Is There Any Justice in Being Other Than 'White' in Britain?

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Over the past five years numerous headlines have deconstructed racism as a political event. There is no escape from the politics of these events in the media; for example, *Racism on the Rise in Britain'* (Guardian, 2014); *Immigrants make UK racist* (The Independent, 2014); *Cameron to hold football racism summit* (Sunday Times, 2012); and, *You can't ignore racism and raise anti-racist children* (Guardian, 2015). Following Prime Minister John Major's political rhetoric calling for *policy [to] be colour blind* (1997:7) and Blair's commitment in the 1990s to address race inequities in schools (DfEE, 1997) there is a need for fresh thinking. Especially since behind such political rhetoric there was only superficial support to challenge racism (Gillborn, 2009). Indeed, on a wider horizon, despite education permeating the warp and weft of Western societies, the politics of 'White supremacy' (more commonly identified as racism) is so ingrained in institutional and political structures in the UK (Taylor, 2009), its grounding assumptions remain largely ignored.

Law and education literature

In trying to open critical discourses and new thinking countering racism (as understood in terms of the micro-dynamics of power and prejudice) academic communities appear equivocal. For educationalists, from a linguistic perspective their everyday work continually reproduces laws which in turn reproduce oppression. When considering such laws and their relationship with justice, new approaches to racism are required.

In contemporary literature three schools of thought regarding racism exist:

- Critical Legal Studies (CLS) – *a leftist legal movement* (Ladson-Billings, 2008: 10) that sought to challenge doctrinal *policy analysis in favour of a form of law that spoke to the specificity of individuals and groups in social and cultural contexts* (ibid).

- Critical Race Theory (CRT) presented as an outgrowth of CLS which seeks to address (directly or obliquely) the different ways assumptions about race affect key players within the legal system (lawyers, judges, and lay people) and have a determining effect on legal doctrine

- The cultivation of 'Whiteness' (as a further development of CRT) which has required education and educators to question *racist inequities* and *structures of oppression* (Gillborn, 2009: 55-58).

Structures of oppression and moves towards justice

To develop a greater understanding of racism it is useful to examine the structures of oppression in British society. However, from a methodological standpoint, it is important to remember Hammersley's (1992) call for caution and the ways structures of oppression can constitute false consciousness. In striving towards a just society, constituting equity and fairness for everyone independent of their colour, class, creed, sex or any other possible distinguishing category, structures that oppress individuals or groups need to be dismantled. As ethical grounds for ethical political practice, this remains a critically important objective for any civilised society. At the heart of this paper is an attempt to uncover a different ethico-political approach which questions oppression and facilitates justice. Such an approach adopts a different framing to this question. No longer is the concern with generating truth claims for knowledge located in the present, but with the '*event*' (Flint, 2015) of transforming societies as they move towards justice.

This approach is predicated on understanding the relationship between laws inscribed in everyday discourse (located in the present) and the risk and responsibility of a just future (located in the unknowable future rather than the programmable tomorrow). This debate opens space for understanding the way laws are constituted in everyday

language and are given extra powers in their reiteration, producing what Marxists have recognised as our repressive institutional apparatuses of the law and police; of government and education; of the family and the church; of business, medicine and health; and the military. Indeed, in a decisive step away from the CLS movement that continues to generate an '*assault on the legitimacy and authority of pedagogical strategies used in law schools*' (Cornell West, 1996: 196), the ethico-political approach explored in this paper gives primacy to understanding and deconstructing laws inscribed in everyday discourse.

Ethico-political approach towards justice

This approach is based on the deconstruction of the structures of oppression. According to Taylor and his colleagues one begins with understanding '*racism not as a fringe question… but as a volatile* **presence** *at the very centre of the world of British politics, actively shaping and determining the history not simply of Blacks, but of the country as a whole…*' (2009: 51, emphasis added). In ethico-political terms, however, there is a danger in accepting the contradictory logic that 'racism' is located at the centre of politics, rather than (despite the rhetoric of CRT/CLS) confined to the fringes of the body politic giving only marginal impetus to its main aims.

The practices of CRT/CLS are directed towards eliminating discrimination and other structures of oppression. It is concerned with abolishing, or at least minimising and to transforming the effects of racism in politics and practice in the name of justice. Nonetheless, in conceptual terms the relationship between law and justice within the CRT/CLS tradition hardly is rarely mentioned. This omission needs to be remedied. To understand justice and its relationship with the law in everyday practice we must consider the structuring of language and how it influences our conceptualisation of situations, people and practices.

Laws of everyday practice and restrictive education policy laws

Consider this simple proposition:

Mary: *I'd like to invite some friends around for a party this evening*.

In this case Mary wishes to invite some of her friends and there will be a number of people included in her invitation. There are also likely to be people she does not wish to be included and more generally a very large number of people who remain largely unconscious exceptions to such an invitation. Her statement, like the structure of language itself, involves a bond of inclusion/exception (Flint, 2015). Given the resources available to her, it also inscribes a restricted form of hospitality extended to those in her community. More generally, laws, are always conditional in accord with the bond of inclusion/exception principles of language.

This way of viewing everyday and more formal language gives us a way of critically examining what is actively excluded or more passively and unconsciously made exceptions within political events. Within the institutional apparatus of education, its moves to enact anti-discrimination policy and its concern to challenge discriminatory incidents, governmental powers to make exceptions become exponentially magnified. Gillborn's study of '*Education Policy as an Act of White Supremacy*' makes clear that Black students are being located within a state of exception by *'high-stakes testing, school performance tables and selection by "ability"… which are all being used increasingly – despite their known detrimental impact…*' (2009: 65). Although not expressed in these terms, his study provides strong evidence of the bond of inclusion/exception which structures education policy in England (Flint, 2015), paradoxically placing Black students in a permanent state of exception, in a state where they are known to exist but are no longer accorded any significant value. Ironically, this arises from the normative demands of our society for quality education, supposedly in accord with anti-discrimination policy.

Gillborn's work, in common with many involved in the CRT/CLS tradition, tends to be focused upon transformations in formal education in seeking justice for people of colour. Gillborn summarises existing education policy in the following simple formula

'PREJUDICE + POWER = RACISM' (Gillborn, 1990: 8)

Here the language of power brings with it the inclusion of all wider social structures mediating prejudice. Further *the simplicity and force of this formula [is] attractive to practitioners'* (ibid). Ironically, what is excluded from this tacit law are the moves towards justice which Gillborn and his many colleagues involved in the CRT/CLS tradition, are developing through their own deconstructions of education in society. Unfortunately CRT/CLS literature provides little conceptual understanding of what constitutes social justice in its continued appeal for deconstruction.

Moves towards justice in education

How are such moves to be understood? In the spirit of deconstruction that is pivotal to the work of the CRT/CLS movement, the answer to this question lies concealed within CRT/CLS literature. According to Taylor

> *CRT scholars believe that racial analysis can be used to deepen understanding of the educational barriers for **people of colour**, as well as exploring how these barriers are resisted and overcome'* (2009: 9, emphasis added).

It is apparent from Taylor's and others' writings that there are no delimitations upon who may be considered 'people of colour'. Equally, there are no restrictions placed upon overcoming any barriers they may experience. At the heart of Taylor's and others' involved in the CRT/CLS movement, there are moves towards an absolute hospitality given to all people of colour. In Derrida's texts, '*absolute hospitality* (2000: 25) is another name for justice and '*restricted hospitality'* (ibid) for the law. This raises the question of how, in ethico-political terms should we understand absolute hospitality in education?

Towards an ethico-political structuring of education

The answer to how we understand moves towards justice is again concealed within the CRT/CLS literature. One dimension of absolute hospitality is apparent from Taylor's express belief: namely, an *unconditional* openness to breaking down barriers for all 'people of colour' in education. A second dimension of such absolute

hospitality is evidenced in the '*counterpedagogical moves taken in the work of Chicago elementary teacher, Marva Collins, and Los Angeles high school teacher, Jaime Collins*' (Ladson-Billings, 2009: 30). Both of these teachers believe in the 'educability' of all students. Such educability is always *incalculable* and certainly beyond the hegemonic illusion of quantifiable measures of learning outcomes that obsesses the governmental apparatus of education in Britain (Flint, 2015). Such incalculability of the educability of all people of colour is the second dimension of the openness, characteristic of absolute hospitality, and hence moves towards justice. A third dimension of absolute hospitality is apparent from the continued growth, refinement and further elaboration of the concepts of racism and oppression in the CRT/CLS movement, which give an indication of the *impossibility* of revealing the pure presence of any event (Derrida, 1999). In cultivating justice education opens space to address such impossibility (Flint, 2015).

Concluding Remarks

This deconstructive reading of law and justice in education has opened an alternative space for thinking about justice and its relationship with the law for people of colour. It has begun to uncover a radically different ethico-political multi-dimensional structuring for the event of education in society. Consequently we can see there is always a heterogeneous relationship between the conditional/unconditional, calculable/incalculable, and, the possible/impossible dimensions of any event.

Such ethico-political structuring of an event provides new ways for challenging racism. Instead of a *conditional* welcome to people of colour in accord with extant law, as a society we have already begun to engage with moves towards justice that carry with them an *unconditional* welcome to **all** people of colour who live in this country, thus exhorting continued revision of the law. Rather than the current hegemonic focus upon *calculation* based on regimes of assessment and testing of learning within the narrowly conceived institutional apparatus of education in Britain (Flint, 2015; Flint and Peim, 2012), moves towards justice in the event of institutional racism demand space for the *incalculable* and challenging dimensions of education in every feature of our society.

Significantly the need to continue to challenge and counter the event of racism remains. In place of the *possibility* of an objective, measurable event of racism being addressed within the conditional and formal institutional apparatus, it is it time to recognise the *impossibility* of any such measures, and to open space for challenging educational thinking about racism and other forms of oppression in our institutions.

While not providing a direct answer the question raised in the title of this paper, it is hoped this brief introduction has opened space for fresh thinking about laws inscribed in everyday practices and moves towards justice in educational events concerned with addressing and challenging racism and other issues of oppression in society.

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