

Toward a Critical Race Theory of State

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Abstract

Critical Race Theory (CRT) is a broad theoretical framework created by synthesizing the main themes of scholars who have challenged dominant contemporary understandings of race and the law. Although a theory of state tacitly undergirds much critical race scholarship, no one has yet aggregated the literature's disparate assertions into a unified theory of state. This article represents an initial contribution toward that effort. Through comparison with Omi and Winant's (1994) Racial State Theory (RST), I identify six central tenets – racialization of the state; state as white institutional space; instrumentalism; interest-convergence; fluid boundaries; and permanent racist orientation – that characterize the CRT of State for the United States. I close by entertaining three questions Omi and Winant (2012) argue demonstrate the utility of RST and use them to illustrate where the CRT of State I outline achieves greater analytical purchase than RST.

Keywords

Critical Race Theory, CRT of state, political sociology, race and ethnicity, racial formation theory, state, white institutional space

Introduction

Critical Race Theory (CRT) is a broad theoretical framework created by synthesizing the main themes of scholars who have challenged dominant contemporary understandings of race and the law, as well as other aspects of social structural inequalities. Building on the pioneering work of civil rights activists and scholars, including Derrick Bell, Kimberle Crenshaw, and Richard Delgado,¹ CRT began as a racial intervention in Critical Legal Studies before growing into a distinct theoretical perspective of its own (Crenshaw, 2002). Since the 1990s, CRT has increased its reach and popularity, providing the intellectual and methodological foundations for work in the legal academy and various social sciences (Crenshaw, 2011; Graham, 2007; Ladson-Billings, 2011; Zuberi, 2011).

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As CRT expands its influence, proponents (Carbado, 2011; Chang, 1993; Hernandez, 2011; Lipsitz, 2011) and critics (Farber and Sherry, 1993; Rubin, 1992; Trevino et al., 2008) alike have called for adherents to specify the boundaries of CRT and develop the framework's analytical tools. This article answers that call by delineating the Critical Race Theory of the US state (CRT of State). Because CRT developed in the legal academy, the literature primarily focuses on racial assumptions and biases embedded in legal rules, precedents, and institutions. Very little explicitly discusses the nature of the US state in terms common to sociological theories of state. Central questions of state theory (e.g. effects of governmental forms on economic development) are generally well beyond the scope of CRT. Nevertheless, I contend that a theory of state is implicit in CRT. To demonstrate that theory, I combed authoritative CRT texts² for concepts and tenets that necessarily imply a particular orientation on issues of state theory. In the original sources, the tenets and concepts I highlight below are almost always applied to specific legal discussions and not questions of state. For example, Derrick Bell's (1980a) interest convergence theory (explicated below) originated as a debate over the legal appropriateness and possible abandonment of a principle of neutrality in the famous *Brown* (1954) decision. However, undergirding CRT scholarship are assumptions about how the state functions that suggest a shared theory of state. I aggregate these tacit assumptions and extrapolate their conclusions to reveal the CRT of State.

Literature Review

CRT is a literature built on contestations with other, often liberal, perspectives (Lipsitz, 2011). In their activism and writing, critical race theorists prefer to concentrate their analyses on liberal critiques of dominant ideologies. In this way, CRT extends progressive work, rather than focusing on – and thus implicitly re-centering – dominant perspectives (Crenshaw et al., 1995; Delgado and Stefancic, 1994). Keeping with that tradition, I bring the CRT of State into relief through comparison with an existent theory of race and state that challenges dominant paradigms.

Thus, this article benefits from the pioneering work of Michael Omi and Howard Winant (1994), whose theory of 'the racial state'³ is among the most developed and most influential (e.g. Alumkal, 2004; Gomez, 2002) sociological theories of race and state. Leading political sociologists traditionally conceptualize the state in terms of class relations (Block, 1977; Domhoff, 2002; Evans et al., 1985; Jessop, 1990; Offe and Ronge, 1982; Skocpol and Finegold, 1982; Useem, 1982; Zeitlin, 1980) and give little attention to race, especially how the state is itself shaped by race and racism. Omi and Winant convincingly detail the need for a race-based theory of state given the centrality of the state in racial history and the fact that race cannot be collapsed into ethnicity, class, or nationalism-based frameworks (see Omi and Winant, 1994: Chapters 1–3).

Conversely, race and ethnicity scholars discuss the relationship between race and state, to be sure (Bonilla-Silva, 1997; Du Bois, 1935; Carmichael and Hamilton, 1967; Cazenave, 2010; Feagin, 2006, 2010a; Feagin and Elias, 2012), but most are concerned primarily with how the state creates and perpetuates race and racism, rather than constructing a theory of state per se. Notable exceptions detail how race shapes the state without fully developing traditional theories of state. For example, Bonilla-Silva (1997) offers a 'structural interpretation' of racism that explains 'racialized social systems' generally but does not focus on the state exclusively. Similarly, Feagin (2006, 2010a, 2012) demonstrates how whites structured the US state at its founding to promote white supremacy and traces the effects of 'systemic racism' to the present day, but his Systemic Racism Theory (SRT) is more concerned with relative racial power than the inner workings of the state apparatus. His book-length applications of SRT to the US state address the impact of white racism on US political trends and discourse (Feagin, 2012; Harvey-Wingfield and Feagin, 2013), rather than engaging traditional state theory. CRT complements and extends sociological race scholarship

by specifying and analyzing racist assumptions and structures in legal institutions and written law that institutionalize white supremacy. The CRT of State thus provides an enhanced analysis of the processes and rules that form the backbone of the state and guarantee racial inequality.

Because CRT is a distinct and increasingly popular body of literature, examining its tacit assumptions is valuable in and of itself. Further, such an examination allows scholars to more easily distinguish CRT perspectives and put them in conversation – whether complementary or contradictory – with social science theories. Therefore, I begin by briefly summarizing Omi and Winant's Racial State Theory (RST) and highlighting where it harmonizes with CRT. I then contrast central tenets of RST with those of CRT. At each turn, I show where CRT breaks with RST conceptually and explicate the underlying assumptions that distinguish the CRT of State from RST. Finally, I define CRT of State on its own terms, apart from comparison, and conclude by specifying issues for which the CRT of State may offer greater analytical utility than RST.

Theories of Race and State

Again, this article exposes and develops the CRT of State that is tacit in existent CRT scholarship. Through comparison with Racial State Theory, I identify six central tenets – racialization of the state; state as white institutional space; instrumentalism; interest convergence; fluid boundaries; and permanent racist orientation – that characterize the CRT of State for the United States. These six tenets compose a CRT of State that views racial conflict as foundational, institutionalized, permanent, and a perduring guide for the development and racial character of state structures. Unlike existent theories of race and state, the CRT of State consistently identifies the source of state power and specifies how relative power influences the relationships racial groups have to the state. It also provides a means for structural and symbolic changes in race policy while suggesting questions for empirical research that other theories cannot entertain. Ultimately, the CRT of State accounts for the oscillating trajectory of previous social movements while providing insightful analysis of contemporary racial issues and opening avenues for research. Before discussing the CRT of State on its own terms, I reveal its tenets and their utility by contrasting the CRT of State with Omi and Winant's Racial State Theory.

Racial State Theory

Omi and Winant's Racial State Theory defines the state as a constellation 'of *institutions*, the *policies* they carry out, the *conditions and rules* which support and justify them, and the *social relations* in which they are imbedded' (1994: 83, emphasis in original). The state is inherently racial because every state action has racial consequences and because the state itself is structured to accomplish racial goals. In other words, the state both shapes and is shaped by racial conflict.

In RST, the state essentially consists of two parts: 1) government institutions and the personal, organizational, and political relationships they engender; and 2) social norms and ideologies that legitimate and constrain government action. Every action by every state institution consists of racially consequential decisions made by racially interested actors who are constrained by race-inflected social norms. The racialized nature of the state is clearest when race is an explicit concern. For instance, Native Americans regularly lobby the Bureau of Indian Affairs for access to grants and other resources. In these cases, the racial implications are obvious – an agency was created to attend to a racially defined group, is composed of agents with racial identities, and produces policies that impact the lives of a distinct racial group. However, the racial nature of the state also means that nominally race-neutral concerns are implicitly racial. To borrow Omi and Winant's example, the National Science Foundation is tasked with facilitating scientific research. However,

decisions about what constitutes legitimate science (e.g. IQ tests) have racial implications (Harding, 1993; Ladner, 1973). So then, state institutions and policies are inescapably racial.

Additionally, state institutions carry out policies in a racialized social environment that enables and constrains governmental activity on two levels. First, concrete interpersonal and institutional interests generate social, professional, and political networks that impact policy development (Cazenave, 2010; Shaw, 2009). For example, the Congressional Black Caucus may ally with the progressive caucus to propose increased funding for low-income housing. Secondly, ideological and historical norms create ‘rules of the game’ that ‘define the scope of state activity, establish “normal” procedures for influencing policy, and set the limits of political legitimacy in general’ (Omi and Winant, 1994: 83). These limitations often normalize white privilege and preclude potential means of resistance by people of color (e.g. belief that slavery reparations exceed the bounds of legitimate state action). Thus RST views the state as thoroughly racialized in every respect – personnel (Bolton and Feagin, 2004), networks (McPherson et al., 2001), institutional mandates (Alexander, 2010), policies (Massey and Denton, 1993), ideology (Brown, 2002; Feagin, 2013; Takaki, 2000), and organizational structure (Brooks, 1994; Delgado, 1997b). Ultimately, the state coordinates the racialized activities of its varied institutions in a way that both generates and responds to racial conflict in the wider society (Button, 1989; Massey et al., 2002). In the process, the state restructures itself to manage those conflicts.

Convergence between Racial State Theory and the CRT of State

Agreement that racism is a fundamental and ‘normal’ part of American culture generates much overlap between RST and the CRT of State. The most important aspects of convergence with regard to state theory are: 1) a shared definition of state that includes organizational and normative components; 2) recognition that the state both shapes and is shaped by racial conflict; 3) recognition that the state is always racial in effect, regardless of actors’ intentions or level of consciousness; and 4) the importance of ‘racial projects’ (Omi and Winant, 1994: 56) through which social actors advocate positions that necessarily include definitions of race and prescriptions for resource allocation, often via the state (e.g. black people are lazy; therefore welfare eligibility must include a work requirement).

These commonalities are significant enough to generate similar analyses of much of American racial history. Both theories conclude that the US government was founded on and is structured by whites’ theft of Indians’ lands and Africans’ labor. Both theories reject the notion that American racial history is characterized by a steady march toward equality and justice. They argue that progress toward racial justice is politically contingent and reversible, though to different degrees. Finally, RST and the CRT of State both see the black civil rights movement as a limited success, currently embroiled in a fierce battle against conservative retrenchment efforts. However, fundamental differences in their conceptualizations of state – specifically, divergent views of state autonomy and disagreement about whether the state is inalterably racially biased – distinguish Racial State Theory from the CRT of State.

Racial State Autonomy vs. CRT of State Instrumentalism

Racial State Theory – Inconsistently Autonomous State

A consequential discrepancy between Omi and Winant’s Racial State Theory and the CRT of State is their competing views of state autonomy. State autonomy is the degree of power the state is able to exercise when opposed by powerful social interests, particularly the capitalist class.

Within political theory, three schools of thought – autonomous state, pluralism, neo-Marxism – predominate. Advocates of the autonomous state perspective specify structural state interests apart from the capitalist class (e.g. elections) and highlight examples of the state pursuing its interests against capitalists' objections (Evans et al., 1985; Skocpol and Amenta, 1986; Skocpol and Finegold, 1982). Pluralists (Dahl, 1958, 1998; Polsby, 1960) argue that the state is effectively neutral. Any coalition of actors can potentially amass enough power to control the state apparatus and manipulate it according to shared group interests. On the other end of the spectrum are Marxists and neo-Marxists who adhere to an instrumentalist view of the state (Akard, 1992; Clawson et al., 1986; Domhoff, 2002; Jessop, 1982; Useem, 1979, 1982; Zeitlin, 1980). From this perspective, the state is a tool, created and completely controlled by the dominant social interest, namely the capitalist class. Thus, the state is inherently biased toward capitalists' interests. Instrumentalists acknowledge conflicts among members of the dominant class, but argue the state serves as a site for settling these disputes before ultimately pursuing the class's collective interests (Poulantzas, 1978; Useem, 1982).⁴

Concerning theories of race and state, whites replace capitalists as the relevant potentially dominant group.⁵ Theories of race and state differ with respect to how much autonomy the state has vis-à-vis whites' collective racial interests. The autonomous state perspective claims the state has independent racial interests that are historically contingent, but always theoretically and demonstrably distinct from whites' collective interests. A pluralist perspective assumes any coalition, regardless of racial makeup and interests, has the potential to control the state. Finally, instrumentalists view the state as an inherently white supremacist tool under whites' collective control.

Omi and Winant's Racial State Theory adopts an inconsistent view of state autonomy, alternating between autonomous and pluralist perspectives. On one hand, RST assumes an autonomous state, in which the state has and acts upon its own interests. In this view, the autonomous state has an independent, structural interest in maintaining political stability by protecting the racial status quo. Consequently, the state aggressively opposes people of color's social movements. On the other hand, Omi and Winant also theorize a pluralist model in which the state is a passive entity available to any sufficiently popular racial project. In pluralist mode, the state succumbs to the skill and force of sufficiently mobilized parties, whether those parties advocate conservatism or racial progress.

This inconsistency in RST is most apparent in Omi and Winant's explanation of 1970s racial politics. Discussing activists' setbacks following the passage of the major civil rights acts, the authors initially conclude: 'From the early 1970s of Richard Nixon to the early 1990s of Bill Clinton, *the state* has sought to absorb, to marginalize, and to transform (or 'rearticulate') the meaning of the reforms won in the earlier decade' (Omi and Winant, 1994: 78, emphasis added). Here, the state is the actor resisting minorities' efforts by 'marginalizing and rearticulating' their meanings. The state itself pursues various means of demobilizing the movement in an effort to achieve its interest in racial and political stability.

In a subsequent passage, however, it is no longer the state but 'the forces of racial reaction' – a power bloc of actors distinct from the state – that oppose civil rights: 'Beginning in the 1970s, the forces of racial reaction seized on the notion of racial equality advanced by the racial minority movements and rearticulated its meaning. Racial reaction repackaged the earlier themes – infusing them with new political meaning and linking them to other key elements of conservative ideology' (Omi and Winant, 1994: 117; original emphasis omitted). Ultimately, 'the forces of racial reaction' (i.e. the New Right and neoconservatives) formed a powerful coalition that produced the 'restructuring [of] the central dynamics – political, cultural, and perhaps most important, intellectual – of U.S. society' largely by controlling the state during the 'Reagan Revolution' (Omi and Winant, 1994: 132).

This example is typical of RST's oscillations between a racially interested autonomous state and a pluralist state under reactionaries' control. In the first instance, Omi and Winant personify the state to show its active role in 'rearticulating' and marginalizing antiracist social movement efforts. In the second, the state is overtaken by reactionary forces that use it to resist antiracist movements. Most of Omi and Winant's analysis of the trajectory (i.e. pattern of conflict and accommodation) of racial politics from the 1960s through the 1990s follows this pattern of oscillation.

CRT – Instrumentalist State

The CRT of State consistently adopts an instrumentalist position on state autonomy. In CRT, the state is not an actor with interests of its own. Rather, the state is a *tool* created, maintained, and used by whites to advance their collective racial interests. The state serves as the site for arbitrating disagreements between large blocs of whites and as an instrument for maintaining white dominance.

Derrick Bell's (1980a, 2004) interest convergence theory – a basic tenet of CRT (Delgado and Stefancic, 2001) – perfectly illustrates the CRT perspective on state autonomy. Although Bell was concerned with the practical effects of interpretations of the fourteenth amendment on integration efforts, his principles assume whites enjoy instrumental control of the state. Bell (2004) reads US racial history as the maintenance of 'silent covenants' among whites. The first type of covenants, 'race-sacrificing covenants', reflects the instrumentalist view that the state is the site of arbitration between competing factions of the dominant group: 'to settle potentially costly differences between two opposing groups of whites, a compromise is effected that depends on the involuntary sacrifice of Black rights or interests' (Bell, 2004). In other words, whites use minorities' state-dependent rights as bargaining chips to quell intra-racial disagreements among themselves. The second type of silent covenants, 'interest-convergence covenants', reflects whites' complete control over the state: 'Black rights are recognized and protected when and only so long as [white] policymakers perceive that such advances will further interests that are their primary concern' (Bell, 2004: 49).

Whites' control of the state is permanent and absolute, as evinced by their collective power to abrogate racial justice policies 'at the point that policymakers fear the remedial policy is threatening the superior social status of whites' (Bell, 2004: 69). Indeed, when race is a central concern, whites' collective control of the state is occasionally explicit. For instance, Haney-López (2006) found that in cases determining whether groups were racially white and thus eligible for naturalization, the Supreme Court abandoned scientific reasoning and relied on 'the understanding of the common [white] man' as its legal standard. While CRT uses Haney-López's analysis to implicate the courts in the social construction of whiteness, I argue that it also demonstrates CRT's presumption that whites have enjoyed instrumental control of the state since its founding. I find the same assumption in critical race scholarship questioning the constitutionality of direct democracy initiatives (Brittain, 1997; Delgado, 1994c; Fountaine, 1988), which suggests the CRT of State presumes that whites maintain instrumental control of the state presently. Empirically, the point is borne out most recently in Michigan, Nebraska, and Colorado – states with more than 80 percent white voter rolls – that subjected minorities' rights via affirmative action to popular vote.⁶ Together, analyses documenting courts' and legislatures' institutionalized delegation of state authority to whites' popular opinion evinces a derivative principle of the CRT of State, namely that the conceptual division between public and private action is a legal fiction. Claiming a clear division between these spheres is a tactic that only masks whites' instrumental control of the state.

The CRT of State's instrumentalist perspective is also implicit in its interpretation of the civil rights era. Where RST interprets the movement as an initially successful mobilization of people of color that won concessions against an oppositional state but declined once reactionary whites took

over the state, the CRT of State interprets the movement as a rare historical moment in which the white controllers of state saw convergence between their interests and those of black activists. When whites felt threatened by redress policies and no longer perceived convergence between their interests and those of people of color, they used the state to cease and reverse the gains of the civil rights movement.

Source of Difference – Naturalizing White Interests as State Interests

Racial State Theory and the CRT of State diverge on interpretations of the black civil rights movement, and much race politics generally, because they have different views of state autonomy. The difference in state autonomy itself derives from a subtler disagreement in the theories. RST oscillates between pluralist and autonomous theories of state because it naturalizes white interests and incorporates them as structural state interests. Whites' hegemony in the US produces a sense of whiteness as normative, a phenomenon that obscures the ways whites' lives are enabled by institutionalized racism (cf. Frankenberg, 1993; powell, 2000). Applied to theories of race and state, normalizing whiteness produces the sort of inconsistencies on state autonomy that occur in RST.

Consider again Omi and Winant's language suggesting an autonomous state opposed civil rights: 'the state has sought to absorb, to marginalize, and to transform (or 'rearticulate') the meaning of the reforms won' in the 1960s (Omi and Winant, 1994: 78). Omi and Winant present the state as the actor interested in reversing people of color's civil rights victories. But it is only because they anthropomorphize the state that it appears to have racial interests. The white 'silent majority' is the relevant – though unnamed – actor with interests in restoring white privilege by 'rearticulating' the principles and policies of the civil rights movement. Because Omi and Winant fail to name whites as the interested party in post-movement racial politics, RST is left with only two actors – racial minorities and the state – upon whom to inscribe racial motives. Consequently, in its autonomous state phase, RST effectively normalizes whiteness, obscuring whites' racial interests while highlighting those of people of color.

Most important for this comparison with the CRT of State, Omi and Winant's erasure of whites as racial actors forces RST adherents to represent whites' racial interests as fundamental state interests. Thus, for RST, the essential questions for analysis are: 'What are the dynamics of the relationships between the *state* and *racial minorities*? Why does a pattern of alternating activism and quiescence characterize both state racial activities and movement ebbs and flows?' (1994: 78; emphasis added). These questions presume racial minorities are ultimately in conflict not with whites, but with the state. This presumption manifests in RST reading the majority of American history accordingly: 'The state from its very inception has been concerned with the politics of race. For most of U.S. history, the state's main objective in its racial policy was repression and exclusion' (Omi and Winant, 1994: 81). Again, only the state and the racially oppressed appear as racially interested actors in the autonomous state version of RST. The failure to consistently describe whites' relationship to the state is a problematic aspect of RST that stands in stark contrast to the CRT of State's instrumentalist view, which consistently recognizes whites' controlling access to the state.

Unfortunately, the pluralist version of RST offers no escape. Under the pluralist conception of RST, the central questions for analysis change. As I rephrase Omi and Winant's research questions to fit the pluralist paradigm, they become: What are the dynamics of the relationships between whites, racial minorities, and the state? Why does constant activism by people of color produce, at best, policies that reflect 'their demands ... in a distorted fashion' (Omi and Winant, 1994: 106)? Why have 'forces of racial reaction' been so much more effective than antiracist forces at controlling the state?

Under basic pluralist assumptions, whites' numerical majority status suggests an answer to these questions. However, Omi and Winant insist that the state is always in a state of 'unequal equilibrium' and subject to sufficiently organized racial projects. They also argue that a key determinant of racial projects' success is activists' ability to compellingly articulate and advocate for their views. Consequently, the pluralist version of RST forces adherents to conclude that antiracist forces have simply failed to offer sufficiently compelling arguments for their interests. They must conclude, as Omi and Winant do, that resistance movements fail in large part because of activists' shortcomings:

... all [factions of the civil rights movement] failed to grasp the comprehensive manner by which race is structured into the U.S. social fabric. All reduced race: to interest group, class fraction, nationality, or cultural identity. Perhaps most importantly, all these approaches lacked adequate conceptions of the racial state. In their radical as much as their moderate phases, minority movements neglected the state's role in the organization and enforcement of the U.S. racial order, not to mention its capacity for adaptation under political pressure. The movement's limits also arose from the strategic divisions that befell it as a result of its own successes. Here the black movement's fate is illustrative. (1994: 111, original emphasis omitted)

Ultimately, the pluralist version of RST blames victims for their continued oppression.

As a rule, the CRT of State repudiates any analysis that blames people of color for whites' racial oppression. The narrative tradition within CRT (Bell, 1987; Delgado, 1989) and its method of utilizing outsiders' standpoints as loci for interpreting legal questions (Matsuda, 1987; Williams, 1991) take for granted that racial outsider status is defined by constant suffering and quotidian resistance. Significant for state theory, CRT highlights how the state backs and often expands whites' group power. From this tradition and method, I conclude that CRT perceives a clear power imbalance between whites and non-whites that impacts interpersonal relations and their relationships to the state. In this way, the CRT of State universally assumes: 1) as marginalized peoples, people of color have less power than whites; 2) said power imbalance ensures that whites alone have the power to do racism; 3) that power imbalance includes whites' power to exclude people of color from normal politics; 4) people of color persistently resist, but cannot unilaterally eliminate the racial power differential; and 5) whites' structural position, not their attitudes about non-whites' arguments, determines whites' interests and subsequent political actions. In CRT narratives, and now subsumed into the CRT of State, continued racial oppression is never attributable to people of color's organizational or strategic failures; it is solely indicative of power-dependent racism. Simply put, the CRT of State's assertion that whites have greater relative power and thus play the dominant role in determining race policy necessarily presumes an instrumentalist perspective with respect to state theory.

The Racial State or the Racist State: Racial Orientation of the State

The Racial State

A second divergence between Racial State Theory and the CRT of State centers on their assessments of the state's ability to pursue anti-racist projects. Omi and Winant view the state as flexible in its racial orientation. In both its pluralist and autonomous versions, RST assumes the state can pursue racist or antiracist projects with equal vigor. Omi and Winant acknowledge that the state has engaged white supremacist projects for most of US history, but they view that fact as a historical artifact that neither reflects nor determines the state's innate racial orientation. For Omi and Winant, the state has no fundamental racial orientation in and of itself. In this way, RST is diametrically

opposed to the CRT of State, which views the state as founded in and permanently structured to reproduce white supremacy. In short, the state apparatus is *racial* in RST, *racist* in the CRT of State.

Omi and Winant base their argument for a racial, rather than racist, state on two assertions. First, they view the history of racial change (e.g. from slavery to civil rights) as evidence of the state's antiracist potential, overtly referring to the civil rights era as 'the great transformation' of the racial state (see Omi and Winant, 1994: Chapter 6). Second, they argue that the state's tactics for reestablishing racial equilibrium after social movements include structural changes, such as new agencies and cooptation of activists, that necessarily create opportunities for racist and antiracist projects. Although 'state institutions often act in a contradictory fashion' (Omi and Winant, 1994: 82), racial state policy must 'preserve an overall unity' (p. 84) that could favor antiracism. Thus conceptualized, the state is capable of extraordinary transformations and cannot be said to have an inherent racial orientation.

The Racist State: State as White Institutional Space

Conversely, the CRT of State argues the US state was, is, and always will be white supremacist. The CRT of State views the state as a tool whose foundations, basic assumptions, and perpetual *raison d'être* are the promotion of white supremacy. As Bell (1991: 80) argues, the state has a 'preplanned equilibrium' and inalterable 'orientation toward dominance for whites over blacks'. Ultimately, where RST views the state as racially flexible, the CRT of State argues that its racist foundations and organizing principles make the state itself a racially biased tool. In other words, now that whites have created the state to be a sword, people of color cannot make it a plowshare.

From a CRT perspective, the US state is similar to the elite law schools Moore (2008) describes as 'white institutional space'. White institutional space occurs when whites exclude non-whites during the formative period of an institution and structure it to benefit themselves. Building on this exclusive and explicitly racist foundation, white institutional spaces perpetually reproduce white privilege by distributing institutional power along racial lines, normalizing whiteness, and installing organizational and cultural practices that justify white dominance (often tacitly). As a white institutional space, the contemporary state reproduces white dominance by design; it no longer requires either racial exclusion or explicit bigotry.

Critical race theorists reveal the state's institutionalized whiteness by documenting every element of white institutional space – initial racial exclusion, white-privileging demographics and power distribution, white-based institutional logics and cultural practices, signifiers and metrics that mask white power and normalize whiteness – in the historical formation and contemporary operation of the state.

Because race is a social construction, theorists first had to demonstrate how founders used the state to create and assign racial categories (Domínguez, 1994; Haney-López, 2006; Harris, 1993) before showing how whites used explicit laws and informally state-sanctioned actions (e.g. failing to enforce treaties with Native Americans) to eliminate non-white influence in the early construction of the state (Ancheta, 2006; Bell, 1987; Delgado et al., 2008; Haney-López, 2006; Motomura, 1990).

Having shown whites' exclusive control over state formation, critical race theorists document three primary means by which whites explicitly designed it to reproduce white privilege. First, whites organized the state around their group interests, creating agencies with racist mandates (e.g. Office of Indian Affairs in the War Department) and embedding racist projects at the heart of institutions. Indeed, the founders opted for a federalist structure partially for racial reasons (Bell, 1980b: 39–44) and wrote at least seven slavery-promoting provisions into the US

Constitution (Feagin, 2010b: 29). Second, whites attached citizens' legal rights to their racial designations (Harris, 1993; Williams, 1991). For instance, the confluence of race and rights determined 'who had the right to own property (whites), who did not (American Indians), and who became the object of property (African Americans)' (Moore, 2008: 14). Finally, whites established laws that perpetuate white advantage directly and indirectly. Anti-miscegenation laws (Haney-López, 2006; Williams, 1991: 17–18), immigration and citizenship restrictions (Chang and Aoki, 1997; Johnson, 1998), innumerable ethnic cleansing programs (Roberts, 1997), and ever-changing definitions of whiteness/non-whiteness (Delgado et al., 2008; Dominguez, 1994; Haney-López, 2006; Harris, 1993; Johnson, 1998; powell, 1997) not only served their nominal purposes, they also produced and maintain an artificial white majority. Whites used – and still use – their constructed majority to disguise racial tyranny as liberal democracy (Brittain, 1997; Delgado, 1994c). Taken together, critical race theorists' work establishing the state as historical and perpetual white institutional space suggests the CRT of State views white racism as a permanent feature of the US state.

With respect to the inseparability of whiteness and the state, CRT of State principles, again, revolve around three themes: concentration of power in white hands, tacit effects of white logic, and legal conventions that preclude racial equality. Scholars developed these principles as they battled claims that accommodating students of color's interests would compromise schools' quality standards (Crenshaw et al., 1995; Trubek, 2011). These principles, however, can be extended beyond the legal academy to speak to the CRT of State generally. For example, just as racial biases in constructions of 'merit' result in whites' promotion to – and people of color's exclusion from – positions of power in the legal academy (Barnes, 1992; Delgado, 1995, 2011; Lawrence III, 2001), the same is true of state offices. Consequently, the CRT of State holds that state power, like that in law schools, is perpetually centered in whites' hands, often through a series of facially race-neutral policies and traditions.

Similarly, the CRT of State incorporates critical race theorists' expositions of white assumptions in legal thought into its view of the state as a whole. Mainstream jurisprudence relies on white-privileging frames (e.g. colorblindness) that constrain liberal arguments (Bell, 1976; Crenshaw, 2002; Delgado and Stefancic, 1997; Lawrence III, 2001) and undergird conservative retrenchment efforts (Crenshaw, 1988, 1997, 2011; Gotanda, 1991; Lawrence III, 1987; Matsuda et al., 1993; Moore and Bell, 2011; powell, 2000; Ross, 1990; Williams, 1991).

These circumscribing frames manifest in fundamental legal principles – *stare decisis*, formal reasoning, impersonal objectivity, doctrines limiting judicial reach – that preclude considering racism from a systemic perspective and implementing effective remedial policies (Bell, 1992b, 2004; Crenshaw, 1989; Delgado, 1994b; Delgado and Stefancic, 1994; Matsuda, 1987). Applying these CRT arguments about legal structures to race and state theory, the CRT of State contends that the state is not racially neutral, but has been rendered fundamentally white supremacist and ill-equipped for antiracist projects.⁷

Because whiteness is institutionalized, the CRT of State predicts the state's white supremacist character will endure. Contemporary white-privileging conventions, such as those above, simultaneously reproduce whites' control of the state and severely limit antiracist efforts. State actors are perpetually drawn disproportionately from elite white communities whose experiences make them unsympathetic to people of color's plights (Delgado, 1989, 1996; Rosenberg, 2008; Spann, 1993; Williams, 1987). Regardless of their cultural roots, all American citizens and state actors are subject to an education system that devalues non-white perspectives and instills white-normative thinking (Crenshaw, 1989; Ladson-Billings, 2011; Moore, 2008; Williams, 1991). Therefore, it is reasonable to conclude that state power will primarily reside in the hands of people apathetic or hostile to antiracist projects.

There is also reason to believe tacit white-privileging norms will continue to characterize the state. Given the permanence of white prejudice theoretically (Bell, 1991, 1992a; Feagin, 2010b; Lawrence III, 1987; Moore and Bell, 2011; powell, 2000) and empirically (Bonilla-Silva, 2010; Picca and Feagin, 2007; Van Ausdale and Feagin, 2001), court decisions refusing to regulate discriminatory actions by ‘private actors’ suggest the state will continue to empower white racism and constrain non-white resistance (Gotanda, 1991). Indeed, contemporary whites skillfully exploit their control of the state to establish a perpetual right to pursue racist projects with state support. This presumptive right to do racism is evinced by juridical articulations of white innocence and victimhood (Delgado, 1994a; Gotanda, 1991; Moore and Bell, 2011; powell, 2000; Ross, 1990), which are in turn employed to execute racist projects – e.g. hate speech (Daniels, 2009; Delgado and Stefancic, 1997; Matsuda et al., 1993; powell, 1996) and nativistic paramilitary projects (Iijima, 1997; Johnson, 1998; Motomura, 1990). Sadly, recent incorporation of people of color into the state is unlikely to effect change. Whites tend to promote people of color who do not represent the racial communities from which they come, and those who do are severely constrained (Bell, 1991, 1992a: Chapter 6).

Source of Difference: Defining of ‘The Racial Order’

Contradictory definitions of ‘the racial order’ generate the differences between RST’s and CRT of State’s assessments of the state’s racial orientation. RST defines the racial order as the racialized social meanings and political roles that are ‘equilibrated by the state – encoded in law, organized through policy-making, and enforced by a repressive apparatus’ (Omi and Winant, 1994: 84). RST’s racial order is extremely variable because each structural adjustment to racial conflict constitutes a new order: ‘[c]hange in the racial order, in the social meaning and political role played by race, is achieved only when the state has initiated reforms, when it has generated new programs and agencies in response to movement demands’ (Omi and Winant, 1994: 88).

Conversely, the CRT of State defines the racial order in terms of power relations among racial groups (Crenshaw, 2002; Delgado, 1994c; Matsuda, 1987; Williams, 1991). From this perspective, the racial order is defined by white-on-non-white oppression (Delgado, 1997a; Iijima, 1997; Perea, 1997). Historically, changes in state structure fortified, rather than eliminated, whites’ material advantages – a pattern suggesting consistency of the racial order, not its instability (Bell, 1991, 1992a, 2004; Crenshaw, 1988, 2011; Harris, 1993).⁸ By the CRT definition, change in the racial order is achieved only when whites no longer control and inequitably disperse society’s material and psychological resources. To date, no such change has occurred.

CRT of State Self-Defined

Thus far, I have elucidated the tacit CRT of State by contrasting it with Omi and Winant’s Racial State Theory. Again, RST and CRT agree that a race-based theory of state is essential for explaining the US state and strategizing racialized social movements. That being the case, explicating the CRT of State on its own terms is necessary.

In the simplest terms, CRT of State embodies the following tenets:

1. Every aspect of the state is racialized, meaning it shapes and is shaped by racism.
2. The state is white institutional space and, thus, inherently white racist. The state cannot be considered racially neutral.
3. The state is a tool, not a social actor unto itself. Whites have instrumental control of the state.

4. With respect to racial justice, the state only changes in accordance with the principles of interest-convergence.
5. Boundaries, both theoretical and empirical, between state and non-state (i.e. public and private) actors are fluid and contingent.
6. Each of these elements is permanent.

Because racism is a fundamental part of American society, every aspect of the state is inescapably racialized. This racialization is due to the dialectic relationship between race and state, in which racial conflict structures the state and vice versa. Whites designed the state to be white institutional space, rendering it inherently racist and permanently under whites' instrumental control. Consequently, they can ensure that the state operates in their collective racial interests, effecting racial change only when and to the extent that it advances some other white concern. Whites' instrumental control also blurs the conceptual and practical division between state and non-state action, as whites' private actions are implicitly backed by state force. Indeed, the state is a vital instrument of racism because, through it, whites: define, unify, and organize themselves; arbitrate intra-racial disputes; mobilize and legitimize force; coerce people of color; and relieve their emotional costs by laundering racial oppression through a formal, 'impersonal' apparatus. Ultimately, because whiteness is tacitly institutionalized at its core and because its utility for white racism is so great, the characteristics of state defined in the tenets of CRT of State are permanent.

Discussion

I illustrate the utility of the CST of State by joining a recent debate in which Omi and Winant (2012) compare Racial State Theory's and Systemic Racism Theory's analyses of racial politics in the contemporary US. As with RST, Systemic Racism Theory (SRT) overlaps considerably with the CRT of State. For example, in his most recent articulations of SRT, Feagin (Feagin, 2010a: 80; Feagin and Elias, 2012: 950) incorporates Bell's interest convergence theory as the mechanism for advances toward racial justice in state policy. Consequently, this debate is a fruitful one for the CRT of State to join because many of the RST's challenges to SRT are germane to the CRT of State.

Omi and Winant's debate with Feagin and Elias (2012) hangs on three questions about contemporary racial politics in the US.⁹ I take each of those questions in turn from a CRT of State perspective, illustrating where the tenets and assumptions of the CRT of State outlined above generate insights and conclusions that diverge from Racial State Theory.¹⁰

What is the relationship between race and racism? On this question, RST argues that race can exist apart from racism. For Omi and Winant, 'race' reflects the dialectic between different racial groups' competing definitions of race. Racism is theoretically distinct, as it does not occur until essentialist definitions are combined with structural domination. On the other hand, SRT and the CRT of State 'argue that race is solely a process of racist domination; ... race does not exist outside of racism' (Omi and Winant, 2012: 962). This difference of positions is consequential because it precludes the CRT of State from agreeing with Omi and Winant's puzzling assertion that 'people of color have a lot of power in the production of racial meanings ... [and] people of color can practice racism as well' (2012: 963–964). From a CRT of State perspective, race was socially constructed by whites, for and through racist material exploitation. Further, whites' racial power advantage grants them exclusive power to *impose* racial meanings. That power imbalance also precludes people of color practicing anti-white racism. Thus, the CRT of State offers a promising theoretical home for scholars who view race and racism as inseparable and whose analyses of racial power reject the notion that people of color can practice racism.

This disagreement about the relationship between race and racism has serious implications for theorists of race and state. Scholars of racialized social movements, for instance, effectively side with RST or the CRT of State when categorizing collective actions and social movement organizations as disruptive or otherwise threatening to the status quo. Power analyses are necessary for distinguishing between social justice movements and oppressive [counter]movements. Where Omi and Winant (1994: 71–72) consider ‘strategic essentialism’ (e.g. formation of black professional organizations designed to increase black economic power at the expense of competing white professionals) racist, the CRT of State recognizes such collective actions by people of color as reasonable reactions to whites’ power to impose racial meanings on non-whites, including meanings that shift wealth from non-whites to whites. Although the CRT of State is anti-essentialist, it consciously stops short of deconstructionist stances that prohibit ‘strategic essentialism’ because some degree of racial cohesion is a necessary aspect of social movement organizing. From the CRT of State perspective, RST’s assertion that people of color can be racist against whites is akin to arresting a woman for wrestling her purse back from a thief. Recognizing justice requires accounting for actors’ relative power and the entire history of their relationship.

A second implication of their divergent definitions of race and racism also advantages CRT of State over RST. Specifically, CRT avoids RST’s *de facto* assumption that US history inevitably marches, however unsteadily, toward racial justice. The reversibility of political change is an empirical question that RST forecloses by asserting, ‘some of the major reforms of the 1960s have proved irreversible’ (Omi and Winant, 2012: 965). Ironically, they name the Voting Rights Act of 1965 as the primary example of irreversible ‘key victories of the 1960s’ and a case-in-point refutation of Bell’s interest convergence theory (Omi and Winant, 2012: 965–966). However, subsequent events – occurring less than six months after the publication of Omi and Winant’s assertion – indicate that a conservative Supreme Court is preparing to effectively nullify the Voting Rights Act by revoking its enforcement powers (Greenhouse, 2013).¹¹ The CRT of State does not make the mistake of presuming any civil rights gains are irreversible. Although the Supreme Court striking down key elements of the Voting Rights Act is unanticipated by RST adherents, it is precisely the kind of event predicted by the CRT of State.¹²

What is distinctive about our own epoch in the USA (post-Second World War to the present) with respect to race and racism? The preceding example of the Voting Rights Act suggests the CRT of State’s answer to RST’s second question. What is distinctive about the contemporary epoch? With respect to the nature of the racial state, nothing – at least nothing that is certain and irreversible.

Omi and Winant (2012: 964–965) argue that people of color’s current possession of political rights evinces a marked shift from Jim Crow to the era of formal equality. However, the CRT of State points out that black men gained voting rights during Reconstruction (1865–76) that were subsequently revoked in practice for nearly a century. Indeed, the Supreme Court asserted formal legal equality between races following *both* the Civil War and the Second World War (Moore, 2013). Nothing guarantees this history of granting rights only to repeal them will not repeat because people of color do not have autonomous power to guarantee their political rights if and when whites decide to rescind them. Indeed, Michigan Governor Rick Snyder (R) has eliminated the municipal governments and effective self-governing rights of nearly half (49 percent) of black Michiganders (Abbey-Lambertz, 2013). These events represent the *erasure* and *reversal* of racial progress that the CRT of State predicts, not the retrenchment by *rearticulation* predicted by RST. Ultimately, working from the CRT of State I have articulated, the issue is not whether people of color have political rights at any historical moment, but whether those rights rest on their own power or on whites’. So long as whites retain the power to determine people of color’s rights, there can be no assurance that whites will not use their instrumental control of the state to retract those rights. Ultimately, the question of where the power to guarantee political rights rests is an essential

one for all investigations regarding race and state. RST sidesteps that question, but it is central to the CRT of State.

What are the political implications of contemporary racial trends? This final question is large. Fortunately, Omi and Winant (2012: 969) narrow it by asking how ‘the New Jim Crow’ (Alexander, 2010) or even ‘the new slavery’ should be understood.¹³ These are straightforward questions for the CRT of State: they should be understood as exactly the kinds of oppression and sacrificing of people of color’s rights that the CRT of State predicts. RST’s assumption that the gains of the 1960s are permanent robs it of the CRT of State’s parsimony on this question. RST recovers by claiming ‘deeper issues’ than naked white racism have produced the ‘New Jim Crow’, namely the effects of Presidents Nixon’s and Reagan’s fear-inducing appeals for law-and-order and whites’ growing fears as they lose numerical majority status. However, this appeal to ‘deeper issues’ only highlights RST’s inconsistent theorizing of state autonomy. No matter how intense, conservatives’ rhetoric and whites’ fears would have no political impact if whites did not collectively maintain instrumental control of the state through which they could quickly impose their racial will on people of color. Again, the CRT of State explains what RST does not lead researchers to even investigate.

Conclusion

From its inception, CRT has been a conglomeration of implicit perspectives and explicit critiques, strung together by latent questions. As Brooks (1994: 85–86) says: ‘The question always lurking in the background of CRT is this: What would the legal landscape look like today if people of color were the decision-makers?’ Indeed, I argue the question undergirding CRT is larger still: What would the *US state*, including its legal landscape, look like if people of color were the decision-makers? In other words: What is the relationship between race and state, and how does that relationship impact state structure and practice?

Through a growing body of critiques (Crenshaw, 2011; Valdes and Cho, 2011) and proposals (Bell, 1992b; Brooks, 1994; Matsuda, 1987), CRT scholars are answering these questions in increasing detail. The process of imagining a different world – one in which people of color are the historical and contemporary decision-makers in the US – ultimately required implicitly theorizing the state as it is, resulting in the CRT of State unearthed in this article.

This CRT of State offers scholars new opportunities to address questions of race and state, in large part because it speaks to the essential questions of state more directly than established theories. It specifies the basis of state power (i.e. whites’ collective racial behavior) and level of autonomy (i.e. instrumentalism) more clearly and consistently than do existent theories. The CRT of State also retains greater recognition of the state’s historical flexibility (e.g. full racial retrenchment after advancements toward racial justice) than RST, and sheds light on empirical questions other theories preclude. Perhaps its greatest advantage is that the CRT of State fully acknowledges differential racial power and its consequences for the development (i.e. white institutional space) and racial character (i.e. perpetually white supremacist) of the state. These theoretical attributes and the CRT of State’s faithfulness to people of color’s communal narratives about how the racial state operates (Brayboy, 2005; Chang, 1993; Delgado, 1989; Feagin and McKinney, 2003; Feagin et al., 1996; Joseph, 2006; Thompson-Miller and Feagin, 2007; Wahad et al., 1993; Williams, 1991) recommend it to scholars addressing questions of race and state.

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Notes

1. For a complete list of attendees at the inaugural Critical Race Theory Workshop, see Valdes et al. (2002, cited in Crenshaw, 2011: 1263, n.24).
2. To avoid personally policing the boundaries of CRT, I limit my sources for this article substantially and include only work that is widely recognized as part of the 'CRT canon' (Crenshaw, 2011: 1281–2, at 95) or authenticated by recognized leaders of the movement that began among lawyers and law students in the 1980s. These sources include: scholarship by members of the inaugural CRT workshop (Crenshaw, 2011: 1263, at 24); scholars included in popular CRT readers (e.g. Crenshaw et al., 1995; Delgado and Stefancic, 2001); scholarship named in published annotated bibliographies of CRT (e.g. Delgado and Stefancic, 1993; Stefancic, 1997); and scholarship contained or cited in journals' special issues centered on developments in CRT (e.g. *Connecticut Law Review* 2011: 43(5), *California Law Review* (1997: 85(5)).
3. For a full summary and critique of Omi and Winant's Theory of Racial Formation, of which Racial State is a pivotal part, see Feagin and Elias (2012). For a philosophical treatment of race and state, see Goldberg (2002). For a multi-disciplinary discussion of the same, see Jung et al. (2011).
4. This synopsis is necessarily overly simplified. Each school of state theory is filled with nuanced development and debate. However, a simplified description of these poles is sufficient background for comparing RST and the CRT of State.
5. Although trends in whiteness studies suggest whites are highly heterogeneous, I refer to whites as a group because: 1) CRT argues whites consolidate in the face of challenges from nonwhites; and 2) whites, from virulent bigots to antiracists, share a 'hegemonic whiteness' that includes unifying myths (Hughey, 2010, 2012).
6. Whites dominated voter turnout in each of these elections: Michigan (85%), Nebraska (92%), and Colorado (81%).
7. That does not mean critical race theorists believe the state has no utility for antiracist projects, only that the state is ill-suited to antiracism. For arguments on law's limited utility, see Williams (1991) and Harris (1994).
8. The persistence of white supremacy despite structural changes, particularly those of the Civil Rights Era, is perhaps the single most dominant theme of CRT. These citations are merely exemplars.
9. Omi and Winant might well ask different questions of the CRT of State than they do of Feagin and Elias' systemic racism. I have not found it essential to the CRT of State to extend its framing analyses to the level of Feagin's White Racial Frame, for instance. Additionally, the CRT of State speaks to aspects of law and the state apparatus that are not Feagin's primary concerns. Nevertheless, Omi and Winant's questions and applications of racial formation theory/RST to contemporary issues offer a valuable opportunity to illustrate the utility of the CRT of State.
10. I noted earlier that Systemic Racism Theory overlaps with CRT of State but is preoccupied with different questions. Therefore, I focus only on how CRT of State engages Omi and Winant's questions and allow Feagin and Elias to speak for themselves (see Feagin and Elias, 2012; see also Golash-Boza's rejoinder, 2013).
11. During oral arguments, Justice Scalia indicated his opposition to the VRA by defining Section V as a 'perpetual racial entitlement' granted to people of color.
12. Even in the unlikely event that the Court upholds the VRA in full, the clear vulnerability of its key provisions still exposes and challenges the assumptions of RST.
13. Omi and Winant (2012) also discuss the difficulties the Obama presidency poses to Systemic Racism

Theory. Again, I allow Feagin and Elias (2012) to speak for themselves. For the purposes of this discussion, critical race theorists Moore and Bell (2010) offer an article-length analysis that reflects the CRT of State perspective.

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