Chapter 4

Critical Race Theory and Education: History, Theory, and Implications

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In 1993 President Clinton nominated Professor Lani Guinier of the University of Pennsylvania Law School to be assistant attorney general in charge of the Civil Rights Division. Her nomination for this government post resulted in a large controversy centering on her scholarship (Guinier, 1991a, 1991b). Guinier's research, which examined voting systems, asked the following question: Are there factors that guarantee winners and losers? She contended that such factors do exist and that race is too often an important factor in the construction of voting districts, the outcome of elections, and ultimately political influence, including the control of educational systems. Guinier (1989) argued that the political system must be rejuvenated to be more inclusive. Specifically, she called for the creation of electoral schemes that would allow Blacks to elect candidates representing their interests. These schemes—proportional voting, in particular—were already a reality in many southern localities and had received endorsement from the Reagan-Bush Justice Department and the Supreme Court. Professor Guinier also was critical of political bargaining between leading civil rights groups, African American politicians, and Republicans that resulted in the construction of guaranteed African American legislative districts and conservative White districts in adjacent jurisdictions. Guinier's position sparked great controversy among both liberals and conservatives.

In the epilogue of *Racial Formation in the United States*, Omi and Winant (1994) posited that this controversy had little to do with Guinier's position on the issue of voting districts; rather, her "sin" was her eagerness to discuss the changing dimensions of race in contemporary U.S. politics. Omi and Winant (1994) remarked:

> Guinier's recognition that, in the post-civil rights era as previously, racial injustice still operates, that it has taken on new forms, and that it needs to be opposed if democracy is to advance, in our view located her in a far more realistic position. Guinier understood the flexibility of *racial identities and*

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politics [italics added], but also affirmed that racism still shapes the U.S. social structure in a widespread fashion. She resisted the idea of closing Pandora's box; in fact she denied the possibility of closing it, arguing the racial dimensions of U.S. politics are too complex, too basic, and too subtle to be downplayed for long. (p. 156)

Ladson-Billings and Tate (1995) asserted that, despite the salience of race in U.S. society, it remains untheorized as a topic of scholarly inquiry in education.[1] Over the past three decades, theoretical and philosophical considerations of gender have been delineated and debated (Chodorow, 1978; Damarin, 1995; DeBouvoir, 1961; Harding, 1986; Hartsock, 1979). Similarly, Marxist and neo-Marxist analyses of class continue to frame many explanations of social inequality (Apple, 1992; Bowles & Gintis, 1976; Carnoy, 1974; Frankenstein, 1987).[2] Although gender-and class-based analyses continue to struggle for legitimacy in academe, educational studies conceptualized on these theoretical precepts abound (see reviews by Ewert, 1991; B. M. Gordon, 1995; Noddings, 1990; Schmitz, Butler, Rosenfelt, & Guy-Sheftall, 1995).

Ladson-Billings and Tate (1995) recognized the importance of gender-and class-based analyses; however, they asserted that the significance of race in the United States, and more specifically "raced" education, could not be explained with theories of gender or class.[3] Similarly, McCarthy and Crichlow (1993) argued that

the subject of racial domination has, to say the least, been treated problematically in modern educational and social theories. Racial logics and mechanisms have been difficult to specify, their persistence difficult to explain, and their dynamics and trajectories difficult to predict. Indeed, the very slippery nature of what has come to be known in the educational literature as the "race question" challenges in fundamental ways the entire tapestry of curriculum and educational thought, particularly with respect to nonclass social antagonisms and domination relations in general. That is to say, the race question brings into the foreground omissions and blind spots. (p. xvii)[4]

These omissions and blind spots suggest the need for theoretical perspectives that move beyond the traditional paradigmatic boundaries of educational research to provide a more cogent analysis of "raced" people and move discussions of race and racism from the margins of scholarly activity to the fore of educational discourse. King (1995) stated:

Conceptual intervention in the educational research literature is needed to facilitate a systemic examination of scholarship that addresses ideological influence on knowledge in curriculum and education practice, particularly with regard to the education of Black people. (p. 270)

To this end, one important question for scholars interested in educational equity and the politics of education is, In what theoretical framework did Lani Guinier embed her analyses of race, voting systems, and political equality?[5] The answer to this question can be found in an emerging literature in legal discourse referred to as critical race theory (CRT). Calmore (1992) remarked:

As a form of oppositional scholarship, critical race theory challenges the universality of white experience/judgement as the authoritative standard that binds people of color and normatively measures,

directs, controls, and regulates the terms of proper thought, expression, presentation, and behavior. As represented by legal scholars, critical race theory challenges the dominant discourses on race and racism as they relate to law. The task is to identify values and norms that have been disguised and subordinated in the law. As critical race scholars, we thus seek to demonstrate that our experiences as people of color are legitimate, appropriate, and effective bases for analyzing the legal system and racial subordination. This process is vital to our transformative vision. This theory-practice approach, a praxis, if you will, finds a variety of emphases among those who follow it. . . .

From this vantage, consider for a moment how law, society, and culture are texts—not so much like a literary work, but rather like the traditional black minister's citation of text as a verse or scripture that would lend authoritative support to the sermon he is about to deliver. Here, texts are not merely random stories; like scripture, they are expressions of authority, preemption, and sanction. People of color increasingly claim that these large texts of law, society, and culture must be subjected to fundamental criticism and reinterpretation. (pp. 2161–2162)

This chapter is structured around the exposition of various sources (authors of CRT articles and philosophers who influenced these authors), followed by commentaries that summarize and critique the more descriptive discussions. The reason for this unusual structure relates to the twofold purpose of the chapter. The first purpose is to describe the major theoretical elements undergirding CRT. The second purpose is to discuss the potential implications of this body of literature for the scholarly articulation of race and equity in educational policy and research. This discussion will offer a critique of CRT writing that asks whether the methods of analysis and argument, and the research agenda represented by the CRT scholarship described here, are valuable in two ways. First, do they provide insights capable of radically transforming educational policy or the study of education? Second, do they provide insights into equity issues in education that are substantial and novel?

OUTLINE OF THE DISCUSSION

This chapter does not include a comprehensive review of the wide range of topics analyzed by scholars employing tenets of CRT; rather, it attempts to outline elements of this theory especially relevant to educational researchers. With this in mind, the first topic explored is the paradigmatic kinship of educational research and the legal structures of U.S. society. The intent of this discussion is to describe how both educational research and legal structures contribute to existing belief systems and to legitimating social frameworks and policy that result in educational inequities for people of color. The section concludes with a call for conceptual intervention.

In the next section, the historical origins and shifting paradigmatic vision of CRT are discussed. CRT is a product of and response to one of the most politically active and successful eras of social change in the United States and cannot be divorced from it without losing analytical insight. The CRT movement in legal studies is rooted in the social missions and struggles of the 1960s that sought justice, liberation, and economic empowerment; thus, from its inception, it has had both academic and social activist goals. Furthermore, the movement is a response to the retrenching of civil rights gains and a changing social discourse in politics.

Fixing the origin of the CRT movement in the 1970s does not deny the pre-movement intellectual history and legal strategies that served as its foundation. Rather, this pre-1970s history both provides a rich resource of data on which to build and reflects an intellectual continuity central to the movement's mission.

The intellectual continuity of CRT should also be viewed as a shift in paradigm from critical legal studies (CLS). The distinctions between CRT and CLS are important for those interested in how race and racism are framed in intellectual discourse. Scholars using both methods of legal analysis have concurred that the law serves the interests of powerful groups in society; however, scholars in the CRT movement have argued that civil rights discourse in CLS does not adequately address the experiences of people of color. Ultimately, this argument serves as a point of departure between the two theoretically driven movements.

EDUCATIONAL RESEARCH AND THE LAW: RACED REPRESENTATIONS

The purpose of this section is to briefly describe how the law and educational research have been influenced by a paradigmatic view that characterizes people of color as inferior. Considerable debate has centered on the appropriateness of quantitative and qualitative research methodologies in educational research (Gage, 1989; Jacob, 1987; Schrag, 1992; Shulman, 1986). This debate has focused largely on ideology and conceptions of social science. Shulman argued that some of the ideological differences developed as a result of contrasting conceptions of education in general and teaching in particular; others developed in relation to views on acceptable forms of research; and yet others developed around political commitments. Research programs often are developed and accepted because of their consistency with favored ideological positions (Shulman, 1986). Earlier, Durkheim (1965) made a similar point when describing the role of theory in scholarly thought and society:

> It is not at all true that concepts, even when constructed according to rules of science, get their authority uniquely from their objective value. It is not enough that they be true to get believed. If they are not in harmony with other beliefs and opinions, or, in a word, with a mass of other collective representations (the concepts taken for granted by most people in a given time and place), they will be denied; minds will be closed to them; consequently it will be as though they do not exist. (p. 486)

Durkheim's (1965) analysis suggests that, for a theory to become acceptable, it must be consistent with other representations or belief systems that reflect the prevailing cultural ethos of a people. Wynter (1995) argued that belief systems are mechanisms by which human orders are integrated on the basis of artificial or symbolic modes rather than on the basis of genetic modes of classification. Wynter stated that the systemic goal of belief systems is to motivate culture-specific ensembles of behavior rather than to deal with truth. Instead, truth is found in the behavior motivated by belief systems and the systemic effects to which the behaviors collectively lead.

The theories and belief systems predominant in education related to people of color and the representations of these citizens in American jurisprudence have shared a common trait. Both have been premised upon political, scientific, and religious theories relying on racial characterizations and stereotypes about people of color that help support a legitimating ideology and specific political action (Allport, 1954; Bullock, 1967; Cone, 1970; Marable, 1983; Takaki, 1993). Some of the earliest studies with educational implications centered on the intellectual assessment and school achievement of African American and other ethnic minority students (Hilliard, 1979; Kamin, 1974; Madaus, 1994). This research legacy, referred to as the inferiority paradigm, is built on the belief that people of color are biologically and genetically inferior to Whites (Carter & Goodwin, 1994; Gould, 1981; Selden, 1994).[6] The inferiority paradigm is characterized by its fluidity and dynamic nature, an ever-changing hegemonic discourse. However, despite its fluid nature, some scholars have attempted to describe elements of the inferiority paradigm.

Padilla and Lindholm (1995) argued that a set of identifiable characteristics inherent in the inferiority paradigm—particularly IQ studies—are still apparent today in educational research involving ethnic minorities. These complex, connected assumptions conform to a societal disposition that makes them appear natural and appealing. The identifiable assumptions of this paradigm are as follows: (a) The White middle-class American (often male) serves as the standard against which other groups are compared; (b) the instruments used to measure differences are universally applied across all groups, with perhaps slight adjustments for culturally diverse populations; and (c) although we need to recognize sources of potential variance such as social class, gender, cultural orientation, and proficiency in English, these factors are viewed as extraneous and can later be ignored (Padilla & Lindholm, 1995). Other scholars also have recognized these assumptions and viewed them as biased against African Americans, Latinos, and other ethnic minorities (Lightfoot, 1980; Pang, 1995; Rodrìguez, 1995).

In *Minority Students: A Research Appraisal*, Weinberg (1977) argued that educational research studies should move beyond the conceptual frameworks associated with the inferiority paradigm. Moreover, he contended that educational research concerning children of color should include (a) pertinent historical and legal background, (b) the ideology of racism, (c) a continuing reexamination of prevailing views of the role of race and social class in learning, and (d) the influence of minority communities on schools.

Although many scholars have called for a change in the way educational research is conducted in communities of color, the influence of past research is persistent (e.g., Lomawaima, 1995; Moran & Hakuta, 1995). Carter and Goodwin (1994) stated:

> The conventional belief in the intellectual inferiority of visible racial/ethnic individuals has had a powerful impact on educational policy and curriculum development since before the 1800s. Because differences in achievement between White and non-White students were assumed to be genetically based, the inferiority paradigm allowed slavery to be condoned, which resulted in racial/ethnic groups,

particularly Blacks and Indians, being considered uneducable and barred from formal or adequate schooling. . . . The inferiority paradigm continues to manifest itself in the quality of education offered non-White children. (p. 296)

The assumptions of the inferiority paradigm have not been limited to discussions by the educational research community. The assumed intellectual inferiority of African Americans, Native Americans, Latinos, and other people of color also has a long history in the legal discourse of the United States (Clay, 1993; Takaki, 1993). In fact, a relationship exists between educational research built on assumptions of the inferiority paradigm and the construction of education-related policy and law (Elliot, 1987). For example, Arthur Jensen (1969) illustrated the interrelationship between science and public policy in an article in the *Harvard Educational Review*. Charged by the editors of the journal to consider why compensatory education programs of the "War on Poverty" had not produced better results, Jensen argued that the programs were bound to have disappointing results because the target population of students—disproportionately African American—had relatively low IQ scores. Similarly, Hernstein and Murray (1994) argued that society has experienced and continues to experience a dramatic transformation resulting in a group of largely White cognitive elite:

The twentieth century dawned on a world segregated into social classes defined in terms of money, power, and status. The ancient lines of separation based on hereditary rank are being erased, replaced by a more complicated set of overlapping lines. . . . Our thesis is that the twentieth century has continued the transformation, so that the twenty-first will open on a world in which cognitive ability is the decisive dividing force. The shift is more subtle than the previous one but more momentous. Social class remains the vehicle of social life, but intelligence now pulls the train. (p. 25)

Herrnstein and Murray (1994) posited that low intelligence is at the root of society's social ills, and policy formulation must take this into consideration. The arguments of both Jensen (1969) and Herrnstein and Murray (1994) have been subjected to considerable scholarly critique (e.g., Fraser, 1995; Gould, 1994; Hilliard, 1984; Hirsch, 1975); however, their position reflects an ideology with a long history in Western civilization (Gould, 1981). Of importance here is the binary opposition of White-Black (Allen, 1974; Anderson, 1994; Crenshaw, 1988): Whites are an intelligent, diligent, and deserving people; Blacks are a simple, lazy, and undeserving people. These socially constructed representations of subjective identity have categorized specific groups of society in terms of perceived abilities to think logically and justified the construction of oppressive social policy and law that reflect these categories (Jefferson, 1954).[7]

Perhaps nowhere is this reality more obvious than in the development of the Constitution (Black, 1988). It would be difficult to understand the construction of law without understanding the individual and collective mind-set of the original framers of American law. Anderson (1994) argued that the men who constructed the Constitution formed the foundation for the subordination and exploitation of African Americans. In 1786, the framers of the Constitution laid the legal ground-

work for a White-Black binary opposition by (a) counting Blacks as three fifths of a person, (b) delaying for 20 years the effective date for outlawing the slave trade, and (c) obligating the government to uphold fugitive slave laws and to use its troops to end Black insurrections and violence. Thus, by constitutional law, the federal government was legally empowered to support a cultural ethos of African American inferiority manifested as slavery.[8] Harold Cruse (1984) stated:

> The legal Constitution of American society recognizes the rights, privileges and aspirations of the individual, while America has become a nation dominated by the social powers of various ethnic and religious groups. The reality of the power struggles between competing ethnic or religious groups is that an individual has few rights and opportunities in America that are not backed up by the political and social power of one group or another. (pp. 7–8)

Cruse's (1984) argument is consistent with the laws, policies, and folkways that have regulated education. For a majority of the 1800s, laws in many states prohibited the education of African Americans. For instance, teaching a Black person to read would lead to fines, imprisonment, or flogging for the educator. These laws were partly a product of White capitalists attempting to secure control over an important means of their economic growth: slavery (Marable, 1983). However, these laws cannot be separated from the inferiority paradigm in education. The following excerpt from the *Dred Scott v. Sanford* decision of 1857 illustrates the relationship between American jurisprudence and the inferiority paradigm:

> They had for more than a century before been regarded as . . . so far inferior . . . that the negro might justly and lawfully be reduced to slavery for his benefit. . . . This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom of morals as in politics, which no one thought of disputing . . . and men in every grade and position in society daily and habitually acted upon it . . . without doubting for a moment the correctness of this opinion. (p. 407)

The power and danger of the inferiority paradigm, and paradigms in general, is that its adherents often fail to seek different conceptions. Oh and Wu (1996) stated:

> A conservative Congress or an electorate voting on a ballot proposition might believe the arguments and accept the public policy proposals advanced in *The Bell Curve* and *Alien Nation*, which argue, respectively, that race determines intelligence which in turn, determines socioeconomic success, and that the nation has been and should remain racially White and culturally homogeneous. With enough social science and empirical data, courts could sustain those [discriminatory] laws. Moreover, the courts may be compelled to sustain those laws because they would lack authority to take an approach that was more critical or that deviated from legal ratification of statistical data. The courts are *limited* [italics added] by the data. (p. 186)

Instead, the concepts and theories of the "accepted" paradigm influence social problem solving, policy development, policy interpretation, and policy implementation. For example, in his analysis of the *Brown* decision, Lawrence (1993) argued that *Brown* should be viewed as an attempt to regulate societal conceptions of African American inferiority:

The key to this understanding of *Brown* is that the practice of segregation, the practice the Court held inherently unconstitutional, was *speech*. *Brown* held that segregation is unconstitutional not simply because the physical separation of Black and white children is bad or because resources were distributed unequally among Black and white schools. *Brown* held that segregated schools were unconstitutional primarily because of the *message* segregation conveys—the message that Black children are an untouchable caste, unfit to be educated with white children. Segregation serves its purpose by conveying an idea. It stamps inferiority upon Blacks, and this badge communicates a message to others in the community, as well as to Blacks wearing the badge, that is injurious to Blacks. Therefore, *Brown* may be read as regulating the content of racist speech. As a regulation of racist speech, the decision is an exception to the usual rule that regulation of speech content is presumed unconstitutional. (p. 59)

Carter and Goodwin's (1994) review of social scientific paradigms revealed that social scientists have historically used race as a determinant of intellectual and educational aptitude. Similarly, the framers and interpreters (i.e., policymakers) of our legal system have used race as a factor in the construction and implementation of laws influencing education (Bell, 1987; Omi & Winant, 1994). Both educational research and law have often characterized "raced" people as intellectually inferior and raised doubts about the benefit of equitable social investment in education and other social services (Ford & Webb, 1994; Herrnstein & Murray, 1994). This paradigmatic kinship built on conceptions of inferiority suggests the need for a theory that explicates the role of race in education and law.

A GENESIS OF CRITICAL RACE THEORY

It is important to view the origins of CRT from both a historical and philosophical perspective. A historical perspective is required to provide a context for understanding the origins of contemporary legal debates concerning the effectiveness of past civil rights strategies in today's political climate. For example, current discussions of equal opportunity and "color blindness" have little meaning unless framed historically (Culp, 1991). Over the years, both concepts were guiding principles for a model of equality closely aligned with the dominant view of justice (Aleinikoff, 1991; Ming, 1948). However, the complexity of civil rights doctrine can be seen by examining the concept of color blindness.

Justice Harlan's dissenting opinion in the case of *Plessy v. Ferguson* (1896) reflects a normative principle of color blindness that runs deep in American civil rights discourse:

In view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste system here. Our Constitution is *color-blind* [italics added], and neither knows nor tolerates classes among citizens. In respect of civil rights all citizens are equal before the law. (p. 559)

From Justice Harlan's dissent to Martin Luther King's desire that his children be judged by the "content of their character" rather than the "color of their skin," the color-blind principle has existed in civil rights discourse. Moreover, despite what may appear to be an obvious tension between race-conscious and color-blind principles, individual supporters of race-conscious measures may actually

be guided by logic associated with a color-blind philosophy. For example, many liberal advocates of race-conscious measures justify the implementation of affirmative action policy on the basis of past violations of the color-blind principle (Aleinikoff, 1991). One example is Justice Blackmun's dissenting opinion in the *Bakke* decision (*Regents of the University of California v. Bakke*, 1978). He argued, "In order to get beyond racism [to color blindness], we must first take account of race. There is no other way" (p. 407).

Similarly, many conservative advocates of color-blind measures cannot ignore the importance of race. For example, Speaker of the House Newt Gingrich, an outspoken supporter of color-blind policy, argued that Blacks, like the Irish, Italians, and Jews before them, must overcome oppression with hard work (Pitts, 1995). When asked what he would tell a Black child growing up in America, Gingrich responded: "If you're black, you have to work harder, and if you're black and poor, you have to work twice as hard" (Pitts, 1995, p. 3A). In his remarks, Speaker of the House Gingrich acknowledged the reality of racial inequality; however, his color-blind approach to policy-making impeded him from moving beyond the recommendation of "pulling yourself up by your bootstraps." Congressman Gingrich's remark reflects a paradox by many who assert strongly they are color blind: To be color blind in this way requires race consciousness; one must notice race. Aleinikoff (1991) described the process:

> It is apparently important, as a matter of widespread cultural practice, for whites to assert that they are strongly colorblind, in the sense that they do not notice or act on the basis of race. One can see this at work in such statements as: "I judge each person as an individual." Of course, it cannot be that whites do not notice the race of others. Perhaps what is being said is that the speaker does not begin her evaluation with any preconceived notions. But this too is difficult to believe, given the deep and implicit ways in which our minds are color-coded. To be truly color blind in this way . . . requires color-consciousness: one must notice race in order to tell oneself not to trigger the usual mental processes that take race into account. (p. 1079)

Many legal and political scholars of color question whether the philosophical underpinnings of traditional liberal civil rights discourse—a color-blind approach—are capable of supporting continued movement toward social justice in a climate of retrenchment (e.g., Lawrence, 1987; Wilkins, 1995; P. J. Williams, 1991). In fact, some critical race theorists argue that there is little difference between conservative and liberal discourse on race-related law and policy. Crenshaw and colleagues (1995) remarked:

> Liberals and conservatives seemed to see issues of race and law from within the same structure of analysis—namely, a policy that legal rationality could identify and eradicate the biases of race-consciousness in social decision-making. Liberals and conservatives as a general matter differed over the degree to which racial bias was a fact of American life: liberals argued that bias was widespread where conservatives insisted it was not; liberals supported a disparate effect test for identifying discrimination, where conservatives advocated a more restricted intent requirement; liberals wanted an expanded state action requirement, whereas conservatives wanted a narrow one. The respective visions of the two factions differed only in scope: they defined and constructed "racism" the same way, as the opposite of color-blindness. (Crenshaw, Gotanda, Peller, & Thomas, 1995, p. xvii)

Critical race scholars find themselves questioning the philosophical underpinnings of civil rights discourse during a period of ideological attack from the right by neoconservatives seeking to eliminate past civil rights gains. Thus, to understand CRT within legal discourse it is important to recognize this scholarship as a critique of both liberal and conservative legal ideologies.

ONE HISTORICAL OVERVIEW[9]

The United States has a long history of attempting to use the courts and legal remedies to resolve racial injustice (Allen, 1974; *Roberts v. City of Boston*, 1850). However, by the turn of the 20th century the doctrine of "separate but equal" was the law of the land (*Plessy v. Ferguson*, 1896). The separate-but-equal doctrine reflected the prevailing social temperament, a belief in the inherent inferiority of African Americans that made it impossible for Whites to see themselves sharing public accommodations with Blacks (Bogle, 1989; *Dred Scott v. Sandford*, 1857; Jefferson, 1954; Peters, 1982; Selden, 1994). African Americans in the South were required by law to use racially segregated schools, trains, streetcars, hotels, barbershops, restaurants, and other public accommodations. The job market was also segregated, resulting in low-paying employment opportunities for African Americans (Margo, 1990). Moreover, African Americans were denied political equality by restrictive voting laws. The flawed legal concept of separate but equal resulted in the maintenance of African American subordination (Tate, Ladson-Billings, & Grant, 1993).

The need for legal remedies to address this subordinate position was articulated by Carter G. Woodson (1933/1990).[10] However, he argued that many African American lawyers were not prepared to litigate and resolve issues of race and American law:

> There are, moreover, certain aspects of law to which the white man would hardly address himself but to which the Negro should direct special attention. Of unusual importance to the Negro is the necessity for understanding the misrepresentations in criminal records of Negroes, and race distinctions in the laws of modern nations. These matters require a systemic study of the principles of law and legal procedure and, in addition thereto, further study of legal problems as they meet the Negro lawyer in the life which he must live. This offers the Negro law school an unusual opportunity. (p. 174)

Woodson was not the only intellectual to recognize the need for African American professionals capable of fighting racial injustice (see, e.g., Bullock, 1967).[11] A case in point is that of Mordecai W. Johnson. In 1926, Dr. Johnson was appointed to the presidency of Howard University, a historically Black college. He brought a set of strict academic standards to the position and a commitment to fight social inequities (Davis & Clark, 1992). Johnson recruited some of the nation's finest scholars. Moreover, on the advice of Supreme Court Justice Louis Brandeis, the new president moved to develop a first-rate law school to address racism and the law. Brandeis remarked, "Build a law school and train men to get the constitutional rights of [your] people. Once you train lawyers to do this, the

Supreme Court will have to hand your people their civil rights" (as cited in Davis & Clark, 1992, p. 47).

Johnson responded by hiring Charles Hamilton Houston to rebuild the law school with a focus on creating a cadre of lawyers capable of challenging racial injustice. An outstanding legal scholar, Houston was credited with the development of a social engineering approach to achieving racial equality (McNeil, 1983). Nathaniel Jones, judge of the United States Court of Appeals for the Sixth Circuit and former general counsel of the NAACP, remarked:

> It was Charles Hamilton Houston who persuasively argued that one of the most effective means of educating the public, of building political coalitions, and thereby obtaining meaningful change, was through litigation. Moreover, it was his view that litigation under the Fourteenth Amendment could be a powerful means of racial minorities to confront governmental authorities with their duty to act on behalf of those whose constitutional rights were being denigrated. He initiated litigation on a broad front and carried it forward. (as cited in Jones, 1993, p. 98)

After rebuilding Howard University's Law school, Houston resigned his deanship to assume the position of chief counsel of the NAACP, with responsibility for organizing the NAACP's campaign against legalized racial discrimination. Incorporating the meta-strategy of social engineering vis-à-vis litigation, Houston and his colleagues at the NAACP won impressive legal victories that led to changes in the nature of race relations in the United States (e.g., *Brown v. Board of Education*, 1954; *McLaurin v. Oklahoma State Regents for Higher Education*, 1950; *Missouri ex rel. Gaines v. Canada*, 1938; *Sipuel v. Board of Regents of the University of Oklahoma*, 1948).

During his tenure as chief counsel of the NAACP, Houston hired Thurgood Marshall, his former student at Howard University Law School and a protégé in the NAACP, to assist with the implementation of the social engineering litigation strategy. In 1938, Houston's health forced him to leave the NAACP (Davis & Clark, 1992). At the age of 30, Thurgood Marshall replaced Charles Houston as chief counsel of the NAACP. Marshall continued the path charted by Houston of using carefully planned lawsuits to challenge the doctrine of separate but equal. The social engineering strategy ultimately led to the *Brown* (1954) lawsuit and a decision that helped legally overturn *Plessy v. Ferguson* (1896).

A few years after the *Brown* decision, Thurgood Marshall, then director-counsel of the NAACP Legal Defense Fund, visited Pittsburgh, where Derrick Bell, a lawyer by training, was serving as executive director of an NAACP branch (Bell, 1993). Marshall offered Bell a position on his staff, and Bell accepted. From Marshall and from NAACP general counsel Robert L. Carter, Bell (1993) learned that "the role of the civil rights lawyer was not simply to understand the legal rules but to fashion arguments that might change existing laws" (p. 75). Thus, Derrick Bell received first-hand experience in Charles Houston's meta-strategy of using litigation to socially engineer civil rights. Moreover, it is this experience that Bell brought to his academic career in law.

The connection between Derrick Bell the civil rights lawyer and Derrick Bell the academic is important in chronicling the origins and philosophical undergirdings of CRT. In 1969, Bell accepted a position on the law faculty of Harvard University. In his negotiations with the dean of the law school, Bell (1994) made it clear that he viewed teaching as an opportunity to continue his civil rights work in a new arena. His legal scholarship was greatly influenced by his perspective as a Black man and his experience as a practicing civil rights lawyer. Bell (1994) noted, "Practitioners, often through storytelling and a more subjective, personal voice, examine ways in which the law has been shaped by and shapes issues of race" (p. 171). His methods of writing about race and law were at the forefront of a new school of scholarly thought in law: critical race theory. However, it is not possible to separate Bell's scholarship and CRT from the African American scholarship that emerged during and after the civil rights movement.

Although no identifiable date can be assigned to the conception of CRT, its foundation is linked to the development of African American thought in the post—civil rights era: the 1970s to the present (Bell, 1980a, 1980b; Matsuda, Lawrence, Delgado, & Crenshaw, 1993). The civil rights movement of the 1960s had slowed, and many opportunities associated with the movement were under attack (e.g., *Regents of the University of California v. Bakke*, 1978). Many scholars and activists of this era noted the limitations of achieving justice using dominant conceptions of race, racism, and social equality. For example, Ladner (1973) in sociology, Cone (1970) in theology, Allen (1974) in political science, and Banks (1971) in education all moved beyond the traditional paradigmatic boundaries of their fields to provide a more cogent analysis of the African American experience. This boundary crossing represents a significant contribution of the Black studies movement to the academic community.

This intellectual movement permeated the boundaries of legal education as law professors and teachers committed to racial justice began to correspond, meet, talk, and engage in political action in an effort to resist institutional structures that facilitated racism while claiming the objective of racial harmony and equality (Matsuda et al., 1993). Thus, the foundation of CRT as a movement and as an intellectual agenda was connected to the development of the new approach to examining race, racism, and law in the post—civil rights period (Barnes, 1990; Crenshaw, 1988). Matsuda and colleagues (1993) stated, "Both the movement and the theory reflected assertions of a community of values that were inherited from generations of radical teachers before us" (p. 3). CRT should be understood as an effort to build upon and extend the legal scholarship and activism that led to the civil rights movement rather than an attack on the thinking and efforts associated with the legal scholarship and strategies of that era (Crenshaw, 1988).

SHIFTING PARADIGMS: BEYOND CRITICAL LEGAL STUDIES

The development of CRT cannot be fully understood without a description of its relationship to the CLS movement.[12] According to Matsuda and colleagues

(1993), many legal scholars of color sought refuge within this intellectual community. The CLS movement emerged in the late 1970s as a small group of academics devoted their scholarly efforts to reappraising the merits of the realist tradition in legal discourse. Livingston (1982) described realism as a dominant philosophical influence on American legal thought for most of the 1920s and 1930s (see also White, 1972). The realist movement developed out of dissatisfaction with tenets of classical legal thought that cast judicial decision as the product of reasoning from a finite set of determined rules (White, 1972).[13] In contrast, the realists argued that legal rules were limited and could not guide courts to definite answers in specific cases (Llwellyn, 1931). Moreover, the realists contended that legal scholarship failed to recognize the impact of social forces on legal change and discourse.

Legal realists built on the philosophical traditions of pragmatism, instrumentalism, and progressivism. Closely connected to the New Deal, the realists supported the notion of identifying a coherent public interest and aligning political strategies to further it (Lasswell & McDougal, 1943). To support the development of political strategy, the realists advocated removing the dogmas of legal theory that obstructed law reform and substituting a "rational, scientific" method of legal scholarship (Livingston, 1982). Specifically, the realists asserted that the application of behavioral sciences and statistical method to legal analysis would lead to better and more creative forms of legal thought and, ultimately, social policy.

Livingston (1982) provided insight into the connection between the realist tradition and CLS:

> Legal Realism was not simply a clarion call for energetic empiricism, however, but also the herald of a characteristic critical methodology oriented toward pragmatic policy reform. Today's critical legal scholar can claim a particularly close kinship to Realist forebears in adoption of the Realists' twin orientations toward an iconoclastic historiography and a rigorous analytic jurisprudence. The work of critical legal scholars can be understood as the maturation of these Realist methodologies—maturation in which critical scholars explore incoherences at the level of social or political theory and critical scholarship is linked, not to reformist policy programs, but to a radical political agenda. (pp. 1676–1677)

In broadest terms, scholars within the CLS movement have attempted to analyze legal ideology and discourse as a mechanism that functions to re-create and legitimate social structures in the United States. Critical legal scholars constructed their view of legal ideology in part from the scholarship of Antonio Gramsci, an Italian neo-Marxist theorist who conceptualized a framework to analyze domination that transcended the perceived limitations of traditional Marxist analyses (Collins, 1982).[14] More traditional Marxist accounts described the law as a vehicle that supports oppression and assists in the pacification of the working class. Borrowing from Gramsci, CLS scholars argued that this instrumental perspective is limited because it fails to account for the significant support the state and legal system receive from the dominated classes.[15]

According to Unger (1983), scholarship within the CLS movement is distinguished by two main tendencies.[16] The first tendency views past or contemporary legal doctrine as a particular perspective of society while illustrating its internal contradictions (usually by exposing the incoherence of legal arguments) and its external inconsistencies (often by describing the contradictory political views embedded in legal doctrine). The second tendency developed out of the social theories of Marx and Weber and the mode of political analysis that combines functionalist methods with radical goals (Unger, 1983).[17]

Both tendencies undergird the theoretical challenges to the dominant style of legal doctrine and the legal theories that support this style. More specifically, CLS is a critique of formalism and objectivism. Unger (1983) described formalism as a belief in the possibility of a method of legal justification that can be contrasted to open-ended debates that are philosophical or ideological. Although philosophical debates may not totally lack criteria, they fail to maintain the level of rationality that the formalist claims for legal reasoning. Formalism is characterized by impersonal purposes, policies, and principles that serve as the foundation for legal reasoning. According to Unger, formalism in the traditional sense—the search for a method of deduction from a coherent system of principles—is only the "anomalous, limiting case of this jurisprudence" (p. 564). Objectivism is the belief that the legal system—statutes, cases, and accepted legal concepts—represents and sustains a defensible framework of human association (Unger, 1983). It provides, although not infallibly, an intelligible moral order.

The CLS critique of formalism and objectivism has led to a far-ranging attack on American legal and social institutions, including the bar, legal reasoning, rights (including civil rights), precedent, doctrine, hierarchy, meritocracy, the prevailing liberal vision, and conventional views of the free market (Brosnan, 1986; Delgado, 1987; R. W. Gordon, 1984; Hutchinson & Monahan, 1984; Stick, 1986). The focus and method of CLS critique have been seen as positive to scholars within the CRT movement. However, many critical race scholars have noted the limitations of the CLS critique for matters of race and the law.

Delgado (1987) and P. J. Williams (1987) argued that the CLS critique of the social order demonstrates that current configurations and distributions of power are neither necessary nor natural and that hierarchy irrationally results in part from judicial support and authority. Similarly, critical race scholarship has employed critiques of formalism. For example, Greene (1995) argued that a series of 1989 Supreme Court decisions involving civil rights issues were built on formalistic interpretations that ignored contextual reality and the impact on traditional victims of racial discrimination. Thus, Greene illustrated the importance and appeal of critiquing formalism within the critical race movement. However, both Delgado (1987, 1988a) and Williams (1987) posited that the CLS position on rights-based theory is especially problematic for people of color seeking justice. Williams (1987) stated:

> There are many good reasons for abandoning a system of rights which are premised on inequality and helplessness; yet despite the acknowledged and compelling force of such reasons, most blacks have not turned away from the pursuit of rights even if what CLS scholars say about rights—that they are contradictory, indeterminate, reified and marginally decisive—is so. I think this has happened because the so-called "governing narrative," or metalanguage, about the significance of rights is quite different for whites and blacks. (p. 404)

Williams (1987) argued that for most Whites, including the mostly White elite of CLS, social relationships are influenced by a world view that links achievement to committed self-control. In contrast, for many Blacks, including academics, lawyers, and legal clients, relationships are viewed frequently as a function of historical patterns of physical and psychic dispossession. According to Williams (1987), this difference is both semantical and substantive; moreover, it is reflected in how the CLS critique has ignored the extent to which rights assertion and the benefits of rights have helped people of color and the underclass of society. Williams (1987) was careful not to idealize the importance of rights in a society in which rights often are selectively employed to create boundaries. However, she contended that to condone analyses that symbolically diminish the significance of rights is to participate in one's own disempowerment.

Delgado (1987) contended that much of the misfit between the CLS program and the agenda of people of color is a product of the informality of the CLS program. According to Delgado (1987), CLS themes and methods criticize formal structures such as rights, rules, and bureaucracies while promoting informal processes that build on goodwill, intersubjective understanding, and community. Delgado (1987) argued that the danger of structureless processes is an increased likelihood of prejudice, a threat CLS theorists avoided reckoning with given their lack of political or psychological theory concerning race and racism (see also Crenshaw, 1988; Delgado, 1984). Instead, CLS theory simply assumes that racism is analogous to other forms of class-based oppression, largely a function of hierarchal social structure (Bell, 1984; Crenshaw, 1988; Delgado, 1987).

Delgado (1987) named three other elements of the CLS movement that were a threat to people of color. First, he objected to the rejection by some CLS scholars of incremental reform. This rejection of incremental reform is built on the theoretical premise that an unfair society uses piecemeal reform as a disguise to legitimize oppression. Delgado (1987) argued that this critique was imperialistic in that it tells people of color how to interpret events in their lives. Moreover, it diminishes the role incremental change can play in catalyzing more revolutionary change. It is worthy to note that, in a later article, Delgado (1990) argued that a theme of CRT was to question the basic premises of moderate/incremental civil rights law. However, the CRT argument against incremental civil rights law is often based on experiential knowledge and personal interpretation by people of color rather than on strictly theoretical proposition.

Second, Delgado (1987) asserted that the CLS program is idealistic; that is, it assigns a large role to reason and ideology. However, reason and ideology alone

do not explain all evil. Specifically, racism will not be understood or go away because critical legal scholarship shows that legalisms are indeterminate, rights are alienating and legitimizing, and the law reflects the interest of the power structure.

Third, Delgado (1987) challenged the CLS concept of false consciousness. The notion of false consciousness suggests that workers and people of color buy into a system that degrades and oppresses them and defend the system with a kind of false honor. Delgado (1987) questioned whether the concept of false consciousness holds true for people of color. Much of the CLS argument concerning false consciousness represents a distrust of liberal legalism and evasive promises of court victory. Delgado posited that many minorities have already acquired this distrust, a product of life's lessons. The aforementioned arguments represent important points of departure between the CLS and CRT movements.

CRITICAL RACE THEORY

The elements that characterize CRT are difficult to reduce to discrete descriptions, largely because critical race theorists are attempting to integrate their experiential knowledge into moral and situational analysis of the law. Delgado (1990) argued that people of color in our society speak from experience framed by racism. This framework gives their stories a common structure warranting the term *voice*. For the critical race theorist, social reality is constructed by the creation and exchange of stories about individual situations (Bell, 1989; Matsuda, 1989; P. J. Williams, 1991). Much of the CRT literature tacks between situated narrative and more sweeping analysis of the law. Many of the arguments found in CRT are best described as an enactment of hybridity in their texts, that is, scholarship that depicts the legal scholar as minimally bicultural in terms of belonging to both the world of legal research and the world of everyday experience.[18] Barnes (1990) stated:

> Minority perspectives make explicit the need for fundamental change in the ways we think and construct knowledge. . . . Exposing how minority cultural viewpoints differ from white cultural viewpoints requires a delineation of the complex set of social interactions through which minority consciousness has developed. Distinguishing the consciousness of racial minorities requires acknowledgement of the feelings and intangible modes of perception unique to those who have historically been socially, structurally, and intellectually marginalized in the United States. (p. 1864)

The notion of voice in the critical race literature and the form of legal analysis associated with this scholarship have implications for the organization of this section of the chapter. To understand the CRT literature, it is important to understand the voice of a particular contributor within the critical race conversation.[19] Thus, three legal scholars who employ CRT methods will be reviewed: Derrick Bell, Richard Delgado, and Kimberlé Crenshaw. Each of these scholars has made a significant contribution to the CRT literature. Moreover, each was chosen because his or her scholarship uniquely intersects with important issues raised in debates of race and the politics of education. However, the review will not be limited to

these three scholars. Scholarship that is a part of the CRT conversation and builds on or is critical of the arguments made by Bell, Delgado, and Crenshaw will be incorporated to provide a more comprehensive view of the theoretical underpinnings of CRT.

Derrick Bell and the Critical Race Theory

The ideas of Derrick Bell are key to understanding the CRT movement because, within this group of scholars, Bell is arguably the most influential source of thought critical of traditional civil rights discourse and a premier example of CRT. Bell's critique of civil rights laws and efforts to implement them was stimulated by a recognition of their importance and a challenge to rethink dominant liberal and conservative positions on these matters. Bell's (1984) description of the goal of his book *Race, Racism and American Law* provides insight into the purpose of his scholarship:

> It is, though, not the goal of *Race, Racism* to provide a social formula that would solve either all or any of the racial issues that beset the country. Rather, its goal is to review those issues in *all* [italics added] their political and economic dimensions, and from that vantage point enable lawyers and lay people to determine where we might go from here. The goal for us, as it was for all those back to the slavery era who labored and sacrificed for freedom, was not to guarantee an end to racism, but to work forcefully toward that end. (p. 14)

Bell's (1984) remark reveals the dual purpose of his scholarship. His first purpose has been to contribute to intellectual discussions concerning race in American society. However, unlike many mainstream legal scholars who often have declared that certain aspects of a legal problem are not relevant—for example, particular stories of individuals—Bell (1987, 1994) has sought to use allegory as a method to examine legal discourse in an ironically situated fashion. In his critique of narrative and law, and more specifically the scholarship of Derrick Bell, Winter (1989) posited:

> The attraction of narrative is that it corresponds more closely to the manner in which the human mind makes sense of experience than does the conventional, abstracted rhetoric of law. The basic thrust of the cognitive process is to employ imagination to make meaning out of the embodied experience of the human organism in the world. In its prototypical sense as storytelling, narrative, too, proceeds from the ground up. In narrative, we take experience and configure it in a conventional and comprehensible form. This is what gives narrative its communicative power; it is what makes narrative a powerful tool of persuasion and therefore, a potential *transformative* [italics added] device for the disempowered. (p. 2228)

A second purpose of Bell's scholarship has been to promote political activism to achieve racial justice. This goal can be found throughout his chain of inquiry (e.g., Bell, 1987, 1989, 1992, 1994). For instance, in the preface to *Confronting Authority: Reflections of an Ardent Protester*, Bell (1994) stated:

> This book does not aim to convince readers that a passive response to harassment and ill treatment is always wrong, a confrontational one always appropriate. Few, if any, of us could survive in modern

society by challenging every slight, every unfairness we experience or witness. I do believe, though, that most people are too ready to accept unwarranted and even outrageous treatment as part of the price of working, of getting along, even of living. (p. x)

After warning the reader about the difficulty of a protester's life, Bell (1994) remarked: "Of course, I will be pleased if my experiences encourage readers to consider openly confronting wrongs that afflict their lives, and the lives of others" (p. xi). Many scholars associated with CRT have attributed Bell's scholarly methods, political activism, and mentorship as pivotal to the movement's development (Barnes, 1990; Calmore, 1992; Crenshaw, 1988; Delgado, 1991). His work provides a model and a standard by which to discuss CRT.

For example, Bell's (1987) *And We Are Not Saved*, an expansion of his 1985 *Harvard Law Review* essay, "The Civil Rights Chronicles," is about the legal barriers to racial justice in the United States.[20] Bell employed a scholarly method to express matters of jurisprudence in a language and style more usual in literature than in legal discourse. Through the vehicle of 10 "chronicles," metaphorical tales devised to illuminate society's treatment of race, combined with discussions of those tales by the book's protagonist and his alter ego, Geneva Crenshaw, Bell explored societal tendencies with respect to race-remedy law.

To understand the discussions that take place between Geneva and the narrator, it is important to know Geneva's background. As depicted in the book, Geneva had been a civil rights lawyer at the NAACP Legal Defense Fund. She is described as one of the most gifted of the fund's litigators until she suffered a mental breakdown caused by a heavy workload, racist violence, and the pressure of battling for legal remedies that often seemed to recede. Geneva was committed to a mental institution for 20 years, during which her thinking raced, out of touch with reality. As the book begins, Geneva regains her mental faculties. She leaves the mental institution and searches for Bell's narrator in an attempt to become current with, and come to terms with, race-related civil rights law.

The book develops by having Geneva revisit visionary chronicles (she presents 9 of the 10) and then debate them with Bell's narrator. The chronicles and subsequent debate between Geneva and the narrator provide the reader an opportunity to explore the progress of race relations law in the United States. For instance, in "The Chronicle of the Constitutional Contradiction," Geneva journeys back to the Constitutional Convention of 1787. Addressing the delegates, she introduces herself as a Black woman from the 21st century. The delegates listen to her compelling argument about the historical legacy of slavery and the compromises they are prepared to enact, but in the end they compromise the rights of Blacks on the basis of national economic interests and White unity.

The narrator and Geneva then discuss how these compromises frame current racial politics:

The men who drafted the Constitution, however gifted or remembered as great, were politicians, not so different from the politicians of our own time and, like them, had to resolve conflicting interests in

order to preserve both their fortunes and their new nation. What they saw as the requirements of that nation prevented them from substantiating their rhetoric about freedom and rights with constitutional provisions—and thus they infringed on the rights and freedom not only of slaves, who then were one-fifth of the population, but ultimately, of all American citizens. (Bell, 1987, p. 50)[21]

In another chapter, "The Chronicle of the Sacrificed Black Schoolchildren," Bell (1987) considers the influence of litigation, specifically the *Brown* decision, on the educational experiences of African American children. At the completion of the tale, Geneva and the narrator discuss the limitations and strengths of the NAACP litigation strategy, the goal of racial integration that led to *Brown*, and the failure of court-mandated school desegregation to achieve educational equality. The debate between the narrator and Geneva represents a long-standing argument in the African American community: Is segregated or desegregated education best for African American children? This question, never stated yet implicit in the subtext of the chronicle, results in a dialogue on the philosophy undergirding various positions taken on the question.

The narrator defends the position taken by civil rights litigators in the pre-*Brown* era who sought to eliminate the social doctrine of separate but equal by attacking segregation in public schools. The narrator and Geneva agree that the doctrine was morally wrong; however, Geneva is convinced a better desegregation policy was possible. She contends that if we recognize that the motivation of segregation was White domination of public education, then the Supreme Court should have given priority to desegregation of money and control rather than students. Moreover, Geneva argues that although separate but equal no longer fulfilled the constitutional equal protection standard, the court should have required immediate equalization of all school facilities and resources. Also, Geneva posits that the court should have required African American representation on school boards and other policy-making bodies to reflect the proportion of African American students in each school district. This final point would have been intended to give African American parents access to the formal decision-making process, a condition still not realized in many predominantly African American school systems (Bell, 1987).

Similarly, each of the other eight chronicles—"Celestial Curia," "Ultimate Voting Rights Act," "Black Reparations Foundation," "DeVine Gift," "Amber Cloud," "Twenty-Seventh-Year Syndrome," "Slave Scrolls," and "Black Crime Cure"—describes the tensions for both Blacks and Whites in the construction, interpretation, and implementation of race-related civil rights law. In the context of each chronicle, Bell (1987) builds on three arguments that appear in his earlier legal writings and that reoccur throughout his subsequent scholarship and that of other legal scholars building on CRT.

One argument, the constitutional contradiction, is based on the U.S. Constitution and subsequent legal decisions. This argument is more specifically an analysis of property in American society and the role of government in protecting property interests. In his discussions with Geneva Crenshaw, Bell (1987)

examines the events leading up to the Constitutional Convention and concludes that the framers of U.S. law grappled with the tension between property rights and human rights. This tension was apparent in the debate over slavery. Bell (1987) contends that the slavery provisions in the original Constitution reflected pragmatic, political compromises by the framers. When confronted with the decision between White racism and justice, the framers of the Constitution chose racism and the rewards of property. Bell (1987) relates this constitutional contradiction to later political debates and policy by asking, "Does slavery have any value in analyzing contemporary racial policies and civil rights doctrine?" (p. 260). For Bell (1987), race and property are linked in complex ways that often result in racial oppression (see also P. J. Williams, 1991).[22] Advancing this argument, Harris (1993) posited that racial identity and property are deeply interrelated concepts:

> Even after the period of conquest and colonization of the New World and the abolition of slavery, whiteness was the predicate for attaining a host of societal privileges, in both public and private spheres. Whiteness determined whether one could vote, travel freely, attend schools, obtain work, and indeed, defined the structure of social relations along the entire spectrum of interactions between the individual and society. Whiteness then became status, a form of racialized privilege ratified in law. Material privileges attendant to being white inhered in the status of being white. After the dismantling of legalized race segregation, whiteness took on the character of property in the modern sense in that relative white privilege was legitimated as the status quo. In *Plessy v. Ferguson* and the case that overturned it, *Brown v. Board of Education*, the law extended protection to whiteness as property, in the former instance, as traditional status-property, in the latter, as modern property. (pp. 1745–1746)

A second argument found throughout Bell's scholarly writing is the interest-convergence principle (e.g., Bell, 1979, 1980a, 1980b, 1987, 1992). The interest-convergence principle is built on political history as legal precedent and emphasizes that significant progress for African Americans is achieved only when the goals of Blacks are consistent with the needs of Whites. Bell (1980b) stated:

> Translated from judicial activity in racial cases both before and after *Brown*, this principle of "interest convergence" provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites. However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites. (p. 523)

As an example of the interest-convergence principle, Bell (1987) offered:

> I often cite the NAACP and government briefs in the *Brown* case, both of which maintain that the abandonment of state-supported segregation would be a crucial asset as we compete with Communist countries for the hearts and minds of Third World people just emerging from the long years of colonialism. As far as I'm concerned, the Court's decision in the *Brown* case cannot be understood without considering the decision's value to whites in policy-making positions who are able to recognize the economic and political benefits at home and abroad that would follow abandonment of state-mandated racial segregation. (p. 62)

Dudziak (1988) conducted a historical study designed to develop additional insight into the *Brown* case and Bell's interest-convergence principle. Dudziak

carefully detailed the international attention given to U.S. racial discrimination in the era following World War II. She documented the Soviet Union's exploitation of poor U.S. race relations and the State Department's concern with this serious foreign policy problem. Dudziak described the Truman administration's response, particularly the Justice Department's arguments in civil rights amicus briefs that racial segregation was a detriment to U.S. foreign policy interests. Dudziak described the positive foreign policy benefits that accrued after *Brown*:

> After *Brown*, the State Department could blame racism on the Klan and the crazies. They could argue that the American Constitution provided for effective social change. And, most importantly, they could point to the *Brown* decision as evidence that racism was at odds with the principles of American democracy. This foreign policy angle, this Cold War imperative, was one the critical factors driving the federal government's postwar civil rights efforts. (p. 119)

Dudziak (1988) concluded that Bell's interest-convergence theory characterized correctly the events leading up to and following the *Brown* decision.

A third major argument found in Bell's scholarship—a corollary to the interest-convergence theory—is that many Whites will not support civil rights policies that appear to threaten their superior social status (Bell, 1979, 1987, 1989). Bell (1979) referred to this argument as the "price of racial remedies." For example, in an analysis describing the commonalities between the *Brown* and *Bakke* cases, Bell (1979) stated:

> The Court did not overestimate the time needed for the country to accept the *Brown* decision as law. But there were compensatory aspects of the case overlooked by the Court, cost issues that have been framed in sharper relief by the *Bakke* litigation. In *Brown*, the focus was on the South. At issue was the constitutionality of the most onerous kind of educational apartheid. The nation was more than ready to blame white Southerners, traditionally the country's scapegoat when there is a need to assign responsibility for racial injustice. . . . When the school desegregation efforts moved north, the attitude toward the South changed from condemnation to complicity, with Northerners rallying to preserve neighborhood assignment patterns, avoid busing, and maintain the "educational integrity" of white schools. Although there has been violence in Boston and Pontiac, most Northern whites do not oppose desegregation in the abstract. What they resist is the *price* of desegregation. They fear that their children will be required to scuffle for an education in schools that for decades have been good enough only for blacks. . . . The problem of cost is aggravated when the issue is college and professional school admissions. As opponents of minority admissions take pains to point out, no one is totally excluded from school under public school desegregation plans. Under preferential admissions programs, however, minority applicants are admitted to college and graduate schools *in place of* whites. Moreover, most public school desegregation plans do not affect upper middle-class white families who live in suburbs or whose children attend private schools. . . . There is a pattern to all this. It is recognizable in the opposition of New York City school teachers to community control. It is apparent in the resistance of unions to plans that require that they stop excluding minority workers. And it is reflected in suburban zoning and referendum practices designed to keep out low-income housing. In each instance, the principle of nondiscrimination is supported, but its implementation is avoided and, necessarily, opposed. The important question, of course, is whether the debilitating effects of racial discrimination can be remedied without requiring whites to surrender aspects of their superior social status. (pp. 11–12)

Bell's analysis of *Bakke* and his subsequent scholarship provide a full-scale structural theory combined with the detail required for microlevel analysis of the

individual story. It is this quality that makes his scholarship a unique contribution to academic writing on issues of race, law, and society.

A Commentary on Derrick Bell

The three major arguments found in Bell's analyses of racial patterns in American law—the constitutional contradiction, the interest-convergence principle, and the price of racial remedies—convey a different message than that found in traditional race scholarship, that is, civil rights or antidiscrimination scholarship.

Bell's scholarship represents an effort to dismantle traditional civil rights language—for example, color blindness and equal opportunity—to provide a more cogent historical and legal analysis of race and law. Moreover, his scholarship is directly connected to educational policy analysis of such issues as school desegregation, admissions and financial aid, school choice, school finance, and university recruitment (Bell, 1979, 1980b, 1987, 1989; Ladson-Billings & Tate, 1995). Elsewhere, I crossed the paradigmatic boundaries of mathematics education—mathematics and psychology—to illustrate the limitations of recent school mathematics reform proposals calling for opportunity-to-learn standards and a national assessment (Tate, 1995a, 1995b). These boundary-crossing analyses were built with theoretical tools found in the scholarship of Derrick Bell and other critical race theorists.

Another area of educational policy that seems especially relevant for the kind of critical race critique found in Bell's writings is school finance.[23] For example, Clune (1993) argued that the standards-based vision of educational policy-making requires a change in school finance structures (see also Moskowitz, Stullich, & Deng, 1993; O'Day & Smith, 1993; Odden, 1992). Clune posited that school finance discussions should shift from fiscal equality to fiscal adequacy and from debates about financial inputs to a focus on standard-based outcomes as the objective of both educational policy and school finance. A shift in federal and state policy from fiscal equality to adequacy is part of a larger federal program that is moving attention away from traditionally underserved students (Chapter 1, special education, and bilingual) toward a discourse on high standards for all students (National Governors Association, 1993; Tate, 1995a). This shift in policy warrants further analysis by scholars interested in equity, and Bell's interest-convergence principle could provide insightful conceptual guidance.

The shift in policy direction from fiscal equality to a call for fiscal adequacy and high standards for all represents an attempt to converge the interests of more affluent suburban communities that wish to limit their tax burden and benefit directly from tax contributions with classical ideas of government and taxation of serving the common good. However, this shift has the potential to create even greater educational inequality. For example, Harp (1996) reported that Governor Christine Todd Whitman of New Jersey plans to address deep inequities between wealthy and poor schools by establishing new education standards rather than by

providing new money from the state. Note that New Jersey has been ordered to resolve its school finance problems by the 1997–1998 school year. Governor Whitman remarked (in her state of the state address), "We must stop chasing dollars and start creating scholars" (as cited in Harp, 1996, pp. 1, 25). Governor Whitman's remarks reflect a shift in political rhetoric from equalizing spending and resources to adopting standards. However, those employing this rhetoric rarely have a plan for addressing equity problems.

The scholarship of Derrick Bell has provoked an alternative method of legal analysis of race and U.S. society. Moreover, his scholarship has important relevance to issues of educational equity. However, his work has not gone without criticism. The legal writings of Derrick Bell and many other CRT scholars are associated with a growing genre of narrative research in the academy (Scheppele, 1989; P. J. Williams, 1991); however, the narrative movement has not been universally accepted in academe. The criticism of narrative research varies depending on the paradigmatic perspective of the writer. Some scholars argue against the form; others challenge the absence of neutrality and objectivity. Still other scholars question the validity and power of narrative research given the institutional stories that may counter the narrative developed by the legal storyteller. For example, Winter (1989) stated:

> Narrative is not the primary medium for the kind of institutionalized meaning that is necessary if a prevailing order is to make persuasive its claims of legitimation and justification. Narrative does not meet the threefold demands of generality, unreflexivity, and reliability that are necessary if a prevailing order is credibly to justify itself. The more limited role of narrative in the processes of social construction is as a link between experience and the effective crystallization of social mores. (It is just this prefiguring role that makes narrative a potentially effective transformative device.) But, although narrative may also be employed on behalf of the existing order, this use of narrative as authority is persuasive precisely because it evokes meaning that is already institutionalized. Accordingly, legal narratives of this sort are constrained by preexisting social processes. (p. 2228)

Winter's (1989) critique of Bell's use of legal story telling, as well as narrative scholarship in general, is important for education scholars interested in equity and policy-making. Winter recognized narrative as a persuasive tool to catalyze legal and social change. Furthermore, Winter acknowledged the role of narrative scholarship in the social construction of meaning. However, he warned that narrative is not the only means by which social meaning is institutionalized.[24]

Despite Winter's criticism of Bell and other narrative scholars, education scholars and policymakers should examine the power of legal story telling to illuminate educational equity issues in public debates. Perhaps no recent example from education illustrates this point better than Jonathan Kozol's (1991) detailed chronicle of school inequity, *Savage Inequalities*. The power of this volume is the story. The statistics on school finance inequality have a long history in educational research literature and the popular press. However, they often have lacked the ability to catalyze democratic deliberation. Reich (1988) described the importance of democratic deliberation:

The reigning American philosophy of policy making has drawn on these three currents of thought—bureaucratic expertise, democratic deliberation, and utilitarianism—but in unequal parts. Especially in this century, beginning with the Progressives' efforts to insulate policy making from the politics and continuing through the modern judiciary's oversight of policy making, there has been a tendency to subordinate democratic deliberation to the other themes. As the "administrative state" has grown, its legitimacy has increasingly rested on notions of neutral competence and procedural regularity. The "public interest" has been defined as what individual members of the public want for themselves—as such wants are expressed through opinion surveys, data on the public's willingness to pay for certain goods, and the special pleadings of interest groups. The ideal of public policy has thus become almost entirely instrumental—designed to maximize individual satisfactions. (p. 10)

Critical race theorists recognize that the way public problems are defined can influence how laws and policies are constructed and interpreted. One purpose of legal story telling by Bell and other critical race scholars is to engage the reader in democratic deliberation concerning the ironies and contradictions associated with laws constructed to appease White self-interest rather than address notions of equity.

Another scholar, Haney Lopez (1996), noted the importance of Bell's scholarship, yet offered a criticism. Specifically, Haney Lopez argued that Bell's (1992) casebook, *Race, Racism and American Law*, treated "Black" and "White" as natural categories rather than concepts created through social construction and, at least partially, through legal strategies. Despite this criticism of Bell's casebook, Haney Lopez acknowledged that critical race scholars have generated a movement to rethink race, law, and U.S. society. Haney Lopez (1996) remarked:

The tendency to treat race as a prelegal phenomenon is coming to an end. Of late, a new strand of legal scholarship dedicated to reconsidering of the role of race in U.S. society has emerged. Writers in this genre, known as critical race theory, have for the most part shown an acute awareness of the socially constructed nature of race. Much critical race theory scholarship recognizes that race is a legal construction. (p. 12)

The importance of examining the social construction of race through the law is a paramount consideration in CRT. As such, Richard Delgado's scholarship has contributed to theoretical methods that provide insight into the interrelationship between the construction of race and the law.

Richard Delgado and Critical Race Theory

The scholarship of Richard Delgado is pivotal to understanding CRT. Crenshaw et al. (1995) placed Delgado and his scholarship at the historical and conceptual origins of CRT. Delgado has engaged in extensive debate with other scholars in the legal community regarding the merits and potential contribution of CRT to legal analysis. Delgado (1990) argued that critical race scholarship is characterized by the following themes:

(1) an insistence on "naming our own"; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories pow-

erful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; (7) criticism of liberal legalisms; and (8) an interest in structural determinism—the ways in which legal tools and thought-structures can impede law reform. (p. 95)

The CRT themes delineated by Delgado can be seen in his scholarship. Building on theories found in the sociology of knowledge, Delgado (1990) argued:

Sociologists of knowledge know that knowledge is power, and power is something that people fight to obtain and struggle to avoid giving up. Physical scientists, for example, have strenuously resisted "paradigm changes" even in their ostensibly objective, value-free world. Legal change comes freighted with even more meaning than the scientific version, for it often portends changes in power and well-being for specific persons or groups. It is thus not surprising that the New Race Theorists, who are raising such ideas as that civil rights doctrine perpetuates and legitimizes discrimination, meet fierce resistance. (p. 110)

A significant portion of Delgado's scholarship is devoted to explaining and clarifying the role of story, counterstory, and "naming one's own reality" in CRT (see also Ross, 1989; Russell, 1995; Torres & Milun, 1990; P.J. Williams, 1987). Delgado (1988a) identified a structural feature of human experience that separates people of color from White friends and colleagues. Simply stated, "White people rarely see acts of blatant or subtle racism, while minority people experience them all the time" (p. 407). Similarly, Lawrence (1987) stated:

Americans share a common historical and cultural heritage in which racism has played and still plays a dominant role. Because of this shared experience, we also inevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions of nonwhites. To the extent that this cultural belief system has influenced all of us, we are racists. At the same time, most of us are unaware of our racism. We do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions. In other words, a large part of the behavior that produces racial discrimination is influenced by unconscious racial motivation. (p. 322)

According to Delgado (1988a), most minorities, in contrast to Whites, live in a world dominated by race (see also Clark, 1963; Comer & Poussaint, 1976). Moreover, the exchange of trade stories among people of color concerning racial treatment and ways of dealing with racism is common (Delgado, 1987). These stories are important histories that help illustrate the irony and contradiction of traditional legal analysis and argument.

Delgado (1989) posited four reasons as justification for legal analysis and scholarship that incorporate stories or voice chronicling the experiences of people of color: (a) Reality is socially constructed, (b) stories are a powerful means for destroying and changing mind-sets, (c) stories have a community-building function, and (d) stories provide members of out-groups mental self-preservation. Elsewhere, Delgado (1990) linked this justification for voice scholarship to CRT.

The first reason critical race theorists use stories or voice scholarship is to address the manner in which political and moral analysis is conducted in tradi-

tional legal scholarship (Delgado, 1989, 1990). Many legal scholars embrace universalism over particularity. Legal analysis and reasoning in Anglo-American legal jurisprudence is characterized by the acceptance of transcendent, acontextual, universal truths (P. J. Williams, 1991). This paradigmatic perspective tends to minimize anything that is historical, contextual, or specific with the unscholarly descriptors "literary" or "personal." In contrast, critical race theorists argue that political, legal, and moral analysis is situational. Delgado (1989) stated:

> Reality is not fixed, not a given. Rather, we construct it through conversations, through our lives together. Racial and class-based isolation prevents the hearing of diverse stories and counterstories. It diminishes the conversations through which we create reality, construct our communal lives. Deliberately exposing oneself to counterstories can avoid that impoverishment, heighten "suspicion," and can enable the listener and the teller to build a world richer than either could make alone. On another occasion, the listener will be the teller, sharing a secret, a piece of information, or an angle of vision that will enrich the former teller; and so on dialectically, in a rich tapestry of conversation, of stories. (p. 2439)

The second reason for the voice theme in CRT is the potential of story to change mind-set (Delgado, 1989). Most oppression does not seem like oppression to the oppressor (Lawrence, 1987). The dominant group of society justifies its position with stock stories (Delgado, 1989, 1990; R. A. Williams, 1989). These stock stories construct realities in ways that legitimize power and position. Stories by people of color can counter the stories of the oppressor. Furthermore, the discussion between the teller and listener can help overcome ethnocentrism and the dysconscious way many scholars view and construct the world. Delgado (1989) posited:

> Stories and counterstories can serve an equally important destructive function. They can show that what we believe is ridiculous, self-serving, or cruel. They can show us the way out of the trap of unjustified exclusion. They can help us understand when it is time to reallocate power. They are the other half—the destructive half—of the creative dialectic.
>
> Stories and counterstories, to be effective, must be or must appear to be noncoercive. They invite the reader to suspend judgement, listen for their point or message, then decide what measure of truth they contain. They are insinuative, not frontal; they offer a respite from the linear, coercive discourse that characterizes much of legal writing. (p. 2415)

The third reason offered by Delgado (1989) for incorporating story into CRT is the role story telling can play in community building. Stories help to build consensus, a common culture of shared understandings, and a more vital ethics. Despite the potential for building consensus, Delgado (1989) warned of the dangers in story telling, particularly for the first-time storyteller. The listener to an unfamiliar counterstory may reject it, as well as the storyteller, because the story reveals hypocrisy and increases discomfort.[25] Moreover, the hearer may consciously or unconsciously reinterpret the new story, framing the content of the story within the hearer's own belief system, thus muting or reversing the meaning.

Delgado (1989) explained that the fourth reason for incorporating voice into legal analysis is to help ensure the psychic preservation of marginalized groups. A factor

contributing to the demoralization of members of out-groups is self-condemnation. People of color may internalize the stock stories that various groups of society promote to maintain their influence (Crenshaw, 1988). Historically, people of color have used story telling to heal wounds caused by racial discrimination.[26] Delgado (1989) stated: "Along with the tradition of storytelling in black culture there exists the Spanish tradition of the picaresque novel or story, which tells of humble folk piquing the pompous or powerful and bringing them down to more human levels" (p. 2414). According to Delgado (1990), the story of one's condition leads to greater insight into how one came to be oppressed. Moreover, Bell (1987) argued that this allows the oppressed to stop inflicting mental violence on themselves.

Delgado (1984) not only wrote about the philosophical underpinnings of voice scholarship; he also questioned whose voice is heard in legal discourse addressing civil rights. In "The Imperial Scholar: Reflections on a Review of Civil Rights Literature," Delgado (1984) showed that an inner circle of 26 legal scholars, all male and White, occupied the key venues of civil rights scholarship to the exclusion of scholars of color. Delgado (1984) noted that when a member of this inner circle wrote about civil rights issues, he referenced almost exclusively other members of the inner circle for support while ignoring the scholarship of minorities in the field. Delgado (1984) offered the following explanation for this practice:

> In explaining the strange absence of minority scholarship from the text and footnotes of the central arenas of legal scholarship dealing with civil rights, I reject conscious malevolence or crass indifference. I think the explanation lies in a need to remain in *control*, to make sure that legal change occurs, but not too fast. The desire to shape events is a powerful human motive and could easily account for much of the exclusionary scholarship I have noted. The moment one makes a statement, however, one is reminded that it is these same liberal authors who have been the strongest supporters of affirmative action in their own university communities, and who have often been prepared to take chances (as they see it) to advance the goal of an integrated society. Perhaps the two behaviors can be reconciled by observing that the liberal professor may be pleased to have minority students and colleagues serve as figureheads, ambassadors of good will, and future community leaders, but not necessarily happy with the thought of a minority colleague who might go galloping off in a new direction. (p. 574)

Several years later, Delgado (1995a) revisited the "Imperial Scholar" debate. He argued that a new breed of imperialists had emerged in legal discourse who deploy a different set of strategies to mute, devalue, and/or co-opt the voice of critical race theorists. Delgado (1995a) identified 13 mechanisms used by these "neo-imperialists" to marginalize critical race scholarship.[27] One mechanism discussed by Delgado (1995a) is the co-option of another person's experience that leads to a refocusing of the original story:

> Some of the new writers [neo-imperialists] make an effort to identify with the stories and accounts the outsider narrativists are offering, but in a way that co-opts or minimizes these stories. The majority-race author draws a parallel between something in the experience of the outsider author and something that happened to him. There is nothing wrong with using analogies and metaphors to deal with the experience of others, for that is how we extend our sympathies. If, however, we analogize to refocus a conversation or an article towards ourselves exclusively, something is wrong, especially if the experience to which we liken another's is manifestly less serious. For example, the author of one article on

campus racial harassment observes that everyone experiences "insulting" or "upsetting" speech at one time or another, so what is so special about the racist version? (p. 406)

According to Delgado (1995a), a second mechanism to minimize the critical race critique is to praise the writing for its emotional or passionate quality, ultimately classifying the article in a category of its own—for example, individual soul searching—and thus selectively ignoring the uncomfortable truths about race, society, and injustice. A third mechanism is for the neo-imperialist to translate a novel, hard-edge, and discomforting thesis by a critical race scholar into a familiar, safe, and tame conceptual state. Here the neo-imperialist scholar often forces the critical race critique into a discourse of liberal-legalist terms that the critical race scholar has intended to avoid. The other 10 mechanisms are equally as troubling; however, they have not deterred Delgado from exploring voice scholarship and other nontraditional methods of analyzing race, law, and U.S. society.

Another theme found in the scholarship of Delgado and other critical race scholars is the examination of structural determinism (see also Bell, 1992; Greene, 1995). Critical race scholars examine the legal system for categories, methods of legal analysis, and doctrines to help illuminate ways the legal system maintains the status quo. For example, Delgado and Stefancic (1989) described how three important resources that lawyers use in legal research—the Library of Congress subject heading, the *Index of Legal Periodicals*, and the West Digest System—function like DNA; that is, they allow the current system to replicate itself. Delgado and Stefancic (1989) asserted that the three information systems function like a double helix in molecular biology: They reconstruct preexisting ideas, arguments, and methods. Within the boundaries of the three systems, moderate, incremental legal change is possible, whereas structural, transformative innovation is much more difficult. Delgado and Stefancic (1989) stated:

A glance at the standard categories shows why; each system bears a strong imprint of the incremental civil rights approach these writers decry. The *Index to Legal Periodicals* and *Decennial Digest*, for example, lead the reader to works on civil rights, employment discrimination, and school integration or desegregation, but contain no entry for hegemony or interest convergence. The *Index to Legal Periodicals* lacked an entry for critical legal studies until September 1987, nearly a decade after the movement began. The *Decennial Digest* contains entries on slums and miscegenation. To find cases on ghettos, one must look in the Descriptive Word Index under slums, which refers the searcher to public improvements under the topic municipal corporations. Another index contains an entry labeled, simply, races. None of the major indexes contains entries for legitimation, false consciousness, or many other themes of the "new" or critical race-remedies scholarship. Indeed, a researcher who confined himself or herself to the sources listed under standard civil rights headings would be unlikely to come in contact with these ideas, much less invent them on his or her own. (pp. 218–219)

Delgado and Stefancic (1992) have not limited their analysis of structural determinism to legal information systems. Building on postmodern insights about language and the social construction of reality, Delgado and Stefancic (1992) argued that conventional First Amendment doctrine is most helpful in resolving

small, clearly bounded disputes. However, free speech is less able to deal with systemic problems such as racism or sexism and, thus, is least helpful with some of society's most difficult dilemmas. Delgado and Stefancic (1992) offered two interrelated reasons for the bounded range of free speech in resolving matters of racial discrimination. First, their review of 200 years of ethnic depiction in the United States revealed that society simply does not see many forms of discrimination at the time they are occurring. Delgado and Stefancic (1992) posited:

> This time-warp aspect of racism makes speech an ineffective tool to counter it. . . . Racism forms part of the dominant narrative, the group of received understandings and basic principles that form the baseline from which we reason. How could these be in question? Recent scholarship shows that the dominant narrative changes very slowly and resists alteration. We interpret new stories in light of the old. Ones that deviate too markedly from our pre-existing stock are dismissed as extreme, coercive, political, and wrong. The only stories about race we are prepared to condemn, then, are the old ones giving voice to the racism of an earlier age, ones that society has already begun to reject. We can condemn Justice Brown for writing as he did in *Plessy v. Ferguson*, but not university administrators who refuse remedies for campus racism, failing to notice the remarkable parallels between the two. (pp. 1278–1279)

Delgado and Stefancic (1992) described a second, related insight from modern scholarship that focuses not on how existing narratives limit reform but, rather, on the relationship between ourselves and those narratives. Specifically, they argued that individuals are confined to their own preconceptions from which escape is difficult. Delgado and Stefancic (1992) offered:

> The emphatic fallacy holds that through speech and remonstrance we can surmount our limitations of time, place, and culture, can transcend our own situatedness. But our examination of the cultural record, as well as postmodern understandings of language and personhood, both point to the same conclusion: The notion of ideas competing with each other, with truth and goodness emerging victorious from the competition, has proven seriously deficient when applied to evils, like racism, that are deeply inscribed in the culture. We have constructed the social world so that racism seems normal, part of the status quo, in need of little correction. It is not until much later that what we believed begins to seem incredibly, monstrously wrong. How could we have believed that? (p. 1281)

One implication of structural determinism is that it limits how individuals and society at large are able to analyze and critique oppression. Critical race theorists have attempted to address this tunnel vision by examining the law through multiple lenses. One of the newer trends in CRT has been the examination of race, gender, and class and how they operate in society and the law. For example, building on the writings of such scholars as hooks (1991), hooks and West (1991), and Harris (1990), Delgado (1993) constructed and narrated a story between himself and his alter ego, Rodrigo. The story explores the tensions that exist when a group—that is, all women—attempts a singular, unitary movement to catalyze change. Specifically, Delgado examined the essentialist debate in legal scholarship and the broader academy.[28]

Delgado (1993) constructed a story that illustrates how the scholarly focus and action of a women's law caucus to achieve its goals of gender equality could

potentially result in their failure to address other forms of oppression (e.g., racial). After the story, Delgado, along with his alter ego, Rodrigo, offered a theory of social change and small groups that represents an effort to explain the process of social reform. Delgado (1993) borrowed from Dewey (1933) and other American pragmatists who argued that human intelligence and progress spring from adversity, that is, the notion that the society is not providing the individual with what he or she needs to survive. Similarly, Delgado argued that subgroups within a social movement recognize that the larger group lacks the vision to include their agenda within the movement. Thus, the subgroup develops its own agenda and moves on to continue the process of social change. Delgado (1993) theorized that social change is, by its nature, an iterative process with reform and retrenchment coming in waves.

A theme that permeates critical race scholarship is the concept of cultural nationalism (e.g., Bell, 1987; Calmore, 1992; Delgado, 1992; Johnson, 1993). Rooted in DuBois's (1906/1990) philosophy of double consciousness and the Black power movement of the 1960s and 1970s, cultural nationalism is defined by the belief that Black and Brown communities should develop their own schools, colleges, and businesses.[29] Cultural nationalism served as one philosophical underpinning of Delgado's (1995b) critique of affirmative action.

Delgado (1995b) challenged the way affirmative action is framed in policy debates. He argued that affirmative action debates typically structure the issue of minority representation with the following question: Should we as a country sanction the appointment of some specific number of people of color to achieve certain political objectives, such as social stability, a diverse workforce, and integration? According to Delgado (1995b), the political objectives are always forward looking: Affirmative action is seen as a tool for socially engineering society from state A to state B. The process ignores the fact that minorities have been treated unfairly in employment practices, deprived of their land, and enslaved. Moreover, the affirmative action debate often frames the issue so that even small accomplishments are seen as painful, requiring careful thinking by liberals and conservatives alike about the opportunity being denied White citizens. Delgado (1995b) called for careful analysis of affirmative action by people of color. He concluded with an analysis of one aspect of affirmative action mythology: the role model argument.

The role model argument is a story that exists in current discourse on affirmative action; its major premise is that if a person of color is hired now and this person is a good role model, things will be better for the next generation of minorities. Delgado (1995b) posited that the role model argument is instrumental and forward looking, like the larger program of affirmative action. Delgado's (1995b) assessment of the role model argument as being instrumental and forward looking is a criticism. He provided five reasons a person of color should avoid employment linked to this argument. Two of these reasons are especially relevant to scholars interested in educational equity. The first is that, to be a good role

model, one must be an assimilationist, never a cultural or economic nationalist, separatist, radical reformer, or anything connected to any of these.[30] The second is that the job of the role model requires one to lie. Delgado (1995b) suggested that promoting an academic law career to children of color is akin to promoting a career in the National Basketball Association. He argued that the current educational conditions for children of color—diminishing federal and state support for scholarships devoted to these children and increasing campus harassment—have limited real opportunity.[31]

A Commentary on Richard Delgado

Delgado (1990) argued that scholars of color and female scholars are able to provide insights and stories different from those traditionally heard in legal discourse. Moreover, he contended that stories have a community-building function and the potential to change mind-set.[32] Delgado's scholarship has combined analytical discussions of the philosophical undergirdings of narrative methods with arguments against structural determinism, essentialism, and academic neoimperialism. Furthermore, Delgado described the function of cultural nationalism in the critical race critique. Delgado's scholarship, like Bell's, is characterized by texts that weave together lively narrative and rigorous theoretical analyses of legal constructs. Moreover, Delgado's scholarship, like Bell's, has been subject to criticism.

Randall Kennedy (1989) noted the contributions of critical race theorists such as Derrick Bell, Richard Delgado, and Mari Matsuda to the literature on race and law; however, he argued that they tended to evade or suppress complications that render their conclusions problematic. Kennedy (1989) specifically challenged (a) the notion that, on intellectual grounds, White scholars are entitled to less standing to engage in race-related civil rights discourse than scholars of color; (b) the argument that, on intellectual grounds, the racial status of scholars of color should serve as a positive credential for the purposes of analyzing their writings; and (c) arguments that contend the current position of minority scholars has been influenced by prejudiced decisions of White colleagues.

In a *Virginia Law Review* article, Delgado (1990) responded to Kennedy's criticisms. He remarked that Kennedy is a believer in dominant discourse: the collection of ideas, arguments, and concepts that compose liberal legalism. Delgado (1990) described dominant discourse as incremental and cautious. Moreover, Delgado (1990) argued that dominant discourse is a homeostatic device by which our society ensures that most race-related reform will last a short time. What is clear from Kennedy's argument and Delgado's response is that they operate in very different paradigms. Delgado (1990) stated:

> The Critical Race Theorists are impatient with that discourse [dominant], and the outlook associated with it. It neither squares with our experience nor permits us to hope for the kind of future we want for ourselves and our communities. Unlike a natural language, which simply adds new concepts and words when its speakers need them, dominant legal discourse resists expansion. Indeed, one of its

principal functions is to make reform difficult to achieve or even to imagine. Kennedy's opposition to alternative voices and insistence that we speak in the current idiom therefore is not merely about legal style or manners. It is about things that matter. In seeking to confine us to a single mode of thought and expression even in law reviews, a traditional forum for experimenting with new ideas, he verges close to intolerance. (pp. 103–104)

Despite the criticism of Delgado's scholarly methods, the implications of his writings for research on education and equity are far-reaching. I will discuss three potential areas in which Delgado's arguments inform equity-related debates in educational literature.

First, Delgado and Stefancic's (1989) critique of structural determinism and librarianship in legal scholarship is applicable to educational research. Scholars in education should ask, Are educational information classification systems assisting in the replication of preexisting thought? If so, what can be done to expand beyond indexing and research systems that confine thought to the traditional categories of educational discourse to include boundary-crossing scholarship related to civil rights and education? This question has been, in part, examined by Apple (1993):

While there is a formal right for everyone to be represented in the debates over whose cultural capital, whose knowledge 'that,' 'how,' and 'to,' will be declared legitimate for transmission to future generations of students, it is still the case that . . . a *selective tradition* operates in which only specific groups' knowledge becomes official knowledge. Thus, the freedom to help select the formal corpus of school knowledge is bound by power relations that have very real effects. (pp. 65–66)

Second, Delgado's (1995b) discussion of cultural nationalism is part of a larger program of scholarship within the critical race movement. This theme of CRT has important applications for the education of students of color. For example, in his analysis of the *Fordice* case, Johnson (1993) concluded that the case represented a quest for equality through an assimilationist version of integration, without respect for the culture of African Americans. Similarly, Brown (1993) argued that, on cultural and educational grounds, a powerful case exists for African American immersion schools; however, he illustrated how the abstract, individualistic nature of the legal system is an impediment. The cultural and educational grounds found in Brown's analysis are strengthened by additional educational research that illuminates the importance of culturally relevant pedagogy for children of color (Deyhle, 1995; Ladson-Billings, 1994, 1995; Nieto, 1992; Perry, 1993). However, Brown's (1993) most important contribution to the literature on educational equity is, arguably, his ability to examine the nexus of K–12 pedagogy, policy, and law. Some educational researchers whose scholarship is centered on equity have been less inclined to grapple with this combination, instead focusing on one of the three. For example, James Banks (1992), known for his important work in multicultural education, remarked:

The radical critics can maintain their innocence because many of them are professors in educational policy studies and foundations departments. Consequently, they have the luxury to write, talk, and

dream about schools without having to confront directly the daily challenges that teachers, students teachers, and students must experience each day. By contrast, most multicultural theorists are former teachers and are curriculum and instruction professors. They generally are among those who construct lesson plans and units and teach methods courses for use by their students who must take their places on the firing line in the schools. The curriculum and instruction orientation of most multicultural theorists is a major factor that explains why they cast their lot with schools and teachers, and try to bring change within the system. (p. 283)

Banks's (1992) argument is compelling, yet somewhat reductive. The change process requires a theoretical lens capable of examining classroom-level and more macrolevel aspects of the educational system and society. Educational systems are built on laws, policies, and folkways requiring macrolevel analyses that overlap with microlevel issues such as curriculum and pedagogy. Thus, the need to build on and expand beyond the theoretical tenets associated with multicultural classroom practice is a paramount consideration for scholars interested in equity-related research (Grant & Tate, 1995; Ladson-Billings & Tate, 1995).

Third, Delgado (1993) posited a theory of social change and explained the role of race, class, and gender in oppositional groups. His theory provides important insight into the essentialism debate. Specifically, Delgado (1993) and other critical race scholars such as Angela Harris argue that some of the feminist legal theorists (e.g., Catharine MacKinnon and Robin West) at times rely on a unitary, essential women's experience that is described independently of race, class, and other experiences of reality. C. I. Harris (1993) offered two reasons that gender essentialism is problematic:

First, the obvious one: As a black woman, in my opinion the experience of black women is too often ignored both in feminist theory and in legal theory, and gender essentialism in feminist legal theory does nothing to address this problem. A second and less obvious reason for my criticism of gender essentialism is that, in my view, contemporary legal theory needs less abstraction and not simply a different sort of abstraction. To be fully subversive, the methodology of feminist legal theory should challenge not only law's content but its tendency to privilege the abstract and unitary voice, and this gender essentialism also fails to do. (p. 585)

This insight is timely given that scholars interested in equity in education have called for scholarship that recognizes the relevance of multiple group memberships for an issue (e.g., Grant & Sleeter, 1986; Secada, 1995). Moreover, an education problem may be analyzed with constructs that build on race, class, and gender positions. Here is where the scholarship of Kimberlé Crenshaw makes a significant contribution to the critical race literature and potentially to educational research.

Kimberlé Crenshaw and Critical Race Theory

Matsuda and colleagues (1993) placed the social origins of CRT as a scholarly movement to a student boycott and alternative course organized in 1981 at Harvard Law School. The purpose of the boycott was to convince the administration to increase the number of tenured faculty members of color. Derrick Bell, Harvard's

first African American professor, had left Harvard to assume the deanship at the University of Oregon's law school. Harvard students requested that the university hire a person of color to teach Race, Racism and American Law, a course organized and taught by Bell, the author of a ground-breaking book on the topic (Bell, 1980a). The administration failed to meet the student demand, and students responded by organizing an alternative course on the topic. Kimberlé Crenshaw, a Harvard Law School student, was one of the primary organizers of the alternative course (Matsuda et al., 1993). The students invited legal scholars and activists to lecture on sections of Bell's book. This action led to collaboration and discussion among a small cadre of legal scholars about different ways to conceptualize race and law. Over time, members of this initial group—for example, Richard Delgado, Charles Lawrence, and Mari Matsuda—became instrumental in the development of critical race scholarship (Delgado, 1990; Lawrence, 1987; Matsuda, 1989). Another contributor to this new genre of scholarship is Kimberlé Crenshaw.

Crenshaw's 1988 *Harvard Law Review* article challenged both the neoconservative and CLS critiques of the civil rights movement. Crenshaw (1988) described the neoconservative critique of the New Right as a set of arguments that reduced civil rights to mere special-interest politics.[33] The New Right view law and politics as essentially distinct; they presume that illustrating that the civil rights vision is largely political renders the vision illegitimate (Crenshaw, 1988). For example, the neoconservative argument that more recent leaders of the civil rights movement have shifted the movement's focus on equal treatment under the law to a demand for equal results delegitimized the movement in a democratic society (Sowell, 1984). According to Crenshaw (1988), neoconservatives like Thomas Sowell built on

> a formalistic, color-blind view of civil rights that had developed in the neoconservative "think tanks" during the 1970's. Neoconservative doctrine singles out race-specific civil rights policies as one of the most significant threats to the democratic political system. Emphasizing the need for strictly color-blind policies, this view calls for the repeal of affirmative action and other race-specific remedial policies, urges an end to class-based remedies, and calls for the Administration to limit remedies to what it calls "actual victims" of discrimination. (p. 1337)

However, Crenshaw (1988) argued that the neoconservative critique failed to identify the "real" law and instead embraced language from antidiscrimination texts while ignoring contradictory purposes and interpretations. For example, Crenshaw (1988) identified two distinct rhetorical visions of equality in the body of antidiscrimination law: one termed the *expansive view* and the other the *restrictive view*. The expansive view stresses equality as an outcome and seeks to enlist the power of the court to eliminate the effects of racial oppression. In contrast, the restrictive view of equality, which coexists with the expansive view, treats equality as a process (Crenshaw, 1988). The primary goal of antidiscrimination law, according to the restrictive view, is to stop future acts of wrongdoing rather than correct present forms of past injustice.

According to Crenshaw (1988), the tension between the expansive and restrictive visions of equality is present throughout antidiscrimination law; however, the neoconservative critique often dismisses the full complexity of the dual interpretation by simply stating that equal process is unrelated to equal results. Unsatisfied with this declaration, Crenshaw (1988) remarked:

> As the expansive and restrictive views of antidiscrimination law reveal, there simply is no self-evident interpretation of civil rights inherent in the terms themselves. Instead, specific interpretations proceed largely from the world view of the interpreter. For example, to believe, as Sowell does, that color-blind policies represent the only legitimate and effective means of ensuring a racially equitable society, one would have to assume not only that there is only one "proper role" for law, but also that such a racially equitable society already exists. In this world, once law had performed its "proper" function of assuring equality of process, differences in outcomes between groups would not reflect past discrimination but rather real differences between groups competing for societal rewards. Unimpeded by irrational prejudices against identifiable groups and unfettered by government-imposed preferences, competition would ensure that any group stratification would reflect only the cumulative effects of employers' rational decisions to hire the best workers for the least cost. The deprivations and oppression of the past would somehow be expunged from the present. Only in such a society, where all other societal functions operate in a nondiscriminatory way, would equality of process constitute equality of opportunity. (pp. 1344–1345)

A belief in color blindness and equal process, according to Crenshaw (1988), is illogical in a society in which specific groups have been treated different historically and in which the outcomes of this differential treatment continue into the present. Moreover, society's adoption of antidiscrimination law is subject to the condition that it does not overly burden majority interests (see also Bell, 1987, 1992).

Crenshaw (1988) also conducted a critique of CLS. She interpreted CLS as an attempt to examine legal ideology and discourse to determine how it re-creates and legitimates American society. Specifically, to discover the composition of the law, CLS scholars deconstruct legal doctrine to illuminate both its internal inconsistencies (often by exposing illogical legal arguments) and its external inconsistencies (generally by noting the paradoxical political perspectives embedded within legal doctrine) (see, e.g., R.W. Gordon, 1984; Livingston, 1982; Unger, 1983). The CLS analysis exposes the ways in which legal ideology has helped construct, maintain, and legitimate America's present class structure.

Moreover, Crenshaw (1988) argued that CLS provides a useful analysis in understanding the limited transformative potential of antidiscrimination discourse. However, Crenshaw identified difficulties in attempting to employ critical themes and ideas to analyze the civil rights movement and to describe possible policy options the civil rights constituency could possibly pursue. More specifically, Crenshaw offered three reasons the CLS critique is inadequate for people of color.[34]

First, many CLS scholars failed to ground their analyses in the realities of the racially oppressed. This deficiency, according to Crenshaw (1988), is especially apparent in critiques related to racial issues. Thus, the CLS literature shares a

characteristic with mainstream scholarship: It fails to speak to or about African Americans and other people of color.

Second, the CLS critique fails to analyze the hegemonic role of racism, thus rendering its prescriptive analysis unrealistic (Crenshaw, 1988).

> The Critics' principal error is that their version of domination by consent does not present a realistic picture of racial domination. Coercion explains much more about racial domination than does ideologically induced consent. Black people do not create their oppressive worlds moment to moment but rather are coerced into living in worlds created and maintained by others. Moreover, the ideological source of this coercion is not liberal legal consciousness, but racism. If racism is just as important as, if not more important than, liberal legal ideology in explaining the persistence of white supremacy, then the Critics' single-minded effort to deconstruct liberal legal ideology will be futile. (p. 1357)

Third, according to Crenshaw (1988), the CLS critique, while exaggerating the role of liberal legal consciousness, minimizes the potential transformative power that liberalism offers. Crenshaw supported her claim by reexamining the civil rights movement. She noted that Blacks challenged their exclusion from political society by using methods recognized and reflected in U.S. society's institutional logic: legal rights ideology. Specifically, civil rights activists articulated their demands through legal rights ideology by exposing a series of contradictions, the most important being the constitutional guarantee of citizenship and the public practice of racial subordination. Crenshaw (1988) remarked:

> Rather than using the contradictions to suggest that American citizenship was itself illegitimate or false, civil rights protestors proceeded as if American citizenship were real, and demanded to exercise the "rights" that citizenship entailed. By seeking to restructure reality to reflect American mythology, Blacks relied upon and ultimately benefited from politically inspired efforts to resolve the contradictions by granting formal rights. Although it is the need to maintain legitimacy that presents powerless groups with the opportunity to wrest concessions from the dominant order, it is the very accomplishment of legitimacy that forecloses greater possibilities. In sum, the potential for change is both created and limited by legitimation. (p. 1368)

In conclusion, Crenshaw (1988) argued that the task at hand is to develop methods to engage in ideological and political struggle while minimizing the costs of waging in an inherently legitimating legal discourse. Central to this process is the creation of a distinct political thought that is the product of the lives and conditions of Black people.

In an effort to create this kind of political thought, Crenshaw has sought to theorize about race and apply this theory to social problems. Crenshaw (1993) argued that social issues emphasizing gender often minimized the interaction of gender and race and class. She contended that this practice is largely consistent with doctrinal and political discourses that construct racism and sexism as mutually exclusive. In response, Crenshaw (1993) called for an intersectional framework to address multiple systems of subordination:

> On the simplest level, an intersectional framework uncovers how the dual positioning of women of color as women and as members of a subordinated racial group bears upon violence committed against

us. This dual positioning, or as some scholars have labeled it, double jeopardy, renders women of color vulnerable to the structural, political, and representational dynamics of both race and gender subordination. A framework attuned to the various ways that these dynamics intersect is a necessary prerequisite to exploring how this double vulnerability influences the way that violence against women of color is experienced and best addressed. (p. 112)

Crenshaw's (1993) argument for an intersectional framework builds on her examination of rhetorical strategies that characterize antiracist and feminist politics merging in ways that construct new problems for women of color. The intersectional critique is important for discovering the methods in which reformist interventions of one discourse establish and reinforce subordinating aspects of another.

Crenshaw (1993) developed an intersectionality framework that explored race and gender while noting that the concept can and should be expanded by including issues such as class and age. She described intersectionality as a provisional concept that links contemporary politics with postmodern theory. The specific purpose of intersectionality is to frame the following inquiry: "How does the fact that women of color are simultaneously situated within at least two groups that are subjected to broad societal subordination bear upon problems traditionally viewed as monocausal—that is, gender discrimination or race discrimination" (Crenshaw, 1993, p. 114).

In her analysis, Crenshaw (1993) used three constructs or metaphors to guide her examination of race and gender in U.S. law and popular culture: (a) the structural dimensions of domination (structural intersectionality), (b) the politics engendered by a specific system of domination (political intersectionality), and (c) the representations of the dominated (representational intersectionality). The intersectionality metaphors attempt to map the space in which women of color are situated: between categories of race and gender when the two are treated as mutually exclusive.

Crenshaw (1993) describes *structural intersectionality* as the way in which women of color are often situated within overlapping structures of subordination. Any area of vulnerability is sometimes exacerbated by yet another set of constraints emerging from a separate system of subordination. According to Crenshaw (1993), scholarly analysis built on the examination of structural intersections would provide insights into the lives of those at the bottom of complex layers of social hierarchies to determine how the interactions within each hierarchy influence the dynamics of another. For Crenshaw (1993), the material outcomes of these interconnected dynamics both within and across hierarchies in the lives of women of color are the essence of structural intersectionality. Crenshaw (1993) provided an example of how structural intersectionality limits legal protection and political intervention:

Structural intersectionality is the way in which the burdens of illiteracy, responsibility for child care, poverty, lack of job skills, and pervasive discrimination weigh down many battered women of color who are trying to escape the cycle of abuse. That is, gender subordination—manifested in this case by

battering—intersects with race and class disadvantage to shape and limit the opportunities for effective intervention. (p. 115)[35]

According to Crenshaw (1993), the term *political intersectionality* refers to the various ways in which political and discursive practices associated with race and gender interrelate, often minimizing women of color. On some political issues, the arguments focusing on race and those focusing on gender work at odds. Manifestations of this oppositionality are found in antiracist and feminist discourse that supports the dynamics of either racial or gender subordination. Crenshaw (1993) remarked that a common example of political intersectionality is the practice of "protecting" the political and cultural integrity of the Black community by silencing public discussions of domestic violence. In other cases, women of color are overlooked when gender politics fail to recognize the plight of women of color. Crenshaw (1993) argued that this was the case with rhetorical appeals made by sponsors of the Violence Against Women Act.

White male senators eloquently urged passage of the bill because violence against women occurs everywhere, not just in the inner cities. That is, the senators attempted to persuade other whites that domestic violence is a problem because "these are *our* women being victimized." White women thus come into focus, and any authentic, sensitive attention to our images and our experience, which would probably have jeopardized the bill, faded into darkness. (Crenshaw, 1993, p. 116)[36]

Political intersectionality, as it relates to issues affecting women of color, reveals the methods in which politics built on mutually exclusive notions of race and gender provide women of color an inadequate political framework that fails to contextualize their experiences and realities (Crenshaw, 1993). Thus, tokenistic, objectifying, voyeuristic inclusion within a political discourse is at least as harmful to women of color as exclusion because both fail to adequately contextualize their lived realities and concerns (Crenshaw, 1993).

The final metaphor of the intersectional framework is *representational intersectionality*, which describes the manner in which race and gender images, abundant in our culture, merge to construct unique narratives considered appropriate for women of color (Crenshaw, 1993). Representational intersectionality is significant for the exploration of issues involving women of color because it seeks to understand the subtle and explicit ways their experiences are weighed against counternarratives that build on stereotypes.

Crenshaw (1993) suggested that media images provide insights into understanding the ways Latina, African American, Asian American, and Native American women are constructed through permutations of accessible racial and gender stereotypes. Crenshaw (1993) conducted an analysis using the intersectionality framework of cultural images widely disseminated in four mainstream movies, a video game, and a rap album.[37] A goal of her analysis was to determine whether cultural artifacts such as media images can influence legal and political thinking. In Crenshaw's (1993) words, "Whatever the relationship between imagery and actions is, it seems clear that these images do function to create coun-

ternarratives to the experiences of women of color that discredit our claims and render the violence we experience unimportant" (p. 120).

A Commentary on Kimberlé Crenshaw

Kimberlé Crenshaw's scholarship characterizes the interdisciplinary and eclectic nature of CRT. Like other critical race scholars, Crenshaw borrows from several traditions, including cultural nationalism, postmodernism, CLS, and black feminist thought, to provide a more comprehensive examination of race, society, and U.S. law. For example, Crenshaw's (1988) critique of neoconservative and CLS arguments in antidiscrimination law provides unique insight into how both groups, for different reasons, have failed to address the complexity of race in U.S. society and the laws governing the society. Instead, Crenshaw (1988) called for scholarship that demonstrates the racist nature of ostensibly neutral norms—a response to neoconservative arguments—and the development of proactive strategies for change that include the pragmatic use of legal rights, a position that differs from that of scholars in the CLS movement. Crenshaw's call for a different approach to antidiscrimination law and related scholarship has more recently been applied to scholarship in education.

In Tate et al. (1993), two colleagues and I built on Crenshaw's notion of expansive and restrictive forms of equality. Specifically, we argued that many policymakers are unaware of the potential for divergent constructions of equality; thus, the implementation of policy and law derived from the restrictive interpretation of antidiscrimination law continues to inhibit African American students' opportunity to learn. We concluded with a description of a more expansive vision of desegregated schooling that considered student diversity, curriculum, instruction, and parent-community involvement. This article represents an effort to negotiate macrolevel policy issues with pragmatic classroom-level concerns, a challenge for all scholars concerned with equity in education. The critical race critique provided important conceptual intervention in this effort, and, more specifically, Crenshaw's (1988) analysis of antidiscrimination law was central. Other potential areas of education and related scholarship where Crenshaw's perspective on antidiscrimination law would be applicable include (a) school choice and voucher plans, (b) standards-based reform efforts, and (c) school desegregation efforts, including those in higher education (see Ladson-Billings & Tate, 1995; Tate, 1995a).

Another way Crenshaw's (1993) scholarship can make a potentially unique contribution to educational research on equity is with her intersectionality framework. Recently, many progressive scholars have called for or actually included a close examination of the intersection of race, class, and gender in their research programs (Apple, in press; Grant & Sleeter, 1986; Morrow & Torres, 1995; Reid, 1995; Secada, 1995). The three variants on the intersectional theme—structural, political, and representational—provide a conceptional framework for analyzing the interplay of race, class, and gender in educational contexts.

Despite the potential of the intersectionality framework, its postmodern roots have been subject to criticism. Apple (in press) warned of the problems inherent in

> the tendency by *some* postmodernists and poststructuralists to see *any* focus on political economy and class relations to be somehow reductive, to analyze the state as if it floats in air, to expand the linguistic turn until it encompasses everything, to embrace overly relativistic epistemological assumptions, and the stylistic arrogance of some its writings.

This warning is worth noting. However, it is Crenshaw's careful attention to structural artifacts, the political economy, and cultural representations that makes her intersectional framework most appealing to education scholars seeking to build on postmodern and critical traditions to better understand the role of race in U.S. schools and society.

FINAL REMARKS: THE DEFINING ELEMENTS OF CRITICAL RACE THEORY

One purpose of this review is to answer the question, What is CRT? A major goal of CRT is the elimination of racial oppression as part of the larger goal of eradicating all forms of oppression (Matsuda et al., 1993). To this end, several defining elements emerge from the CRT literature. Although these elements are distinct, they each reflect the goal of achieving racial justice. In this sense, the elements of CRT are interrelated. Moreover, each of these elements provides guidance for the development of questions related to the systematic inquiry of the political dimensions of equity in education. My literature review of CRT revealed the following defining elements and related questions.

1. CRT recognizes that racism is endemic in U.S. society, deeply ingrained legally, culturally, and even psychologically. Thus, the question for the education scholar employing CRT is not so much whether or how racial discrimination can be eradicated while maintaining the vitality of other interests linked to the status quo such as federalism, traditional values, standards, established property interests, and choice. Rather, the new question would ask how these traditional interests and cultural artifacts serve as vehicles to limit and bind the educational opportunities of students of color.

2. CRT crosses epistemological boundaries. It borrows from several traditions, including liberalism, law and society, feminism, Marxism, poststructuralism, CLS, cultural nationalism, and pragmatism, to provide a more complete analysis of "raced" people. This element of CRT suggests that scholars in education interested in equity research must begin to question the appropriateness and potential of their theoretical and conceptual frameworks. For example, does functionalism, a particular multicultural perspective, or critical theory provide the most cogent analysis of the experiences of students of color in education or the many "raced" representations?

3. CRT reinterprets civil rights law in light of its limitations, illustrating that laws to remedy racial inequality are often undermined before they can be fully

implemented. Interestingly, multicultural education and some multicultural perspectives are built on or closely associated with the civil rights laws developed in the 1960s. Thus, an important question from a critical race theoretical perspective is, What limitations do these perspectives have and how can they be reinterpreted to the advantage of traditionally underserved students of color? Moreover, this question can be applied to each theoretically driven movement in education.

4. CRT portrays dominant legal claims of neutrality, objectivity, color blindness, and meritocracy as camouflages for the self-interest of powerful entities of society. Do currently employed theoretical perspectives in education address these practices? If not, how do they fail, and what does CRT offer to remedy this lack of conceptual depth?

5. CRT challenges ahistoricism and insists on a contextual/historical examination of the law and a recognition of the experiential knowledge of people of color in analyzing the law and society. Do we in education challenge ahistorical treatment of education, equity, and students of color? Moreover, what role should experiential knowledge of race, class, and gender play in educational discourse?

These elements of CRT represent a beginning point. Critical race scholars are engaged in a dynamic process seeking to explain the realities of race in an ever-changing society. Thus, their theoretical positions and, more specifically, these elements should be viewed as a part of an iterative project of scholarship and social justice.

Secada (1989) argued that there are three areas into which research on educational equity might move. First, future scholarship should seek to set equity apart from equality of education while building on the important contributions that have emerged from that paradigmatic view. It is here that CRT makes a direct contribution to equity-related research in education. Critical race scholars have reinterpreted civil rights law and dominant legal claims of equality, color blindness, and meritocracy as part of an interest-convergence ploy. They have described in detail the origin and intent of these claims of neutrality and offered alternative solutions to difficult social problems.

Second, Secada (1989) called for equity research in education that focused on the individual and on the group case. This is where the power of legal story telling is most illuminating. The voice of the individual can provide insight into the political, structural, and representational dimensions of the legal system, especially as they relate to the group case. Similarly, narrative research in education can provide comparable insights into the educational system (see Casey, 1995).

Finally, Secada (1989) argued that the link of educational equity to justice needs examining with respect to how changing notions of justice may give rise to different interpretations of educational equity. A central part of the critical race critique is to examine ever-changing conceptions of justice. Thus, scholars interested in educational equity should benefit from the CRT literature.

Throughout this chapter, I have attempted to delineate the possibilities and limitations of CRT, specifically for debates concerning equity in education. A challenge for those interested in the politics of education and related research in equity

is to find theoretical frameworks that allow for an expansive examination of race that moves beyond those associated with the inferiority paradigm. Such inquiry must begin with the recognition that this paradigm is a tool for the maintenance of racial subordination. The defining elements of CRT suggest that this theoretical perspective can provide novel and innovative ways of exploring educational policy, research, and practice.

NOTES

[1] Despite the ground-breaking work of such scholars as Woodson (1933/1990) and DuBois (1919), many researchers have continued to use race as only a categorical variable to compare and contrast social conditions rather than a theoretical lens or analytical tool.

[2] Race and gender have more recently emerged as important considerations to scholars in this tradition. For example, Apple (1992) remarked:

We cannot marginalize race and gender as constitutive categories in any cultural analysis. If there is indeed basic cultural forms and orientations that are specifically gendered and raced, and have their own partly autonomous histories, then we need to integrate theories of patriarchal and racial forms into the very core of our attempt to comprehend what is being reproduced and changed. At the very least, a theory that allows for the contradictions within and among these dynamics would be essential. (p. 143)

[3] Historians, social scientists, and other scholars have argued that race is not a natural cultural artifact but, rather, a social construction (see, e.g., Apple, 1992; Apple & Weis, 1983). Thus, people are "raced" based on certain characteristics and for different reasons (Harris, 1993; McCarthy & Crichlow, 1993; Morrison, 1992; Roediger, 1991).

[4] Haney Lopez (1996) provided an insightful description of race:

Race can be understood as the historically contingent social systems of meaning that attach to elements of morphology and ancestry. This definition can be pushed on three interrelated levels, the physical, the social, and the material. First, race turns on physical features and lines of descent, not because features or lineage themselves are a function of racial variation, but because society has invested these with racial meanings. Second, because the meanings given to certain features and ancestries denote race, it is the social processes of ascribing racialized meanings to faces and forbearers that lie at the heart of racial fabrication. Third, these meaning-systems, while originally only ideas, gain force as they are reproduced in the material conditions of society. The distribution of wealth and poverty turns in part on the actions of social and legal actors who have accepted ideas of race, with the resulting material conditions becoming part of and reinforcement for the contingent meanings understood as race. (p. 14)

[5] Another important question is, What was it about Guinier's thinking and writing that alarmed both liberal and conservative writers and critics? Although this chapter will not specifically deal with this question, Stephen L. Carter's foreword in Lani Guinier's (1994) *The Tyranny of the Majority* provides excellent insight into the issue.

[6] Despite the effort to associate intelligence testing with genetic classification, this movement is more consistent with Wynter's (1995) notion of artificial/symbolic modes of classification. I contend that one goal of intelligence testing is to create a symbolic mode (i.e., test score) that affirms a belief system and justifies and motivates political action. Hernstein and Murray (1994) illustrated this point when they raised the following question: "How should policy deal with the twin realities that people differ in intelligence for reasons that are not their fault and that intelligence has a powerful bearing on how well people do in life?" (p. 535).

The authors argued that the interrelationship between race and intelligence is a fixed genetic reality. One limitation of this argument is captured in the following statement:

"Race" is not a biological category that can serve as a justifiable scientific tool for representing and comparing human populations. Rather, it is a *marker* [italics added] for historically oppressed groups whose domination was perpetuated and reproduced through reference to accidental phenotypical features, those of "visible" minorities. (Morrow & Torres, 1995, p. 385)

[7] Walker (1991) argued that race has evolved beyond being an ideological construct:

To most nineteenth-century white Americans the Negroes' racial difference and inferiority were not mere abstractions. Race was a physical fact. To argue as one recent student of southern history has that for nineteenth-century whites race was a pure "ideological notion" is arrant, ahistorical nonsense. Those American historians who have noted that racial antipathy was a major factor in the history of the United States have not been engaged in some sort of exceptionalism, as has sometimes been alleged. Nor have they accorded race a transhistorical, almost metaphysical, status that removes it from all possibility of analysis and understanding. On the contrary, what scholars such as Carl Degler, George Fredrickson, Wintrop Jordon, Leon Litwack, Michael Rogin, Richard Slotkin, and Joel Williamson have done is to pay close attention to race and racial thinking, as it evolved in Euro-American thought. (p. 5)

[8] Fields (1990) provides additional insight into the relationship between racial oppression and inferiority:

Race as a coherent ideology did not spring into being simultaneously with slavery, but took even more time than slavery did to become systematic. A commonplace that few stop to examine holds that people are more readily oppressed when they are already perceived as inferior by nature. The reverse is more to the point. People are more readily perceived as inferior by nature when they are already seen as oppressed. Africans and their descendants might be, to the eye of the English, heathen in religion, outlandish in nationality, and weird in appearance. But that did not add up to an ideology of racial inferiority until a further historical ingredient got stirred into the mixture: the incorporation of Africans and their descendants into a polity and society in which they lacked rights that others not only took for granted, but claimed as a matter of self-evident natural law. (p. 106)

[9] According to Anderson (1994), "As a general rule, the category of race has been distorted or omitted in the writing and teaching of American history" (p. 87). To avoid contributing to this problem, I use the heading "One Historical Overview" to indicate that my historical interpretation of the origins of critical race theory is subject to critique and debate. Moreover, the heading reflects my belief that it is possible to construct more than one history of this scholarly movement.

[10] Woodson's argument extended beyond legal education. He argued that schools and universities, in general, taught about European civilization and from European perspectives while ignoring the Black experience. He contended that this practice was harmful to the esteem and thinking of African American youth.

[11] For a discussion of educators who participated in this struggle, see Banks (1993).

[12] The purpose of this section of the chapter is to provide the reader insight into the thinking of critical race legal scholars about scholarship associated with critical legal studies. Thus, I am not attempting to represent the critical legal studies movement as a scholar in that movement might; rather, the intent is to present the conceptual similarities and differences as interpreted by individual scholars within the critical race group.

[13] According to Unger (1982):

Classical legal thought which flourished between approximately 1885 and 1940, conceived of law as a network of boundaries that marked off distinct spheres of individual and governmental power. Judicial authorities were thought to arbitrate conflict through impartial elaboration of a mechanical legal analytic. (p. 1670)

[14] I am not attempting to suggest that every scholar associated with the CLS movement borrows from the work of Gramsci. Instead, I suggest that this is a tendency within the movement (see, e.g., Gordon, 1984).

[15] Gramsci (1971) conceptualized the notion of hegemony, the method by which a network of attitudes and beliefs, influencing both popular values and the ideology of powerful members of society, sustains existing social configurations and convinces dominated groups that existing social relationships are natural.

[16] Unger's (1983) use of the word *tendencies* is more appropriate than *tenet* or *methodology*. CLS scholarship is closely associated with a variety of currents in contemporary radical social theory but does not reflect any agreed upon set of political tenets.

[17] Livingston (1982) contended that these two tendencies distinguished realist tradition from CLS. Whereas the realists employ analytic critique to discredit legal arguments and suggest specific methods of legal reform, critical legal scholars are more focused on the entire framework of liberal thought, exploring the tension between normative ideals and social structure.

[18] Narayan (1993) provided important insight into the enactment of hybridity:

One wall stands between ourselves as interested readers of stories and as theory-driven professionals; another wall stands between narrative (associated with subjective knowledge) and analysis (associated with objective truths). By situating ourselves as subjects simultaneously touched by life-experience and swayed by professional concerns, we can acknowledge the hybrid and positioned nature of our identities. Writing texts that mix lively narrative and rigorous analysis involves enacting hybridity, regardless of our origins. (p. 682)

[19] I use the term *conversation* to indicate the dialogue that exists between critical race theorists and other scholars outside this genre of legal analysis.

[20] For an excellent review and critique of *And We Are Not Saved*, see Delgado (1988b).

[21] Throughout this chronicle, Bell (1987) builds his arguments on research conducted by constitutional scholars (e.g., Beard, 1913; Wiecek, 1977). His analysis differs in that he uses story to introduce ideological contradiction and raise questions.

[22] The notion of property as "thing" is the popular conception. A second conception of property as the relationship between various entities is the more sophisticated conception. In this analysis, I am discussing the latter.

[23] I am using the terms *critical race theory* and *critical race critique* interchangeably in this chapter.

[24] See Casey (1995) for a review of narrative research in education.

[25] For additional discussion of this issue, see Tatum (1992).

[26] For a powerful example of this, see Sara Lawrence-Lightfoot's (1994) *I've Known Rivers*.

[27] Each of these mechanisms should be read and understood by scholars interested in equity and education. They provide a power mirror for self-reflection and a lens for critiquing the scholarship of colleagues in the field.

[28] Harris (1990) provided an excellent summary of the tension created by gender essentialism in political action and scholarly writing:

The notion that there is a monolithic "women's experience" that can be described independent of other facets of experience like race, class, and sexual orientation is one I refer to in this essay as "gender essentialism." A corollary to gender essentialism is "racial essentialism"—the belief that there is a monolithic "Black Experience," or "Chicano Experience." The source of gender and racial essentialism (and all other essentialisms, for the list of categories could be infinitely multiplied) is the second voice, the voice that claims to speak for all. The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: "racism + sexism = straight

black women's experience," or "racism + sexism + homophobia = black lesbian experience." Thus, in an essentialist world, black women's experience will always be forcibly fragmented before being subjected to analysis, as those who are "only interested in race" and those who are "only interested in gender" take their slices of our lives. (pp. 588–589)

[29] DuBois (1990) stated:

After the Egyptian and Indian, the Greek and Roman, the Teuton and Mongolian, the Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder. (pp. 8–9)

For additional reading on DuBois and implications for the law, see Barnes (1990). For a discussion of DuBois's philosophy and African American education, see, for example, Lee, Lomotey, and Shujaa (1990) and Shujaa (1993).

[30] Delgado's argument is grounded in reality. For example, an article in *USA Today* naming the newspaper's academic all-star team described an African American student who, despite mediocre schooling and an unstable family structure, was able to maintain outstanding grades and admission to Stanford (della Cava, 1996). The article casts the young woman as a leader and role model for other students in similar social conditions. However, a remark by the student's counselor was confirming of Delgado's argument. The counselor stated, "Tonya has *grown* [italics added] in the last four years, moving from being a black nationalist to being less ethnocentric" (p. 8E). It appears that, in the eyes of the school counselor, Tonya's growth and role model status were predicated on more than overcoming her personal hurdles and included Tonya's view of the world.

[31] See Bell (1994) for a detailed description of the resistance he encountered when attempting to get a woman of color on the Harvard law faculty. The process described confirms Delgado's NBA analogy. See Frierson (1990) and Tate (1994) for similar discussions about the academy and education faculty.

[32] Similarly, Gordon (1992) argued that biographical information about scholars of color helps to forge relationships between minority scholars across the academy.

[33] Crenshaw (1988) used the term *New Right* to reflect the significant changes in the social and political fabric that have influenced the rhetoric and composition of tradition political coalitions.

[34] Recall that Delgado (1987, 1988a) and Williams (1987) offered additional reasons the CLS critique does not meet the needs of people of color. However, Delgado, Williams, and Crenshaw (1988) remarked that CLS provided important insights into civil rights discourse.

[35] This illustration of structural intersectionality provided by Crenshaw (1993) is especially relevant to the way children of color are labeled "at risk." Often, school systems label children of color "at risk" if they are the products of illiterate parents, poverty, and/or homes where abuse is present. This label is often a signal to school systems to offer limited intervention and then abandon responsibility, claiming the role of schools is to educate and not mediate social "dysfunction" (see Jackson, 1993).

[36] This point is consistent with Bell's (e.g., 1979, 1987, 1992) interest-convergence argument. However, Crenshaw provides a unique framework for understanding multiple intersections of a woman of color's reality.

[37] The four movies were "Angel Heart," "Colors," "Year of the Dragon," and "Tales from the Darkside." The video game and rap album were "General Custer's Revenge" and 2 Live Crew's "Nasty as They Wanna Be."

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