

10/25/93

Presentation on Critical Race Theory/Derrick Bell

CRT and Bell: I was asked to talk today about a growing new movement in legal scholarship called Critical Race Studies. And I'm going to talk particularly about the person who can justly be labeled the founder and head of that movement -- Derrick Bell.

Remote from classroom? Now frankly, I'm not at all sure how discussion of the Critical Race Studies Movement or of Derrick Bell will help you in the classroom. I suspect that there won't be a very direct connection between what we'll do here for the next couple of hours and what you do in your classroom each day. I say that so you won't be disappointed if what I'm talking about here seems a bit remote.

Growing and hard to define: Critical race theory got its start in the late 1970s, perhaps the early 1980s. By now, many law professors all over the country -- most African-American, some Latino, some Asian -- would call themselves critical race theorists and say they're doing CRT work. Because of that, it's become increasingly hard to define or describe the movement. Each person works in some slightly different area and some slightly different way. Disagreements have developed among people who refer to themselves as critical race theorists. The movement has become more diffuse and amorphous.

Most general common questions and claims: Still some things can be said to define and describe the movement as a whole. Most generally, what critical race theorists ask about is how legal doctrine -- legal doctrine of all sorts, ranging from constitutional law to labor law, from criminal procedure to civil procedure -- reflects and perpetuates racial subordination in America. What most critical race theorists believe is that law, in a variety of ways, works to maintain the subordination of members of minority groups. And what most critical race theorists believe is that the achievement of racial justice in this country, if possible at all, will require not merely the more even-handed application of current laws -- that will do less than nothing -- but a root and branch transformation of the legal system.

Four features: More specifically, works of CRT often share four common features:

Pervasiveness of racism: First, CRT takes as a given -- as its first premise -- that racism infects every aspect of American law and American life. That racism is deep and pervasive -- some would go so far as to say inevitable and permanent.

"Neutral" law as mechanism of racial subordination: Second, CRT attempts to show that the claims of the legal system to neutrality, to impartiality, and to objectivity are false claims. CRT attempts to show that the law -- even

when it seems neutral and even-handed – in fact works in the interest of dominant groups in American society and particularly in the interest of dominant racial groups. CRT attempts to show that the so-called “logic of the law,” that so-called “neutral principles” are a sort of cover for a deeply ingrained system of racial domination.

Critical of civil rights strategies: Third, CRT generally is extremely critical of the activity -- the strategy and even the goals -- of the traditional civil rights movement. The thinking here is that the traditional civil rights movement believed that all that needed to be done was to make the laws neutral -- to end legal segregation in the schools, for example -- in order to achieve racial equality in America. But such reforms, critical race theorists say, were ineffectual, and necessarily so -- because they ignored the way even neutral laws could effect racial subordination. In addition, it might be said that critical race theorists see the civil rights movement as too “reformist,” too “gradualist,” not sufficiently committed to the broadscale social transformations necessary to achieve racial equality.

Insistence on incorporation of minority perspectives and use of stories: Fourth, and relatedly, critical race theory insists that the law -- legal doctrines of all sorts -- be reformulated, fundamentally altered, to reflect and incorporate the perspectives and experiences of so-called “outsider groups,” who have known racism and racial subordination at first hand. Critical race theorists often write not in traditional, lawyerly terms, but with parables, and stories, and dialogues. The thinking is that these techniques can better demonstrate the actual experiences of members of minority groups -- experiences which should be accepted by and incorporated in the law. In addition, the decision to spurn traditional techniques of legal argument reflects the belief that these apparently neutral techniques are not neutral at all -- that they have been the means of promoting not some objective system of truth and justice, but instead a system based on racial power.

Derrick Bell as exemplar: Now Derrick Bell’s writing illustrates each of these four aspects of critical race theory. He believes that racism is a pervasive -- and a permanent -- aspect of American society. **Read 1.** He believes that the legal system is a means of promoting a system of racial subordination -- even, or perhaps especially, when it makes claims to objectivity and neutrality. **Read 2.** He is deeply critical of the strategies and goals of the traditional civil rights movement -- of which he used to be a part. And he insists that law must take into account the experiences of minorities, which he attempts to explicate through dialogue and stories.

Biographical background: First, a little biographical background. NAACP Inc Fund -- doing school desegregation. Then one of first A-A profs at Harvard. Then, one of first A-A deans -- at Oregon. He left Oregon over a dispute about whether to hire an Asian-American woman, returned to Harvard.

Disputes over series of African-Amer women (Harv has none). (Participated in sit-in in Dean's office; Clark: "wish he'd figure out that Harvard is not a lunch counter.") Went on leave til Harvard hired. Still not happened; his leave time ran out; now at NYU.

Structure of two books: Two books; both follow same general structure. Geneva Crenshaw talking to a fictional, ever hopeful "Professor Bell."

Education "story": Story I gave you is less storylike than most; in fact, hardly a story at all. But I picked this one because it deals with education -- specifically with the effort to desegregate schools in this country and the result of that effort. In this story and the dialogue that follows, Bell seems to me to make the following two crucial points:

Desegregation benefitted blacks least: First, the struggle to desegregate the schools has benefitted least the black children it was supposed to help. Whites have used desegregation mandates to achieve educational reforms for themselves, while ignoring the needs and grievances of the black population. All too often, desegregation proved no help -- and sometimes a real harm -- to black schoolchildren.

Error of civil rights movement: And second, as the results of the desegregation imply, the civil rights movement committed a real error in devoting such time and expense to the mere goal of integration. The movement confused integration (racial balance) with what children need- effective education. (Read 111.) They chose this mistaken course precisely because they took a too-optimistic view of the extent and strength of racism in American society; they thought that once racial balance had been ordered, the system would become non-oppressive (instead of the system simply finding another way to oppress black children). The civil rights lawyers would have been better off insisting on greater funding and control of traditionally black ^{sch} goals, with mandated desegregation only a long-term goal.

Essential message: Essential message here is on page 118. **Read 118.**

Pose some questions: Now I was hoping we could get a discussion going on some of these points, and I thought I would try to set it up by posing the following sets of questions. I'm going to pose the questions in a general way, but it may be that the best way to address them is by reference to the particular problem of education. I am sure that as schoolteachers, you will have a lot to teach me on that score.

Racism permanent? First, is racism not only as currently pervasive, but also as inevitable and as permanent a part of American life as Bell and the critical race theorists believe? If it is, is recognition of this fact a counsel of despair, suggesting that further struggle is hopeless? Or is it instead the realistic

understanding that any movement needs in order properly to set its priorities and choose its strategies?

Law as means of racial subordination? Second, does law serve as a means of perpetuating a system of racial subordination? Are the claims of our legal system to neutrality and objectivity mere camouflage -- a sort of cover for the promotion of the majority's interests?

What legal strategies? Third, what legal strategies should members of minority groups today adopt -- what legal reforms (or transformations) should they press for? Did the old civil rights strategies work? Are they still working? If they should be replaced, what is the alternative?

Critically important questions: Those are the questions that Bell and other critical race theorists pose. There is no doubt that they are the among the most important questions -- if not the most important questions -- in all of American law.