

### **Introductory remarks regarding the following bibliographic annotations<sup>1</sup>**

Because the literature on racism is extensive, this bibliographic annotation should be considered a work-in-progress and it accounts specifically for theories and case studies deploying a methodology of structural racism. A “structural racism” approach considers the ways in which the networked operations between historical legacies, individuals, and institutional arrangements produce unequal and hierarchical racial outcomes. Thus, rather than understanding racism as an isolated or individual phenomenon, a structural racism approach understands it as an outcome and suggests that different societal institutions work together to distribute or limit opportunity along racial lines. In addition to complexly modeling social praxis, structural racism describes a particular method for devising response strategies and rethinking policy recommendations that accounts for these interactive operations of power.

This aggregation of texts then represents multiple trajectories of a structural racism approach. We hope that this link offers both a basic, accessible, and instructive introduction to the concept of structural racism, as well as a refined overview of critical arguments within the field’s literature and comprehensive and incisive research through case studies. Finally, we hope that this provides helpful information for both scholars and activists, so that this may be part of both nuanced diagnoses and fruitful political responses.

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<sup>1</sup> Bibliographic annotations have been provided by: Melanie Maltry, *Research Assistant* at the Kirwan Institute and Mary Kelly Persyn, *Research Assistant* at the Civil Rights Project.

**Bell, Jr., Derrick A. “Property Rights in Whiteness: Their Legal Legacy, Their Economic Costs.” In Richard Delgado and Jean Stefancic, eds. *Critical Race Theory: The Cutting Edge*. Philadelphia: Temple University Press, 2000.**

Bell pinpoints property rights in whiteness as a key aspect of the “on-going struggle between individual rights reform and the maintenance of the socio-economic status quo”(71). Compromises that traded away the rights of African-Americans in exchange for various property rights are legion in American history. The Constitution institutionalized property rights in slaves and, inversely but covertly, property rights in whiteness. Since whiteness served as a guarantee against slavery, even poor whites had a property right in their racial identity. Bell argues that the economic injustice inherent in this property relation is such that “the rhetoric of freedom so freely voiced in this country is no substitute for the economic justice that has been so long denied” (78).

As did Harris’ article (see above), Bell’s article draws a connection between white property rights and the inertia created by white privilege. He therefore points to the instantiation of structural racism in the Constitution, even as he acknowledges the contemporary near-miracle of turning a document primarily created to protect property rights into one that guarantees some protections for those individuals who lack property and power.

**Bell, Jr., Derrick A. “Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

\_\_\_\_\_. “*Brown v. Board of Education* and the Interest Convergence Dilemma.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.

In these two landmark articles, Bell argues that in *Brown*, civil rights lawyers did not necessarily consider their clients’ interests appropriately. While African American parents most commonly prioritized improved education for their children, civil rights lawyers and, eventually, the remedies dictated by the courts prioritized integration—often by forced busing—and did nothing to prevent the resegregation of education within “integrated” schools. “Racial balance,” states Bell, “may not be the relief actually desired by the victims of segregated schools” (6). Within legal cases like *Brown*, therefore, the (often white) lawyers’ desire for an integrated society thus trumps the parents’ desire for improved educational outcomes.

“Interest convergence,” one of CRT’s key concepts, argues that civil rights progress occurs only when the interests of whites converge with those of African Americans. For Bell, *Brown* provides a signal example for three reasons. First, the decision was believed to play well to people of color in the Third World, where the United States was battling Communism. Second, it assuaged the anger of African American veterans. Returning home World War II to face vicious racial attacks and continued segregation, they wondered why they should be expected to go to

war, if called, with a country—the Soviet Union—which had in their view succeeded in creating racial equality. Third, whites realized that “segregation was a barrier to further industrialization”—and thus profit—in the South (23). *Brown* presents a situation where interests may have converged in a very general sense, but motivations did not; therefore, the remedy that resulted satisfied whites who desired the appearance of racial progress but left behind African Americans, who most longed for educational opportunity for their children.

In these two arenas—the competing interests of clients and their lawyers, and the converging interests of African Americans and whites at the time that the decision was adjudicated—Bell argues that, however well-intentioned, the fight for educational integration in fact served the white power structure. Ironically, therefore, Bell presents *Brown v. Board of Education* and its aftermath / remedies as an example of institutional racism. In assuming that improvement in the education received by African American children would result as a logical conclusion of racial integration, the decision failed to prioritize that which actually mattered more to African American parents and would have had greater long-term impact on the success of African American and other minority children. The interest convergence / divergence dilemma reflects institutional racism in that, on this model, progress for racial minorities occurs only when it is in the interest of the white power structure. Authentic equality therefore slips out of reach.

**Bell, Jr., Derrick A. “Racial Realism.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Bell addresses the contrast between realist and formalist views of the law; realists concern themselves with the function and consequences of law, while formalists focus on abstract conceptualizations of law. In a further distinction familiar to readers of CRT, Bell associates realism with context, history, and social conditions and formalism with individualism, decontextualization, and technical, “rigid” legal interpretations. Clearly, the legal institution’s tendency toward formalism protects the status quo and prioritizes the individual over the group, thus displaying strong evidence of structural racism. An example is the statement that “race-conscious policies derogate the meaning of racial equality”—reasoning that allows judges to render such policies illegal, which in turn excludes African Americans and other people of color from the arena in question (307). In a circular manner, such an action derogates the meaning of racial equality in a different, but much more harmful way. Thus, notes Bell, “a judge may advocate the importance of racial equality while arriving at a decision detrimental to black Americans” in another version of plausible deniability (307).

Judicial formalism has created a context within which the fight for equality damages the chances of attaining it. Surely such a tautology qualifies Bell’s argument as one that exposes structural racism.

**Bonilla-Silva, Eduardo. “Rethinking Racism: Toward a Structural Interpretation.”** *American Sociological Review* 62, no. 3, pp.465-81, 1997.

In his article “Rethinking Racism,” Bonilla-Silva details and critiques previously deployed sociological methods for approaching the study of racism in order to propose a more comprehensive framework. While Bonilla-Silva critiques three frameworks—ideological, internal colonialist, and institutionalist—the pith of his critique is leveled against idealist methods. Accordingly, Bonilla-Silva suggests that ideological analyses fail to account for the material base undergirding racism globally, reduces racism to an “abnormal” psychological phenomenon, and figures racism as both static and obsolete.

Attending to these deficiencies, Bonilla-Silva instead proposes the concept of a “racialized social system,” which refers to “societies in which economic, political, social, and ideological levels are partially structured by the placement of actors in certain categories or races.” In contrast to ideological methods which he suggests locate racism in individuals, a racialized social systems framework describes the formation of racialized hierarchies at the level of the social that produces material effects and acquires autonomy, articulates race as relationally constructed, and accounts for shifting discursive and material operations of racial categories.

Bonilla-Silva dismisses criticism that argues that social systems cannot describe the within-category differences of class, nation, gender, sexuality, etc., suggesting that attending to systems of racialization does not exclude analysis of other forms of oppression.

**Brown, Michael et. al. *Whitewashing Race: The Myth of a Color-Blind Society*. University of California Press, 2003.**

Brown and colleagues center their critique of “color-blind” mythology on one powerful binary: the accumulation and disaccumulation of wealth by, respectively, white, middle-class America and African America. In this sense, the foundational idea of the book is structuralist in origin; for the authors, the social, economic, and political relations of these two major racial groups are profoundly interdependent.<sup>2</sup> The central problem, state Brown et. al., is that the conservative think tanks’ denial of such an interdependence has bled out into the mainstream such that most Americans now believe that durable inequality is the fault of the poor themselves. (Note Glenn Loury’s argument about external and non-external structures in *Anatomy of Racial Inequality* at 162.)

One of the book’s greatest strengths is its historical contextualization of current inequality. “Very small economic and social advantages can have large cumulative effects over many generations” (23), and the book demonstrates the process by examining FHA and VA mortgage loans and the GI Bill (chapter 2), educational deprivation (chapter 3), systematic abandonment of the inner cities and its link to labor market isolation (chapters 2 and 5), the injustices of the justice system

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<sup>2</sup> Note a representative chapter subtitle: “From white advantage to racial subordination: the reciprocal nature of racism” (51).

(chapter 4), and voting rights (chapter 6). The focus remains the overall disinvestment in Black communities and generational disaccumulation of wealth, most acutely in the loss of property values and employability (both b/c of qualifications and accessibility).

The book demonstrates an important connection to color-blindness and to structural racism via its argument that decreases in publicly or individually acknowledged prejudice do not equate to material gains for African American communities. Attitudes and institutionalized practices are not congruent, and discrimination can be entirely unintentional. Their definition of racism is therefore structural; racism is “the organized accumulation of racial advantage, a system best understood by observing actual behavior”(43). Racism ultimately must be understood as a group phenomenon, not a symptom of individual prejudice. The current climate, as they point out, pursues the individualist definition of racism by elevating “color-blindness” to a “civic religion that actually promotes the unequal racial status quo” (58).

The authors conclude by declaring that “race is a relationship, not a set of characteristics” (228). Defeating durable racial inequality is therefore not a matter of developing policies targeted only at minority communities; rather, the web of relationships needs fixing. They propose two sets of policies. One attacks the accumulation/disaccumulation binary; the other aims to decrease direct and indirect discrimination and to increase institutional diversity. The final chapter describes several of these policies in detail.

### **Comments on *Critical Race Theory***

The Critical Race Theory (CRT) movement broke off from Critical Legal Studies (CLS) in the mid-eighties when Kimberlé Crenshaw, Neil Gotanda, Stephanie Phillips, and other scholars formed the Critical Race Theory seminar. They sought a body of critical theory that would follow CLS in critiquing law as an institution, but would also take into account the realities of race and racism as they are lived in everyday life. CRT sees law as the fundamental institution of American life and emphasizes its function as a legitimator of existing conditions and hierarchies of privilege. It identifies formal equality and color-blindness as key obstacles to authentic equality—obstacles inherent in the legal system ever since its beginning. Specifically, CRT fits our working definition of structural racism in the following points:

1. Premise #2, SR\_White Supremacy: The American legal system was originated and for much of its history was exclusively built by white male property owners. Racial discrimination was written into the federal Constitutions and many, if not most, state constitutions. Legal scholars assume that establishing formal equality and editing/altering legal principles and statutes after the fact can “cure” the original racism of the system. CRT disagrees.
2. Premise #3, evolution of situated definitions of SR: changing understanding / treatment of racial discrimination in the courts—see especially the SC 1989 decisions that doomed remedies to strict scrutiny.

3. Premise #5, four dimensions—law is **sedimentary** (though also institutional): Law functions on the bases of several foundational assumptions that obscure the presence of racism: liberal individualism; neutrality; formal equality of citizens.
  - a. Because liberal individualism rules the legal system, it is unable to adjudicate situations of generational disaccumulation/injustice/loss of opportunity.
  - b. Because the formal equality of citizens is now a bedrock assumption, the legal system is unable to adjudicate situations where persons of color are disadvantaged by the discriminatory effects of facially neutral policies. The legal system now requires proof of intent to discriminate.
  - c. “Having rejected race-consciousness too, there was no conceptual basis from which to identify the cultural and ethnic character of mainstream American institutions; they were thus deemed to be racially and culturally neutral.” (Crenshaw et al., *Critical Race Theory: The Key Writings that Formed the Movement*, “Introduction” xvi)

**Crenshaw, Kimberlé. “Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Crenshaw echoes Freeman’s argument regarding the conservative “era of rationalization” by stating that “the position of the New Right...is that the goal of the civil rights movement—the extension of formal equality to all Americans regardless of color—has been achieved, hence the vision of a continuing struggle under the banner of civil rights is inappropriate”(103). She contrasts the New Right position with that of the New Left as represented by CLS scholars, who assert that the pursuit of rights within a legal framework is counterproductive because, they argue, rights doctrine entrenches racial inequality and oppression. Crenshaw opposes both visions in this article. She also presents two distinct “views” within antidiscrimination law, which she terms the expansive (involving equality as a result) and the restrictive (involving equality as a process). In its struggle to eliminate the conditions of subordination, the expansive view recalls Freeman’s victim perspective; in its prioritization of process and dismissal of results, the restrictive view recalls the perpetrator perspective.

In its interpretation of discrimination as isolated violations rather than ongoing conditions, the restrictive view prioritizes vested interests and the status quo; color-blind policies, for example, assume that a “racially equitable society already exists”(105). In effect, therefore, the rights and interests of white people normally outweigh those of African Americans and other people of color. Thus, the restrictive view, currently the ruling paradigm of antidiscrimination law, embodies the cognitive and institutional dimensions of structural racism, particularly in its protection of white supremacy. If we state that we live in a color-blind society, yet societal conditions embody racial inequality, we cannot correct those conditions because we literally

cannot see them. Though the “explicit ideology of white supremacy” is gone, argues Crenshaw, it has not disappeared; rather, it has been “submerged in popular consciousness”(115)—or, in other words, institutionalized.

**Delgado, Richard and Jean Stefancic. “Why Do We Tell The Same Stories? Law Reform, Critical Librarianship, and the Triple Helix Dilemma” In Richard Delgado and Jean Stefancic, eds. *Critical Race Theory: The Cutting Edge*. Philadelphia: Temple University Press, 2000.**

Delgado and Stefancic expose a powerful form of status-quo-protecting inertia in major American institutions as they describe the legal profession’s method of cataloguing its publications and conducting its research. Legal scholarship’s requirement that articles and notes establish precedent and authority in cases and statutes creates an illusion that law is scientific and objective, they argue. In addition, the cataloguing system discourages creative and independent thinking because of the way that searches are categorized. Though legal research should encourage the search for innovative solutions, “computer-assisted research can discourage innovation and law reform,” argue the authors. The ruling legal principle of stare decisis—a concept that requires judges and scholars always to cite and accede to those precedents hierarchically superior to them—both undergirds the legal institution and protects the status quo.

Legal research presents an example of structural racism in that its strictures influence cognitive function to an undue degree and hide (make unconscious) the roots of racism that lie within the legal system.

**Feagin, Joe R. *Racist America: Roots, Current Realities, and Future Reparations*. Routledge, 2001.**

Twenty-three years after publishing *Racism American Style*, Feagin produced *Racist America*, a book with a much greater scope and a good deal more anger. He leaves the impression of a man tired of observing the same phenomena, year after year, even as America’s legislative and judicial environments rebuff effective remedy, in effect turning back the clock on justice.

Feagin reaches back to the early years of the American republic to examine the origins of the Constitution, noting that the trade in and enslavement of Africans was a prominent issue at the Constitutional Convention. The Constitution, argues Feagin, could not have come about in its actual form without the protection of private property and, most importantly, of property in slaves. By the end of the summer of 1787, slavery figured in no less than seven sections of the Constitution, though it is always referred to euphemistically and never directly by name. The point bears emphasis because no deeper source of structural racism could exist in our Republic.

What began as a system of enslavement and unjust enrichment developed, over the years, into a system fatally infected with racism. Systemic racism, in Feagin’s terminology, takes on a meaning akin to our use of “structural racism,” and it is worth quoting here:

Systemic racism includes the complex array of antiblack practices, the unjustly gained political-economic power of whites, the continuing economic and other resource inequalities along racial lines, and the white racist ideologies and attitudes created to maintain and rationalize white privilege and power. Systemic here means that the core racist realities are manifested in each of society's parts...each major part of U.S. society—the economy, politics, education, religion, the family—reflects the fundamental reality of systemic racism. (6)

Interlocking systems of unjust enrichment / impoverishment and “alienating racist relations” both play key roles in the development of systemic racism, which stretches back four hundred years to the earliest days of America. Specific, detailed chapters document the historical development of systemic racism, racist ideology as a social force, contemporary racial attitudes and images, everyday racial oppression, the continuing, cumulative impact of oppression, and systemic racism amongst other Americans of color.

One of *Racist America*'s most trenchant criticisms focuses on affirmative action, which has always been administered by the white male elite and manages only to fit some white women and people of color into a “Procrustean bed of existing white-male-controlled institutions”(36). In the final chapter of the book, Feagin notes that whites, who already constitute less than half the population of several major cities and two states, will likely become the numerical minority in the coming century. To advance antiracism and prepare for the coming changes, Feagin advocates massive public education about the history and realities of racism, a new Constitutional Convention, and a program of reparations.

Its definition of systemic racism, historical reach and depth, and ability to probe the development of white racism make *Racist America* a valuable addition to *Whitewashing Race*, which offers similar arguments, but includes more elaborate contemporary detail and less historical reach.

**Feagin, Joe R. and Clairece Booher Feagin. *Discrimination American Style*. Prentice-Hall, Inc., 1978.**

In one of the first treatments of institutional (structural) racism authored in the United States, Feagin and Feagin begin by separating prejudice from discrimination. As they build a definition of structural racism that includes unintentional or unconscious discriminators, they note that “the growing view among white males that they are not prejudiced...supports the contention that they are no longer responsible for the oppressive conditions of women or nonwhites” (7). Indeed, according to *Discrimination American Style*, there was much handwringing over the detrimental effects of affirmative action on white men...in 1978.

Feagin and Feagin define discrimination generally as “actions or practices carried out by members of dominant groups, or their representatives, which have a differential and negative impact on members of subordinate groups”(20). More specifically, the authors emphasize the “routine, continual” character of structural racism, as opposed to the “individualistic, sporadic, and episodic” characteristics of “traditional” discrimination definitions (22). Such distinctions

make it possible to separate structural *racism* from individual *racists*, thus removing the study of discrimination from the realm of psychology and guesswork. They gain the same objective by calling attention to the “imbeddedness” of discrimination within “large-scale bureaucratic organizations” (23). From an institutional perspective, they argue, the beliefs guiding discriminatory behavior are “normal,” and both “actions or organizational regulations or policies directing actions can be taken as examples of institutional discrimination”(24).

The genealogy of “indirect institutionalized discrimination” is particularly useful to our study of structural racism. The term refers to institutional practices that have a negative differential impact on minorities (and women) even though the norms and regulations that led to the treatment were facially and attitudinally neutral. Here the authors distinguish “past-in-present discrimination,” which involves “organizational penalizing of women or minorities in the present because they lack some ability or qualification intentionally denied them in the past”(32). Seniority and tenure practices provide key examples. For our analysis, the book is also useful for its early formulations of “systemic discrimination” and cumulative impact (after Myrdal; 35).

**Freeman, Alan David. “Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Freeman differentiates two possible perspectives in the exercise of antidiscrimination law. The victim perspective regards “racial discrimination” as a continuing condition with clear connections to situations in everyday life; discrimination is inextricable from its historical and social context. In contrast, the perpetrator’s perspective defines discrimination as a discrete act or “violation” that can be fully isolated from and punished independently of its historical and social context. Thus, argues Freeman, while it would take affirmative action to remedy racial discrimination, from the perpetrator’s perspective only the correction of specific actions is necessary. Antidiscrimination law has therefore ignored the condition of the victim, focusing not on meaningful systemic remedy but on stopping the perpetrator from acting again. The individualization and decontextualization of discrimination “gives rise to a complacency about one’s own moral status; it creates a class of ‘innocents’ who need not feel any personal responsibility for the conditions associated with discrimination”(30).

The perpetrator perspective also assumes that the “default” status of the world in which we live is “color-blind” and racially neutral. Thus, discriminatory acts violate that homeostasis. This doctrine, argues Freeman, “both declares racial characteristics irrelevant and prevents any affirmative steps to achieve the condition of racial irrelevance”(35). One cannot have a racially equal world by fiat, he points out; as we have never truly lived in a “color-blind” world, wishing will not make it so.

Freeman describes an earlier “era of contradiction” involving tension between violations and remedies in antidiscrimination law. This era brought us, most notably, *Griggs v. Duke Power Co.*, a case establishing the requirement that employers demonstrate a rational connection

between requirements for hire and requirements for performing a particular job. Despite this victory, notes Freeman, the gains of this era have been lost to the “era of rationalization,” which declares that “the war is over” and the problem of racial discrimination has already been solved (41). Such an approach reflects a “brazen indifference to results” that eliminates attention to social conditions to focus only on intentional acts (43).

The connection to structural racism is clear. Antidiscrimination law protects vested (white) interests and generally ignores structural discrimination imbedded by centuries of previous unequal treatment. The law isolates discriminatory acts and their perpetrators from historical and social context, thereby advancing the “liberal individualism” that is a key ingredient of structural racism. Traditional civil rights arguments in favor of equal treatment before the law and color-blind jurisprudence have been granted, and have ended by institutionalizing racism within that body of law ostensibly designed to defeat it.

**Greene, Linda. “Race in the Twenty-First Century: Equality Through Law?” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Greene wishes to expose the “manner in which the existing current legal framework may immorally and unduly limit and dampen the aspirations of African-Americans for universal freedom”(300). She builds her argument by examining a series of 1989 Supreme Court decisions that “create barriers to changes in the racial status quo” by using overly formalistic and technical reasoning (292). Like other CRT scholars, Greene argues that viewing race as a formal characteristic unconnected to history and contemporary social conditions strips it of its true significance and disguises the real ramifications of being a person of color in America. At the same time, the inherent tendency of “formal race” considerations to protect the status quo leads to a concern for “white rights” in the 1989 decisions. As Greene notes, “it is troubling that none of these cases acknowledges that the interests asserted may be characterized as an interest in the continued racial hegemony of whites, in the subordination of blacks”(299).

The elimination of the disparate impact standard, the use of formalism to detach legal cases from history and social context, and the protection of white rights mark the 1989 decisions as the embodiment of a serious civil-rights setback. Greene concurs with Ralph Bunche in arguing that “the confidence blacks had in the possibilities of civil libertarianism as a basis of struggle for equality was misplaced”(300). Such a statement invokes key aspects of structural racism, including a strong critique of the contemporary legal system at the heart of its institutional dimension.

**Gotanda, Neil. “A Critique of ‘Our Constitution is Color-Blind.’” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Gotanda’s trenchant criticism of U.S. Supreme Court jurisprudence takes on “color-blind” constitutionalism and links it to the decontextualization associated with formal equality. Echoing

other CRT scholars who argue that a racially equal status quo does not exist and never has, Gotanda argues that “a color-blind interpretation of the Constitution legitimates and thereby maintains the social, economic, and political advantages that whites hold over other Americans”(257). Color-blindness ignores “historical race,” a term which indicates the long history of social, political, and economic oppression of people of color in the United States. Without consideration of historical race, notes Gotanda, advocacy of a formal-race or formal-equality standard is nonsensical and deeply irresponsible. Formal-race sees race only “as an attribute of individuality unrelated to social relations”; thus, “racism is thought of only as an individual prejudice”(265). Given Lawrence’s unconscious-racism argument, Gotanda’s warning about decontextualization gains considerable explanatory force; if unconscious racism derives from submerged societal prejudices, it has very little to do with individual prejudice and a great deal to do with societally-induced conditions. In such a situation, treating racism as an individual prejudice, race as an individual attribute isolated from social reality, and race in general as disconnected from history and context neglects the fundamental source of racism: the wider society.

Gotanda’s article focuses our attention on the formal-race jurisprudential concept as an agent of institutional racism. “These extremely individualized views of racism exclude an understanding of the fact that race has institutional or structural dimensions beyond the formal racial classification...this disaggregated treatment veils the continuing oppression of institutional racism” because the issues are cut off from history and discussed in isolation (265; 266). One result of this procedure is to apply strict scrutiny to all racial classifications whether used to remedy past discrimination or to further oppress a group already the victim of discrimination. Inherently, such an approach perpetuates the status quo—one way of defining the concept “institutional racism.”

**Guinier, Lani. “Groups, Representation, and Race-Conscious Districting: A Case of the Emperor’s Clothes.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Guinier addresses race-conscious districting and its opponents, arguing that “a mathematically equal vote that is politically worthless because of gerrymandering or winner-take-all districting is as deceiving as ‘the emperor’s clothes’”(205). The white mainstream focuses on, and opposes, districting by race because it is more visible to them than is districting by other characteristics. “We all lose, the theory goes, when some of us identify in racial or ethnic group terms,” Guinier notes, though the problem is a good deal more widespread. Recalling the metaphor of the miner’s canary, Guinier contends that the practice of districting in general, rather than race-conscious districting specifically, causes representational deficiencies in the political system. Districting prompts such deficiency by first, aggregating groups of people according to assumptions about group characteristics; and second, overinflating that group’s importance through a winner-take-all electoral system. Guinier proposes systems of proportional representation and instant runoff voting as solutions to the districting problem that also embody

the one-person, one-vote principle with more fidelity. An equal opportunity to vote for a winning candidate should be recognized as a “universal principle of political fairness”(206).

Guinier’s indictment of traditional districting places the practice within the realm of institutional racism because of its clear protection of a white-supremacist status quo. As she notes, the “virtual representation” system created by winner-take-all elections invokes three concepts detrimental to the exercise of political power by minority groups of all kinds: “indirect representation, representation of similar interests elsewhere, and top-down representation”(211). Guinier advocates neither race-conscious districting nor its elimination; rather, she argues for a new election system that would link voters more directly to their representatives of choice by empowering all voters to “spend” their votes on a (winning) elected representative. Her argument therefore pursues the CRT tenet that the current legislative and political system must be entirely remade in order to enable authentic racial equality.

**Guinier, Lani and Gerald Torres. *The Miner’s Canary: Enlisting Race, Resisting Power, Transforming Democracy*. Harvard UP, 2002.**

Guinier and Torres employ the miner’s canary of their title to establish the concept of political race, which looks at race relations in an inherently structural way. Racially marginalized communities are like the miner’s canary in that disadvantages and dangers that they suffer signal social justice deficiencies within the democratically constituted society as a whole. If the miner’s canary image serves as the distress signal, “political race” serves as the project devoted to attacking the causes of the problem; it encourages “meaningful action that improves the lives of the canary and the miners by ameliorating the air quality in the mines”(12). We can conceptualize the “air quality” as those obstacles to equity of opportunity and participation in society. Such obstacles, while they affect people of color most immediately and severely, touch a large number of citizens. Like Feagin in *Racist America*, Guinier and Torres’ goal is the transformation of American society as a whole—a transformation that they imagine benefiting all citizens. If “conventional zero-sum hierarchies trap even the most privileged among them in units of autonomous individuality,” then political race, with cross-racial relationships and partnerships its goal, can open the trap door.

Guinier and Torres include chapters on political race, colorblindness, race as a political space, zero-sum power conventions, “enlisting race to resist hierarchy,” “the problem democracy is supposed to solve,” “whiteness of a different color,” and “watching the canary.” Essentially, political race, which recruits both people of color and whites to join together to fight racial inequality, is the very opposite of colorblindness, which in fact masks racial inequality. While colorblindness perpetuates structural racism, political race “enlists race to resist hierarchy.” The key is resisting the argument that the recognition of race is inherently undemocratic. Not so, argue Guinier and Torres; rather, like Justice Blackmun, they believe that the achievement of racial justice requires the recognition of race—there is no other way.

In addition to political race, Guinier and Torres offer the key concept of “power-with” as another rereading of traditional hierarchical arrangements of power. “Power-with,” they explain, “is the

psychological and social power gained through collective resistance and struggle...it is relational and interactive” (141).

**Harris, Cheryl I. “Whiteness as Property” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Harris builds her argument that “whiteness” is a form of value-bearing property by linking conceptions of race and property. “The ideological and rhetorical move from ‘slave’ and ‘free’ to ‘black’ and ‘white’ as polar constructs,” she notes, “marked an important step in the social construction of race”(278). Under the slavery regime, whiteness became a shield against being held in bondage; “whiteness was the characteristic, the attribute, the property of free human beings”(279). Whiteness evolved into a personal characteristic defined and protected by the law that carried with it a whole range of property rights. The barriers to entry were high; such barriers, combined with the rights attendant upon “whiteness,” raised the property value of that identity. Each expansion in the value of “white” identity has been attended by a concomitant narrowing of African American rights; the two identities cannot be conceptualized independently of each other. This is especially true of property rights.

Harris demonstrates that the American courts’ refusal to recognize the significance of the social group, preferring the notion of individualism and thus formal equality. In this formulation, race “is not historically contingent,” and “the legal affirmation of whiteness and white privilege allowed expectations that originated in injustice to be naturalized and legitimated”(287). Further, she locates the source of the property rights of whiteness in the deep roots of white supremacy. Once established, white supremacy gained the power of status-quo inherency; given individualism and formal equality as legal standards, white supremacy guarantees white privilege, and thus property rights become automatic and privilege becomes all but invisible. Affirmative action is deeply threatening to this regime because it redistributes power and resources, thus challenging “the notion that there is a protectable property interest in ‘whiteness’”(289).

The connection between the concept of property interest in whiteness and structural racism is clear; indeed, white identity involves all four of the dimensions we have identified and reaches deep into every aspect of contemporary racial inequality. The accumulation / disaccumulation hypothesis usefully frames this concept, as every gain many aspects of the white-black property relation (especially in earlier American history) have implicated a zero-sum game. Whiteness as property, also known as white privilege, is a key part of the unconscious racism that forms the backbone of institutional racism.

**International Convention on the Elimination of All Forms of Racial Discrimination (CERD). U.N. General Assembly Resolution 2106, 1965.**  
[http://www.unhcr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhcr.ch/html/menu3/b/d_icerd.htm)

**Transnational Racial Justice Initiative. *The Persistence of White Privilege and Institutional Racism in US Policy: A Report on US Governmental Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*. March 2001. PDF available via Applied Research Center at <http://www.arc.org/trji/>**

The UN CERD (1965), to which the US is a signatory (1994), contains a definition of racial discrimination and several articles that detail obligations of signatory nations regarding racial equality. The definition warrants quoting in full:

In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. (Article 1)

Article 1 also states that actions taken to remediate past discrimination shall not be defined as racial discrimination, provided that they do not continue after the elimination of those conditions they were meant to remedy. In fact, Article 2 essentially requires signatory nations to take “special and concrete measures” to promote measures that guarantee to groups racially stigmatized in the past the full range of human rights and fundamental freedoms. Article 7 requires public and cultural education programs to combat prejudice and promote tolerance and understanding.

The Transnational Racial Justice Initiative authored the above-named “shadow” report, which responds to the first United States report to the UN on our progress toward compliance with the CERD. While the US report claims substantial compliance, the TRJI report contradicts this claim by citing specific evidence and arguments demonstrating noncompliance with particular articles and sections of the CERD.

As the report’s title indicates, the TRJI focuses specifically on white privilege and institutional racism (though we use the term “structural,” substantially the same phenomena are referenced). The TRJI defines white privilege as “a system that accrues to whites (or European Americans) greater wealth, resources, more access and higher quality access to justice, services, capital...than other racial groups”(7). Further, the TRJI explicitly recognizes the accumulation / disaccumulation hypothesis by stating that the system of white privilege encompasses the concomitant disfranchisement and impoverishment of racial minorities.

The report argues that white privilege goes far beyond attitudes and beliefs; it forms an overarching structure that has very little if anything to do with individual intentions. Thus, the report draws attention not only to the victims of injustice, but also to those people who benefit

from that injustice. Comprehensive reparations and remedies going beyond current affirmative action policies are recommended. Among them, the TRJI states that a complete review of American law is necessary because “the US Constitution does not offer adequate or clear protection, assurances or remedies for victims.” The claim is based on Supreme Court jurisprudence, which has eliminated the use of the disparate impact standard in most cases. Instead of consequences or social conditions serving as evidence of discrimination, Americans must demonstrate intent to discriminate—a nearly impossible standard, and one that prevents the US from meeting the obligations of the CERD.

Highly detailed sections of the report address the institutionalization of discriminatory policy in the areas of welfare, health care, education, and exclusionary land use. In these sections, the TRJI goes beyond claiming inaction and instead argues that the US government has established policies and practices that discriminate, whether directly or indirectly, with severe consequences.

The relevance of the CERD and the TRJI shadow report to our study of structural racism is clear. We have repeatedly observed the “disappearing” of racial discrimination when government, legislative, or judicial officials claim that the problem has been solved. Similarly, by signing the CERD and then claiming substantial compliance, the US claims to have solved the problem of racial discrimination, though the evidence of radical disparity is clear. Unfortunately, then, our signing of the CERD may have damaged the fight against racial discrimination by providing the power structure with an “out.” In fact, argue the authors, “government action has played a primary role in ‘creating or perpetuating racial discrimination’”(12). The US government’s use of an overly narrow definition of racial discrimination and the detachment of it from historical and social context make this government report a prime example of structural racism, made worse by the fact that it is claiming to have made substantial gains in solving the very problem it has arguably promoted.

**Lawrence III, Charles R. “The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism.” In Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press, 1995.**

Lawrence tangles with the doctrine of discriminatory purpose, a legal standard which has entrenched the perpetrator perspective (Freeman) and the restrictive view (Crenshaw) in antidiscrimination law. Lawrence makes two central arguments against the intent standard. First, the burden of proof placed on the victim becomes very heavy and often impossible. Second, and more significantly, the intent standard ignores the fact of the injury itself, insisting on its irrelevance so long as it was not intended. Such a stance means that any injury stemming from unconscious racism is by definition beyond the reach of our legislative and judicial systems. As Lawrence notes, the Court “creates an imaginary world where discrimination does not exist unless it was consciously intended”(239). The standard emphasizes the perpetrator perspective and counts the victim’s injury as inconsequential. In contrast, Lawrence argues that behavior must always be contextualized. Thus, government actions must be examined to determine whether they have produced a symbolic message that is racially nuanced or meaningful to the

general population. In such cases, the court would have to apply strict scrutiny to the governmental action in question. The procedure would nullify the status-quo preference created by the intent standard.

Lawrence's article illustrates the presence of institutional racism in the law. Again, the law protects the status quo by in effect defending unconscious racism, which it refuses to acknowledge as real or actionable. To the extent that unconscious racism is a clear subset of institutional racism, then, its defense is self-perpetuating.

**Loury, Glenn. *The Anatomy of Racial Inequality*. Harvard UP, 2002.**

Loury produces a series of key distinctions on the way to arguing in favor of "race egalitarianism." Essentially, these distinctions cement his case against his version of structural racism, which he associates closely with racial stigma—the basic ways that African Americans are cognized in the United States, by others and (in some cases) by themselves.

1. racism and discrimination vs. racial stigma

Loury argues that racism and discrimination have to do with how people are treated; a focus on discrimination, for example, "yields a search for harmful or malicious actions as the treatment, using the law and moral suasion to curtail or modify those actions"(168). Such searches distract attention from the more important, and more far-reaching, quest for the social superstructure responsible for durable racial inequality. For Loury, that superstructure is racial stigma. A crucial feedback loop is at work: stigma was originally generated during the slavery era; stigma influences the behavior of those stigmatized; the behavior reinforces the stigma; and so on. This feedback loop is not dependent upon any particular bureaucratic or administrative policy. Thus, policies aimed at eliminating discrimination cannot reduce the influence of racial stigma, which, argues Loury, is now at the heart of the problem.

2. race-indifference vs. race-blindness

Loury makes this distinction by way of putting a finer point on his discussion (and rejection) of "color-blindness." "Race-blindness" is "the conviction that racial identity should play no part in the way that people are treated in public life, that we should be "blind" to race" in the realm of policy formulation and implementation (112). "Race-indifference" is "the practice of not thinking about race when determining the goals and objectives on behalf of which some policy is adopted"(133); it dictates that one should be indifferent to race when considering the possible results of a policy and when evaluating the actual outcomes of a policy. The adoption of a race-indifferent stance would eliminate any consideration of the racially disparate impacts of a policy or procedure. Loury rejects both (in most cases) for the reason explained below.

3. liberal individualism (indifference and blindness) vs. race-egalitarianism

“The phenomenon of racial stigma poses intractable problems for liberal individualism,” argues Loury (123). Social interactions have always been constrained by race; only recently have those constraints become more abstract (i.e., since the bureaucratic terminus of Jim Crow). Thus, “as a moral judgment, I hold that there is a fundamental tension between the ideal of attaining racial justice and that of respecting individual autonomy” because fully autonomous individuals will discriminate in contact (160). In contrast to an individualist view, race-egalitarianism “focuses explicitly on the status of groups” (112). To argue that either African American or white people can function as autonomous individuals is to ignore actual societal conditions, argues Loury.

*The Anatomy of Racial Inequality* offers a precise theoretical, philosophical, and economic basis for the rejection of liberal individualism in the realm of social policy. It also offers several definitions that can help us to locate racism (or racial stigma, as he would have it) within the deeper structures of society, including human cognition. Loury clearly states that “too many African Americans cannot gain access on anything approaching equal terms to social resources that are essential for human flourishing, but that are made available to individuals primarily through informal, culturally mediated, race-influenced social intercourse” (168). Loury’s book is a think piece, so it does not provide quantitative evidence for its arguments (though a wealth of quantitative support for his arguments exists elsewhere, including Brown in 2003). One disadvantage of his work is that its language, which is academic, dense, and stylized, may require “translation” for a wider audience. Another is that it does not lead to any particular course of action, rather making the case for a “hearts and minds” approach to reducing structural racism. This lack marks a significant difference from Brown’s work, which is overall less theorized but more quantitative and policy-oriented.

**Loveman, Mara. “Is ‘Race’ Essential?” *American Sociological Review* 64, no. 6. (December): pp. 891-898, 1999.**

In a lengthy response to Bonilla-Silva’s “Rethinking Racism,” Loveman elucidates critical problems with the structural model proposed by Bonilla-Silva located in his deployment of an “essentialist” model of racialization. Loveman suggests that Bonilla-Silva conflates racial categories with race as a social group, a move which overdetermines the relationship between the social circulation of racial categories and the complex constitution of racialized subjectivity. By too staunchly delimiting the boundaries of race and reifying race as an ontological category, Bonilla-Silva cannot accurately recount the processes and operations of racialization therefore obscuring analysis of its effects.

Drawing from Max Weber’s theory of “social closure,” Loveman proposes an alternative framework to structural racism for investigating race: race as a “category of practice.” This “comparative sociology of group-making” focuses on the historical contexts and symbolic processes through which race coheres, changes, and dissolves--as well as the consequences of racialization. Because race is not understood as an already-constituted category, this model can attend to the specificity and implications of group formation.

**Omi, Michael and Howard Winant. *Racial Formation in the United States*. New York: Routledge, 1994.**

Tracing three paradigms of 20<sup>th</sup> century sociological theory treating race—ethnicity, class, and Nation—Omi and Winant detail the ways in which race has been treated epiphenomenally and, as such, have failed to produce a comprehensive theory of the structural, material, and ideological interactions of race. While ethnicity theory was successful in challenging biological paradigms of race through its attention to race as a social phenomenon, its reliance on a European immigrant model promoted assimilation and failed to account for structural disadvantages located specifically in racial forms. In the class model, race is figured merely as a divisive ideological by-product of class organization. And models predicated on nation position race as secondary to nationalism and colonialism.

Omi and Winant generate the concept of “racial formation,” which is an intervention both in its treatment of the material and ideological faultline and the historically epiphenomenal theorization of race. Defined as “a sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed,” a racial formation framework examines how and what race comes to mean in particular sociohistorical spaces and how this meaning structures cultural organization and material outcomes (and vice versa). Deploying this method, the authors examine the shift in racial formation characterizing the Civil Rights movement which provoked activist mobilization in the form of the Gramscian “war of position.” Finally, Omi and Winant examine the racial formation undergirding the ascendancy of “the new right” in the 1980s onward.

**Sewell, William H. “A Theory of Structure: Duality, Agency, and Transformation.” *American Journal of Sociology* 98, no. 1 (July): pp. 1-29, 1992.**

In his article “A Theory of Structure,” Sewell produces a comprehensive theoretical treatment of the concept of “structure” as it has circulated in social scientific discourse by responding to three fundamental tensions in its conceptualization: the question of determinism, the capacity to exercise human agency, and the bifurcation of semiotic and material operations of structure. Because structure has historically been conceived as rigidly determinative of material relations, cultural values, and social subjectivity, it has been unable to accommodate either the exercise of human agency or the epistemological challenge of social change. By refiguring the relationship between material and semiotic organization of structure, Sewell presents new ways to conceive of agency and social change.

Critiquing and deploying Anthony Giddens’ “duality of structure,” Sewell suggests that structure should be understood as composed of both virtual (or ideal) schemas and material resources which each shape and produce the other. This interactivity between the constitutive forces of structure upset the determinism proposed by both Marx and Bourdieu in his articulation of “habitus” which Sewell characterizes through five key axioms: multiplicity of structures, the transposability of schemas, the unpredictability of resource accumulation, the polysemy of resources, and the intersection of structures. This model creates the possibility for human agency

in that the subject has the capacity to reinterpret and mobilize an array of resources in terms of schemas.

**Young, Iris Marion. “Equality for Whom? Social Groups and Judgments of Injustice.”** *The Journal of Political Philosophy* 9, no. 1: pp. 1-18, 2001.

In her article “Equality for Whom?” Young articulates a theoretical and philosophical foundation for responding to group injustice. Locating the root of inequality in choice and circumstance, political scientists have historically argued that inequality is produced and should be analyzed on the individual level. More recently, this philosophy has undergirded decisions to undo affirmative action and other forms of redress to group injustice.

In contrast to the individual-based model, Young suggests that not only are choice and circumstances shaped by greater forces than the individual, so too are patterned outcomes such as the distribution of resources. Elucidating a theoretical model for understanding these patterns, Young suggests that structures of power “describe a set of relationships among assumptions and stereotypes, institutional policies, individual actions following rules or choosing self-interest, and the collective consequences of these things, which constrain the options of some as they expand options for others.” When patterns of the inequitable outcomes can be located in structures, this should be understood as source of injustice constituting cause for political and legal recourse.

**Zong, L. “Structural and Psychological Dimensions of Racism: Towards an Alternative Perspective.”** *Canadian Ethnic Studies* 26, no. 3, 1994.

Providing a helpful historical overview of two trends in race theorizing—individual/psychological prejudice and institutional/structural racism—Zong argues that both conceptual trajectories need to be integrated. The racism-as-prejudice model, which argues that racism is primarily an individual attitude, often variant according to personality, was soon supplanted by a more complex structural model. The structural or institutional model argues that racism emerges from “political arrangements that produce discriminatory policies, programs and laws as well as economic arrangements that result in unequal opportunity and differential reward.” Despite the important advance in theorizing, Zong argues that structural racism fails because it needs to be able to account for the macrostructures of institutions as well as the micro properties of prejudice and human agency. When structural racism does theorize individual prejudice, it generally suggests that structures are exclusively causal.

Instead, Zong argues that macrostructural racism and individual prejudice be understood as co-productive and reciprocal. As evidence of these operations, Zong details the ways in which individual negative sentiments towards immigrants in Canada affected institutional change through the new, more restrictive immigration laws passed in 1994. Zong relies on a fairly narrow conception of structural racism in order to render this argument.