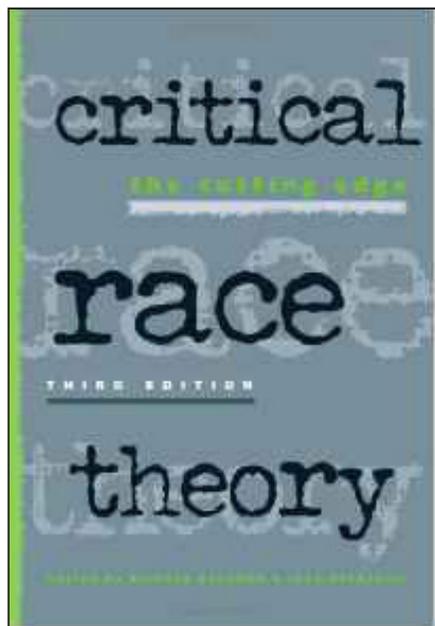


unjust wars, and unjustified acts even in the pursuit of just wars, as identical in principle to domestic violent crimes.

The model of “justice as right actions” apparently calls for a position between those extremes. International relations must be an agreement, at the state-to-state level, on “something in between, with attributes of both views guiding international relations,” under which nations express “due concern and respect for other nations.” Rightly organized states, that is, states that have a “just constitution and basic structure,” will recognize one another, and presumably over time will work together to create a more cohesive global order.

As Abraham Lincoln reportedly said about another book, “People who like this sort of thing will find this the sort of thing they like.” ☺



Critical Race Theory: The Cutting Edge (Third Edition)

Edited by Richard Delgado
and Jean Stefancic

Temple University Press, Philadelphia, PA, 2013.
839 pages, \$99.50 (cloth), \$55.95 (paper).

Reviewed by R. Mark Frey

On July 4, 1992, in Philadelphia, former Supreme Court Justice Thurgood Marshall received the Liberty Medal from the National Constitution Center, and, during his acceptance speech, he voiced frustration with our nation's failure to come to grips with race and racism:

I wish I could say that racism and prejudice were only distant memories. I wish I could say that this Nation had traveled far along the road to social justice and that liberty and equality were just around the bend. I wish I could say that America has come to appreciate diversity and to see and accept similarity.

But as I look around, I see not a Nation of unity but of division—Afro and White, indigenous and immigrant, rich and poor, educated and illiterate. ... We must dissent because America can do better, because America has no choice but to do better. ... We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same. America's diversity offers so much richness and opportunity.

Marshall delivered those comments almost a quarter of a century ago, and it seems that we still have much to do in this regard. Some might even say that we've lost ground.

Think about the world today. Black Lives Matter decries the high incidence of shootings and imprisonment of young black men in this country, while noting as well the disparities in income and education for blacks in America. In June of last year, nine people were killed during a mass shooting at the Emanuel African Methodist Episcopal Church in Charleston, S.C., by a white man who told police that he'd hoped to start a race war. Immigrants and refugees are demonized and lumped with terrorists, and people demand to close our borders to foreigners. Until recently, marriage was viewed as a legal relationship restricted to opposite-sex couples.

All the while, our nation grows more diverse, with projections that by mid-century, no group will constitute a majority of the population. What are the implications of this development? And what is race anyway? A biological fact or social construct? President Barack Obama comes from a mixed-heritage background, with an African father from Kenya and an Anglo mother from the plains of Kansas. Should he be defined as black or white? Should he be allowed to self-identify as black or white, or does that decision fall to the majority culture? And what flows from being categorized as black? As white? Or as mixed heritage?

When we raise the issue of race in the United States, do we refer solely to the dynamics between blacks and whites, which have developed from our history as a slave-holding republic? What about our Asian-Pacific Islander, Hispanic, or Native American populations? What about sexual orientation? How does that factor into the conversation about race and racism?

Questions such as these are the essence of *Critical Race Theory: The Cutting Edge*, an anthology edited by Richard Delgado and Jean Stefancic, which is comprised of 82 essays devoted to race and how it permeates all aspects of our lives in the United States, whether we perceive it or not. Race is an ever-present element of life in this country. It can be seen at the macro level in matters of access to resources and power and at the micro level of daily social interactions, such as a simple greeting exchanged between two people, which may differ if it is between two white males, a white male and white female, a white male and black male, a white female and black male, a white female and black female, or a black male and black female.

According to the editors, critical race theory arose when certain legal scholars, most notably the late Derrick Bell (an African-American) and Alan Freeman (a white), expressed frustration with the glacial pace of racial reform in the mid-1970s. They and others sought to find “new ways of thinking about our nation's most intractable, and insoluble, problem—race.” In 1989, the critical race theory movement began organizing and held its first working session shortly thereafter. The first edition of this book was published in 1995 and was used in more than 100 college and university courses. Proponents of critical race theory claim that old ways of seeking reform, such as preparing amicus briefs, marching, and publishing articles in legal and popular journals, were not working. Calls for new approaches relied on such sources of inspiration as critical legal studies, feminist thought, and continental social and political philosophy, as well as the works of civil rights leaders Martin Luther King, Jr., Rosa Parks, César Chávez, Malcolm X, and the Black Panthers, among others.

In a systematic fashion, *Critical Race Theory* tackles numerous issues by presenting several related essays within themed sections, many of which have been alluded to in this review: critiques of liberalism; revisionist interpretations of history;

crime; intersection of race, sex, and class; the black-white binary; intergroup relations; legal institutions, critical pedagogy, and minorities in the law; gay and lesbian issues; cultural nationalism and separatism; criticism and self-awareness; and critical white studies, among others. The material is sometimes dense, confrontational, rhetorical, and demanding, best read in bits, an essay here and there, allowing time to ruminate on each. But it is must-read material.

The book raises more questions than answers, and that's fine. It forces us to face uncomfortable issues and think hard about our legal system and our place in it, whether one is a student contemplating or attending law school, a new practitioner, or an old hand

who has devoted his or her career to the law.

In a 2005 commencement address at Kenyon College, the late David Foster Wallace related this parable:

There are these two young fish swimming along and they happen to meet an older fish swimming the other way, who nods at them and says "Morning, boys. How's the water?" And the two young fish swim on for a bit, and then eventually one of them looks over at the other and goes "What the hell is water?"

Critical Race Theory's objective is to develop self-awareness and a sense of the

pervasive quality of these issues. It succeeds in doing that. ☺

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Intersection *continued from page 37*

Office of Policy Development and Research, Jan. 2014, *available at* www.huduser.gov/portal/publications/housing_conditions.pdf. (hereinafter the Pettit-HUD study). The Census surveys allowed individuals to delineate their race and their ethnicity independently. Racial options included single race (e.g., AIAN alone) or multiple races (AIAN multiracial). *Id.* at 7-8. In addition, individuals could also select "Hispanic" as their ethnic identity. *Id.* at 12.

⁶*Id.* at 6-18.

⁷*Id.* at ix.

⁸*Id.* at 17. Comparatively, the AIAN multiracial population of 2.3 million represents 77% of the AIAN alone population.

⁹*Id.* at 8.

¹⁰The Pettit-HUD study used the U.S. Census Bureau typology that delineates two broad geographical categories: AIAN counties and non-AIAN counties. An AIAN county means that part of the county is AIAN area. According to HUD's Office of Native American Programs, 523 of the 3,138 counties are AIAN counties. This category is further delineated into tribal areas and AIAN surrounding counties. Tribal areas include reservations and areas of concentrated AIAN population. The 2010 Census identifies 617 AIAN tribal

areas (comprised of federally recognized reservations, state-recognized reservations, joint-use areas, tribally designated statistical areas, and Alaska Native Village statistical areas). Quite important, the Census Bureau added 31 new AIAN tribal areas in the last 10 years. Non-AIAN counties include metropolitan and nonmetropolitan areas. *Id.* at 9-10.

¹¹"Indian Country" in the Pettit-HUD report is defined as all AIAN tribal areas and the counties that surround them. "In 2010, Indian Country accounted for two-thirds of the population of non-Hispanic AIANs and more than three-quarters of the growth in non-Hispanic AIANs over the 2000s." *Id.* at x.

¹²*Id.* at 12.

¹³*Id.* at 17-18.

¹⁴*Id.* at 21. It is important to note that even within these significant trends, there are more nuanced demographic shifts. For example, while still a younger population, the AIAN population actually is aging, as evident by the decrease in the AIAN population under 18 by 4 percentage points from 2000 to 2010. *Id.* at 22.

¹⁵*Id.* at 24.

¹⁶The Community Reinvestment Act (CRA), enacted by Congress in 1977 (12 U.S.C. § 2901) and implemented by regulations, 12

CFR parts 25, 228, 345, and 195, is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate. For the Minneapolis Fed, this has meant meeting the needs of the 45 tribal reservations within its district, from Montana to the Upper Peninsula of Michigan.

¹⁷I am encouraged in this Indian Country work by the recent attention to the work of Angus Deaton, the 2015 Nobel Memorial Prize winner in Economic Science, who has devoted his career to improving the data that shape public policy, including measures of wealth and poverty, savings and consumption, health and happiness. Taking advantage of a wealth of newly accessible information, Deaton assembled the fine details of individual lives to better understand overall economic trends. He also has championed the collection and use of new kinds of data, particularly about developing countries that often lack basic demographic statistics. The Nobel Prize also reflects Deaton's contribution of using such household data to trace the effect of economic policy on the well-being of community members. See www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2015.