorblind perspective, evident in the way the curriculum presents people of color, presumes a homogenized “we” in a celebration of diversity. This perspective embraces a so-called multicultural perspective by “misequating the middle passage with Ellis Island” (King, 1992, p. 327). Thus, students are taught erroneously that “we are all immigrants,” and, as a result, African American, Indigenous, and Chicano students are left with the guilt of failing to rise above their immigrant status like “every other group.”

But it is not just the distortions, omissions, and stereotypes of school curriculum content that must be considered, it also is the rigor of the curriculum and access to what is deemed “enriched” curriculum via gifted and talented courses and classes. As Jonathan Kozol (1991) describes:

The curriculum [the white school] follows “emphasizes critical thinking, reasoning and logic.” The planetarium, for instance, is employed not simply for the study of the universe as it exists. “Children also are designing their own galaxies,” the teacher says. (p. 96)

In my [Kozol's] notes: "Six girls, four boys. Nine White, one Chinese. I am glad they have this class. But what about the others? Aren't there ten Black children in the school who could *enjoy* this also?"

This restricted access to the curriculum is a good illustration of Harris's (1993) explanation of the function of property in terms of use and enjoyment.

Instruction

CRT suggests that current instructional strategies presume that African American students are deficient. As a consequence, classroom teachers are engaged in a never-ending quest for "*the* right strategy or technique" to deal with (read: control) "at-risk" (read: African American) students. Cast in a language of failure, instructional approaches for African American students typically involve some aspect of remediation.

This race-neutral perspective purports to see deficiency as an individual phenomenon. Thus, instruction is conceived as a generic set of teaching skills that should work for all students. When these strategies or skills fail to achieve desired results, the students, not the techniques, are found to be lacking.

Fortunately, new research efforts are rejecting deficit models and investigating and affirming the integrity of effective teachers of African American students.⁵ This scholarship underscores the teachers' understanding of the saliency of race in education and the society, and it underscores the need to make racism explicit so that students can recognize and struggle against this particular form of oppression.

Examples of counterpedagogical moves are found in the work of both Chicago elementary teacher Marva Collins and Los Angeles high school mathematics teacher Jaime Escalante. While neither Collins nor Escalante is acclaimed as a "progressive" teacher, both are recognized for their persistence in believing in the educability of all students. Both remind students that mainstream society expects them to be failures and prod the students to succeed as a form of counterinsurgency. Their insistence on helping students achieve in the "traditional" curriculum represents a twist on Audre Lorde's notion that one cannot dismantle the master's house with the master's tools. Instead, they believe one can only dismantle the master's house with the master's tools.

Assessment

For the critical race theorist, intelligence testing has been a movement to legitimize African American student deficiency under the guise of scientific rationalism (Alienikoff, 1991; Gould, 1981). According to Marable (1983), one purpose of the African American in the racial/capitalist state is to serve as a symbolic index for poor Whites. If the working-class White is "achieving" at a higher level than Blacks, then they feel relatively superior. This allows Whites with real power to exploit both poor Whites and Blacks. Throughout U.S. history, the subordination of Blacks has been built on "scientific" theories (e.g., intelligence testing) that depend on racial stereotypes about Blacks that make their condition appear appropriate. Crenshaw (1988) contends that the point of controversy is no longer that these stereotypes were developed to rationalize the oppression of Blacks, but rather, "[T]he extent to which these stereotypes serve a hegemonic function by perpetuating a mythology about both Blacks and Whites even today, reinforcing an illusion of a White community that cuts across ethnic, gender, and class lines" (p. 1371).

In the classroom, a dysfunctional curriculum coupled with a lack of instructional innovation (or persistence) adds up to poor performance on traditional assessment measures. These assessment measures – crude by most analyses – may tell us that students do not know what it on the test, but fail to tell us what students actually know and are able to do. A telling example of this mismatch between what schools measure and what students know and can do is that of a 10-year-old African American girl who was repeatedly told by the teacher that she was a poor math student. However, the teacher was unaware that the girl was living under incredible stresses where she was assuming responsibilities her drug-addicted mother could not. To ward off child welfare agents the child handled all household responsibilities, including budgeting and paying all the household bills. Her ability to keep the household going made it appear that everything was fine in the household. According to the teacher, she could not do fourth-grade math, but the evidence of her life suggests she was doing just fine at “adult” math!

School funding

Perhaps no area of schooling underscores inequity and racism better than school funding. CRT argues that inequality in school funding is a function of institutional and structural racism. The inability of African Americans to qualify for educational advancements, jobs, and mortgages creates a cycle of low educational achievement, underemployment and unemployment, and standard housing. Without suffering a single act of personal racism, most African Americans suffer the consequence of systemic and structural racism.⁶

Jonathan Kozol’s *Savage inequalities* (1991) created an emotional and ethical stir within and beyond the education community. White colleagues talked of how moved both they and their students were as they read Kozol’s descriptions of inequity in school settings. Some talked of being “moved to tears” and “unable to read more than a few pages at a time.” Others talked of how difficult it was for their students to read the book. Interestingly, many African American colleagues indicated that although Kozol had been precise and passionate in his documentation, he had not revealed anything new about the differences that exist between African American and White schools. But, Kozol’s research did give voice to people of color. His analysis of funding inequities provides insight into the impact of racism and White self-interest on school funding policies.

CRT argues that the import of property provides another way to consider the funding disparity. Schooling, as a function of individual states, is differentially administered by the various state legislatures. But, one of the most common aspects of these 50 different schooling agencies is the way they are funded. Almost every state funds schools based on property taxes. Those areas with property of greater wealth typically have better funded schools. In the appendix of Kozol’s book are comparisons showing the disparities within three different areas. In the Chicago area, for the 1988–89 school year, the funding disparity was an almost a \$4,000 per pupil difference. Chicago schools were spending \$5,265 per pupil, while the suburban Niles Township High School District was spending \$9,371. In the New Jersey area the differences between Camden Schools and Princeton Schools was about \$4,200 in per pupil spending. In the New York City area the difference was almost \$6,000 in per pupil spending.

Talking about the disparity between per pupil spending often invites the critique

that money doesn't matter. Studies as far back as Coleman et al. (1966) and Jencks et al. (1972) have argued that family and individual effects are far more powerful than schools in determining poor school performance. Whether or not school spending is a determining factor in school achievement, no one from the family and individual effects camp can mount an ethical case for allowing poor children to languish in unheated, overcrowded schools with bathrooms that spew raw sewage while middle-income White students attend school in spacious, technology rich, inviting buildings. If money doesn't matter, then why spend it on the rich?

CRT takes to task school reformers who fail to recognize that property is a powerful determinant of academic advantage. Without a commitment to redesign funding formulas, one of the basic inequities of schooling will remain in place and virtually guarantee the reproduction of the status quo.

Desegregation

Although desegregation is not occurring in every school district, its impact on the national level is important enough to be included with the more common school experiences of curriculum, instruction, assessment, and funding. Despite the recorded history of the fight for school desegregation, CRT scholars argue that rather than serving as a solution to social inequity, school desegregation has been promoted only in ways that advantage Whites (Bell, 1990)

Lomotey and Staley's (1990) examination of Buffalo's "model desegregation" program revealed that African American students continued to be poorly served by the school system. African American student achievement failed to improve, while suspension, expulsion, and dropout rates continued to rise. What, then, made Buffalo a model desegregation program? In short, the answer is the benefits that Whites derived from the program and their seeming support of desegregation. As a result of the school desegregation program, Whites were able to take advantage of special magnet school programs and free extended child care. Thus, the dominant logic is that a model desegregation program is one that insures that Whites are happy (and do not leave the system altogether).

The report of school desegregation in Buffalo is not unlike the allegorical story presented by CRT dean, Derrick Bell (1987). The story, entitled "The sacrificed Black children," illustrates how the failure to accept African American children into their community schools causes a White school district to ultimately end up begging the students to come because their presence was intimately tied to the economic prosperity of the community. It is this realization that civil rights legislation in the USA always has benefited Whites (even if it has not always benefited African Americans) that forms the crux of the CRT argument against traditional liberal civil rights legislation. The CRT argument provides an important segue into the final section of this paper – the need for caution in proceeding with the integration of CRT into educational research.

Words of caution

It is the pattern in educational research for a new idea or innovation to take hold and proliferate. Sometimes an idea takes a while to take root, but once it does, most likely its creators lose control of the idea. Consider what happened with the notion of

cooperative learning. When Cohen and Roper (1972) proposed cooperative classroom structures to equalize the status of White and African American students, their work held great promise for helping teacher to develop curricular and instructional strategies for improving the academic performance of all children in desegregated classrooms. However, somehow their findings got distilled into day-long workshops and five-step lesson plans. School systems throughout the USA were adopting cooperative learning without any thought to improving the performance of children of color.

A similar transmutation of theory is occurring in the area of multicultural education. Although scholars such as James Banks, Carl Grant, and Geneva Gay⁷ began on a scholarly path designed to change schools as institutions so that students might be prepared to reconstruct the society, in its current practice iteration, multicultural education is but a shadow of its conceptual self. Rather than engage students in provocative thinking about the contradictions of U.S. ideals and lived realities, teachers often find themselves encouraging students to sing “ethnic” songs, eat ethnic foods, and do ethnic dances. Consistently, manifestations of multicultural education in the classroom are superficial and trivial “celebrations of diversity.”

What, then, might happen to CRT in the hands of educational researchers and school personnel? Well, to be honest, like Lani Guinier, I doubt if it will go very far into the mainstream. Rather, CRT in education is likely to become the “darling” of the radical left, continue to generate scholarly papers and debate, and never penetrate the classrooms and daily experiences of students of color. But, students of color, their families, and communities cannot afford the luxury of CRT scholars’ ruminations any more than they could afford those of critical and postmodern theorists, where the ideas are laudable but the practice leaves much to be desired.

As excited as I may be about the potential of CRT for illuminating our thinking about school inequity, I believe educational researchers need much more time to study and understand the legal literature in which it is situated. It is very tempting to appropriate CRT as a more powerful explanatory narrative for the persistent problems of race, racism, and social injustice. If we are serious about solving these problems in schools and classrooms, we have to be serious about intense study and careful rethinking of race and education. Adopting and adapting CRT as a framework for educational equity means that we will have to expose racism in education *and* propose radical solutions for addressing it. We will have to take bold and sometimes unpopular positions. We may be pilloried figuratively or, at least, vilified for these stands. Ultimately, we may have to stand, symbolically, before the nation as Lani Guinier and hear our ideas distorted and misrepresented. We may have to defend a radical approach to democracy that seriously undermines the privilege of those who have so skillfully carved that privilege into the foundation of the nation. We will have to adopt a position of consistently swimming against the current. We run the risk of being permanent outsiders, but, as Wynter (1992) suggests, we must operate from a position of *alterity* or *liminality* where we may “call into question the rules of functioning on whose basis the United States conceptualizes itself as a generically ‘White’ nation, and elaborate its present system of societal self-knowledge” (p. 19). But, I fear we (educational researchers) may never assume the liminal position because of its dangers, its discomfort, and because we insist on thinking of ourselves as permanent residents in a *nice* field like education.

Notes

1. For a richer description of critical race theory, see Tate (1997).
2. Scholars such as Peggy McIntosh (1990) and Ruth Frankenberg (1993) have begun to deconstruct whiteness through their position of otherness as women. Their work suggests possibilities for Whites to deploy a CRT analysis.
3. Williams is known for her Benetton story where she was locked out of the trendy clothing store in New York because of her race. Some doubted the “generalizability” of Williams story until television personality Oprah Winfrey reported a similar incident. Bell’s “Space Traders” story is an allegorical tale that suggests that White America would gladly “give away” African Americans to space aliens if the aliens made a good enough trade.
4. Of course in America the concept of “ownership” of the land has to be contested by the indigenous people’s rights to that land. However, that discussion is beyond the scope of this one.
5. See for example, Foster and Newman (1989), Henry (1992), and Ladson-Billings (1995).
6. The impact of racism generally is tied to the everyday lives of poor and underclass people of color. Recently, revelations of major U.S. corporations (e.g., Texaco and Avis) indicate that they systematically perpetuate racism in hiring, promotion, and customer service.
7. Banks, Grant, and Gay are but a few of the notables who were in the forefront of the intellectual genesis of multicultural education. Gwendolyn Baker, Carlos Cortez, and Margaret Gibson are others. Any attempt to name them all would fall short.

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