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To cite this article: Adrienne D. Dixson & Celia K. Rousseau (2005) And we are still not saved: critical race theory in education ten years later, *Race Ethnicity and Education*, 8:1, 7-27, DOI: [10.1080/1361332052000340971](https://doi.org/10.1080/1361332052000340971)

To link to this article: <http://dx.doi.org/10.1080/1361332052000340971>



Published online: 23 Aug 2006.



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And we are still not saved: critical race theory in education ten years later

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In 1995, *Teachers College Record* published an article by Gloria Ladson-Billings and William Tate entitled ‘Toward a critical race theory of education’. In this article, the authors proposed that critical race theory (CRT), a framework developed by legal scholars, could be employed to examine the role of race and racism in education. Within a few years of the publication of the article by Ladson-Billings and Tate, several scholars in education had begun to describe their work as reflecting a CRT framework. In this article, we review the literature on CRT in education that has been published over the past ten years. We also assess how far we have come with respect to CRT in education and suggest where we might go from here.

Prologue

This is the story of a school. Within this school, there were two separate academic programs that differed in several ways. Class size was one of the most obvious differences. Students in Program A were often in classes of no more than 15. In contrast, classes of 25 students or more were not uncommon in Program B. Program A’s classes were not only smaller but were also staffed by the most highly qualified teachers in the school. These classes were ‘protected’ from teachers who were perceived to be less well qualified. In contrast, Program B’s classes were often the last to be assigned teachers. Those responsible for making the assignments confessed that they sometimes subscribed to the ‘warm body’ approach when more qualified teachers were not available. It is probably not surprising to those who are familiar with how these things work that the student populations of the two programs also differed substantially. Classes in Program A were often approximately 80% white and 20% African-American. In contrast, classes in Program B were sometimes as much as 80% African-American. Moreover, the programs also differed in where they sent their students after graduation. The students from Program A were more likely to graduate

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and go on to some of the ‘best’ schools in the area, while the Program B graduates often went to the local schools with poor reputations.

Introduction

In 1995, *Teachers College Record* published an article by Gloria Ladson-Billings and William Tate entitled ‘Toward a critical race theory of education’. In this article, the authors asserted that race remains a significant factor in society in general and education in particular. Yet, according to Ladson-Billings and Tate, race remained, at that time, under-theorized as a topic of scholarly inquiry in education. As a means to begin to address this theoretical void, they proposed that critical race theory (CRT), a framework developed by legal scholars, could be employed to examine the role of race and racism in education. In particular, they detailed the intersection of race and property rights and how this construct could be used to understand inequity in schools and schooling.

Their analysis built upon the work of legal scholar Cheryl Harris, employing Harris’ construct of ‘whiteness as property’. According to Harris (1993), although the popular conception of property is in terms of some tangible object—a home or car—the position held by many theorists is that historically within US society, property is a *right* rather than a physical object. Conceived of in this way, it is possible to examine the property value (in terms of rights) of whiteness. Harris proposes that the core characteristic of whiteness as property is ‘the legal legitimation of expectations of power and control that enshrine the status quo as a neutral baseline, while masking the maintenance of white privilege and domination’ (p. 1715). Beyond this general definition, Harris also contends that whiteness meets the more specific functional criteria of property. According to Harris, ‘the law has accorded “holders” of whiteness the same privileges and benefits accorded holders of other types of property’ (p. 1731).

One of these privileges and benefits of property is the absolute right to exclude. In their 1995 article, Ladson-Billings and Tate outlined the manifestations of this property function of whiteness in education.

In schooling, the absolute right to exclude was demonstrated initially by denying blacks access to schooling altogether. Later, it was demonstrated by the creation and maintenance of separate schools. More recently it has been demonstrated by white flight and the growing insistence on vouchers, public funding of private schools, and schools of choice. Within schools, absolute right to exclude is demonstrated by resegregation via tracking. (p. 60)

Thus, tracking can be viewed as one of the current means through which the property right of whiteness is asserted in education. African-American and Latino students are disproportionately placed into the lowest tracks and afforded fewer educational opportunities as a result (Oakes, 1995; Darling-Hammond, 1997; Oakes *et al.*, 2000). The story included as the prologue to this article could be viewed as an example of the property value of whiteness through the operation of a two-track system characterized by de facto segregation.

Whiteness as property is but one of the theoretical constructs outlined in the legal literature on critical race theory. Much like the theoretical void described by Ladson-Billings and Tate (1995), the founders of the movement in legal studies characterize the emergence of CRT as part of the search for a new vocabulary. There was a need for a vocabulary that could name the race-related structures of oppression in the law and society that had not been adequately addressed in existing scholarship (Crenshaw *et al.*, 1995). This effort, which began in the 1970s, has produced a substantial body of legal scholarship that seeks to provide this critical vocabulary.¹ According to Matsuda *et al.* (1993), there are six unifying themes that define the movement.

1. Critical race theory recognizes that racism is endemic to American life.
2. Critical race theory expresses skepticism toward dominant legal claims of neutrality, objectivity, colorblindness and meritocracy.
3. Critical race theory challenges ahistoricism and insists on a contextual/historical analysis of the law ... Critical race theorists ... adopt a stance that presumes that racism has contributed to all contemporary manifestations of group advantage and disadvantage.
4. Critical race theory insists on recognition of the experiential knowledge of people of color and our communities of origin in analyzing law and society.
5. Critical race theory is interdisciplinary.
6. Critical race theory works toward the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression. (p. 6)

It was upon this framework outlined in legal studies that Ladson-Billings and Tate (1995) built in their article regarding CRT in education. Since the publication of their article, several other scholars have written about the application of CRT to education. However, in the midst of the burgeoning CRT movement, both Ladson-Billings (1999a) and Tate (1999) have warned critical race scholars in education against moving too quickly away from the foundation provided by the scholarship in legal studies. In fact, Tate (1999) argues that one of the criterion for CRT scholarship in education is that it should 'build on and expand beyond the scholarship found in the critical race legal literature' (p. 268). The purpose of this article is to examine the literature on CRT in education that has developed over the past decade, keeping this criterion in mind. We seek to assess the progress made in educational scholarship with respect to CRT and to suggest where we might go from here.

Using the keywords, 'critical race theory in education' and 'critical race theory and education,' we conducted a search in several education, social science and legal databases—ERIC, Education Abstracts, Wilson Social Science and Lexis-Nexis. We limited our search to literature published between 1995 and 2003. Given that the article by Ladson-Billings and Tate was published in 1995, it was unlikely that work on CRT in education would appear before that time. The search with the descriptor 'critical race theory in education' revealed 44 hits in ERIC and Wilson and 125 hits in Lexis-Nexis. 'Critical race theory and education' revealed 38 hits in ERIC and Wilson and 125 hits in Lexis-Nexis. Not surprisingly, there was a great deal of overlap between the two searches. Several scholars did not draw explicitly upon constructs

outlined in CRT scholarship in the law, although most of the articles in some manner alluded to the legal antecedents of CRT. For this reason, we have not incorporated into this review all of the articles found in our search. Rather, we have included articles that built upon or were clearly tied to the legal literature and tenets of CRT in education as suggested by Ladson-Billings and Tate. It is important to note, however, that the articles found in the Lexis-Nexis search are law review articles wherein legal scholars examined educational issues within a CRT framework. Hence, the articles selected from the Lexis-Nexis search represent the ways in which legal scholars use CRT to analyze educational issues as compared to the work of CRT scholars in education or scholars in education who utilize CRT. Thus, we describe two slightly different, but closely related, bodies of literature in this article—one from education and the other from law. In the first section of the review, we introduce the reader to legal constructs that have been used in educational scholarship. For the sake of clarity, we address each construct separately, describing how the construct was defined originally in the legal literature and how it has subsequently been employed to understand educational inequity. However, we acknowledge that the separation of these constructs is more for the sake of organization than representative of clear distinctions. The constructs that we describe are, in fact, overlapping and supporting. In the second section, we attempt to illustrate the interrelated nature of these ideas by returning to the legal literature for an examination of cases relevant to education. Specifically, we examine CRT scholarship on the *Brown vs Board of Education* decision as well as more recent legal cases regarding affirmative action in higher education. The analyses of these cases draw upon the roots of CRT scholarship in the law and, therefore, provide an image of the theoretical structure upon which Ladson-Billings and Tate (1995) argued that scholarship in education should build.

Critical race theory in education

Voice

One of the central tenets of CRT includes the ‘recognition of the experiential knowledge of people of color’ (Matsuda *et al.*, 1993, p. 6). This recognition is the basis of the theme of ‘voice’ that runs throughout CRT in legal studies. Calmore (1995) describes CRT as tending:

... toward a very personal expression that allows our experiences and lessons, learned as people of color, to convey the knowledge we possess in a way that is empowering to us, and, it is hoped, ultimately empowering to those on whose behalf we act. (p. 321)

This, then, is the essence of ‘voice’—the assertion and acknowledgement of the importance of the personal and community experiences of people of colour as sources of knowledge. In this way, CRT scholars argue that we should ‘shift the frame’ (Crenshaw, 1989, p. 8) or ‘look to the bottom’ (Matsuda, 1995, p. 63) and begin to value the knowledge of people of colour. ‘Those who have experienced discrimination speak with a special voice to which we should listen’ (Matsuda, 1995, p. 63). Thus, CRT scholars believe and utilize personal narratives and stories as valid forms of

‘evidence’ and thereby challenge a ‘numbers only’ approach to documenting inequity or discrimination that tends to certify discrimination from a quantitative rather than a qualitative perspective.

We should make clear, however, that the use of the term ‘voice’ in the singular does not imply the belief that there exists a single common voice for all persons of colour. The stories of individuals will differ. However, Delgado (1990) suggests that, although there is not one common voice, there is a common experience of racism that structures the stories of people of colour and allows for the use of the term voice.

One of the important functions of voice and stories in CRT scholarship is to counteract the stories of the dominant group (Delgado, 1989). The dominant group tells stories that are designed to ‘remind it of its identity in relation to outgroups and provide a form of shared reality in which its own superior position is seen as natural’ (Delgado, 1989, p. 240). One of the functions of voice scholarship is to subvert that reality. According to Lawrence (1995), ‘we must learn to trust our own senses, feelings and experiences, to give them authority, even (or especially) in the face of dominant accounts of social reality that claim universality’ (p. 338). Thus, one of the functions of voice scholarship is to provide a ‘counterstory’—a means to counteract or challenge the dominant story.

Much of the literature on critical race theory in education has focused on this particular element of the CRT legal literature. In fact, according to Parker and Lynn (2002), one of the main goals of CRT is to use storytelling and narrative to examine race and racism. Similarly, Solorzano and Yosso (2002) have outlined what they call a ‘critical race methodology’—a methodology that focuses on the stories and experiences of students of colour. They propose that the counterstories offered by students of colour can be used as a ‘tool for exposing, analyzing and challenging the majoritarian stories of racial privilege’ (p. 32).

This attention to voice has been employed in educational research in various ways. For example, Fernandez (2002) presents the counterstory of Pablo, a Latino college student reflecting on his experiences in a Chicago high school. His account of his experiences at the predominantly Latino/a school includes descriptions of low expectations on the part of teachers, a school-wide focus on discipline and a lack of academic rigor in the curriculum, even for college-bound students. Similarly, Teranishi’s (2002) study of Filipino students in California also includes accounts of negative stereotypes, lowered expectations on the part of teachers, and tracking into vocational rather than college prep courses. While these studies are not unique in their focus on the views and perspectives of students of colour (see Fine, 1991), they are of note here because the authors’ attention to the experiences of these students is set within a CRT framework. According to Teranishi, ‘CRT was instrumental in providing a voice for students who are otherwise not heard, thus allowing students to provide their own perspectives on their educational experiences’ (p. 152).

Similar studies have also been conducted with students of colour in higher education. For example, Solorzano (2001) examined the campus climate experienced by African-American students at three Predominantly White Research I universities (PWI). The stories recounted by the students of their classroom experiences include

feelings of invisibility, low expectations expressed by both students and faculty, and assumptions by others about how they entered the university. The students' stories also depict their struggle with feelings of self-doubt and isolation as a result of the daily 'microaggressions'—subtle, automatic, or unconscious racial insults—that they experienced.

The stories of these students were similar in many ways to those of Chicana/Chicano graduate students also studied by Solorzano (1998). The students in Solorzano's study of Ford Fellows describe feeling out of place in graduate school. Their descriptions reflect a lack of 'voice' insofar as they felt that their experiences and perspectives were ignored and invalidated. They also describe lowered expectations—'expectations that resulted in stigmatization and differential treatment' (p. 130). As Solorzano (2001) notes, these students' stories serve to counter the dominant discourse. 'Their descriptions of racial microaggressions challenge the anti-affirmative action ideology of college as an equal, colorblind, and race-neutral institution' (p. 72).

Another use of voice in the CRT literature has involved examination of the experiences of scholars of colour in higher education. For example, Delgado Bernal and Villalpando (2002) describe what they call an 'apartheid of knowledge' in which the dominant discourse within the mainstream research community devalues the scholarship of faculty of colour. Through a form of 'epistemological racism', the scholarship of faculty of colour is rendered to the margins (Villalpando & Delgado Bernal, 2002). Because the scholarship of faculty of colour is often focused on issues related to race and ethnicity, Delgado Bernal and Villalpando contend that it is deemed by the academy to be 'illegitimate, biased, or overly subjective' (p. 171). Similarly, Tate (1994) recounts his experience with colleagues who have judged voice scholarship to be 'problematic' for its perceived lack of neutrality or objectivity. However, despite this tendency on the part of the academy to silence the voices of scholars of colour, Tate contends that this attention to voice is important.

Remarks about our experiences as people of color will not be seriously considered in academic circles. ... However, for those scholars of color dedicated to improving the experience of African-American children in urban schools, there is no choice. We must continue the battle to have our experiences and voice heard in academic discourse. Our voices provide stories that help others think in different ways about complex, context-dependent domains like schools and communities. (p. 264)

Thus, the construct of 'voice' has been used in various ways in the educational literature. Some scholars have focused on the voice of students of colour, describing their perceptions and experiences at both the K-12 and university levels. This literature reveals both individual-level 'microaggressions' in the form of lowered teacher expectations as well as more macro-level forms of institutional racism in which school-wide programs lack the courses and rigor necessary for students to succeed in higher education. In addition, a second line of scholarship has focused on the ways that the voices of scholars of colour are silenced in the academy.

While both of these lines of work are important for what they reveal about the micro and macro systems of inequity in education, we would argue that, in some cases,

scholarship in education has only begun to scratch the surface in terms of the use of the full explanatory power of CRT. The construct of voice is important. As Ladson-Billings and Tate (1995) argue, ‘the voice of people of color is required for a complete analysis of the educational system ... Without authentic voices of people of color it is doubtful that we can say or know anything useful about education in their communities’ (p. 58). However, we submit that it is not enough to simply tell the stories of people of colour. Rather, the educational experiences revealed through those stories must then be subject to deeper analysis using the CRT lens. Furthermore, CRT mandates that social activism be a part of any CRT project. To that end, the stories must move us to action and the qualitative and material improvement of the educational experiences of people of colour.

Duncan’s (2002a) ethnographic study of black male students at City High School provides an example of such an analysis. His attention to the stories of black male students can be understood as an example of voice scholarship. However, he also includes the perspectives of others in the school. In this way, it is possible to juxtapose the dominant discourse represented in the voices of other students and faculty with the counterstory told by the black male students.

Duncan (2002a) then uses the CRT literature to further analyze these differences and the condition of the black male students at City High School. In particular, he builds on the legal scholarship of Richard Delgado (1995), specifically Delgado’s conception of certain groups as being ‘beyond love.’ According to Delgado,

Blacks, especially, the black poor, have so few chances, so little interaction with majority society, that they might as well be exiles, outcasts, permanent black sheep who will never be permitted into the fold. Majority society has, in effect, written them off. (p. 49)

They are ‘beyond love’. Duncan uses this same construct to describe the status of black male students in his study, noting that other students and faculty at the school have written off black males in the same manner. The exclusion and marginalization of black male students from the school is taken, not as a cause for concern, but as a ‘predictable, albeit unfortunate, outcome of a reasonably fair system’ (p. 134). In this way, Duncan’s use of the CRT legal literature to go beyond simply reporting students’ stories creates a powerful analysis of the schooling conditions of students in his study. In the sections that follow, we outline other constructs from the legal literature that could be used in a similar manner.

Restrictive vs expansive views of equality

According to Crenshaw (1988), there are two visions of equality—the restrictive and the expansive—present in antidiscrimination law. Crenshaw defines the two views in the following way:

The expansive view stresses equality as a result, and looks to real consequences for African-Americans. It interprets the objective of antidiscrimination law as the eradication of the substantive conditions of Black subordination and attempts to enlist the institutional power of the courts to further the national goal of eradicating the effects of racial

oppression. The restrictive view, which exists side by side with this expansive view, treats equality as a process, downplaying the significance of actual outcomes. The primary objective of anti-discrimination law, according to this vision, is to prevent future wrongdoing rather than to redress present manifestations of past injustice. ‘Wrongdoing’, moreover is seen primarily as isolated actions against individuals rather than as societal policy against an entire group. (pp. 1341–1342)

She goes on to point out that the tension between the two visions is present throughout antidiscrimination law.

Within education, Rousseau and Tate (2003) have used the restrictive vs expansive constructs to examine the beliefs of high school mathematics teachers about the nature of equity. When asked about their response to the needs of an increasingly diverse student population, the teachers in the study universally described ‘treating students equally’ as their approach to ensuring equity. Rousseau and Tate argue that this approach represents a restrictive understanding of the nature of equity, viewing equity as equality of treatment rather than outcomes. The teachers did not connect the concept of equity to the achievement of students of colour in their classes (achievement that was substantially lower on average than the achievement of white students in the same classes). Rousseau and Tate posit that it was, in part, the teachers’ restrictive view of the nature of equity that prevented them from reflecting deeply on their instructional practices and on the differential effects of those practices on students of colour. Because the teachers viewed equity as equal treatment, inequitable results were not a catalyst for reflection. As long as the teachers believed that they had treated students equally, disproportionately negative outcomes for students of colour were not questioned.

The contrast between the restrictive and expansive visions can serve as an important framework for analyzing the nature of equity and inequity in education. We will return to this construct in a subsequent section when we examine the impact of the *Brown* decisions. At this point, we simply note that, as indicated in the Rousseau and Tate (2003) study, the distinctions between equality of process and equality of outcomes can call into question many of the practices of teachers in schools. In particular, a focus on achieving an expansive vision of equality would render problematic the ideal of colour-blindness.

The problem with colour-blindness

Crenshaw *et al.* (1995) note that integration, assimilation and colour-blindness have become the official norms of racial enlightenment. The dominant discourse positions colour-blindness as an ideal. The writings of several scholars within CRT in legal studies seek to problematize this construction of colour-blindness.

CRT indicates how and why the contemporary ‘jurisprudence of colorblindness’ is not only the expression of a particular color-consciousness, but the product of a deeply politicized choice ... The appeal to colorblindness can thus be said to serve as part of an ideological strategy by which the current Court obscures its active role in sustaining hierarchies of racial power. (Crenshaw *et al.*, 1995, p. xxviii)

Like Crenshaw *et al.*, Gotanda (1991) also asserts that the colour-blind ideal in the law serves to maintain racial subordination. In his analysis, Gotanda proposes that the Supreme Court uses the concept of race in different ways. One of those ways is what Gotanda refers to as 'formal-race.'

Formal-race refers to socially constructed formal categories. Black and white are seen as neutral, apolitical descriptions reflecting merely 'skin color' or country of origin. Formal-race is unrelated to ability, disadvantage, or moral culpability. Moreover, formal-race categories are unconnected to social attributes such as culture, education, wealth or language. This 'unconnectedness' is the defining characteristic of formal-race. (Gotanda, 1991, p. 4)

Gotanda goes on to suggest that colour-blind analyses of the law use 'race' to mean formal-race. Because formal-race is connected to social realities, a colour-blind analysis 'often fails to recognize connections between the race of an individual and the real social conditions underlying litigation or other constitutional dispute' (Gotanda, 1991, p. 7). He notes that this disconnection to social realities places severe limitations on the possible remedies for injustice and thereby maintains a system of white privilege. Thus, the lack of historical or social context is one of the mechanisms through which colour-blindness can support inequity.

Within the literature in education, Taylor's (1999) analysis of the Tennessee State University (TSU) desegregation case illustrates the disconnected nature of the court's treatment of race. According to Taylor, TSU was deemed a problem, with respect to desegregation, as a result of its historically black student population, whereas the status of the predominantly white state schools was left unquestioned. He argues that this focus on TSU as the crux of the desegregation process represents a failure to consider the historical context. 'By ... refusing to act on the full ramifications of certain social and economic realities faced by blacks in Tennessee for hundreds of years, the court reveals no contextualized picture' (p. 196). Using the principles of neutrality and choice to buttress its position, the court applied the formal-race definition described by Gotanda (1991).

A similar manifestation of 'formal-race' colour-blindness can be seen in Rousseau and Tate's (2003) study of high school mathematics teachers. The teachers in their study demonstrated a similar acontextual view of race. In particular, the teachers refused to acknowledge race-related patterns in achievement and the potential role of racism in the underachievement of students of colour. They either denied that race-related differences in achievement existed in their classrooms or asserted that the reasons for any differences were related to socioeconomic status rather than the impact of systemic racism in the school and school district. The authors argue that this colour-blind stance, in conjunction with a view of equality as a process, prevented the teachers from reflecting on their own practices and their role in the production of the underachievement of their students of colour.

The pernicious impact of colour-blindness can also be evidenced in subtle micro-aggressions against students of colour. Patricia J Williams, another founding member of the CRT movement, examines how this notion of colour-blindness manifests in seemingly innocent schooling discourse, and the ways in which this ideology covertly pathologizes students of colour. Williams retells an incident that occurred at her

son's pre-school. His teachers report to her that they suspect her son may have a problem with his vision and suggest that she take him to an ophthalmologist. According to his teacher, her son is unable to identify colours. Williams recalls that indeed in conversations she has had with her son in which she has asked him to identify the colours of various objects, his persistent response was, 'I don't know', or, 'What difference does it make?' After careful reflection and observation of his behaviour at school, Williams realized that, as the *only* African-American child who attended the pre-school, his teacher had made comments about colour (meaning skin colour) being unimportant, making the pat liberal comment, that 'it didn't matter ... whether a person is black or white, or red or green or blue', when the white children in the pre-school argued over whether African-Americans could play 'good guys' (p. 3). The irony, as Williams points out, is that her son's teacher had interpreted his internalization of the colour-blind discourse as a physical malady. The fact that he refused to acknowledge colour (as he had been taught, both explicitly and implicitly), had essentially, become *his* problem. Williams suggests that in part the larger discourse on race and the insistence on colour-blindness is not necessarily for purely benevolent reasons. Rather, race, within the scheme of whiteness, is seen as a malady. That is, if we accept the notion of whiteness as normal, then any person who is *not white* is abnormal. Thus, within polite, middle class mores, it is impolite to *see* when someone is *different*, abnormal, and thus, *not white*. Hence, it is better to ignore, or become colour-blind, than to notice that people of colour have the physical malady of skin colour, or *not whiteness*. Similarly, Thompson (1998) points out that 'politely pretending not to notice students' color makes no sense unless being of different colors is somehow shameful' (p. 524). When students begin to internalize this shame or sense of abnormality, colour-blindness can become a form of microaggression.

The critique of colour-blindness can be viewed as a part of a larger critique of liberalism that is characteristic of CRT. According to Ladson-Billings (1999b), 'the liberal discourse is deeply invested in the current system. It relies on the law and the structure of the system to provide equal opportunity for all' (p. 231). CRT calls into question this faith in the system as an instrument of justice. In addition to the challenge to the liberal ideal of colour-blindness, this critique of the liberal paradigm is reflected in the literature on CRT in education in various ways.

For example, Ladson-Billings and Tate (1995) have questioned the efficacy of multicultural education as a means for obtaining justice for students of colour. They argue that 'the multicultural paradigm is mired in liberal ideology that offers no radical change in the current order' (p. 62). Their critique of multiculturalism is similar to CRT scholars' critique of incremental civil rights law. Thus, one of the commonalities between CRT in law and education is the critique of both the inequities of the status quo and liberal ideology that fails to advance the cause of justice for people of colour. It is important to note that Ladson-Billings and Tate's critique of multiculturalism should be seen as a 'call to action' rather than a dismissal of the import and need for more inclusive schooling. That is, what has often been presented as multicultural education has generally been a superficial 'celebration of

difference' through 'foods and festivals' activities rather than an examination of how 'difference' serves to disadvantage some and advantage others.

Duncan's (2002b) CRT analysis of his experiences teaching an undergraduate methods course also provides an example of a critique of liberalism. Duncan argues that the students in his class (who were all white) demonstrated a 'false empathy' for the African-American children at the field site. False empathy occurs when 'a white believes he or she is identifying with a person of color, but in fact is doing so only in a slight, superficial way' (Delgado, 1996, p. 12). According to Delgado (1996), this paternalistic form of empathy is a common characteristic of white liberals. Duncan argues that the students in his class held this attitude toward the children at the field site. His students 'understood their work as helping a group of unfortunate, under-privileged children take advantage of the offerings of a fundamentally just society' (p. 91). Having identified this false empathy as one of the factors blocking student reflection, Duncan changed the organization of the course and the nature of the experiences that he provided for his students. Beyond a merely theoretical critique of liberalism, the analysis of his experiences provided the basis for a change in practice.

Summary

In the first section of this article, we reviewed scholarship in education that has employed critical race theory in an effort to better understand the nature of inequity in schools and schooling. The articles included in this first section were chosen because they reflected a direct link (or, at the very least, a clear connection could easily be made) to the legal literature from which critical race theory originated. The body of literature that has developed in education over the past ten years has drawn upon a variety of constructs from legal studies, including the property value of whiteness, voice, restrictive vs. expansive visions of antidiscrimination law, and the problem with colour-blindness. In the second section of this article, we shift the focus back to the roots of CRT as we examine how this framework can be used to analyze legal cases related to education.

Critical race theory in the law: an examination of legal cases impacting education

Brown vs Board of Education

Given the recent commemoration of the fiftieth anniversary of the Supreme Court's decision in *Brown vs Board of Education*, it seems appropriate to examine this landmark desegregation case through the lens offered by critical race theory. In 1954, the Supreme Court ruled that the 'separate but equal' doctrine that had been legally established in the 1896 *Plessy vs Ferguson* case could no longer be used to justify segregated schools for African-American and white children. While the *Brown* decision is one of the most recognized of the US Supreme Court rulings and one with a far-reaching impact on education, critical race theorists (and others) have come to

question the nature of the effects of the *Brown* decision on the educational experiences of African-American students. Rather than viewing *Brown* as a move to establish racial equality and bring about greater racial justice, critical race scholars have examined both the factors influencing the decision itself and the structures of racial inequity that *Brown* served to reconfigure rather than dismantle.

Derrick Bell (2004, p. 4) has described *Brown* as a ‘magnificent mirage’—an example of the ‘unfulfilled hopes for racial reform’. In order to understand those unfulfilled hopes, it is important to examine briefly the current status of schooling for students of colour. Fifty years after the *Brown* decision to end *de jure* school segregation, recent reports indicate that growing numbers of African-American and Latino/a students attend predominantly minority schools. For example, during the 2001–2002 school year, nearly 63% of black students in Michigan attended schools that were 90–100% minority (Orfield & Lee, 2004). The picture of increased segregation is even more pronounced in urban school districts. On the eve of the fiftieth anniversary of *Brown*, a Memphis newspaper reported that nearly 75% of Memphis City Schools are at least 90% African-American and over half are at least 99% African-American (McKenzie, 2004). Latino/a students are also attending increasingly segregated schools. According to Orfield and Lee (2004), over 58% of Latino/a students in the state of New York attended highly segregated schools (90–100% minority) during the 2001–2002 school year. Moreover, this racial segregation in schooling is tied to differential educational opportunity. ‘The vast majority of intensely segregated minority schools face conditions of concentrated poverty, which are powerfully related to unequal educational opportunity. Students in segregated minority schools face conditions that students in segregated white schools seldom experience’ (Orfield & Lee, 2004, p. 2). In fact, according to Bell (2004), ‘the statistics on resegregation ... painfully underscore the fact that many black and Hispanic children are enrolled in schools as separate and probably more unequal than those their parents and grandparents attended under the era of “separate but equal”’ (p. 114).

So, what might account for the failure of *Brown* to live up to the vision of equal educational opportunity? Part of the answer lies in an examination of the factors contributing to the *Brown* decision. Derrick Bell (1980) has described *Brown* as a prime example of the ‘interest convergence’ principle. According to Bell (2004), the principle of interest convergence has two parts. First, Bell argues that:

... the interest of blacks in achieving racial equality will be accommodated only when that interest converges with the interests of whites in policymaking positions. This convergence is far more important for gaining relief than the degree of harm suffered by blacks or the character of proof offered to prove that harm. (p. 69)

A second rule of interest convergence holds that ‘even when the interest-convergence results in an effective racial remedy, that remedy will be abrogated at the point that policy makers fear the remedial policy is threatening the superior societal status of whites’ (p. 69).

Bell refers to these tacit agreements that occur when interests converge as ‘silent covenants’. He argues that *Brown* represents an example of a silent covenant based

on interest convergence insofar as *Brown's* ostensible move toward racial equality and civil rights for African-Americans was only possible as the result of a confluence of domestic and international factors. Specifically, Bell argues that policymakers at the time of *Brown* were motivated by their own self-interest, rather than a desire for racial justice. In the midst of the Cold War, there was a need felt by policymakers to improve the image of the US democracy—an image that had been tarnished internationally by pictures of racial injustice. Dismantling US apartheid was an important means to the end of negotiating and working internationally, particularly in newly-independent African nations. Furthermore, given the United States' opposition to communism and its contentious and hostile relationship (to say the least) with communist nations like Cuba, the then Soviet Union and China, the fact that democracy and freedom was not enjoyed by *all* citizens of the US was highly problematic for a government that attempted to position itself against those 'red' nations. Bell argues that the *Brown* decision was one way to accomplish the desired positioning within the international arena. Thus, the basic civil rights represented in *Brown* were conferred because they converged with the self-interests of US foreign policy.

Interest convergence offers not only an explanation for the *Brown* decision itself, but also for the effects of the desegregation efforts that followed the ruling. According to Morris (2001), the St Louis desegregation plan, for example, illustrates the operation of interest convergence. African-American students in St Louis were offered the option, under the desegregation plan, of attending schools in the surrounding, predominantly white, county districts. At the same time, magnet programs were provided in the St Louis district to entice white students to return to city schools. These between-district transfers were intended to provide greater racial balance in both city and county schools. However, although many African-American students took advantage of the transfers offered to county schools, far fewer white students went to the magnet schools in the city.

The St Louis example actually provides evidence of both parts of Bell's interest convergence principle (Morris, 2001). In particular, Morris notes that the white county schools have been the primary beneficiaries of the desegregation plan, through increases in overall revenue. In this way, the self-interests of the largely white school systems were served by taking in African-American students. Moreover, the relative failure of the city magnet schools to draw large numbers of white students is an illustration of the second rule of interest convergence—the impact of a threat to the social status of whites.

Although the integration of Black students into predominantly White county schools might have represented to African-Americans a step toward greater social and educational justice, many White families hesitated to disrupt their status by sending their children to the city's magnet schools just so that racial balancing can occur. For these parents, racial balance and equality are secondary to ensuring a quality education for their children. (Morris, 2001, p. 592)

In conjunction with its origins in white self-interest, Tate *et al.* (1993) argue that *Brown* failed to substantively improve the education of African-American students

because it represented a restrictive, rather than expansive, view of equality. Building on Crenshaw's (1988) constructs, Tate *et al.* suggest that *Brown* reflected a restrictive view, focusing on numerical equivalency and equality of process rather than on the actual educational outcomes for students of colour. Insofar as the Court equated desegregation with equal educational opportunity, an expansive vision, attending to the actual educational results for students, was not pursued. By focusing strictly on the process of physical desegregation, the *Brown* court neglected other strategies with the potential to achieve truly equitable educational outcomes for all students. 'What was needed was a vision of education that challenged the fundamental structure of schools that reproduced the same inequitable social hierarchies that existed in society' (Tate *et al.*, 1993, p. 267). That the *Brown* decision failed to disrupt these structures is evidenced by the enduring inequities in the educational system.

Specifically, according to Harris (1993), *Brown* failed to challenge the property value of whiteness. According to Harris, *Brown's*:

... dialectical contradiction was that it dismantled an old form of whiteness as property while simultaneously permitting its reemergence in a more subtle form. White privilege accorded as a legal right was rejected, but de facto white privilege not mandated by law remained unaddressed. In failing to clearly expose the real inequities produced by segregation, the status quo of substantive disadvantage was ratified as an accepted and acceptable baseline—a neutral state operating to the disadvantage of Blacks long after *de jure* segregation has ceased to do so. In accepting substantial inequality as a neutral baseline, a new form of whiteness as property was condoned. (p. 1753)

Thus, Harris argues that part of *Brown's* 'mixed legacy' was its failure to dismantle the structures that had produced and supported school segregation in the first place. An example of this failure can be seen in the St Louis desegregation plan described by Morris (2001). Morris argues that the effects of the property value of whiteness are demonstrated by white parents' reluctance to send their children to St Louis magnet schools. Despite the quality of the city's magnet schools, the fact that they were predominantly African-American reduced the perceived value of the education that they offered. For white parents, 'their children's attendance at predominantly Black schools, despite a particular school's quality, would have represented a loss of "White" status' (Morris, 2001, p. 593). Moreover, by promoting an image of the superior education provided in county schools, the advertising used to draw African-American students to the county districts reified this perception that the 'property' of city schools was of lower educational value. This devaluing of the predominantly black city schools served to uphold the perceived value of the educational 'property' that belonged primarily to whites.

While the goal of desegregation was ostensibly to provide more equitable educational opportunities for all students, the questionable success of such policies is related, at least in part, to the ongoing salience of racism and white privilege. Bell (2004) argues that the *Brown* decision 'substituted one mantra for another: where separate was once equal, "separate" would be now categorically unequal ... By doing nothing more than rewiring the rhetoric of equality, the *Brown* court foreclosed the

possibility of recognizing racism as a broadly shared cultural condition' (p. 197). Thus, the property value of whiteness was maintained, and the promise of substantive change in the education of students of colour remained unfulfilled.

Affirmative action

A similar analysis involving the property value of whiteness has been employed to examine the status of affirmative action in higher education. Legal challenges to race-based admission policies generally focus on 'unfair' advantages given to students of colour in the admissions process. Filed by white students who were not granted admission, these challenges use the rhetoric of 'merit' to argue that policies giving admission points to students of colour violate the Equal Protection Clause of the constitution and lead to 'less qualified' applicants (i.e., applicants with lower test scores or grade point averages) being admitted ahead of the white plaintiffs. However, it is noteworthy that the plaintiffs in such cases do not challenge the admission of other white students with lower test scores and GPAs. Nor do they question admission points given for other factors (legacy, high school quality, geographic location, etc) that are more likely to benefit white applicants. Rather, the action to file suit based on racial discrimination, in essence served to protect the property value of whiteness by challenging opportunities provided to people of colour—opportunities that were perceived to threaten that which was due to whites. Harris (1993) contends that such suits are based on the premise that 'the expectation of white privilege is valid, and that the legal protection of that expectation is warranted. This premise legitimates prior assumptions of the right to ongoing racialized privilege and is another manifestation of whiteness as property' (p. 1769).

According to Harris (1993), the protection of the property interest of whiteness in affirmative action cases is accomplished through appeal to the colour-blind norm. In *Hopwood vs Texas*, for example, a panel of the Fifth Circuit court found that 'considering race or ethnicity in admissions decisions is always unconstitutional, even when intended to combat perceived effects of a hostile environment, to remedy past discrimination, or to promote diversity' (Bell, 2004, p. 145). Pursley (2003) argues that the disavowal of the use of race in *Hopwood* was a quintessential example of the application of colour-blindness. By refusing to allow universities to 'consider' race, the court was attempting to establish a 'race-neutral' approach to college admissions. However, CRT scholars have argued that the appeal to colour-blindness is far from racially neutral and in the best interests of persons of colour, but, instead, supports the operation of white privilege (Gotanda, 1991; Crenshaw *et al.*, 1995). For example, in examining the backlash in Washington State against affirmative action, Taylor (2000) notes that the colour-blind approach, in fact, masks the centrality of white privilege—'the multitude of benefits extended to the majority population by virtue of group membership'. He argues that the insistence on race-neutral language negates the social and historical context and leaves unchallenged the privileged and oppressive position of whiteness.

Conclusion

We have sought in this review to examine the literature that has developed over the past decade on critical race theory in education. However, at the same time, we have also attempted to remain grounded in the legal literature from which CRT originated. As a result, we have intentionally not tried to clearly delineate where the legal literature ended and the educational scholarship on CRT began (in some cases, such distinctions would be largely impossible to make). As we seek to provide our assessment of where we, in education, should go from here with respect to critical race theory, we must now attempt to highlight some of the differences between CRT scholarship in the law and the work that has been done thus far in education.

In some ways, the scholarship in education that has been described here is very consistent with the legal scholarship on CRT. Several of the tenets of CRT outlined by legal scholars are reflected in the work reviewed in this article. The educational scholarship described in this article positions race at the centre of analysis and reflects the recognition of racism as endemic to US society. It questions mainstream discourse centred on neutrality, objectivity, colour-blindness and merit. It insists on historical and contextual analyses. And it values the voices of people of colour. With respect to these elements, there is a clear connection between CRT scholarship in education and its antecedents in legal studies. However, the other two tenets outlined by Matsuda *et al.* (1993) have been less clearly articulated in CRT scholarship in education.

One of the six characteristics of CRT in legal studies is its interdisciplinary nature. According to Matsuda *et al.* (1993), 'this eclecticism allows critical race theory to examine and incorporate those aspects of a methodology or theory that effectively enable our voice and advance the cause of racial justice' (p. 6). We would argue that this quality of CRT scholarship in legal studies should not be overlooked in the application of CRT to education. Much of the literature on CRT in education has focused on the theory's application to 'qualitative' research. Qualitative methodologies, such as ethnography, are certainly consistent with particular elements of CRT. However, CRT is probably more accurately described as a problem-centred, rather than qualitative, approach. Within the problem-centred approach, the problem determines the method, not the other way around (Tate & Rousseau, 2002). As Matsuda *et al.* suggest, the goal of using any method is to further the cause of racial justice. In this sense, CRT scholarship in education is neither inherently 'qualitative' nor 'quantitative'. Rather, such scholarship should employ 'any means necessary' to address the problem of inequity in education.

The sixth tenet outlined by Matsuda *et al.* (1993) states that 'critical race theory works toward the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression' (p. 6, emphasis added). One of the core values of the movement, as described in the legal literature, is the theme of active struggle. This theme recurs throughout writings on CRT. Crenshaw *et al.* (1995) describe one of the common interests that cut across critical race scholarship as the 'desire to not merely understand the vexed bond between law and racial power but to *change it*'

(p. xiii, emphasis in original). Matsuda *et al.* (1993), describe CRT as ‘work that involves both action and reflection. It is informed by active struggle and in turn informs that struggle’ (p. 3). In fact, Lawrence (1992) suggests that this relationship between reflection and social action is so symbiotic, that if one is sacrificed the other immediately suffers. For example, CRT founder Derrick Bell received national attention for his two-year protest of Harvard Law School’s lack of women of colour on their faculty. In this way, active struggle against inequity is an integral part of CRT. This is not simply a theoretical stance. There is a commitment to change and to action inherent in the theoretical position. Calmore (1995) states that CRT:

... finds its finest expression when it ... serves as ‘fuel for social transformation.’ In that sense, our efforts must, while directed by critical theory, extend beyond critique and theory to lend support to the struggle to relieve the extraordinary suffering and racist oppression that is commonplace in the life experiences of too many people of color. (p. 317)

This element of CRT in legal studies must be translated into CRT in education. According to Ladson-Billings (1999a), ‘adopting and adapting CRT as a framework for educational equity means that we will have to expose racism in education *and* propose radical solutions for addressing it’ (p. 27, emphasis in original). Thus, in addition to uncovering the myriad ways that race continues to marginalize and oppress people of colour, identifying strategies to combat these oppressive forces and acting upon those strategies is an important next step within CRT. However, in our review of the CRT literature in education, we found that scholars have not yet implemented this aspect of CRT.² Although a number of CRT scholars in education offer recommendations for changes in educational policy and practice, the extent to which these recommendations are carried out either by the recommender or others, is not clear. From our reading of the legal literature on CRT, the call to action must move beyond mere recommendations. However, dismantling years of inequitable schooling practices and policies with a large constituency (or constituencies) takes a concerted and organized effort. CRT scholars in education have yet to organize even amongst ourselves. Perhaps a first step would be for CRT scholars in education to come together as our colleagues in the legal field have done and strategize on ways to address the persistent and pernicious educational inequity facing our communities.

The work of ensuring equity in schools and schooling involves continued study of the legal literature and careful thought about its application to education (Ladson-Billings, 1999a; Tate, 1999). That we have made progress toward a critical race theory of education is evident from a review of the scholarship published since 1995. However, that the legal literature still offers much in the way of a framework on which to build is, we believe, illustrated by the CRT analyses of the *Brown* decision and the affirmative action cases. We assert that constructs such as interest convergence and the property value of whiteness provide powerful explanatory tools for analyzing and understanding these legal issues related to education. Despite the powerful analytical lens that they provide, we would argue that the constructs outlined in CRT scholarship in the law have yet to be used to their full potential in education. For example, some scholars have examined whiteness as a construct of privilege, but not as an idea

that manifests in tangible ways that affect schooling—through curricula, school choice, and even student behavior that sets standards for ‘normal’ and ‘acceptable’ actions. Thus, while the examination of whiteness (and whiteness as a function of racism) is certainly central to a CRT analysis, examining the material effects of whiteness and the manner in which it is deployed and maintained materially, hence as an aspect of property, has yet to be fully pursued by CRT scholars in education. Morris’ (2001) work (reviewed earlier in this article) is one exception. Another exception, perhaps, is Michael Vavrus’ (2002) text on transforming the multicultural education of teachers. Vavrus uses a CRT analysis and the notions of colour-blindness and white privilege to examine the discursive practices within multicultural education that are an obstacle to preparing teachers to address, in any substantive manner, educational inequity. We would urge other CRT scholars in education to continue to pursue analyses that build upon these under-utilized, but nevertheless powerful, tools.

The continued relevance of these constructs to educational scholarship can be illustrated by a return to the story recounted at the start of this article. Ten years ago, Ladson-Billings and Tate (1995) argued that the ‘intersection of race and property [is] a central construct in understanding a critical race theoretical approach to education’ (p. 58). We suggested earlier that one way to view the opening story was as an illustration of tracking as a manifestation of the absolute right to exclude. For, tracking was one of the examples provided by Ladson-Billings and Tate of this property function of whiteness. However, the story was not, in fact, about tracking in the traditional sense. It was based not on the curricular structure of a middle or high school, but on the teacher education programs offered by an institution of higher education. The schools that the students moved on to after graduation were not the high schools or colleges in which they would become students, but the elementary and middle schools in which they would become teachers. The students in Program A most often went on to become teachers in largely white suburban districts or private schools, while the students from Program B generally went on to largely minority schools in the city. Thus, the story illustrates the second-generation, or inherited, effects of the property value of whiteness. The impact of larger classes and less qualified instructors on students in the teacher education programs would then be passed along to the students whom they would later teach. We offer this ‘true’ story to reiterate the point made by Ladson-Billings and Tate a decade ago. The CRT legal literature offers a necessary critical vocabulary for analyzing and understanding the persistent and pernicious inequity in education that is *always already* a function of race and racism. Thus, while CRT in education must necessarily grow and develop to become its own entity, we would argue that there is still much support and needed nourishment yet to be gained from the legal roots of CRT. In this way, the direction forward with respect to CRT in education requires, in some sense, a return back to the place where we started.

In 1987, Derrick Bell published *And we are not saved: the elusive quest for racial justice*. He prefaced the book by reminding the reader of the unfulfilled promise of *Brown vs Board of Education*. At that time, 30 years had past since *Brown*. Yet, the

Supreme Court ruling and other apparent civil rights victories had failed to bring about the lasting harvest of racial equality that many people believed was forthcoming. The title of Bell's book, taken from the biblical book of Jeremiah, is a poignant reminder of those unmet expectations. Our adaptation of this title is both a reference to the work of one of the founders of CRT in legal studies and a comment on the, as of yet, unfulfilled promise of CRT in education.

Acknowledgements

A portion of this article was presented at the 2004 Annual Meeting of the American Educational Research Association in San Diego, CA, USA. The authors would like to thank Gloria Ladson-Billings and William F Tate, IV, for their comments on an earlier draft of this manuscript. We would also like to thank David Gillborn and the reviewers for their thoughtful comments on this article.

Notes

1. For a review of the origins and development of CRT in legal studies, see Tate (1997).
2. One exception to this general observation is the involvement of CRT scholars in legal proceedings related to education. For example, both Solorzano and Ladson-Billings have been called upon to serve as expert witnesses in cases that address educational inequity. Solorzano served as an expert witness in *Gratz vs Bollinger* (University of Michigan affirmative action case). Ladson-Billings served as an expert witness in a case against a rural school district in South Carolina. In this way, CRT scholars in education have taken action in the struggle against racial inequity.

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