Towards an interest-convergence in the education of African-American football student athletes in major college sports

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The purpose of this article is to advance Derrick Bell’s (1992b) interest-convergence principle as an analytical lens for understanding the complex role of race in the educational experiences of African-American football student athletes. Currently, there is a scarcity of educational research that employs a critical theoretical perspective on race to address the education of African-American students in general, and student athletes in particular. This article includes American law cases that attend to the educational experiences of student athletes participating in high profile intercollegiate football programs. The inclusion of the legal literature is meant to adhere to the intellectual and methodological origins of critical race theory and to demonstrate how educational differences are institutionalized through coercion and ideology. The article concludes with a discussion of the interest-convergence principle as a means of investigating and establishing alternative strategies on behalf of the student athlete in order to improve his educational experience and academic outcomes.

Introduction

We cannot ignore and should learn from and try to recognize situations when there is a convergence of interests. (Derrick Bell, 2000, p. 9)

The profundity of Derrick Bell’s statement resides in its analytical insight given its simplicity. The above quote represents a timely mechanism for understanding the current educational experiences of African-Americans as the US celebrates the fiftieth anniversary of its Supreme Court’s decision to abolish sanctioned racial segregation of public schools. Some American legal and educational scholars have come to question the impetus for the decision. Moreover, they contend that Brown vs Board of Education 1954 has failed to improve the education of African-Americans (and Latino Americans) collectively (see Bell, 1972, 1983, 1987, 1992a, 1992b, 1995a, 1995b, 2000, 2004; Dudziak, 1988; Ladson-Billings, 1994; Siddle-Walker, 1996; Foster, *University of Wisconsin-Madison, Madison, WI 53706, USA. Email: jkdonnor@wisc.edu
Analysis of the causes and consequences of the *Brown* decision lends support to Bell’s theory of the importance of interest convergence. This article applies Bell’s (2000) convergence of interest construct to a contemporary example in an effort to understand the academic experiences of African-American male scholarship football student athletes in the US.¹

The education of African-American male student athletes in major college sports (i.e., football and men’s basketball) has received a significant amount of attention in recent years. Much of this attention has focused on the graduation rates of African-American male football student athletes at the Division IA level.² Black males constitute the majority of student–athletes participating in Division IA football, however less than half of them graduated from college between 1996 and 2002 (NCAA, 2003). According to the National Collegiate Athletic Association (NCAA) (2003) the graduation rate for African-American males in Division I football was 49%, compared to 61% for their white counterparts during the six-year period.³ These figures include student athletes who have either transferred schools or withdrawn from college after their junior year to pursue a professional football career in the National Football League (NFL). In addition, the NCAA (2003) findings account for student athletes admitted into academic programs such as education and engineering that require additional coursework and pre-professional training, thus extending their enrolment beyond the traditional four years.⁴

The NCAA’s (2003) findings are intriguing, for they counter earlier research that indicated a positive correlation between athletic participation and academic achievement in high school regardless of race (see Braddock, 1979, 1981, 1982; Trent, 1982; Harris, 1991, 1998).⁵ Moreover, the NCAA’s use of a six-year scale to measure the academic outcomes of student-athletes is troubling considering five years is the maximum a student athlete can receive financial assistance from an athletic scholarship.⁶ This means that in addition to graduating at a lower rate than white male student athletes, African-American student athletes, if they earn a college degree, are more likely to do so once their athletic eligibility has expired. Social activist and sociologist Harry Edwards (1984) argued that race plays a role in the education of African-American male student-athletes in three ways:

They must contend, of course, with the connotations and social reverberations of the traditional ‘dumb jock’ caricature. But [Bl]ack student athletes are burdened also with the insidiously racist implications of the myth of ‘innate [Bl]ack athletic superiority’, and the more blatantly racist stereotype of the ‘dumb Negro’ condemned by racial heritage to intellectual inferiority. Under circumstances where there exists a pervasive belief in the mutual exclusivity of physical and intellectual capability. (p. 8)

The aforementioned quote suggests that the low academic outcomes and the ‘Black dumb jock’ caricature are the result of a disparate educational experience (Edwards, 1984, p. 8).

The purpose of this article is to advance Derrick Bell’s (1992b) interest-convergence principle as an analytical lens for understanding the role of race in the educational experiences of African-American football student athletes at elite intercollegiate athletic programs within the US. Rooted in American contemporary
legal studies, the interest-convergence principle is an analytical construct of critical race theory (CRT) that explains how laws and policies established to promote equality maintain the status quo. Currently, there is a scarcity of educational research that employs a critical theoretical perspective on race to address the education of African-American students in general, and student athletes in particular. By examining the fundamental relationships among ideology, culture, status and action in the education of African-American male student athletes in college football, this article will illustrate through the legal literature how race continues to serve as a ‘constitutive element and an organizing principle’ in determining the life chances of African-Americans within the context of education (see Winant, 2001, p. 21). Lastly, the goal of this article is to contribute to the knowledge base on the education of African-American male student athletes by expanding the current discourse on the relationship between race and education conceptually and methodologically.

To achieve this goal, I will first articulate the popular perceptions of sport in America, African-American male participation in sports, and intercollegiate athletics in the US. Next, I will briefly discuss and critique the traditional theoretical frameworks (e.g., conflict and social psychological) used to explain the educational outcomes and experiences of Black males in major college football. This step is necessary in order to highlight the gaps in the literature and justify the call for a theoretical and analytical approach that is race-centred. Thirdly, I will explain critical race theory and its use in education. This article will also include cases from the American legal literature that attend to the educational experiences of African-American male student athletes. The inclusion of the legal literature is meant to adhere to the intellectual and methodological origins of critical race theory and to demonstrate how educational differences are institutionalized through coercion and ideology. This article concludes with a discussion on the interest-convergence principle to explain the educational process of African-American male student athletes and suggest an alternative strategy to improve their academic outcomes.

**Popular perceptions of sports, African-American male participation and intercollegiate athletics in the United States**

Sport in America is generally seen ‘as a positive and progressive racial force, an avenue of racial progress and an arena of racial harmony … the great racial equalizer, and a leader in Civil Rights, if not a literal model for race relations in the United States’ (see Hartmann, 2000, p. 232). For African-American males in particular, the dominant thought regarding their participation in sport is that it legitimately: (1) provides educational opportunities and social mobility both individually and collectively; (2) furnishes ‘role models and heroes’ for African-American youth, as well as leaders and spokespersons for the race (emphasis added); and (3) serves as a venue for ‘social interaction and community building among African-Americans as well as an important symbol of racial accomplishment and a source of [racial] pride and collective identification’ (Hartmann, 2000, p. 233).
Studies investigating African-American male participation in sport suggest that because of the legacy of racial discrimination in US education and occupational attainment, sports’ ethos of merit and emphasis on egalitarian principles make it a more appealing and viable career option (see Rudman, 1986). Therefore, Black males participating in sports are more likely to possess aspirations for pursuing sports professionally than their white counterparts because they believe they will be treated fairly. As a result, African-American males will generally interpret their involvement in intercollegiate (and interscholastic) sports as a conduit for achieving their career aspirations.

Moreover, by being affiliated with a ‘non-profit’ institution like a college or university, intercollegiate athletics perpetuates the dominant perception of sport. This stands in contrast to professional athletics where money is an explicit motivating aspect (e.g., player’s and coaches’ salaries, and endorsements/marketing of products) on the part of all participants. Athletics connected to higher education projects ‘patriotic views consistent with America’s professed ideals of racial justice and equality of opportunity’ because it is seen as a contributing to the school’s mission of promoting physical fitness, learning the value of hard work and perseverance, and being goal-oriented (see Edwards, 1985, p. 373).

I submit that the popular perceptions of sport in the US, African-American male participation in athletics, and collegiate sports has precluded critical examinations into the possibility that these young men may be exploited for their athletic ability within the context of education. Usage of the term exploited is appropriate considering the fact that these young men are recruited and admitted to these institutions primarily because of their physical talent. Concomitantly, Black males dominate football, which in some instances generates enough revenue to financially underwrite non-revenue-producing athletic sports such as crew, swimming, tennis and golf that are overwhelmingly populated by white middle and upper class students. In other words, sports, and intercollegiate athletics in particular, have not been viewed as mechanisms that can work against the academic advancement of African-American males. It is this construction of underachievement that I explore in this article.

I contend that for African-American males who possess the physical potential or talent to participate at the level of Division IA football, education no longer only serves their interests. Rather, the Black male student athletes’ educational interests converge with the interests of other individuals and his institution. In other words, while a Black male football student athlete may be interested in receiving a college education and graduating (or playing professional football), other educational stakeholders such as football coaches and institutions of higher education may be more interested in the personal (i.e., cash bonuses for meeting academic incentives) and institutional advancement gained through association with or exploitation of the physical talents of these student athletes. Institutional advancement refers to the generation of revenue from the following sources: (1) television and radio contracts; (2) sale of merchandise with the institution’s logo; (3) ticket sales and concessions; (4) corporate sponsorship for advertising space during events or within the stadium; and (5) rental fees charged from luxury skybox suites to wealthy fans/supporters. The
advancement of a university with a highly competitive football program also translates into ‘intangible benefits’ such as increase in donations from alumni/a, and a rise in the number of student applications and enrollments. In other words, the more successful a football program is, the more that institution is able to enhance its image and market itself as a first-rate university.

**Traditional theoretical approaches to understanding the education of African-American male student athletes**

**Conflict theory**

Traditionally, researchers have employed a conflict theoretical perspective to addresses the larger social structures within which college athletics and student-athletes operate and to explain the academic outcomes of student athletes. Conflict theorists specifically cite the commercialization of college football as the reason for the low graduation rates of Black scholarship football student-athletes (Eitzen, 2001; Gerdy, 2000; Patterson, 2000). This position asserts that the significant sums of money involved with the cost of operation and generation of revenue has created a ‘win at any cost’ ethos. To illustrate, the 2002–2003 total expenses for football at The Ohio State University was $14,728,966, while their total revenue for football was $52,742,278 (OSU Department of Athletics, 2003). Subsequently, the win at any cost ethos creates a culture within these athletic programs that leads coaches to place pressure on student athletes to dedicate the majority of their time to sports instead of academics. During the football season, a student athlete’s weekly schedule (in addition to taking a full-time student course load) includes mandatory activities such as: practice, weight training, team meetings, position meetings, film study, treating injuries, team dinner, and travel for away events. According to Harris (2000), most participants of major intercollegiate athletics spend approximately ‘28 hours per week on their sport alone, 12 hours attending class per week and an additional 12 hours preparing for class per week’ (p. 48).9

Consequently, the institutional pressure to compete annually for prestige and revenue not only defines a student athlete’s existence on campus; it explicitly tells him where to concentrate his energies for the next four to five years. Furthermore, the pressure to field a successful team contributes to the academic underachievement of student athlete because it leads to the recruitment and enrolment of student athletes who may not meet the minimum academic requirements for admission. For instance, it is not uncommon for student athletes in major football programs to be admitted with SAT scores that are 200 points lower than those of their non-athletic peers (Lapchick, 1996; Eitzen, 1999). The following universities have had a student athlete to non-student athlete SAT score discrepancy of 200 points or greater: (1) Clemson University at 271; (2) Duke University at 304; (3) the University of Colorado-Boulder at 216; (4) Rice University at 382; (5) the University of Michigan-Ann Arbor at 364; (6) UCLA at 229; (7) Stanford University at 298; (8) the University of Arizona-Tucson 213; and (9) the University of Florida-Gainesville at 319 (Eitzen,
As a result, these student athletes are ‘specially’ admitted to universities and encouraged to enrol in ‘easy’ courses caught by ‘sympathetic’ professors who may not expect much intellectually and are more inclined to provide a less rigorous curriculum.

The conflict position also points out that in extreme instances the pressure to win has led to the outright manipulation of a student athlete’s education. For example, in October of 2000, the University of Minnesota-Twin Cities athletics counselling office was found guilty by the NCAA of ‘preparing approximately 400 pieces of course work at various lengths, including theme papers, homework assignments and take-home exams, for at least 18 men’s basketball student–athletes’ from 1994 to 1998 (Friedenthal, 2000, p. 2). The National Collegiate Athletic Association also cited the University of Southern California of engaging in ‘unethical conduct-academic fraud’ from the summer of 1996 to March 1998. Personnel employed in the Office of Student Athlete Academic Services, including the coordinator of tutor services, ‘knowingly committed academic fraud by conducting research and substantially composing and typing portions of a paper submitted by a football student–athlete’ (Friedenthal, 2000, p. 2).

**Social psychological theory**

The social psychological framework on the other hand, addresses the micro-level issues affecting the education of African-American male football student athletes in its acknowledgment of the role(s) of racial, gender and athletic identity. The emphasis on identity is useful because it not only speaks to the formation and uniqueness of the athletic identity, it also acknowledges the potential conflict between student and athletic roles. The social psychological perspective is primarily concerned with knowing ‘under what social circumstances people behave in predictable ways’, rather than how individuals contribute to or influence a situation (Eitzen & Sage, 1997, p. 6). As such, social psychologists contend student participants of major college sports experience a set of challenges distinct from their non-athletic peers upon matriculating to campus (Snyder, 1985; Hughes & Coakley, 1991; Parham, 1993; Watt & Moore III, 2001; Howard-Hamilton & Sina, 2001). Parham (1993) identifies the following challenges as unique to student athletes:

(a) learning to balance academic and athletic pursuits; (b) adapting to a certain degree of isolation from social and more ‘mainstream’ activities; (c) managing success or lack thereof; (d) attending to their own physical health in a more deliberate way so as to minimize injury and subsequent rehabilitation; (e) satisfying multiple relationships, including those having to do with coaches, parents, friends and community; and (f) terminating an athletic career and finding other activities in which participation will bring about a very similar, if not a more heightened level of satisfaction. (p. 412)

Summarily, the social psychological framework focus is on the behaviours and attitudes of individuals who share common characteristics (Eitzen & Sage, 1997). The use of identity is an attempt to understand the similarities among student athletes regarding their academic outcomes.
Critique of traditional theories

As useful as these dominant theoretical perspectives have been for providing some understanding of the issues that contribute to the academic shortcomings of student participants in high profile football programs, the conflict and social psychological frameworks do not consider the historical and contemporary status of being the Other and an athlete in the education of African-American male student athletes. In the instance of conflict theory, its causal explanation does not reveal how Black student athletes and other educational stakeholders’ (i.e., teacher, parents, peers and coaches) conscious and/or unconscious subscription to the dominant ethos of sport may contribute to academic underachievement. According to Edwards (1984):

...as soon as someone finds that a particular [B]lack youngster can run a little faster, throw a little harder, or jump a little higher than all of his grammar school peers, that kid becomes-something 'really special'. What this usually means is that, beyond sports excellence, from that point on little else is expected of him. (p. 9)

Conflict theory’s deterministic focus on the commercialization of intercollegiate football renders it unable to articulate instances in which student athletes are academically successful in spite of the pressure for athletic success.

Similarly, the social psychological framework’s emphasis on sameness prohibits exploration or consideration of difference within this marginalized group. For example, because the majority of African-American student athletes that participate in Division IA football come from urban areas and lower socioeconomic backgrounds, the social psychological perspective postulates their chances at academic success are less likely. Moreover, social psychologists do not critically employ race to investigate why major college football programs heavily recruit and admit student athletes from ‘property-poor’ school districts that have historically failed to meet the educational needs of African-Americans (Harris, 2000, p. 47).

Furthermore, both the conflict and social psychological frameworks do not critically examine how the student athlete himself and other educational stakeholders may view the social experience of being an athlete as an adequate accomplishment. Finally, both theoretical frameworks position the student athlete as passive rather than as an active agent in the education process, therefore framing the educational experience as a static instead of a dynamic phenomenon.

A critical race theoretical approach

Critical race theory (CRT) is a theoretical position that challenges mainstream notions of race, racism and racial power in American society. Originating in part from the American critical legal studies paradigm, CRT is an intellectual and methodological perspective grounded in the particulars of social reality based on an individual’s lived experiences, and his or her racial group’s collective historical experiences within the US. Critical race theory rejects the following entrenched positions on racism:
Critical race theory situates race at the center of its critique through the following analytical and methodological strategies: (1) incorporating the absolute centrality of history and context (Crenshaw et al., 1995); (2) rejecting notions of objectivity and neutrality; (3) recognizing that racism is endemic within US society (Bell, 1995a); (4) employing a variety of theoretical traditions including feminism, Marxism, post-structuralism, and critical legal studies in order to provide a more complete analysis of raced people (Matsuda et al., 1993); (5) incorporating an individual’s ‘experiential knowledge’ in order to posit that ‘reality’ is situational and socially constructed (Ladson-Billings, 1998, p. 11); and (6) working towards the elimination of racial oppression, with the goal of ending all forms of oppression (Matsuda et al., 1993).

What this means is that race is more than categorical differences in phenotype, motivation, attitude or socioeconomic status. CRT treats race as a social construct situated in the lived experiences of a group of people with a common history and ancestry (Haney Lopez, 1996). The reliance upon a group’s historical and current social standing is essential to explaining racial inequity both collectively and individually. Critical race theory also ‘provides an entrance into how large political structures [schools, universities, and sports] influence opportunity without minimizing the role of individuals as important actors in the access and opportunity process’ (Tate, 2003, p. 122). According to Harrison and Malia Lawrence (2003) CRT ‘exposes the inherent racism in sports and institutions of higher education’ (p. 376). In short, critical race theory contends that modern racism does not occur indiscriminately (see Derrick Bell, 1999). Instead, modern racism and racial inequity is systematic because it privileges and normalizes ‘cultural messages and institutional policies and practices’ that function to advantage whites—both directly and indirectly.

Moreover, critical race theory provides a more thorough explanation of the complex ways one’s everyday experiences as a racialized Other are permanently designed. In summary, critical race theory is able to destabilize fixed, biologically determined notions of race in legal discourse by ‘privileging contextual and historical description over transhistorical or purely abstract ones’ (Matsuda et al., 1993, p. 3)

**CRT in education**

In education, scholars and researchers using critical race theory have specifically questioned the manner in which race, racism and racial power function in the schooling of African-Americans and other students of colour. For example, Ladson-Billings and Tate (1995)—the first to introduce CRT to education—posit that, unlike the theoretical considerations of gender and class which have ‘proliferated [and] continue to merit considerations as theoretical models for understanding social inequity’, race has been ‘untheorized [and] not been systematically employed in the analysis of educational inequality’ (Ladson-Billings & Tate, 1995, pp. 49–51).
Yet, Ladson-Billings and Tate (1995) point out that class and gender separately or in conjunction cannot ‘account for the extraordinarily high rates of school … failure among African-American … males’ (Ladson-Billings & Tate, 1995, p. 51).

Likewise, Parker and Lynn (2002) comment that educational research that focuses on students of colour has traditionally: (1) ignored historically marginalized groups by simply not addressing their concerns; (2) relied heavily on genetic or biological determinist perspectives to explain away complex social educational problems; and (3) ‘epiphenomenized’ or de-emphasized race by arguing that the problems minority students experience in schools can be understood via class or gender analyses that do not fully take race, culture, language and immigrant status into account (p. 13). For Parker and Lynn (2002), methodological questions regarding race have ‘often remained unaddressed or become shrouded in a language that fails to address important questions regarding the origins, uses, and abuses of social scientific inquiry and the importance of minority representation in this enterprise’ (p. 13). In instances of epistemological biases in qualitative research, CRT raises ‘important questions about the control and production of knowledge—particularly knowledge about people and communities of color’ by asking the researcher to reveal his or her political, intellectual/academic and personal viewpoint(s) (Ladson-Billings, 2000, p. 272).

Still in the formative stages, critical race theory in education is not about ‘coloring scholarship’ or replacing one discourse for another (Ladson-Billings, 2000, p. 271). Like their legal colleagues, critical race scholars in education are committed to promoting social justice in the form of equitable access to quality educational opportunities for all students of colour. Unfortunately, many studies in education that employ critical race theory have been totally reliant on narrative methodologies to explain the material inequities and outcome disparities in the education of African-American and other students of colour. Absent from these critical race studies is the legal literature. Inclusion of this literature would not only adhere to the roots of CRT but would also provide a richer context for explaining the educational experiences of African-American student athletes in major college sports.

The legal literature and the educational experiences of African-American male student athletes in major college sports

The American legal literature is able to provide a fuller understanding of the educational experiences of African-American male Division IA football student athletes in two ways. The first is by contextualizing their relationship to an institution of higher education and the athletic department specifically. The second is by presenting examples of personal and institutional practices that influence their educational opportunities. The American judicial system recognizes the relationship between a university or college and enrolled students as contractual (Orenstein, 1996). An institution’s course catalogues, bulletins, class schedules, codes of conduct, financial aid awards, degree requirements and other policies or regulations represent contracts between the student and the university (Hilbron, 1995). Student athletes, however, have a ‘special relationship’ with a post secondary institution because they have been actively
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recruited to perform a specific function (see Johnson, 1985; Hilbron, 1995; Davis, 1996; Ornstein, 1996; Emerick, 1997; Grant, 2003). This special relationship is governed by the terms and conditions stipulated in the National Letter of Intent (NLI) and an athletic scholarship as determined by the Collegiate Commissioners Association (CCA) and the NCAA. The National Letter of Intent is an independent program recognized by the NCAA as certification of a student athlete’s intent to enrol at a specific college or university for the upcoming fall academic term. Similar to the NCAA, institutions voluntarily participate in the NLI.10

The National Letter of Intent is a ‘binding agreement’ between a prospective student-athlete and a university that has offered admission in exchange for their participation in athletics for one year (CCA, 2004). A purpose of the NLI is to ensure that the signing student athlete receives financial support for their participation in intercollegiate sports. Under CAA (2004) and NCAA (2004) guidelines a student athlete is found in ‘breach’ of the agreement by either not attending the signing institution or enrolling at another university that participates in the National Letter of Intent program. Consequently, the student athlete is penalized by preclusion from athletic competition and is required to complete course work in residence at the latter institution for two calendar years.11 The NLI not only compels the student athlete to attend the named institution for the forthcoming academic year or term, it also legally insures and protects the school’s interest because it prohibits other universities from contacting the signed student athlete. Furthermore, if the student athlete decides to transfer to another institution, both NCAA (2004) and CCA (2004) regulations require the athlete to obtain a Qualified Release Agreement, to abrogate the binding arrangement under the NLI.

Accompanying the National Letter of Intent is a financial aid agreement or athletic scholarship denoting the specific monetary amount and instalments to be awarded upon matriculation. An athletic scholarship stipulates that in exchange for athletic participation, the institution/athletic department agrees to pay for tuition, housing, meals, books and fees of the student athlete (NCAA, 2004). The NCAA bylaws governing the administering of athletic scholarships limits its award annually or on a term-by-term basis depending on institutional policy. In other words, unlike traditional scholarships, an athletic scholarship is not automatically renewed and not allowed to exceed an academic year. This financial ‘agreement’ between an institution and a student athlete is non-negotiable. Of greater import is that ensuing scholarship awards are contingent upon the student athlete’s physical performance, meaning that a college or university is not financially obligated to a student–athlete if an injury inhibits their participation in athletics. In essence, both the National Letter of Intent and the athletic scholarship ‘impose rules and regulations upon the student athlete in excess of those ordinarily implicit in the relationship between the university and the non-athlete student’ (Johnson, 1985, p. 4). Moreover, because a student athlete is bounded to a stricter contract than non-student athletes, under the expressed terms, the student athlete’s physical talent and ability are the property of the institution.

Treatment of both the National Letter of Intent and an athletic scholarship as a contractual relationship between a student athlete and a university legally establishes
a set of ‘expressed’ and ‘implied’ duties between both groups. Under the terms and conditions expressed by both documents the expectations for the student athlete and university are made explicit. In return for their participation in athletics the institution agrees to bear related costs. The legal case responsible for establishing this understanding as precedent is Taylor vs Wake Forest University of 1972.

Taylor vs Wake Forest University

In Taylor vs Wake Forest University, Gregg Taylor, a former football player brought suit against the school alleging breach of contract. The basis of Taylor’s lawsuit was that the teams’ practice interfered with his academic progress. According to the case, Taylor’s grade point average at the end of the Fall semester of 1967 (which coincided with the conclusion of the football season) was a 1.0 on a 4.0 scale (p. 3). At the time of his enrolment, Wake Forest required the following grade point average(s) for enrolled students: (1) 1.35 grade point average after a student’s first year; (2) 1.65 after their sophomore year; and (3) 1.85 at the end of their junior year (p. 3). Subsequently, Taylor informed the football coach that he would no longer participate in practice the following spring until his grades improved. Taylor left the football program his junior year after earning a 2.4 grade point average. As a result of Taylor’s decision, the athletic department terminated his scholarship, forcing him to bear the financial expenses to continue his enrolment.

Upon earning an undergraduate degree in 1971, Taylor brought his suit against Wake Forest University citing wrongful termination of scholarship and sought recovery for the educational expenses incurred. It was Taylor’s contention that the university had orally agreed that ‘in the event of any conflict between educational achievement and athletic involvement, participation in athletic activities could be limited or eliminated to the extent necessary to assure reasonable academic progress’ (Taylor vs Wake Forest, Opinion, p. 2). Unfortunately, Taylor’s case was dismissed with the opinion:

Gregg Taylor, in consideration of the [athletic] scholarship award agreed to maintain his athletic eligibility and this meant both physically and scholastically. As long as his grade average equalled or exceeded the requirements of Wake Forest, he was maintaining his scholastic eligibility for athletics. Participation in and attendance were required to maintain his physical eligibility. When he refused to do so in the absence of any injury or excuse other than to devote more time to studies, he was not complying with his contractual obligations. (Taylor vs Wake Forest, Opinion, p. 5).

Taylor vs Wake Forest is significant for several reasons. First, the American court system recognized the written and signed communications between a student athlete and a post secondary institution as an ‘express contract’, in which both parties must meet the stated obligations (Johnson, 1985, p 6). Second, as an educational matter, this case demonstrates an instance where a student athlete’s educational opportunity was adversely affected by the affirmative conduct and competing interests on the part of the athletic department. In addition, it points out the mediocre academic expectations student athletes in major college sports are held to by their ‘biggest’
supporters. Finally, this case is useful because it illustrates how a student athlete participating in a major collegiate sport can be academically successful despite the competitive interests of the institution. Unlike the majority of students participating in Division IA football, Taylor was able to recognize that his educational interests did not converge with the competitive interests of Wake Forest University’s athletic department.

Unfortunately most African-American males involved in big time college sports are unable to share Taylor’s experience, because they either ignored or could not identify a convergence of interest until their contract expired. Former Creighton University basketball player Kevin Ross personifies this point.

Ross vs Creighton University

*Ross vs Creighton University*, 1990, is a legal case that speaks to the issue of an ‘implied duty’ on the part of university regarding a student athlete. Ross, a former basketball player for Creighton University, filed a lawsuit against the institution for alleged educational malpractice. Similar to medical and legal malpractice lawsuits, educational malpractice claims assert that educational institutions have an obligation to educate students in such a manner as to impart a minimum level of competence in basic subjects (Sobocinski, 1996). Underpinning a plaintiff’s assertion of educational malpractice is an institution’s *moral* obligation to provide an education, hence justification for the term ‘implied duty’. In other words, the plaintiff’s actions are peripheral in the court’s determination of the quality of education offered by the college or university. Ross sued on the grounds that the university ‘injured him by recruiting him to attend the school on a basketball scholarship’ (p. 1).

At the time of his matriculation in 1978, the average American College Test (ACT) score for students admitted to Creighton was 23.2 points, Ross scored ‘9 points out of a possible 36’ on the exam (p. 1). According to the complaint, Creighton knew he was not prepared academically to handle college level coursework, ‘but still kept him eligible for the basketball team by recommending that he enrol in “bonehead” courses such as ceramics, marksmanship and the respective theories of basketball, track and field, and football’ (p. 1). The complaint further points out that:

Under its rules, the university would have never accepted the pursuit of this esoteric curriculum by a non-athlete. After four years, when his basketball eligibility expired, Ross had earned only 96 of the 128 credits required to graduate, maintaining a ‘D’ average. His reading skills were those of a seventh grader; his overall language skills, those of a fourth-grader. In order to get Ross remedial education, representatives of Creighton made arrangements for Ross to attend Chicago’s Westside Preparatory School. (pp. 1–2)

Unfortunately, like the Taylor case, Ross’ suit against his former institution was unsuccessful. According to the court:

Education is an intensely collaborative process requiring the interaction of student with teacher. A good student can learn from a poor teacher; a poor student can close his mind to a good teacher. Without effort by a student, he cannot be educated. (p. 6)
In short, the court viewed Ross as integral to his education. *Ross vs Creighton*, however, is able to provide a richer or more complete understanding of the educational experiences of African-American student athletes. It reveals that, like all students, these students believe educational institutions have an obligation to educate them. This was the basis of Ross’ educational malpractice claim. According to Davis (1992) educational malpractice is premised on the notion that:

> ... academic institutions have a legal obligation to instruct students in such a manner as to impact a minimal competence in basic subjects. The theory behind educational malpractice has also been described as placing a duty on schools to provide that standard of education appropriate for the particular student. (p. 61)

Finally, *Ross vs Creighton* is an illustration (albeit extreme) of how a Black male’s physical talent and academic development can be manipulated for the competitive interests of other educational stakeholders.

Unlike conflict and social psychological theoretical frameworks, a critical theoretical framework rooted in the legal literature is better equipped to highlight the synergistic nature of education. In both law cases discussed, the legal literature was able to identify systematically the practices that contribute to academic shortfalls of Black male participants in intercollegiate athletics. The utility of the legal literature is derived from establishing a pattern, and providing insight into strategies that seek redress. Nevertheless, when dealing with issues of race, racism and racial power, traditional mechanisms such as the law by themselves are insufficient. The emphasis of traditional American legal discourse on equality preserves the status quo, because its purpose is to recreate and legitimate the myth of individual merit. As a result, the impact of judicial remedies is never understood in collective terms.

Critical race scholars have pointed out that American jurisprudence has historically played and continues currently to play a determinate role in much of social inequity that exists among racial groups. Moreover, race is a central force shaping the dynamics of American law. Therefore, theories that employ analytical lenses such as the market system, the pluralist tradition, identity, social role conflict, and classical and neoliberalism cannot provide a complete assessment of social disparities that impact the lived experiences of nonwhites absent a consideration of race. Thus, applying the CRT framework to the case of student athletes is informative. In particular, evaluating the educational experiences of African-American male student athletes through the interest-convergence construct is useful in investigating institutions such as universities and athletics because it exposes their limitations and contradictions. An interest-convergence examination of these neutral spaces also demonstrates how the low academic outcomes for this group of African-American students are not fortuitous.

**The interest-convergence principle**

Interest-convergence is a mode of explanation within critical race theory conceived by legal scholar and social activist Derrick Bell (the founding father of CRT). The interest-convergence principle is an analytical construct that considers the motivating
factors for laws and social policies established to eradicate racial discrimination or provide remedies for racial injustice on the basis of ‘merit’ and ‘colour-blindness’. In addition, this analytical viewpoint suggests that terms such as merit and colour-blindness serve as code words for laws and policies that secure and advance the political and economic interests of upper class whites. The interest-convergence principle is premised on a racial groups’ legal history within the US. This legal history serves as a precedent or social context for demonstrating how judicial relief for racism only occurs when it directly or indirectly furthers the best interest of the nation rather than the group that suffered the injustice. Bell (1992b) contextualizes and defines the interest-convergence construct as a phenomenon that occurs:

In the absence of overt racial discrimination of a character that shocks the public conscience, the Fourteenth Amendment, standing alone, will not authorize judicial relief providing an effective remedy for [B]lacks where the remedy sought threatens the superior societal status of middle and upper class whites. It follows that the availability of Fourteenth Amendment protection in racial cases is not actually determined by the character of harm suffered by [B]lacks or the quantum of liability against whites. Rather, racial remedies are the outward manifestations of unspoken and perhaps unconscious judicial conclusions that the remedies, if granted, will secure or advance societal interests deemed important by the upper class. Racial justice or its appearance may, from time to time, be counted among the interests deemed important by the courts and the society’s policymakers. (p. 646)

Bell, a former attorney with the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund during the Civil Rights-Desegregation-Movement, employed the interest-convergence construct to explain how the US Supreme Court reached its decision in the Brown vs Board of Education case of 1954 (1992a, 1993, 1995a, 2004). Bell (1992a, 1993, 1995b, 2004) argued that the Brown decision was not the result of America coming to terms with its democratic ideals or moral sensibilities. According to Bell (1992b):

The Brown decision represented an unstated understanding that legally-sanctioned segregation no longer furthered and in fact was now harmful to the interests of those whites who make policy for the country ... The greater receptivity of the Court to the plaintiffs’ arguments in Brown can’t be explained ... by the evidentiary record in the school cases of harm done to [B]lacks by segregated schools. That evidence was controverted by experts for the states. Until Brown, [B]lack claims that segregated public schools were inferior had been met by orders requiring merely that facilities be made equal. Courts had been unwilling to substitute their judgments for those of the legislatures as to the wisdom of school segregation policies. The decision in Brown to break with its long-held position on these issues, despite the language of the opinion, can’t be understood without some consideration of the decision’s impact on interests other than those of long-suffering [B]lack children and their parents. Brown, while taking from whites the benefits of segregation...has proved a greater value to whites than [B]lacks. Certainly, it has been a great blessing to whites in policy-making positions able to benefit from the economic and political advances at home and abroad that followed abandonment of apartheid in our national law. (pp. 639–640)

For Bell (1995b), the Supreme Court was more interested in providing ‘immediate credibility to America’s struggle with communist countries to win the hearts and minds of emerging third world people’ than in doing what was morally right (p. 233).
Bell contends further, that public schools were purposely selected, because they ‘represented a far more compelling symbol of the evils of segregation and a far more vulnerable target than segregated railroad cars, restaurants, or restrooms’ (Bell, 1995b, p. 229). Thus, under the interest-convergence principle, passage of Brown is best understood as ‘progress’ requiring the coincidence of a pressing issue, more than a commitment to justice.

Law professor Mary L Dudziak (1988) conducted a historical document analysis of formerly confidential Supreme Court memos and other classified government materials to test the validity of the interest-convergence principle, and concurred with Bell that Brown’s passage occurred more as a matter of national interest on the part of America, rather than a remedy for past social wrongs based on race. According to Dudziak (1988):

In the years following World War II, racial discrimination in the United States received increasing attention from other countries. Newspapers throughout the world carried stories about discrimination against non-white visiting foreign dignitaries, as well as against American blacks. At a time when the US hoped to reshape the postwar world in its own image, the international attention given to racial segregation was troublesome and embarrassing. The focus of American foreign policy at this point was to promote democracy and to ‘contain’ communism. However, the international focus on US racial problems meant that the image of American democracy was tarnished. The apparent contradictions between American political ideology and practice led to particular foreign policy difficulties in countries in Asia, Africa and Latin America. US government officials realized that their ability to sell democracy to the Third World was seriously hampered by continuing racial injustice at home.

In essence, the interest-convergence construct—as articulated by Bell (1992b) and substantiated by Dudziak (1988)—not only illustrates how practices, policies, and laws designated to provide equal access and fair opportunities benefit the dominant class more than the group that suffered the racial injury. The interest-convergence principle articulates how race is an underwriting factor in most political, social and educational decisions.

**Interest-convergence and African-American student athletes**

Law Professor Timothy Davis (1995) applied Bell’s (1992b) interest-convergence principle to explain the integration of African-Americans into major college sports. According to Davis (1995) during the early 1900s, prior to World War II, ‘[B]lack athletes who played for white institutions were channelled into sports such as track and field’, because they did not involve the type of ‘intimate physical contact’ football and basketball required (p. 8). However, by the end of World War II, the practice of racial exclusion changed as a result of economic factors both inside and outside of college athletics and higher education that led to the integration of football and men’s basketball. Davis (1995) posits:

Increased commercialization of college sport was one of the most significant intrinsic factors. It resulted in African-American student-athletes gaining greater access to
opportunities to compete. Commercialization enhanced the pressure on colleges to field winning teams. This, in turn, propelled colleges to recruit and obtain the services of the most talented student-athletes regardless of their color. While moral desire to end segregation may have prompted many to seek the integration of organized collegiate sport, the economic interests of others may have been of primary importance. (p. 100)

Assertions on the recent participation of Black males in American sports are not new. Dyson (1993) argues:

The prohibition of athletic activity by [B]lack men in mainstream society severely limited publicly acceptable forms of displaying [B]lack physical prowess, an issue that had been politicized during slavery and whose legacy extended into the middle of the twentieth century. Hence, the potentially superior physical prowess of [B]lack men validated for many by the long tradition of slavery that built American society, helped to reinforce racist arguments about the racial regimentation of social space and the denigration of the [B]lack body as an inappropriate presence in traditions of American sport. (p. 66)

These explanations regarding African-American male involvement in collegiate sports are noteworthy, for like the Taylor and Ross cases they suggest that the reasons for the presence of African-American males are not empathic or altruistically motivated. Although there are high-profile Division IA football programs with a legacy of displaying a commitment to the academic achievement of their African-American student athletes, (e.g., The Pennsylvania State University) for the majority of Black males who participate in major football programs either earning a college degree or developing a strong academic skill-set in technology, literacy, science, numeracy, history and the humanities is unlikely.

Therefore, the application of the interest-convergence construct to examine the educational experiences of these collegiate students is timely. The interest-convergence principle in this instance is advanced as a way to highlight the past and current educational location of African-American male student-athletes. Critical race studies using the interest-convergence construct acknowledge and make linkages to the ways through which secondary education may affect the collegiate setting with regard to student academic outcomes. According to Benson (2000), much of the data on the under-achievement of African-American male football student athletes has focused on either the deficit perspective or on the ‘problems within society at large suggesting that these students’ underachievement may be caused in part by the way schools are structured to maintain the prevailing social and economic order’ (p. 223). A greater value in using the interest-convergence construct to examine the educational experiences and academic outcomes of these Black students is learning how they make sense of their educational experience. In other words, it is a ‘culturally sensitive’ methodology because it pays strict attention to the internal and external processes responsible for the construction and deployment of their interests (Tillman, 2002, p. 3). Benson’s (2000) study of African-American football scholarship student athletes at a Division I program reveals that the ‘marginal academic performance’ of the participants was a ‘phenomenon created by a series of interrelated practices engaged in by all significant members of the academic setting’ (e.g., peers, coaches, advisors, teachers/professors, and the student-athlete) (p. 226).
Similarly, the interest-convergence construct accounts for and incorporates the differences that exist among Black student-athletes. Thus, it provides a way of understanding differing experiences and outcomes within this particular racial group.

Concurrently, the interest-convergence principle provides proactive strategies for Black scholarship student athletes in order to align their educational interests with the self-interests of other individuals. An approach under this principle is for student athletes to acknowledge their ‘property interests’ in their physical ability and athletic talent. Again, the legal literature is helpful, because the US courts have acknowledged the opportunity to participate in intercollegiate athletics, specifically at the Division I level, as property. In *Regents of the University of Minnesota vs National Collegiate Athletic Association*, 1976, the United States District Court for the District of Minnesota, Fourth Division found that the NCAA did not afforded three basketball players due process. According to the case, University of Minnesota’s basketball players, Philip Saunders, Michael Thompson and David Winey were found in violation of NCAA eligibility rules. The university afforded the three basketball players a due process hearing that found that they did not violate NCAA rules and should not be declared ineligible. Based on these findings, the University of Minnesota-Twin Cities refused to declare the three players ineligible. As a result, the NCAA placed the university’s entire athletic department, including all teams on probation.

It was the university’s contention that it had a ‘superior legal duty which … prevents it from fulfilling its [contractual] duty to the NCAA. That superior legal duty is its constitutional obligation to afford its students the rights guaranteed to them by the Fourteenth Amendment’s due process clause’ (p. 3). According to the University of Minnesota’s *amicus* brief:

> Because participation in the basketball program at the University of Minnesota may lead to a career in professional basketball and because this participation is an important part of the student-athlete’s education, the court is satisfied that if the Minnesota Supreme Court were presented with this issue it would conclude that the interest in question is a substantial property right … The court is convinced that, on this rationale alone, the Minnesota Supreme Court would conclude that this interest is a substantial property interest … In summary, the opportunity to participate in intercollegiate basketball at the University of Minnesota is a property right entitled to due process guarantees.

The court agreed with the university, citing that ‘Minnesota would be irreparably harmed’ and directed the NCAA to remove its sanctions against all University of Minnesota’s teams. In this case, the university based its argument on the premise that its economic interests and those of the student athletes who participate in big-time college sports such as basketball are a form of property.

Although participation in athletics is not a constitutional right (see *Albach vs Odle*, 1976), a student is entitled to public education as a property interest that is protected by the US Constitution (see *Goss vs Lopez*, 1975). In addition, attending an institution of higher education is a property right (see *Hall vs University of Minnesota*, 1982). Simply accepting that one has entered into a binding contract with an institution is insufficient. African-American student athletes in Division IA football must recognize
their ‘property rights’ in participation and place education at the fore. This intersection of race and property in education contributes to a better understanding of the educational experiences of these particular students. For instance, encapsulated within the ‘intersectionality’ of race and property is the right to use and enjoyment (Crenshaw, 1995; Ladson-Billings & Tate, 1995). For student athletes of African descent, rights to use and enjoyment illustrate who is most likely to reap the benefits of their participation in sport at all levels not just college. Reputation and status property refers to the practices of major football programs that exclude African-American student athletes from the larger collegial setting of the university through in-season and ‘off-season’ activities that diminish their status as a student.

**Conclusion**

Unfortunately, the majority of critical race studies in education are too preoccupied with ‘telling a story’ to explain the educational experiences and outcomes of African-Americans and other students of colour. The omission of the legal literature by these studies reduces their ability to identify how difference is systematically created through coercion and ideology with the participants acting either consciously or unwittingly. Exclusion of the legal literature also limits these critical race studies’ capacity to ascribe a richer context because they cannot make linkages to similar social institutions. In the case of African-Americans, the legal literature is able to articulate their structural and epistemic position in American society. For example, Derrick Bell’s postulation that the *Brown* decision was the result of a convergence of interest is supported by the following legal incidents that were motivated by race and white supremacy: (1) the justifications for the enslavement of Africans; (2) the US Constitutional interpretation of citizens of African descent; (3) universal white male suffrage; (4) *Dred Scott vs Sandford* 1856; and (5) the Hayes-Tilden compromise in 1876 (Bell, 2004).

More importantly, the legal literature is complementary to a narrative approach because it substantiates the ‘stories’ being told. Finally, the inclusion of the legal literature adheres to the intellectual and methodological origins of critical race theory. That said, critical race theory and interest convergence are intellectual and political endeavours that ask and attempt to answer the following questions surrounding access to and equity in the distribution of social resources such as education: Who gets what (e.g., placement in advanced courses)? How and why do they get these advantages? Why did someone else or another group not receive the same benefits? Why does the same group continue not to benefit when all things are ‘equal’? Is this a historical pattern or an isolated case?

At a time when the majority of African-American males are under some form of control by the US judicial system and American society constructs and transmits the image of the Black male athlete (and entertainer) as the highest form of racial achievement (Western *et al.*, 2003), educational researchers and other social scientists need to ask new questions—questions such as how and why it is that these ‘chosen’ individuals collectively are under-achieving academically. Given that the majority of
African-American males that participate in Division IA football will not play the sport professionally, earning a college degree is paramount for basic social and economic participation in technological and science-based fields such as ‘computers, biochemistry, food technology, bio-genetics, communications and electronics [which represent] the new sites of power, control and wealth’ in an increasingly post-industrial America (Madhubuti, 1998, p. 5). Critical race theory offers a means to better recognize and more fully understand the forces that have constructed a system in which African-American athletes are cheered on the field by wealthy alumni and powerful fans while at the same time denied opportunities to earn the degree that could lead to wealth and power of their own.

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Notes

1. From henceforth referred to as interest-convergence.
2. Division IA (and Division I) is term used to classify colleges and universities that participate at the highest level of athletic performance, as well as to demarcate institutional prestige. In a more technical sense, Division IA group institutions of higher education are able to meet the following criteria as stipulated by the governing body of intercollegiate athletics in the United States—the National Collegiate Athletic Association (NCAA) (2004): (1) Provide at minimum ‘76.5% of the 85 grant-in-aid’ to football over a ‘rolling two-year period’; (2) ‘Annually participate in a minimum of five regular-season home contests against Division IA opponents’; (3) ‘Sponsor a minimum of 16 varsity sports with a minimum of six varsity sports for men and a minimum of eight varsity sports for women’; (4) ‘Annually offer a minimum of 200 athletics grant-in-aid to student athletes’; and (5) ‘Be able to demonstrate on a yearly average attendance of 15,000 for all home games’ (p. 4).
3. The National Collegiate Athletic Association is the governing body for America’s intercollegiate programs at both public and private four-year institutions of higher education. It is responsible for establishing requirements regarding athletic scholarships, recruitment of athletes, and student athlete academic eligibility. The membership of the NCAA is divided into three categories: (1) Division I; (2) Division II; and (3) Division III. Institutions with football programs are subdivided into Division IA and Division IAA. Division IA represents highest level in terms of prestige and competition. I will use the terms Division I and Division IA interchangeably only to report statistical findings as reported by the NCAA.
4. The graduation rates for football student–athletes at less prestigious colleges and universities, and lower level(s) of athletic competition are as problematic. For example, the graduation rate for Division II African-American male football players is 34% and 45% for his White counterpart (NCAA, 2003).
5. Graduation rates are considered as an indication of the quality of education and educational opportunity provided to enrolled students (see Smith & Walker, 2001).
6. A student athlete is eligible for a fifth year of financial support if he has not played in a game during his freshmen year (red-shirt), or is able to apply for a medical, military or religious exemption.

7. For example, Ohio State University’s football coach Jim Tressel’s contract for the 2002 season contained scheduled payments for reaching the following academic incentives: (1) $30,000 for a graduation rate of 50%; (2) $50,000 for a graduation rate of 60%; and (3) $100,000 for a football student–athlete graduation rate of 70% (Miller, 2002). The same contract rewarded Tressel if the following percentage of scholarship athletes had a cumulative grade point average (GPA) of 3.0 or higher: (1) $20,000 for 25%; (2) $35,000 for 40%; and $50,000 for 60% (Miller, 2002). Finally, Jim Tressel’s 2002 contract contained a scheduled bonus payout based on the following percentage of scholarship athletes that had annual cumulative increases: (1) $10,000 for 70%; (2) $15,000 for 80%; and (3) $25,000 for 90% (Miller, 2002).

8. Although there is no proof that substantiates that fielding a successful football team contributes to these occurrences, there is very little empirical data that completely dispels this commonly held belief.

9. Others have put the amount of time student athletes spend on athletically related activities closer to 60 hours, once ‘voluntary’ commitments are included.

10. Interestingly enough 57 collegiate conferences and 560 institutions—including all Division IA football programs—are members of the program (CCA, 2004).


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