

**Columbia Law School
Center for Gender & Sexuality Law
Racial Justice Project**

**Critical Race Theory: FAQ
By Candace Bond-Therault**

Q: What Is Critical Race Theory?

A: Critical Race Theory (CRT) emerged in the 1980s when scholars of race and racial justice insisted that a critique of law include an account of law’s role in perpetuating white supremacy and structural race-based inequality. Generated significantly in response to the Critical Legal Studies movement, Critical Race scholars such as Professors Derrick Bell, Kimberlé Crenshaw, Kendall Thomas, Patricia Williams, Mari Matsuda, Charles Lawrence, and Richard Delgado, to name only a few, insisted that an interrogation of law must center race in its analysis of the impact that legal rules, systems, and institutions have had—and continue to have—on people of color, particularly Black individuals and communities, in the United States. Bell and other Critical Race scholars thought it necessary to create this framework to investigate why even after the 13th, 14th and 15th Amendments (otherwise known as the Civil Rights Amendments) and the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act, Black Americans still faced huge disparities in almost all areas of life including, but not limited to, employment, healthcare, voting, housing, and education.

Critical Race Theory rests on several fundamental insights:

- First, the law has played a critical role in the maintenance of white supremacy and the subordination of people of color in the U.S.¹
- Second, even laws ostensibly designed to dismantle racial subordination, such as the equal protection clause of the 14th Amendment, have done less to advance racial justice than to perpetuate existing race-based inequity.²
- Third, one of the ways that the law does this is by exceptionalizing racism, that is, by treating it as an unfortunate aberration to what is an otherwise just social order. As such, the job of the law is to isolate the “bad apples” and punish them, while leaving the overarching structure of society unimplicated in the problem of racial injustice or inequality.³ This is accomplished through what they described as law taking the perpetrator perspective, focusing on the bad actions of particular individuals rather than on the ways that the white supremacist structure of society affects Black people. Requiring evidence of an explicit intent to discriminate, rejecting the relevance of the effects of discriminatory systems, and collapsing equal protection into the idea of “color

¹ See, for example, Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

² See, for example, Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism*, 1992.

³ See Alan Freeman, *Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 804 (1978).

blindness” are among the measures that Critical Legal theorists identified as central to law’s contribution to the system of race-based inequality.⁴

- Finally, Critical Race scholars question baselines of inequality that the law takes as given and neutral, thus rendering any deviation from the baselines as both taking something from innocent white people, and a kind of unfair or unearned privilege afforded to people of color.⁵

CRT is not a comprehensive theory of law. Instead, it is an invitation to consider the role that law, even “good” civil rights laws, plays in the creation and maintenance of racial injustice.

Q: Why Is It Important for the Center for Gender and Sexuality Law (CGSL) to Prioritize This Framework in Our Work and Advocacy?

A: The Center for Gender and Sexuality Law at Columbia Law School, and in particular the Center’s Racial Justice Project, strives to answer the call of the founders of CRT to center race in our work, and do so in a way that is intersectional in nature, recognizing that racial injustice cannot be understood apart from how it engages with other forms of injustice. For this reason, the Racial Justice Project centers the intersections of race, gender, and sexuality in our research, writing and advocacy. Too often, scholars and advocates of gender justice have understood sex or gender-based injustice as problems that can be understood in isolation from the dynamics of race and racism. Our work insists that this approach is practically impossible – gender-based injustice always takes place in racialized contexts. What is more, our centering of the experiences of women of color aims to remedy the long-standing neglect in legal research, legal education, and public policy of the particularity of injustices experienced by women of color.

Q: How Does CGSL’s Use of CRT Respond to Current Debates Around Critical Race Theory in the Classroom:

A: In recent years, CRT has become a talking point often used to galvanize a conservative base.⁶ Well organized attacks on CRT emerged as a direct response to the demands for meaningful racial justice reforms in the summer of 2020 in the aftermath of the police killings of George Floyd and Breonna Taylor, as well as the New York Times 1619 project which sought to rigorously depict the domestic history of Black people’s enslavement in the U.S., and how the afterlife of slavery continues to underwrite systemic racial injustice to the present.

The attacks against Critical Race Theory have intentionally misinterpreted the meaning of this academic school of thought, weaponizing a fabricated threat to white children’s education in the service of protecting white innocence and white parental rights. Ironically, the attacks against Critical Race Theory provide a persuasive object lesson in the validity of CRT’s central point: that only from the perspective of the beneficiaries of white supremacy do efforts to address the

⁴ Neil Gotanda, *A Critique of Our Constitution is Color Blind*, 44 STANFORD L. REV. (1991); Gary Peller, *Race-Consciousness*, *Duke L.J.* 758-847 (1990); Patricia Williams, *The Alchemy of Race and Rights*, 1992.

⁵ Cheryl Harris, *Whiteness as Property*, 106 HAR. L. REV. (1993); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

⁶ Candace Bond-Therault, *The Right Targets Queer Theory*, *the Nation*, April 19, 2022.

“badges and incidents of slavery” feel like a violation of and a threat to fundamental American notions of fairness.

The Center for Gender and Sexuality Law’s mission is to provide rigorous and objective research and socio-legal policy analysis that incorporate the actual insights of Critical Race Theory—among other useful tools of analysis such as feminist theory—into contemporary legal and social problems.