

Introduction

This book collects the best writing of a new generation of civil rights scholars—the cutting edge of critical race theory (CRT). Here you will find the ironic, challenging *Chronicles* of the late Derrick Bell, the evocative first-person stories of Patricia Williams, the incisive analysis of the burdens of workplace identity of Devon Carbado and Mitu Gulati. You will read Paul Butler’s startling suggestion that black juries acquit black defendants who are not dangers to the community and his even more striking proposal that society adopt a hip-hop theory of criminal justice. Included as well is James Gordon’s painstaking historical sleuthing that concludes that the first Justice John Marshall Harlan, author of a remarkable dissent in *Plessy v. Ferguson*, had a black brother. You will read Julie Su’s story of how activists successfully confronted garment-district sweatshops in a contemporary city, Gerald López’s and Anthony Alfieri’s impassioned defenses of engaged lawyering, and Peggy Davis’s arresting description of legal “microaggressions”—those stunning, ambiguous assaults on the dignity and self-regard of people of color. You will read about Latino/a critical (Lat-crit) studies, an emerging subdiscipline within CRT, and the debate over whether a black-white binary paradigm of American antidiscrimination law paradoxically discriminates against Latinos and Asians. Lat-crit scholar George Martinez analyzes judicial decisions grappling with whether Mexican Americans are white and concludes that they generally were held to be so when this would hurt the group—but nonwhite when it made no difference. Superstar Ian Haney López weighs in with an analysis of the social construction of race and another piece scolding Latino leaders for cleaving to whiteness.

Are radical law professors who spend their hours in the ivory tower vampires? In a supremely satirical article, American Indian law scholar Robert Williams argues that they are and that they should come down from the tower, roll up their sleeves, and join the fray at street level. And in an essay that rivals the best of Tom Wolfe, you will read the late Trina Grillo and Stephanie Wildman’s demonstration of how white people, even ones of goodwill, unconsciously turn discussions about race around so that the conversation ends up being about themselves! You will read about the atrocities of federal Indian law, the problem of statistical discrimination and what to do about racism that seems “reasonable”—based on statistically valid generalizations about a group—and interethnic group alliances and tensions. You will read about black women who chose to wear their hair in braids (and lived to tell the tale) and about those who wear race as a

mask. You will read about what it is like to be a professor of color trying to win an appointment at a major school or a gay or lesbian of color trying to find a place in the larger civil rights movement. Have you ever wondered how the white race created itself? You will read here Ian Haney López's surprising answer that the Supreme Court played a large part in that construction.

This book is for the reader who wishes to learn about critical race theory, a dynamic, eclectic, and growing movement in the law, and about the emerging writers, many but by no means all of color, who have been challenging racial orthodoxy, shaking up the legal academy, questioning comfortable liberal premises, and leading the search for new ways of thinking about our nation's most intractable, and insoluble, problem—race.

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. It seemed to them—and they were quickly joined by others—that the civil rights movement of the 1960s had stalled and indeed that many of its gains were being rolled back. New approaches were needed to understand and come to grips with the more subtle, but just as deeply entrenched, varieties of racism that characterize our times. Old approaches—filing amicus briefs, marching, coining new litigation strategies, writing articles in legal and popular journals exhorting our fellow citizens to exercise moral leadership in the search for racial justice—were yielding smaller and smaller returns. As Freeman once put it, if you are up a tree and a flood is coming, sometimes you have to climb down before finding shelter in a taller, safer one.

Out of this need came critical race theory, now a body of several hundred leading law review articles and dozens of books, many of which are noted or excerpted in this volume. The movement has predecessors: critical legal studies, to which it owes a great debt; feminism; and continental social and political philosophy. It derives its inspiration from the American civil rights tradition, as represented by such leaders as Martin Luther King, Jr., W.E.B. Du Bois, Rosa Parks, and César Chávez, and from nationalist movements, as manifested by such figures as Malcolm X and the Black Panthers. Although its intellectual origins go back much further, as a self-conscious entity the CRT movement began organizing in 1989, holding its first working session shortly thereafter. This book grew out of the 1993 annual summer workshop held at Mills College in Oakland, California, when the group decided to put its energies into producing a reader. The first edition, which appeared in 1995, was adopted in courses in more than one hundred colleges and universities around the world. This third edition builds on the first two but contains much new material, including major sections dealing with crime, gay-lesbian issues, the black-white binary, intergroup tensions, black men who are on the “down low,” and critical race practice and activism. It also includes much new writing by young scholars addressing such issues as workplace identities and the relation of CRT to hip-hop culture and music.

CRT begins with a number of basic insights. One is that racism is normal, not aberrant, in American society. Because it is an ingrained feature of our landscape, racism looks ordinary and natural to persons in the culture. Formal equal opportunity—rules and laws that insist on treating blacks and whites alike (color blindness)—can thus remedy only the more extreme and shocking forms of injustice that do stand out. It can do

little about the business-as-usual forms of racism that people of color confront every day and that account for much misery, alienation, and despair.

Critical race theory's challenge to racial oppression and the status quo sometimes takes the form of storytelling, in which writers 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. Starting from the premise that a culture constructs its own social reality in ways that promote its own self-interest, these scholars set out to construct a different reality. Our social world, with its rules, practices, and assignments of prestige and power, is not fixed; rather, we construct it with words, stories, and silence. But we need not acquiesce in arrangements that are unfair and one-sided. By writing and speaking against them, we may hope to contribute to a better, fairer world.

A third premise underlying much of critical race theory is interest convergence. Developed by Derrick Bell, this concept holds that white elites will tolerate or encourage racial advances for blacks only when these also promote white self-interest. Other criticalists question whether civil rights law is designed to benefit folks of color and even suggest that it is really a homeostatic mechanism that ensures that racial progress occurs at just the right pace: Change that is too rapid would be unsettling to society at large; change that is too slow could prove destabilizing. Many question whether white judges are likely to propel racial change, raising the possibility that nonjudicial avenues, such as community action and militancy, may prove more promising. A number of writers employ critical tools to address such classic civil rights issues as federal Indian law, remedies for racist speech and hate crimes, and women's reproductive liberty.

In addition to exploring new approaches to racial justice, criticalists have been trying out new forms of writing and thought. Many are postmoderns, who believe that form and substance are closely connected. Accordingly, they have been using biography and autobiography, stories and counterstories to expose the false necessity and unintentional irony of much current civil rights law and scholarship. Others have been experimenting with humor, satire, and narrative analysis to reveal the circular, self-serving nature of particular legal doctrines or rules. Most mainstream scholars embrace universalism over particularity, and abstract principles and the rule of law over perspectivism (an approach characterized by an emphasis on how it was for a particular person at a particular time and place). Clashing with this more traditional view, CRT writers emphasize the opposite, in what has been termed the "call to context." For CRT scholars, general laws may be appropriate in some areas (such as, perhaps, trusts and estates or highway speed limits), but political and moral discourse is not one of them. Normative discourse (which civil rights is) is highly fact sensitive, which means that adding even one new fact can change intuition radically. For example, imagine a youth convicted of a serious crime. One's first response may be to urge severe punishment. But add one fact—he was seen laughing as he walked away from the scene—and one's intuition changes: Even more serious punishment now seems appropriate. But add another fact—he is mentally impaired or was abused as a child—and now leniency seems in order. Because civil rights is more like the latter example than the former (highway law), neutral universal principles like formal equality can sometimes be more of a hindrance than a help in the search for racial justice. For this reason, many CRT writers urge attention to the details of minorities' lives as a foundation for our national civil rights strategy.