

Séminaire d'étude doctorale

organisé par le Professeur Francis Feeley

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Grande Salle des Colloques

15h30

Louise Kamara

Doctorant dans le Département d'études anglophones - Université Paris Ouest Nanterre La Défense

"Learning from Racism: A critical perspective of the work of Gunnar Myrdal"

Notes on Louise Kamara's Research

Gunnar Myrdal (1898-1987), Swedish Nobel Prize winning economist (1974) : An American Dilemma: The Negro Problem and Modern Democracy (commissioned the *Carnegie Corporation* to study the social and economic problems of African Americans in 1938-40; published in 1944).

E. Franklin Frazier (1894-1962), African American sociologist : The Negro Family in the United States (Chicago: University of Chicago Press, 1939) & The Negro in the United States (New York: Macmillan, 1949) + Study of the causes of the 1935 Harlem Race Riots, (commissioned by NYC Mayor Fiorello La Guardia, "an interracial Commission of Conditions in Harlem headed by E. Franklin Frazier". According to John Hope Franklin (1994) : "Intense feelings against white merchants and landlords in Harlem led to a riot of considerable proportions. ... During most of the night of March 19 the rioting went on. Three blacks were killed, 200 store windows were smashed, and more than \$2 million worth of damage was done." The Commission concluded that "the lawlessness was provoked by 'resentments against racial discrimination and poverty in the midst of plenty.' There was insufficient relief of a private and public nature to stem the tide of social unrest that prevailed in Harlem and other black communities. Picketing and other measures continued. Blacks were encouraged greatly by the decision of the Supreme Court in 1937 declaring that the picketing of firms that refused to employ African Americans was a legal technique of securing relief." (pp.400-401)

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Critical Race Theory (CRT) began as a response to critical legal studies. The earliest writings on Critical Race Theory can be traced to the works of Derrick Bell in the 1960s. CRT is

concerned with racism, racial subordination and discrimination. It emphasizes the socially constructed nature of race and considers judicial conclusions to be the result of the workings of social phenomena but sees race as a primary factor. Analyzing racial inequity as the social construction of race and discrimination are present in the scholarship of such established critical race theorists as Derrick Bell, Kimberlé Williams Crenshaw, Richard Delgado, Neil Gotanda, Cheryl I. Harris, Charles Lawrence III, Mari Matsuda, and Patricia J. Williams in the legal field. In the field of education, notable scholars include Gloria Ladson-Billings, George Noblit, Laurence Parker, Daniel Solórzano and William Tate and a second wave of CRT in education scholars, Thandeka Chapman, Adrienne Dixson, Jamel Donnor, Garrett A. Duncan, Marvin Lynn, Celia Rousseau, David Stovall, and Tara Yosso.

Key theoretical elements :

Richard Delgado and Jean Stefancic note the following major themes in critical race theory writings:

- * A critique of liberalism: critical race theorists object to political liberal's cautious approach to social transformation, to color blindness as a solution to racism (favoring instead challenges to the way racism can be embedded in apparently neutral standards), and have criticized the limitations of a rights-based approach to resolving racism
- * Storytelling/counterstorytelling and "naming one's own reality"
- * Revisionist interpretations of American civil rights law and progress.
- * Applying insights from social science writing on race and racism to legal problems
- * Structural determinism, how "the structure of legal thought or culture influences its content"
- * The intersections of race, sex, and class
- * Essentialism and anti-essentialism
- * Cultural nationalism/separatism, Black nationalism
- * Legal institutions, Critical pedagogy, and minorities in the bar
- * Criticism and self-criticism

Critical race theory emerged in part from the milieu of Critical Legal Studies (CLS), a field of inquiry that argues that preserving the interests of power, rather than the demands of principle and precedent, is the guiding force behind legal judgments. CLS theorists suggest that the existing precedents are indeterminate, allowing the judiciary wide freedom to interpret them according to prevailing balance of power. Both CLS and Critical Race Theory scholars engage in deconstructing extended arguments to demonstrate that legal precedents are not based on a consistent application of legal principles. Critical Race Theory shares an overlapping literature with both Critical Legal Studies and Critical Theory, feminist jurisprudence, and postcolonial theory.

[edit] Applications

Critical Race Theory has been applied in a variety of contexts where institutionalized oppression of racial minorities has been litigated in courts (critical race theorists often present amicus curiae briefs, or critically examine the rulings of these cases). [1]

One particular application has been to hate crime and hate speech legislation. In response to Justice Scalia's opinion in a paradigm hate speech case, *R.A.V. v. City of St. Paul* (which addressed cross burning as an act of hate speech), Mari Matsuda and Charles R. Lawrence III

presented a critical race theory argument against Scalia's opinion. While Scalia posits that speech is protected independent of content, Matsuda and Lawrence argue that historical and social context is paramount. When acts of speech are acts of intimidation and threaten violence, backed up by a historical force, then those words become a mechanism for social control and domination. Justice Scalia delivered the opinion of the Court, in which Chief Justice Rehnquist, Justice Kennedy, Justice Souter, and Justice Thomas joined. All 9 justices concurred in the judgment of the Court that city's ordinance was facially invalid under the First Amendment. [2]

Delgado also draws on CRT in calling for a tort action for racial insults, looking to the historical pattern of speech and the serious psychological harm inflicted on its victims as just measures for evaluating hate speech.

Critical race theory has become especially important in education where the educational experience and results for both children and adults are so clearly connected to racial background. Critical race theorists can argue that the possession of whiteness and property are statistically connected to everything from test scores to teacher ethnicity, and these results form the basis for the future acquisition of income, wealth, health, and longevity.
[edit] Criticisms

CRT and its methodology have not gained acceptance in the mainstream legal world. Many mainstream legal scholars of various ethnicities have criticized CRT for its use of narrative and storytelling. Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit in Chicago has "label[ed] critical race theorists and postmodernists the 'lunatic core' of 'radical legal egalitarianism.'" [3] He writes,

What is most arresting about critical race theory is that...it turns its back on the Western tradition of rational inquiry, forswearing analysis for narrative. Rather than marshal logical arguments and empirical data, critical race theorists tell stories - fictional, science-fictional, quasi-fictional, autobiographical, anecdotal - designed to expose the pervasive and debilitating racism of America today. By repudiating reasoned argumentation, the storytellers reinforce stereotypes about the intellectual capacities of nonwhites.[4]

Critical Race Theorists do not dispute this allegation of a-rationality. Gloria Ladson-Billings writing the foreword for the book *Critical Race Theory in Education: All God's Children Got a Song* states that "CRT never makes claims of objectivity or rationality." [5] Derrick Bell writes that mainstream scholars often reject lines of inquiry that seek to expose what CRT scholars believe is inherent White supremacy.[6].

Judge Alex Kozinski, United States Court of Appeals for the Ninth Circuit, writes Critical Race Theorists have constructed a philosophy which makes a valid exchange of ideas between the various disciplines unattainable.

The radical multiculturalists' views raise insuperable barriers to mutual understanding. Consider the *Space Traders* story. How does one have a meaningful dialogue with Derrick Bell? Because his thesis is utterly untestable, one quickly reaches a dead end after either accepting or rejecting his assertion that white Americans would cheerfully sell all blacks to the aliens. The story is also a poke in the eye of American Jews, particularly those who risked life and limb by actively participating in the civil rights protests of the 1960's. Bell clearly implies that this was done out of tawdry self-interest. Perhaps most galling is Bell's

insensitivity in making the symbol of Jewish hypocrisy the little girl who perished in the Holocaust -- as close to a saint as Jews have. A Jewish professor who invoked the name of Rosa Parks so derisively would be bitterly condemned -- and rightly so.[7]

African-American attorney and author Winkfield F. Twyman, a graduate of the Harvard Law School, investigated the impact that CRT has made in law courts by conducting a search of Westlaw to determine the number of times this theory has been cited in rulings. As of December 2005, he found that "out of tens of thousands of federal cases at every level -- U.S. Supreme Court to the lowest federal district court -- only one judge has ever cited to 'Critical Race Theory.' And that lonely cite was in one obscure case involving a challenge to New York City's termination of fire and police employees for participating in a parade. *Locur v. Giuliani*, 269 F. Supp. 2d 368, S.D. N.Y. (2003)." He concluded that "For all intents and purposes, Critical Race Theory is a non-issue in the real world." [8]
[edit] Offshoot fields

Within Critical Race Theory, nuances have emerged that take into consideration gender, linguistic and immigration oppression. See for example, Critical Race Feminism (CRF), Latino Critical Race Studies (LatCrit) [9] Asian American Critical Race Studies (AsianCrit) and American Indian Critical Race Studies (sometimes called TribalCrit).

Notes

1. ^ Dixson and Rousseau, 2006
2. ^ *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1991),
<http://supct.law.cornell.edu/supct/html/90-7675.ZS.html>
3. ^ Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997
4. ^ Critical Race Theory: An Overview
5. ^ Dixson, Adrienne D. and Celia K. Rousseau, eds., *Critical Race Theory in Education: All God's Children Got a Song*. New York: Routledge, 2006.
6. ^ Bell, D.A. "Whose Afraid of Critical Race Theory?" *University of Illinois Law Review*, 1995
7. ^ *Bending the Law*
8. ^ <http://www.intellectualconservative.com/article4783.html> The Lightness of Critical Race Theory
9. ^ Richard Delgado and Jean Stefancic's *The Latino/a Condition: A Critical Reader* (1998).

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