

FEBRUARY 2022

THE CENTER FOR THE STUDY OF
DIVERSITY AND DEMOCRACY PRESENTS

A Critical Race Theory Teach-In

For Black History Month

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MESSAGE FROM THE DIRECTOR

By Professor Alvin B. Tillery Jr., Ph.D

In honor of Black History Month 2022, I proposed a social media campaign that would spotlight an intellectual tradition that has been the subject of disinformation campaigns in the American news media: critical race theory. Our mission at the Center of the Study of Diversity and Democracy is to stimulate research, dialogue, and civic engagement about the relationship between diversity and democratic politics. Critical race theory aligns with our mission such that it defies the authoritarian political movement intent on erasing U.S. history.

As we will explain throughout this newsletter, the United States has a complicated and storied history of race relations which critical race theory (CRT) can help explain. While CRT was originally created and intended specifically for legal scholarship and training lawyers how to scrutinize the law in the spirit of reforming the U.S. legal system to take a hard look at America's racist past (and present). We believe that CRT transcends this original purpose.

We have developed this newsletter to educate the public on critical race theory's foundations, core concepts, and historical contexts where you can see why and how these scholars developed their original framework. We hope that you will find this newsletter as a valuable resource to educate you on CRT and help inform your worldview by examining how past U.S. policy has affected our present reality.

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Northwestern

Center for the Study of
Diversity and Democracy



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Who are the Critical Race Theorists?

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“Critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”

— RICHARD DELGADO, CRITICAL RACE THEORY



A FOUNDER OF CRITICAL RACE THEORY: DERRICK BELL

Derrick Bell (1930-2011) is a Duquesne University graduate (AB) who served in the U.S. Air Force during the Korean War before earning his LLB at University of Pittsburgh School of Law. At Pittsburgh, he was the only Black graduate of his class. Bell then worked for the U.S. Department of Justice (DOJ) where he was asked to give up his NAACP membership.

Bell faced retaliation from his DOJ supervisors for not giving up his NAACP membership, but Bell was subsequently hired by the NAACP Legal Defense and Educational Fund, Inc. where he supervised 300+ desegregation cases. Bell then transitioned into academia as law faculty for USC Gould School of Law in 1967, then as the first tenured African American professor at Harvard Law School in 1969.

At Harvard University Bell published his most famous work "Race, Racism and American Law" (1973) before resigning to protest Harvard's refusal to hire a Black woman professor with tenure.

In 1980, Bell became the first African American Dean of a US law school at the University of Oregon, but, again resigned in protest. The University of Oregon refused to hire an Asian American woman professor prompting Bell to return to Harvard Law in 1986.

Bell staged a 5-day sit-in in his office to protest Harvard's failure to tenure two professors whose work promoted critical race theory. He then took unpaid leave until a Black woman professor would be tenured.

Bell requested his leave from Harvard Law to be extended while he was a visiting professor at New York University School of Law but he was denied. He wrote "Faces at the Bottom of the Well" during his time at NYU in 1992.

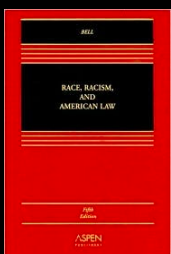


Education leads to enlightenment.
Enlightenment opens the way to empathy.
Empathy foreshadows *reform.*

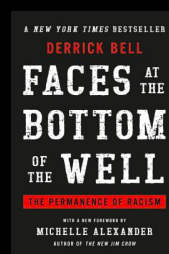
Derrick Bell

Faces at the Bottom of The Well: The Permanence of Racism, 1992

Find Bell's works in a library near you:



Race, Racism and American Law (1973) provides students with insight into the issues surrounding race in America and an understanding of how the law interprets those issues as well as the factors that directly and indirectly influence the law.



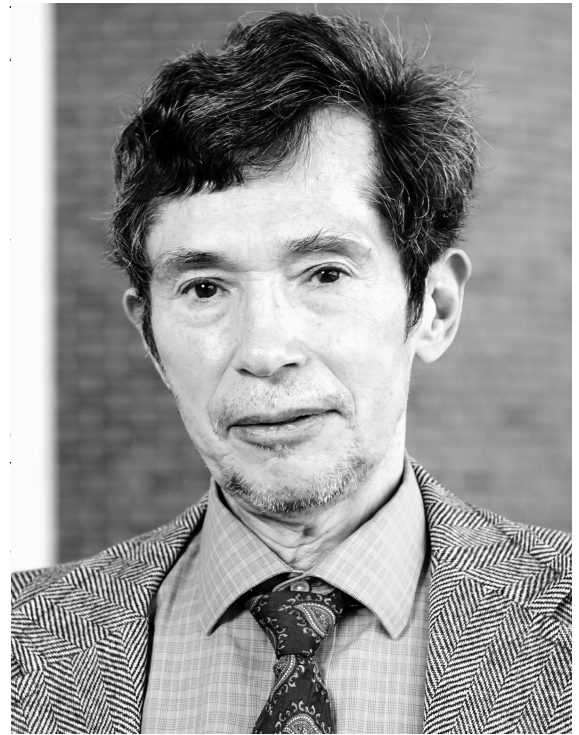
The message of Faces at the Bottom of the Well: the Permanence of Racism (1992) is that "racism is an integral, permanent, and indestructible component of this society." He contends that blacks "are doomed to fail as long as the majority of whites do not see their own well-being threatened by the status quo".

A FOUNDER OF CRITICAL RACE THEORY: RICHARD DELGADO

Richard Delgado (1939-) is the son of a Mexican-American father who immigrated to the US alone at age 15. Delgado graduated from University of Washington (AB) and then University of California, Berkeley (JD) where he served as an editor of the California Law Review. He taught at University of California, Los Angeles School of Law for eight years and University of Colorado Law School for 14 years. Delgado is currently the John J. Sparkman Chair of Law at the The University of Alabama.

In 1995, Delgado published "[The Rodrigo Chronicles](#)", a book based in fiction that relays a story between a law student and a professor discussing the American racial scene. Here, Delgado expands on the themes of the critical race theory movement.

Originally published in 2012, then updated in 2017 to incorporate major developments (the Black Lives Matter movement and Barack



Obama's presidency), "[Critical Race theory: an Introduction](#)" addresses the rise of right-wing insistence on American "colorblindness", ignoring racial study. This work provides questions for discussion, defines CRT and outlines practical steps to implement a progressive race agenda.

Delgado often conveys his ideas on critical race theory through storytelling, which can be understood by laypeople (not just legal scholars) and how marginal communities can change the outcomes of legal proceedings. He also emphasizes that not all speech is worth protecting (i.e. hate speech).

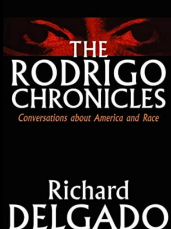
Our system of race is like a two-headed hydra.

One head consists of outright racism—the oppression of some people on grounds of who they are. The other head consists of white privilege—a system by which whites help and buoy each other up. If one lops off a single head, say, outright racism, but leaves the other intact, our system of white over Black/brown will remain virtually unchanged.

Richard Delgado

Critical Race Theory: An Introduction, 2012

Find Delgado's works in a library near you:



"[The Rodrigo Chronicles](#)" conveys that US law has an overwhelmingly white voice and that white crime (versus Black crime) poses the most significant problem in modern American life.



In "[The Coming Race War](#)" (1996), Delgado discusses the American racial future in the wake of the 1994 midterms. He explores merit & affirmative action, racial privilege, racial scapegoating, false empathy, & the limitations of legal change.



In both books, Williams discusses how we might collectively progress towards a brighter future where we can acknowledge racism while simultaneously fighting against it.

In 2000, the MacArthur Foundation awarded Williams a MacArthur "genius" Fellowship; she was one of 25 individual recipients.

In general, Williams's works speak to critical race theory and intersectional feminism, addressing the disenfranchisement of Black people and Black women in general.

A FOUNDER OF CRITICAL RACE THEORY: PATRICIA J. WILLIAMS

Patricia J. Williams (1951-) graduated from Wellesley College (AB) and Harvard Law School (JD) before becoming the Deputy City Attorney at the Office of the Los Angeles City Attorney's Office. Remaining in LA, she pivoted to becoming a Staff Lawyer at the Western Center On Law and Poverty.

Williams was an Associate Professor at Golden Gate University School of Law and City University of New York School of Law before achieving full tenure at University of Wisconsin Law School. She then pivoted to Columbia Law School where she has become the James L. Dohr Professor of Law Emerita. Williams is also a columnist for The Nation, a political news source for independent journalism.

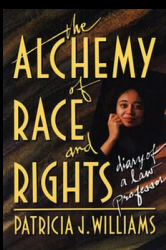
Her most notable publications include "The Alchemy of Race and Rights" (1991) and "Seeing a Colorblind Future" (1997).

I am certain that the solution to racism lies in our ability to see its *ubiquity* but not to concede its *inevitability*.

Patricia J. Williams

Seeing a Color-Blind Future, 1997

Find Williams's works in a library near you:



The Alchemy of Race and Rights (1991), is an autobiographical essay focused on the intersection of race, gender, and class politics. Here, she unites legal theory and pop culture, pursuing a path toward racial justice and revealing the roots of racism.



In Seeing a Colorblind Future (1997), Williams theorizes how it might be possible to achieve a world where color doesn't matter and where BIPOC are treated with the same dignity as whites, ultimately transcending the realities of our prejudices.

A FOUNDER OF CRITICAL RACE THEORY: KIMBERLÉ CRENSHAW

Kimberlé Crenshaw (1959-) is a graduate of Cornell University (AB), Harvard Law School (JD), and University of Wisconsin Law School (LL.M.). She became a distinguished professor at the University of California, Los Angeles School of Law and then the Isidor and Seville Sulzbacher Prof of Law at Columbia Law School. She holds both appointments to this day.

Crenshaw is the Co-Founder & Executive Director of the African American Policy Forum which focuses on dismantling structural inequality, expanding racial justice, gender equality, and human rights domestically and internationally. She is also the co-founder of the #SayHerName campaign.

In 1991, Crenshaw assisted the legal team representing Anita Hill in Supreme Court Justice Clarence Thomas's confirmation.



Then in 2001, she wrote a paper on race and gender discrimination for United Nations' World Conference on Racism and subsequently held the position of chair for The Fulbright Program for Latin America in Brazil (2007).

In general, Crenshaw's work examines how racism and sexism intersect in oppressing women of color. She pushes back against the concept that all free speech should be protected by the First Amendment and that racist and sexist verbal assaults can wound victims.

When feminism does not explicitly oppose racism and when anti-racism does not incorporate opposition to the patriarchy, race and gender politics often end up being antagonistic to each other and **both interests lose**.

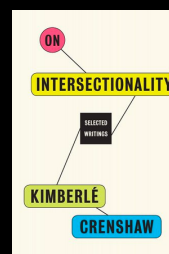
Kimberlé Crenshaw

Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 1994

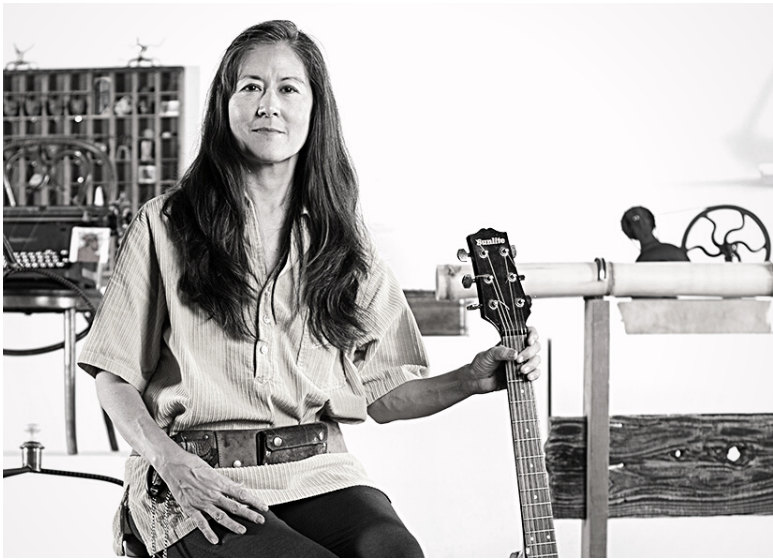
Find Crenshaw's works in a library near you:



"Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1994) details the routine violence women face, putting those with marginalized identities at the forefront with the concept of intersectionality.



After introducing the concept in 1980, Crenshaw defines intersectionality "On Intersectionality: Essential Writings" (2017). Here, she documents its evolution within social justice activism through a collection key articles and essays.



Matsuda currently serves on the advisory board of the ACLU, the National Council of Asian Pacific Americans (NCAPA), and Ms. Magazine.

Matsuda's works aim to foster solidarity between oppressed communities and explore the theory and implementation of racial equity policies such as affirmative action and reparations. Her work "Looking to the Bottom: Critical Legal Studies and Reparations" (1987) addresses the latter concept.

In "Public Response to Racist Speech: Considering the Victim's Story" (1989) she emphasizes the need to center the narratives of the victims of racial oppression in the U.S. legal system.

A FOUNDER OF CRITICAL RACE THEORY: MARI MATSUDA

Self-described activist-scholar Mari Matsuda (1956-) is a graduate of Arizona State University (AB), the William S. Richardson School of Law at University of Hawai'i at Manoa (JD), and Harvard Law School (LL.M.). Matsuda then became a law clerk to Judge Herbert Young Cho Choy at United States Court of Appeals for the Ninth Circuit. She began teaching as a law professor at University of Hawaii at Manoa in 1983.

In 1992, Matsuda became a law prof at Georgetown University Law Center and in 1998. In doing so, she became the first Asian American tenured law professor in the U.S. at UCLA School of Law LL.M. Program.

In 2008, Matsuda returned to be a professor at University of Hawai'i at Manoa, a position she still holds today. In 2014, she won the Asian American Legal Defense and Education Fund Justice in Action award.

However we choose to respond to racist speech, let us present a competing ideology, one that has existed in tension with racism since the birth of our nation: *there is inherent worth in each human being*, and each is entitled to a life of dignity.

Mari Matsuda

Public Response to Racist Speech: Considering the Victim's Story, 1989

Find Matsuda's works in a library near you:



In "Public Response to Racist Speech: Considering the Victim's Story" (1989), Matsuda makes the argument that the narratives of the victims of racial oppression should be central in law-making and that racist speech directly competes with human dignity.



Matsuda's intention with "Looking to the Bottom: Critical Legal Studies and Reparations" (1987) is to convey that BIPOC and legal scholars may learn from one another, creating positive change and peace, and that reparations are a valid way to counteract historical injustice.

II.

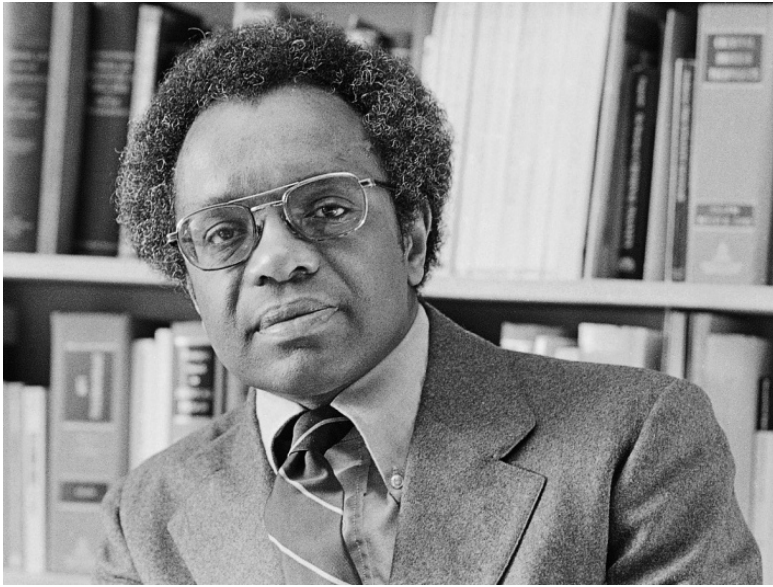
A Guide to CRT Concepts

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“Critical race theory is based on the premise that race is socially constructed, yet it is real through social constructions.”

— KIMBERLÉ CRENSHAW, [VANITY FAIR](#)

Critical race theorist, Derrick Bell



SOCIAL CONSTRUCTION OF RACE

Like the vast majority scholars working in the modern academy, critical race theorists reject the notion that there are scientifically differentiated races in favor of the view that racial identities are social constructions.

Critical race theorists argue that the U.S. legal system has been a major site where the government has created “races” with vastly different rights and immunities.

They also argue that simply changing laws to be more equitable does not erase the social realities of the racial hierarchy that was created by the U.S. legal system since the colonial era in the United States.

INTEREST CONVERGENCE

Interest convergence is a theory coined by the late Derrick Bell, an American legal academic and founder of critical race theory. Interest convergence stipulates that African Americans and other people of color achieve civil rights victories only when their interests converge with the interests preferred by the white power structure in the United States.

In Bell's view, the signature example is Brown v. Board of Education, which happened because it advanced the white power structure's interests in national security. Specifically, desegregation raised the nation's prestige in world politics during the Cold War. Eventually, when interests diverged, the enforcement of civil rights was curtailed: Brown was undercut by later cases that sanctioned segregation for decades. Bell pointed to later affirmative-action triumphs as examples of renewed interest convergence.



Protesters against school segregation

Read some examples of these CRT concepts:

Social
Construction
of Race

Interest
Convergence

INTERSECTIONALITY

The concept of intersectionality was introduced to the field of critical race theory by Kimberlé Williams Crenshaw in 1989. While the theory began as an exploration, primarily, of the oppression of Black women within society and the ways in which they both exist at an intersection, and experience intersecting layers of different forms of oppression, today the analysis has expanded to include many more aspects of social identity.

Intersectionality demonstrates a multi-faceted connection between race, gender, and other systems that work together to oppress while allowing privilege. Crenshaw used intersectionality to display the disadvantages caused by intersecting systems creating structural, political, and representational aspects of violence against minorities in the workplace and society.



Critical race theorist, Kimberlé Crenshaw

RACIAL REALISM

The concept of racial realism was developed by Derrick Bell in the 1990s to suggest to urge racial justice advocates to see racism as a permanent feature of American society. Bell believed that the focus on eradicating racism was both impossible and likely a strategic blunder that led racial justice advocates to make bad decisions about their policy aims.

Racial realism also encompasses the view that white privilege is endemic within the U.S. legal system and that courts will frequently ignore precedent in order to protect the interests favored by the white power structure and punish people of color.

Critical race theorists, Derrick Bell, Patricia J. Williams



Read some examples of these CRT concepts:



Intersectionality



Racial Realism

Critical race theorist, Cheryl Harris



WHITENESS AS PROPERTY

Critical race theorists share a very distinct theory about the connections between the law, democratic politics, and whiteness as a property right in the United States. Whiteness as property is based on the notion that there is an ironclad link between whiteness and the qualifications for participation in America's democratic institutions or, what James Madison called "property in rights", that emerged during the era of American slavery.

Cheryl Harris identifies the efforts of colonial courts and legislatures supporting the "hyper-exploitation of black labor" as the first stage in the process that imbued whiteness with the functions of property in the United States.

Whiteness remained a fundamental property right that cleared the way for full participation in the labor and credit markets, franchise rights, and public accommodations until the Civil Rights Act of 1964 banned racial discrimination.

Read some examples of this CRT concept:



Whiteness
as Property

III.

Historical Context for CRT Concepts

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RACE*

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II. INTEREST CONVERGENCE

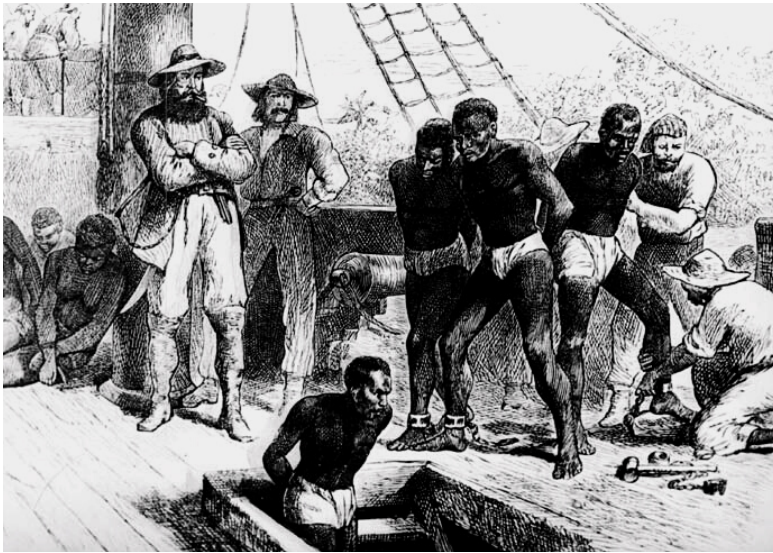
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*"It appears that my worst fears have been realized:
we have made progress in everything yet nothing
has changed."*

— DERRICK BELL

Social Construction of Race

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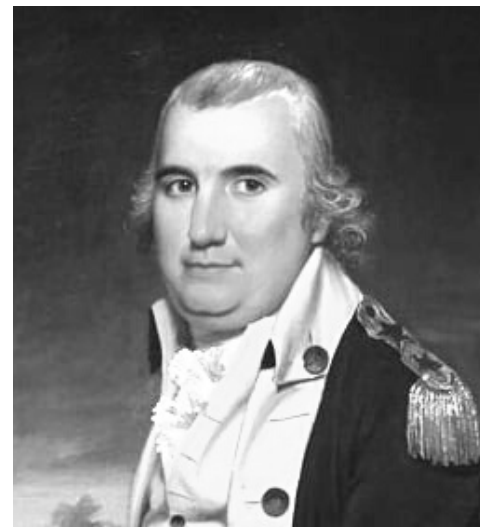
SOCIAL CONSTRUCTION OF RACE: HOW THE U.S. LEGAL SYSTEM CREATED THE CONCEPT OF RACE

Race has no biological basis and in fact any two people have 99.5% of the same genetic composition. Despite this fact, some people still think otherwise as indicated by the [CSDD's polling collaboration with 23andMe](#).

Certainly the founders and key players in the creation of the constitution and other laws created over the course of American history would have held these beliefs, which were necessary in order to dehumanize the people they purchased and forced into slavery in the United States.

In the next column, we have detailed how the United States enacted the concept of racial dehumanization through legislation.

- Southern delegates, led by [Charles C. Pinckney of South Carolina](#), to the Constitutional Convention in 1787 threaten not to join the Union unless protections for slavery are enshrined in the document.
- [Article 1, Section 9, Clause 1 of the Constitution](#), which is frequently referred to as the slave trade clause, blocks the federal government from prohibiting the "importation" of slaves to the United States until 1808.
- [The Apportionment Clause](#), also known as the 3/5ths Compromise, expands the power of the slave states by counting slaves as 3/5ths of a person in the federal Census.
- [The Fugitive Slave Clause](#) promises the return of any slave that escapes to the free states.



Charles C. Pinckney

Read about our historical references:



[Article 1, Section 9, Clause 1 of the Constitution](#)

[The Apportionment Clause: Fourteenth Amendment, Section 2](#)

[The Fugitive Slave Clause: Article 4, Section 2, Clause 3 of the Constitution](#)

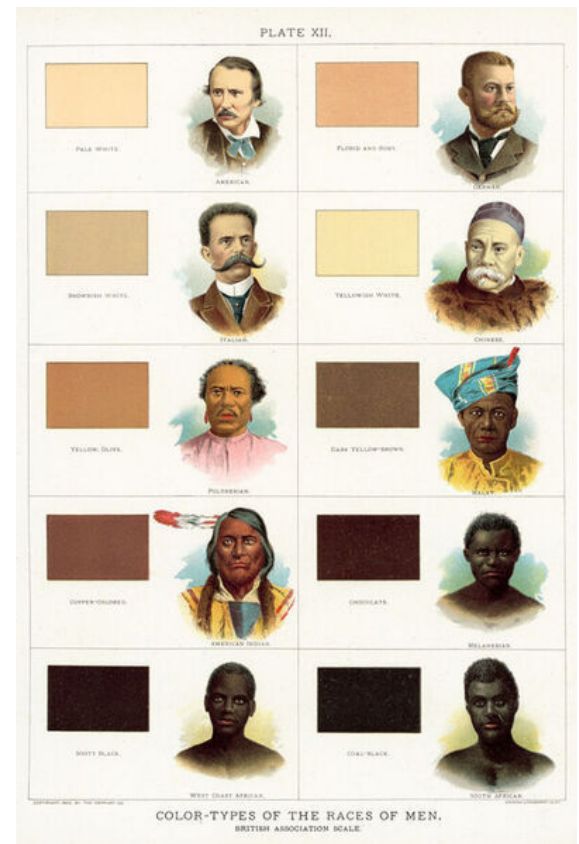
SOCIAL CONSTRUCTION OF RACE: HOW THE U.S. LEGAL SYSTEM ENFORCED RACE

To cement the supremacy of white Americans for years to come, the first congress of the United States established the Naturalization Act of 1790.

This act would enable non-whites to be excluded from citizenship and, therefore, the rights entitled to United States citizens. At this time in history, only white, male property owners could obtain citizenship.

Citizens were allowed to own property, have court representation, public employment, and the right to vote.

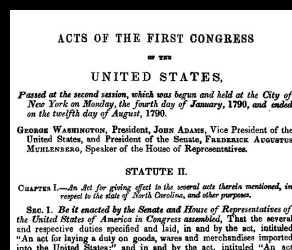
The Naturalization Act of 1790 sets up an immigration system where only white immigrants were able to obtain citizenship rights through naturalization. This form of whiteness as property stayed in force until 1968.



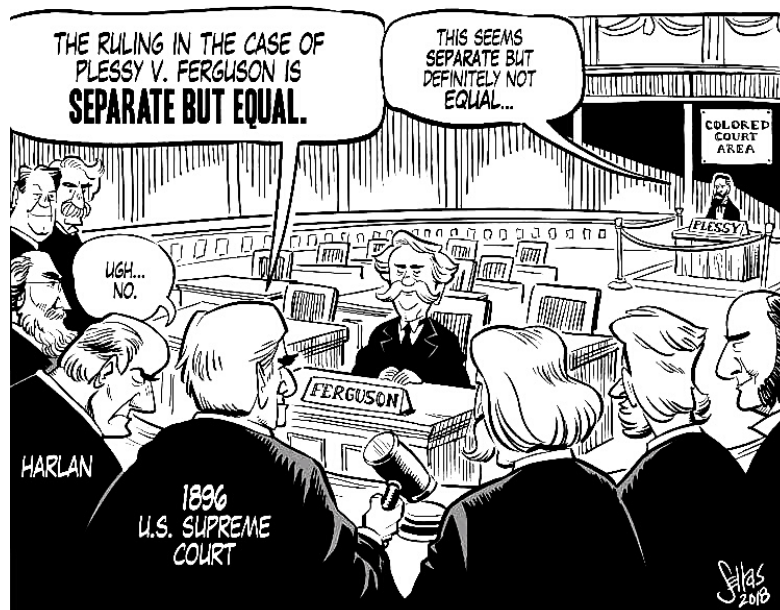
Any Alien, being a **free white person**, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof.

Naturalization Act of 1790

Read about our historical references:



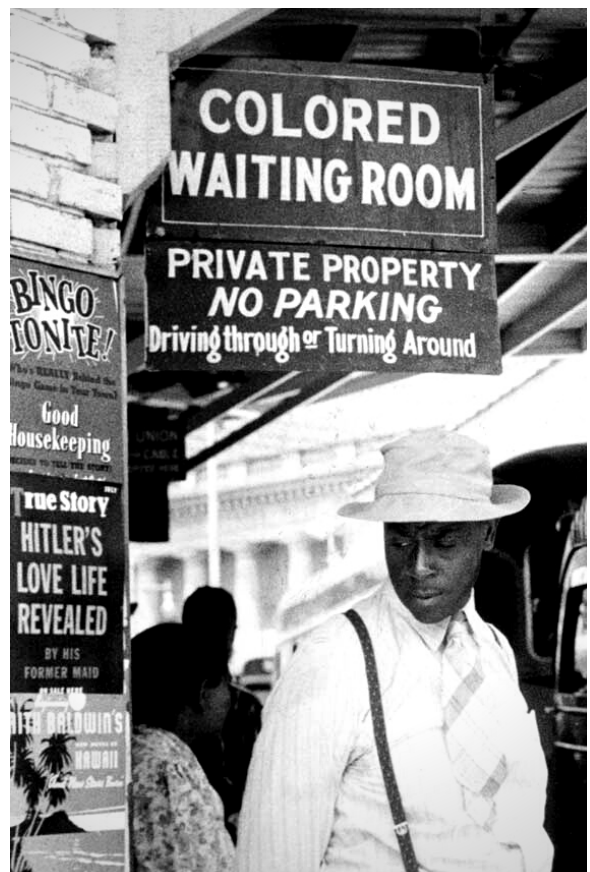
The Naturalization Act of 1790



SOCIAL CONSTRUCTION OF RACE: HOW THE U.S. LEGAL SYSTEM ESTABLISHED SEGREGATION

The concept of the social construction of race can be best exemplified by the implications of the Plessy v. Ferguson Supreme Court ruling (1896).

- The Supreme Court rules that racial segregation is permissible on train cars in New Orleans. The court claims that segregation “protects” Blacks from the depredations of lynching and riots by white mobs.
- The Court says that as long as accommodations are “equal” racial segregation does not violate the US Constitution.



Read about our historical references:



[Plessy v. Ferguson
Supreme Court
ruling \(1896\).](#)

SOCIAL CONSTRUCTION OF RACE: HOW THE U.S. LEGAL SYSTEM DEFINED WHITENESS

The exclusion of light-skinned folks from carrying the “white” racial label is crucial to concept of the social construction of race.

For most of our country’s history, only whites could become naturalized citizens of the United States. Immigrants from Africa, Asia, and Latin America could not naturalize until the middle of the twentieth century.

For over 250 years, the United States intentionally designed policies to exclude immigrants of color.



Takao Ozawa

- Ozawa v. United States (1922): Takao Ozawa argues that the Naturalization law of 1790 applies to him because the Japanese are a branch of the white race.
- The Supreme Court rebuffs his claim by stating that “the words ‘white person’ were meant to refer only to those popularly known as Caucasians”.

Read about our historical references:



Ozawa v. United States Supreme Court ruling (1922)



SOCIAL CONSTRUCTION OF RACE: HOW THE U.S. LEGAL SYSTEM DEFINED WHITENESS

Our final example of the concept of the social construction of race is the ruling of the Supreme Court case United States v. Bhagat Singh Thind (1923).

After serving as a U.S. Sergeant in the First World War and having been honorably discharged, Thind was granted US citizenship which would be revoked four days later.

- In 1923, Bhagat Singh Thind sued the United States for citizenship arguing that the preponderance of anthropological data in 1923 said that Indians were part of the white race.
- The Supreme Court held that Thind: “has the purity of Aryan blood by virtue of being a high caste Hindu” but was not white by “common understanding” in the United States of America.



Bhagat Singh Thind

Read about our historical references:



United States v.
Bhagat Singh Thind
(1923)

Interest Convergence

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INTEREST CONVERGENCE: HOW WHITE INTERESTS DRIVE RACIAL REFORMS

While many progressives herald President Abraham Lincoln as “The Great Emancipator” for freeing enslaved people in the United States, it is clear that Lincoln did not push for emancipation to enact a progressive social agenda.

The Emancipation Proclamation was passed to give the Union an advantage over the Confederate army, as we have detailed here.

White folks pushing a political agenda for their own advancement irrespective of Black humanity exemplifies the critical race theory concept of interest convergence.

- President Lincoln issues the Emancipation Proclamation on September 22, 1862.
- The proclamation would “emancipate” slaves in the rebellious Confederate states on January 1, 1863.



Massachusetts 54th Colored Infantry

- The internal debate within the Lincoln administration over the proclamation shows the importance of interest convergence.
- Lincoln was pushed to issue the proclamation by his field commanders as early as 1861 because they wanted to enlist Black freedmen in the Union Army.
- Many of Lincoln’s advisors were uneasy about turning the war effort into a cause for Black freedom. Ultimately, the military commanders prevailed and Lincoln issued the proclamation after a major Union Army victory at the Battle of Antietam.
- 250,000 African American soldiers fight for Union; turn the tide of the war between 1863 and 1865 and ensure a Union victory.



Painting of the Battle of Antietam

Read about our historical references:



The Emancipation
Proclamation (1863)



INTEREST CONVERGENCE: HOW WHITE INTERESTS CONTROLLED CITIZENSHIP

The concept of interest convergence consists of BIPOC being awarded civil rights when it is in the interest of whites in power.

The history of how indigenous Americans acquired the right to United States citizenship is a clear example.

- The US Constitution excludes indigenous Americans from citizenship by describing them as “Indians not taxed.”

- This lack of citizenship rights makes indigenous peoples on the east coast vulnerable to exploitation in the early 19th Century.
- The “five civilized tribes” are subjected to the cruelty of forced relocation to the Oklahoma territory during the Trail of Tears in the 1830s.
- Dawes Act (1887): Congress first moves to make indigenous Americans citizens in the Dawes Act of 1887.
- The law promises that all members of the civilized tribes would be made citizens by 1906.
- The problem for indigenous people is that Congress saw this grant of citizenship as a form of compensation for the fact that the same law was forcing them to open their lands to settlement by whites.
- Thus, it was the government’s interest in stimulating white settlement in Oklahoma that cleared the way for the “reform” of US citizenship laws towards indigenous Americans.



Read about our historical references:



Dawes Act (1887)

INTEREST CONVERGENCE

INTEGRATION AS POLITICAL STRATEGY

To conclude our newsletter, we discuss how the court case ruling of Brown vs. Board of Education of Topeka, Kansas and President Eisenhower's enforcement of it was entrenched in interest convergence.

Not due to his own morality or code of ethics, Eisenhower decided to push for school integration out of the fear of communism.

In 1954, the Supreme Court struck down segregation in public schools in Brown vs. Board of Education of Topeka, Kansas.

U.S. Marshals escort 6-year-old Ruby Bridges from School, 1960



Protesters against school segregation

- The pace of reform was incredibly slow after the ruling because the court left it up to local governments to desegregate at their own pace and the federal government was not interested in pushing enforcement on southerners.
- President Eisenhower enforces the Brown decision for the first time in Little Rock, Arkansas in 1957.
- Critical race theory scholars have documented that Eisenhower chose to enforce the decision in Little Rock because he feared that continuing Civil Rights protests would lead Ghana and other emerging nations in Africa to align with Soviet Union.

Read about our historical references:



Brown vs. Board of Education of Topeka, Kansas (1954)