



THE  
Critical  
CLASSROOM

How Critical Race Theory  
Undermines Academic Excellence and  
Individual Agency in Education

EDITED BY

*Lindsey M. Burke, PhD | Jonathan Butcher | Jay P. Greene, PhD*



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# CONTENTS

|   |     |
|---|-----|
| <b>INTRODUCTION</b>   |     |
| The Fight for the Next Generation.....  | 1   |
| <i>Kevin Roberts, PhD</i>   |     |
| <b>PART I: <i>Critical Theory and the Threat to the Next Generation</i></b>                             |     |
| <b>CHAPTER 1</b>  |     |
| A Brief History of Critical Race Theory—<br>from the Frankfurt School to K-12 Classrooms .....          | 7   |
| <i>Mike Gonzalez</i>  |     |
| <b>CHAPTER 2</b>  |     |
| Critical Race Theory: Its Harmful Effect on<br>Entrepreneurship and Innovation.....                     | 27  |
| <i>John Sibley Butler, PhD</i>  |     |
| <b>PART II: <i>Critical Legal Theory’s Impact on the Schoolhouse</i></b>                                |     |
| <b>CHAPTER 3</b>  |     |
| Critical Race Theory in Practice: A Violation of Federal Law.....                                       | 41  |
| <i>Jonathan Butcher &amp; Sarah Parshall Perry</i>  |     |
| <b>CHAPTER 4</b>  |     |
| Critical Race Theory Goes to Court.....   | 55  |
| <i>Joshua Dunn, PhD</i>   |     |
| <b>CHAPTER 5</b>  |     |
| Critical Race Theory and School Discipline.....   | 67  |
| <i>Max Eden</i>   |     |
| <b>PART III: <i>Curriculum and Instruction</i></b>  |     |
| <b>CHAPTER 6</b>  |     |
| How Critical Race Theory Undermines Individual Agency.....  | 81  |
| <i>Ian V. Rowe</i>  |     |
| <b>CHAPTER 7</b>  |     |
| Diversity, Equity, and Inclusion:<br>What If Americans Have It All Wrong?.....                          | 91  |
| <i>Robert Pondiscio</i>   |     |
| <b>CHAPTER 8</b>  |     |
| “Critical Math” Doesn’t Add Up: Race Consciousness<br>and Radical Egalitarianism in the Curriculum..... | 103 |
| <i>Williamson M. Evers, PhD &amp; Ze’ev Wurman</i>  |     |
| <b>CHAPTER 9</b>  |     |
| The Problem with Critical Race Theory and<br>the 1619 Project—and What to Do About Them .....           | 127 |
| <i>Robert Maranto, PhD</i>  |     |
| <b>CHAPTER 10</b>   |     |
| Critical Race Theory Is Incompatible with Christian Education.....                                      | 141 |
| <i>Craig L. Frisby</i>  |     |

**PART IV: *Higher Education’s Role in Critical Race Theory***

**CHAPTER 11**

The Credential Cartel—How Colleges of Education Spread Critical Race Theory ..... 155  
*Lindsey M. Burke, PhD*

**CHAPTER 12**

Political and Elite Support for CRT Started in the University ..... 167  
*Jay P. Greene, PhD*

**CHAPTER 13**

Diversity, Equity, and Inclusion in the Academic Sciences ..... 177  
*J. Scott Turner, PhD*

**PART V: *Fighting Back***

**CHAPTER 14**

Parents on the Front Lines ..... 193  
*Erika Sanzi*

**CHAPTER 15**

How School Boards Should Reject Critical Race Theory ..... 205  
*Jonathan Butcher*

**CHAPTER 16**

American Parents Want American Civics Education ..... 217  
*Adam Kissel*

**CHAPTER 17**

School Choice: Parents’ Most Powerful Tool for Defeating Critical Race Theory ..... 227  
*Inez Feltscher Stepman*

**CHAPTER 18**

Conclusion and Policy Proposals ..... 237  
*Jonathan Butcher & Lindsey M. Burke, PhD*

**MODEL LEGISLATION**

Protecting K–12 Students from Discrimination ..... 245

**APPENDIX OF TERMS** ..... 249

**CONTRIBUTORS** ..... 255

# The Fight for the Next Generation

*Kevin Roberts, PhD*

Until recently, critical race theory (CRT) was a concept that few Americans heard of, as it was mainly in the domain of university campuses. But as the Left has become more brazen in its attempts to radically control Americans' thoughts, speech, and interactions with one another in society, CRT has burst wide open into our workplaces, governments, houses of worship, the military, and even our K–12 classrooms, where young minds have little chance to resist it, and parents are told it does not exist.

While America—like anything created by the imperfect being known as man—has flaws, it is a nation that for hundreds of years has made great strides toward living up to its founding ideals of liberty, justice, equality, opportunity, and unity among its people. CRT is antithetical to those Founding ideals and to our core principles as Americans. If left unchallenged, CRT will tear apart the great American experiment—and its overwhelming success—that those ideals created.

At first glance, CRT may seem appealing to reasonable people because it sounds like a way for America to come to grips with its sinful past of slavery and segregation. But if we scratch ever so slightly below the surface, we find that CRT does not grapple with—as we absolutely should—America's moral stains, such as slavery and Jim Crow. Instead, CRT rekindles racism by clamoring for a new race-consciousness in policymaking. It stigmatizes all whites as oppressors from birth and condescendingly declares all minorities to be victims who will never be capable of achieving their dreams in “white” America.

Schools that implement the tenets of CRT poison our children to believe that the color of their skin determines their success or lack thereof and that they must conform their opinions to those of their race. These schools falsely teach that America was founded on white supremacy and that its institutions remain inherently and irredeemably racist to this day. To them, racism is “systemic” and “structural,” embedded in America’s legal system, institutions, and free-enterprise system. The system is “rigged” to reward “white behavior” and norms and therefore preserve white supremacy. Part of what is “rigged” includes the criteria used to measure merit and success in school—those criteria are not objective but are designed to keep whites on top. Punctuality, logical thinking, and standardized testing need to be eliminated if non-whites are to succeed.

CRT advocates are so extreme that if Martin Luther King, Jr., were alive today to give his “I Have a Dream” speech—one of the most stirring and unifying oratories in American history—he would be canceled. In fact, CRT advocates deem the push for a “colorblind” society, for which Dr. King and the civil rights movement longed, to be a wrongheaded mistake.

As a historian of early America, I am always disheartened when false teachings get in the way of a real historical diagnosis of issues like race and racism in America. Students should learn American history, and that means all of America’s history. We do our children no favors by glossing over the distasteful parts, because we learn from them all, including the ones we hope never to repeat.

At the same time, no justification exists for distorting history in the opposite direction to try to achieve some “social justice” outcome. No justification exists for pitting students against one another in the classroom over race, and there is no justification for spending taxpayer dollars on CRT staff trainings by Ibram X. Kendi, who preaches that “the only remedy for past discrimination is present discrimination.” Yet these practices are taking place in our nation’s schools as proponents of CRT malign the American story in their attempts to dismantle America itself.

This book on CRT, with chapters by some of the nation’s foremost experts in the discipline itself, as well as in education, and by parent-activists fighting on the front lines of today’s CRT battle, provides invaluable insight and lessons for those parents, educators, and ordinary citizens who want to understand CRT, how it is taught and applied, how it is purposely hidden from parents and the public, and how to defeat it. The way to tackle CRT is to diagnose its failings, to show that it is in no way harmless, and to demonstrate that challenging and defeating CRT is—far from racist—necessary for the survival of this country.



States, school districts, and schools of all stripes should roundly reject CRT. It is racist, anti-American, and anti-historical and pits children against one another, polluting their minds with lies about one another's alleged motivations. For all the leftist talk of creating "safe spaces," CRT creates a toxic environment precisely where children should feel safe to learn and grow—and, with their peers, be building a—yes, colorblind—society.

Kevin Roberts, PhD, President  
The Heritage Foundation  
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PART I

*Critical Theory and the  
Threat to the Next Generation*



# A Brief History of Critical Race Theory—from the Frankfurt School to K-12 Classrooms

*Mike Gonzalez*

Critical race theory (CRT) is rooted in a body of writings by law professors of color<sup>1</sup> that focuses on the legal system. What must really be understood about CRT, however, is that it uses racial issues to promote leftist views. Writing in 1995, CRT’s recognized godfather Derrick Bell described the discipline in this manner: “[C]ritical race theory is a body of legal scholarship, now about a decade old, a majority of whose members are both existentially people of color and ideologically committed to the struggle against racism, particularly as institutionalized in and by law.”<sup>2</sup>

Right from the start, CRT’s architects made it clear that CRT would be used not just passively to analyze legal issues and society at large from a leftist perspective but as an instrument with which to actively change society. Adds Bell, “As I see it, critical race theory recognizes that revolutionizing a culture begins with the radical assessment of it.”<sup>3</sup>

One of CRT’s most important contentions is that racism is not a conscious individual act or position but a systemic problem created by the societal structure, including above all the legal system. The strong implication, often not just implied but stated overtly, is that both the societal structure and legal system of America need to be dismantled.

This is a view that CRT promoters modified from the field of critical legal studies (CLS), from which CRT scholars emerged in the mid- to late 1980s. Also called critical legal theory (CLT), this ideological take on the legal system was created by a group of American legal scholars

influenced by the New Left of the 1970s and its “guru,” the Frankfurt School’s Herbert Marcuse.<sup>4</sup> Among CLT’s main postulates was that the legal system created the social power relationships that allowed members of “hegemonic” groups to exercise power over others. Critical legal theorists further argued that “the law does not passively adjudicate questions of social power; rather, the law is an active instance of the very power politics it purports to avoid and stand above.”<sup>5</sup> In essence, the law hypocritically perpetuates that from which it is supposed to protect society. Marx saw the law as a reflection of power relations, while the critical legal theorists espoused the view that the legal system itself created the power system.

The non-white CLT scholars who later founded CRT added race to the equation by making it the decisive marker of societal oppression. This contention led to long and strenuous disputes with the mostly white critical legal theorists. Eventually, CRT proponents split from CLT when their insistence that “race and racism function as the central pillars of hegemonic power” was not taken with the seriousness they thought it deserved.

CRT, like CLT before it, also borrowed from critical theory (CT), an even older discipline, the view that the way to change the oppressive present arrangement was to submit the cultural and ideological belief system, indeed the entire conceptual superstructure, to a root canal. CT came out of the Institute for Social Research (*Institut für Sozialforschung*) founded by communist intellectuals at the University of Frankfurt in 1923, known as the Frankfurt School (*Frankfurter Schule*), and was the instrument to achieve that undermining of the ruling narrative. “To the Frankfurt School, a society is particularly susceptible to critical theory when oppression covers its tracks by preventing awareness of the theories of legitimacy upon which it depends,” wrote Harvard’s David Kennedy in 1986 in a particularly insightful essay.<sup>6</sup> This constant disparagement would separate the citizen from his attachment to institutions and traditions that did not serve him and were oppressive or, in the case of CRT, racist.

All three disciplines—CT, CLT and CRT—were not merely academic theories but calls to action. In this commitment to praxis, all three disciplines were faithfully following Marx’s dictum that “[u]ntil now, the philosophers have only interpreted the world in various ways; the point, however, is to change it.”<sup>7</sup> For CLT and CRT, this meant subjecting the legal system to withering criticism and denigration. “Law is violence, hence the more of it the more violent the society,” wrote Richard Delgado,

professor of law at the University of Alabama School of Law and one of the founders of CRT.<sup>8</sup>

And, of course, given CRT's core believe that racism is a problem created by the law in the first place, it was foretold from the start that CRT's proponents would be averse to *law enforcement*, including in schools through policies such as “restorative justice,” and that they would arrive at the belief that the criminal justice system is also the product of systemic racism. An overview of the genesis, and genealogy, of CRT will help the reader to understand how CRT's biggest minds come to all these conclusions.

## Critical Theory

CRT, as CLT, descends from CT, the brainchild of German Marxists at the Frankfurt School. These Marxists were frustrated by the inability of the German working class to set up a German Soviet, in the style of the recently established Soviet Union in Russia and other parts of the Tsarist Empire, after the failure of the German Revolution in 1919. Historian Martin Jay, whose supportive 1973 history of the Frankfurt School is the most often cited, offers a view on how the despondency felt by the school's founders after the revolution's failure fed their radicalism:

After the failure of the German revolution, its members, at least those around [future School director Max] Horkheimer, were alienated from all political factions on the left. The SPD [Social Democratic Party] was treated with the scorn its craven capitulation before the status quo deserved—in fact, one might argue that the SPD's betrayal of the working class colored the Frankfurt School's subsequent distrust of all moderate solutions.<sup>9</sup>

The Institute for Social Research was the first of what would later be known as neo-Marxist, or Western-Marxist, schools or intellectual endeavors. Of the self-conscious Marxism of the school, Jay leaves no doubt, writing:

Symptomatic of its position was the close ties it maintained with the Marx-Engels Institute in Moscow.... It photostated copies of unpublished manuscripts by Marx and Engels brought over weekly by courier to the SPD's Berlin headquarters and forwarded them to Moscow.<sup>10</sup>

The idea for the institute was born when several Marxist intellectuals came together in Thuringia, Germany, in May 1923, for what they termed the First Marxist Workweek (*Erste Marxistische Arbeitswoche*). According to Andrei Znamenski, professor of history at the University of Memphis, “the major item on their agenda was to explore how to better unleash the revolutionary potential of the Western proletariat that was incapable to replicate [*sic*] the Bolshevik 1917 Revolution.”<sup>11</sup> Among the intellectuals present were Felix Weil, a political scientist who became the wealthy funder of the institute; Friedrich Pollock, who advocated Soviet-style central planning in the West; Georg Lukacs, who had been the culture commissar in the short-lived Hungarian Soviet of 1919 and whose works would become very influential with the New Left of the 1960s in America; Richard Sorge, a Brit who was an actual Soviet spy; and others.

The institute was originally to be called the Institute for Marxism (*Institut für Marxismus*) but its forebears thought that to have Marx in the school’s title was too provocative, according to Jay.<sup>12</sup> So from the start, the scholars engaged in dissimulation when it came to their beliefs. Even then, the institute, especially in its earlier years, was self-consciously Marxist, to the point that some of the scholars and their acolytes referred to the school affectionately as Café Marx.<sup>13</sup>

The scholars fled Germany to escape Hitler and settled at Columbia University’s Teachers College in 1934, from which point on they became even more restrained, carefully avoiding the terms “Marxism” and “communism.” Instead, they used euphemisms, such as “dialectical materialism.”<sup>14</sup> Historian Stuart Jeffries, as sympathetic as Jay toward the Frankfurt School, wrote that the school was careful to erase the “M word from its research papers so as not to affront its American hosts and potential sponsors.”<sup>15</sup> The school’s American perch allowed it to have an impact on the American debate precisely at the point when the United States was becoming an undisputed superpower and a bulwark against Soviet communism but was also following the siren song of statism with the New Deal. The school’s destructive approach to all things Western or capitalist remained classically Marxist during the decades that followed.

CT itself was first formulated by Max Horkheimer, the third director of the institute, in a 1936 essay titled “Traditional and Critical Theory,” though its roots go back to Marx, Sigmund Freud, Friedrich Nietzsche, and G. W. F. Hegel.<sup>16</sup> The Hungarian sociologist Zoltan Tarr, in his book on the school, writes that “[t]he term ‘Critical’ carries reference to both Immanuel Kant and Karl Marx.”



In his essay, Horkheimer announces that critical theory is “not just a research hypothesis.... [I]t is an essential element in the historical effort to create a world which satisfies the needs and powers of men.”<sup>17</sup> The satisfaction of physical needs by a self-interested individual was to become an obsessional theme for critical theorists; Horkheimer, Marcuse, and the others laid many if not most of society’s ills at the feet of consumerism. “Independence of thought, autonomy, and the right to political opposition are being deprived of their basic critical function in a society which seems increasingly capable of satisfying the needs of the Individuals through the way in which it is organized,” wrote Marcuse in his magnum opus, *One Dimensional Man*.<sup>18</sup> Marcuse repeats a version of this sentiment in *An Essay on Liberation*: “In the advanced capitalist countries, the radicalization of the working classes is counteracted by a socially engineered arrest of consciousness, and by the development and satisfaction of needs which perpetuate the servitude of the exploited.”<sup>19</sup>

Horkheimer and Marcuse thus believed that the worker lost his “revolutionary consciousness” while satisfying his wants and was sucked into the consumer culture of capitalism. Znamenski adds that “Marcuse argued that the elites purposely buy the loyalty of the people by improving their living standards in order to tame their desire to make fundamental changes to policy and their way of life.”<sup>20</sup>

Horkheimer’s foundational essay lays out traditional theory as nothing other than a way of perpetuating the status quo, while CT was the mechanism to destroy it through unstinting denigration. The status quo that Horkheimer saw himself as battling in the 1930s had itself emerged philosophically in the Enlightenment and economically in the nearly contemporary Industrial Revolution. Both had produced the bourgeois and his opposite number, the worker of mass industrialization.

All these forces produced the concepts by which man ordered his world, the conceptual, ideological and cultural superstructure. There was no true reality as such; man may apprehend the outside world through the five senses, but he comprehended it through the metanarrative created by the individuals who had emerged the winners of capitalism and Enlightenment. Traditional theory—that is, the philosophical framework that existed in the West before critical theory came along—only perpetuated this narrative: “[T]he scholar and his science are incorporated in the apparatus of society; his achievements are a factor in the conservation and continuous renewal of the existing state of affairs.”<sup>21</sup> (A very similar explanation emerged contemporaneously in Italy from the mind of the founder of Italy’s communist party, Antonio Gramsci, who called

the conceptual superstructure the hegemonic narrative and did his best writing while languishing in an Italian prison between the late 1920s and the mid-1930s.)

The problem was that this superstructure, while benefitting its winners, alienated the majority. Free trade inexorably leads to capitalism, and the latter inexorably ends in wars, “unemployment, economic crises, militarization, [and] terrorist regimes,” according to Horkheimer.<sup>22</sup> Therefore, the job of CT was to dismantle the narrative that created this world. It was “wholly distrustful of the rules of conduct with which society as presently constituted provides each of its members.”<sup>23</sup> It “urges a transformation of society.”<sup>24</sup> CT can sometimes use almost impenetrable language and concepts, but what is important to remember is that it was, from beginning to end, always an instrument for dismantling Western thought and institutions and for introducing Marxist ones through a very hidden back door.

The purpose of the Frankfurt School was perhaps put best in the 1980s by the eminent CLS scholar David Kennedy, who wrote in 1986:

The Frankfurt School seeks to expose the underlying nature of the belief structure which supports a social system so that it might be discarded by the agents of that system. The first thing to understand about “critical theory” is that the word “critical” is not meant to suggest criticizing. Rather, it refers to a particular style of work developed primarily by a group of German intellectuals who saw themselves as the inheritors of a tradition begun by Hegel and Marx. Such theorists as Georg Lukacs, Max Horkheimer, Theodor Adorno, Herbert Marcuse, and Jürgen Habermas, often referred to collectively as the Frankfurt School, interpreted both Hegel and Marx to have been concerned with overcoming the split between theory and action.<sup>25</sup>

In exposing the nature of the set of ideas that undergird everything, CT practitioners hope to play the vanguard role in aiding the oppressed to understand their oppression. “All liberation depends on the consciousness of servitude,” says Marcuse.<sup>26</sup>

The Frankfurt scholars brought this philosophical ferment to the United States in the 1930s after the rise of Adolph Hitler made the work of the mostly Jewish scholars impossible to carry on in Germany. It is important to note at this point that though of Jewish ancestry, the scholars were all deeply influenced by German thought, especially those of Hegel and his disciples Marx, Nietzsche, and Martin Heidegger (a former professor

of Marcuse who eventually joined the Nazi party). The Frankfurt scholars were at the same time fascinated with the United States but just as sorely disappointed in the American worker as they had been in his European counterpart. In *Dialectic of Enlightenment*, Horkheimer and Theodor Adorno write of the American worker that

Capitalist production hems them in so tightly, in body and soul, that they unresistingly succumb to whatever is proffered to them. However, just as the ruled have always taken the morality dispensed to them by the rulers more seriously than the rulers themselves, the defrauded masses today cling to the myth of success still more ardently than the successful.... They insist unwaveringly on the ideology by which they are enslaved. The pernicious love of the common people for the harm done to them outstrips even the cunning of the authorities.<sup>27</sup>

After America defeated the Nazis, Horkheimer, Adorno, and most of the other scholars who had taken residence in the U.S. returned to Germany. But one Frankfurter was left behind: Horkheimer's assistant Marcuse, who went on to gain great fame. Just as Horkheimer had pondered in the 1930s the monopolist stage of the liberal system created in the 18th century, Marcuse considered conditions in the 1960s in the context of an advanced industrial society. "If this idea of a radical transformation is to be more than idle speculation, it must have an objective foundation in the production process of advanced industrial society, in its technical capabilities and their use," wrote Marcuse in *An Essay on Liberation*.<sup>28</sup>

The New Left was a radical core of intellectuals, activists, and students who had also abandoned economic determinism and embraced a cultural interpretation of Marxism. They were greatly influenced by texts from 1920s and 1930s by Lukacs and others, especially Gramsci, whose preference for a cultural explanation of Marxism had been swept under the rug in the Soviet Union under Stalin but whose writings gained traction again after Stalin's death in 1953 and the de-Stalinization period begun by Nikita Krushchev in 1956.

Znamenski adds that,

[s]urrounded all around by the bourgeois culture, proletarian minds were infected with the alien ideology that effectively muted their revolutionary potential. Gramsci suggested that, under these

circumstances, the radical left needed to pay more attention to taking over a “superstructure” (education, media, art, and culture in general). His rationale as a revolutionary was that those who dominated the world of ideas and culture would eventually come to control political and economic power. In the interwar period, when classical Marxist notions of economic nationalization and class warfare were still reigning supreme, Gramsci’s radical left colleagues treated such speculations as bourgeois revisionism and a concession to capitalism. No leftist could notice his prison notes anyway since they were not excavated and published until the 1950s; the first English translation appeared only in the 1970s.<sup>29</sup>

In this turn toward cultural Marxism, the New Left proved to be, too, direct descendants of the Frankfurt School.<sup>30</sup> Whether a departure from Marx’s economic determinism or merely a refinement or an expansion into all areas, the Frankfurt School and the 1960s leftists it impacted looked for answers not just in Marx’s “material forces.” As Jason Whitehead wrote:

The refinement and reformulation of Marxism was among the central tasks the School set for itself. But this did not entail the acceptance and application of orthodox Marxism whereby the economic base of society was alleged to determine, in a direct, linear way, the political and legal superstructure. Rather, consistent with its dialectical method, the Frankfurt School rejected all forms of determinism.<sup>31</sup>

The adherents of the New Left sought systemic change but despaired, as had Gramsci, Horkheimer, and the others, that the American worker was clearly not going to lead a revolution. As the social critic and leading member of the Democratic Socialists of America Irving Howe put it, “Almost everyone on the left, but the Marxist remnants especially, was fervently on the hunt for a ‘substitute proletariat’—some agency that might yet undertake the historical mission assigned to the workers by Marxism.”<sup>32</sup> Marcuse found this revolutionary agent first in the third world—supporting communist revolutionaries in Cuba, China, and Vietnam<sup>33</sup>—and sometimes he hoped the students would lead the revolt.

But eventually he and others settled on the minorities in the United States. “The ghetto populations may well become the first mass basis of revolt,” Marcuse wrote in his *Essay on Liberation*, though he was quick to add, “though not of revolution.”<sup>34</sup> This idea that the intellectuals would

act as the indoctrinating vanguard became, too, a belief of the New Left. But minorities would be the cannon fodder of the new revolution. In *One Dimensional Man*, Marcuse adds that

underneath the conservative popular base is the substratum of the outcasts and outsiders, the exploited and persecuted of other races and other colors, the unemployed and the unemployable. They exist outside the democratic process; their life is the most immediate and the most real need for ending intolerable conditions and institutions. Thus, their opposition is revolutionary even if their consciousness is not.<sup>35</sup>

Because in satisfying his daily needs, man was thwarting revolution,<sup>36</sup> Marcuse set for himself and his fellow revolutionaries an immense task: to change the nature of needs itself. In other words, he set out to do the impossible: to change human nature.

What is now at stake are the needs themselves. At this stage, the question is no longer: how can the individual satisfy his own needs without hurting others, but rather: how can he satisfy his needs without hurting himself, without reproducing, through his aspirations and satisfactions, his dependence on an exploitative apparatus which, in satisfying his needs, perpetuates his servitude?<sup>37</sup>

Like all versions of Marxism, CT promised liberation from the human condition. The West's superstructure has enslaved its people. Marxists promised to liberate humans from their human nature during this earthly passage. Marx, after all, promises earthly utopia.

The earthly utopia has proved an impossibility thus far and explains why Marxists always end up using coercion when their attempts to create a "New Man" fail. In Marcuse's case, it came in the form of what he called "repressive tolerance" in an essay by that name in 1965, which he reissued with a postscript in 1969. In it, Marcuse demanded that freedom of speech be denied to people expressing conservative ideas, observing that "[l]iberating tolerance, then, would mean intolerance against movements from the Right and toleration of movements from the Left."<sup>38</sup> Marcuse explained that the intolerance had to be aimed not only toward thought, opinion, and word but toward conservatives as a whole. Somehow, these anti-democratic notions would lead to universal tolerance, Marcuse argued.

## The Birth of Critical Race Theory

CRT did not come directly from CT but from its CLS offshoot. In their groundbreaking collection of essays detailing the rise of CRT and its main ideological positions, *Critical Race Theory: The Key Writings That Formed the Movement*, editors Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas describe the emergence of CRT from the CLS conferences as “a race-conscious intervention on the left.”<sup>39</sup> Because these—along with some of the authors of the essays, academics such as Derrick Bell, Richard Delgado, Patricia Williams, Angela Harris, and others—are acknowledged architects of CRT, and the book in question is a recognized foundational text, the description of the split between the two disciplines included in the introduction to the series of essays is quoted at length here.

Crenshaw, Gotanda, and the rest do give some praise to the CLS movement but at the same time dispassionately dismiss it as “basically a white and largely male academic organization.” The split happened this way, in their own telling: “By the mid-eighties, there was a small cadre of scholars of color who frequented CLS conferences and summer camps.” These law professors were more radical as a consequence of their “lived experience” and therefore did not find CLS’s attacks on the legal profession’s claims of neutrality and objectivity outlandish as the mostly white legal profession did. “[T]o scholars of color who drew on a history of colored communities’ struggle against formal and institutional racism,” write the editors—characterizing the CLS scholars as “crits” and the emerging CRT offshoot as “race crits”—“the crits’ contention that law was neither apolitical, neutral nor determinate hardly seemed controversial. Indeed, we believed that this critical perspective formed the basic building blocks of any serious attempt to understand the relationship between law and white supremacy.”

The shared positions were many, and CRT’s architects recognize the CLS movement as having played a “central role in the genesis of Critical Race Theory,” write the editors in the introduction. “Organized by a collection of new-Marxist intellectuals, former New Left activists, ex-counter-culturalists, and other varieties of oppositionists in law schools,” CLS “established itself as a network of openly leftist law teachers, students and practitioners committed to exposing and challenging the ways American law served to legitimize an oppressive social order.”

CLS adherents excelled particularly not only at challenging the conservative elements of the legal profession but the traditionally liberal ones as well, both of whom believed (mistakenly in the eyes of CLS and CRT practitioners) in the law’s rationality. More important, in the view of the

editors, CLS started the transformation of law schools and therefore of the legal profession as a fulcrum of the revolutionary left. CLS proponents saw law schools as workplaces where they could do a version of neighborhood organizing “for political resistance. ‘CLSers’ actively recruited students and left-leaning law teachers from around the country to engage in the construction of left-legal scholarship and law school transformation.”

The law school, then, started to become, in the eyes of these revolutionary scholars at least, a base of ideological opposition to Ronald Reagan’s America. CLS, lastly, was instrumental, in the eyes of the later CRT proponents, in helping to defeat the traditional liberal faith “in the gradual reform of American law through the victory of superior rationality of progressive ideas,” a faith that depended on the belief that politics and law were separate and that “legal institutions employ a rational, apolitical, and neutral discourse with which to mediate the exercise of social power.”<sup>40</sup> Having softened up the ground of by casting doubt on all the foundational premises of the American legal system, and by having organized Marxists within the law schools, CLS had performed a useful service for CRT.

*However*, write the CRT scholars, “significant differences between us became increasingly apparent during a series of conferences in the mid-eighties.”<sup>41</sup> The main nub of disagreement was over the role that race played in the conceptual superstructure; the budding CRT prophets identified the superstructure as equal to “white supremacy,” but CLS “had not, by and large, developed and incorporated a critique of racial power into their analysis.” For this reason, “their practices, politics and theories regarding race tended to be unsatisfying and sometimes undistinguishable from those of the dominant institutions they were otherwise contesting.” The “white left,” wrote the editors, “interpreted racialist accounts as analogous to class reductionism.” White CLS academics, argued the increasingly bitter non-white CLS proponents, saw racial determinism as reductive as the economic determinism of vulgar Marxism. “Vulgar Marxism” was the term that critical theorists used for Marxists who emphasized economic determinism to the exclusion of other social and cultural activities.

By defining class in terms of one’s position in the material production process and viewing law and all other “superstructural” phenomena as merely reflections of interests rooted in social class identification, vulgar Marxism, critics argued, ignored the ways that law and other merely “superstructural” arenas helped to constitute the very interests that law was supposed to merely reflect.<sup>42</sup>

A breakup could not be long in coming, and the turning point appears to have been the 1986 CLS conference, which was organized by feminist legal scholars. The fem-crit organizers asked non-white CLS practitioners to hold discussions on race at the conference. When the fem-crits designed a workshop to discuss power in a racial context, “as manifested within Critical Legal Studies,” opposition from the mostly white CLSers flared up. The non-white CLSers were confrontational. Crenshaw and her fellow editors describe their workshop as asking the question, “what is it about the whiteness of CLS that discourages participation by people of color?” Things got worse in subsequent conferences in 1987 and 1988. Rifts became apparent in things as fundamental as the nature of legal rights. CLS as a discipline critiqued the nature of all rights, whereas non-white CLS practitioners disliked some rights, such as equal protection rights that would preclude a continuation of racial discrimination (because they wanted racial preferences), but liked other rights—they wanted an *à la carte* approach. CLS also viewed the law as reflecting a racial dynamic, whereas the editors articulated in the introduction “a structural relationship between law and white supremacy.” The law was not a reflection but was written by white supremacists with a purpose.

All these differences amounted to “crucial theoretical divergences between CLS and CRT.” To the protesting non-white CLS practitioners, CLS was not committing “the typical Marxist error of subsuming race under class,” but they were still unable to “come to terms with the particularity of race, and with the specifically racial character of ‘social interests’ in the racialized state.” CLS pretended that race did not exist and should not be considered in public policy. It was thereby “a more fundamental attack on the very possibility of our project,” wrote the editors. “Our discussions during the conferences revealed that while we shared with crits the belief that legal consciousness functioned to delegitimize social power in the United States, race crits also understood that race and racism likewise functioned as central pillars of hegemonic power.”<sup>43</sup>

This led to the foundational event of CRT, the workshop held in summer 1989 at a convent outside Madison, Wisconsin. Formally called “New Developments in Critical Race Theory,” the workshop marked the first time the phrase “critical race theory” was used publicly. At a 2019 panel discussion with Mari Matsuda, Crenshaw, who had organized the 1989 workshop with Gotanda and Stephanie Phillips, described the workshop as “[o]ur eventual self-declaration as an off-shoot of critical legal studies. We discovered ourselves to be critical theorists who did race and



racial justice advocates who did critical theory.” Crenshaw said the meeting had been in the planning for two years:

In 1987, I sent out a call to attend a retreat called, New Developments in Critical Race Theory. Only she (Matsuda), Neil Gotanda, Chuck Lawrence and maybe a handful of others knew that there were no new developments in critical race theory because CRT didn’t have any old ones. It didn’t exist. It was made up as a name. Sometimes you have to fake until you make it.<sup>44</sup>

After this, CRT proponents held meetings every year on their own. In his own primer on CRT, Delgado says that

[f]urther conferences and meetings took place. Some were closed working sessions at which the group thrashed out internal problems and struggled to clarify central issues, while others were public, multi-day affairs with panels, plenary sessions, keynote speakers, and a broad representation of students, activists, and scholars from a wide variety of disciplines.<sup>45</sup>

Though Crenshaw—along with Matsuda and the others—get the credit for naming CRT, it was really Derrick Bell, Delgado, and others who had been writing since the 1970s who really invented CRT. It was they who placed race at the heart of the conceptual framework that they believed had created the legal superstructure of white supremacy. All of them, together, then started to evict their white colleagues from the field of civil rights. Their white colleagues’ lack of lived experience, the CRT proponents maintained, forestalled the possibility of whites making a career out of writing about the law from a civil rights perspective. Delgado and others were quite explicit that whites should take their talents to other fields and offered a detailed strategy on how this exit should take place.

Indeed, Delgado had already begun this process a few years earlier. Already in 1984, he had written that

while no one could object if sensitive white scholars contribute occasional articles and useful proposals (after all, there are many more of the mainstream scholars), must these scholars make a career of it? The time has come for white liberal authors who write in the field of civil rights to redirect their efforts and to encourage their colleagues to do so as well. There are many other important

subjects that could, and should, engage their formidable talents. As these scholars stand aside, nature will take its course; I am reasonably certain that the gap will quickly be filled by talented and innovative minority writers and commentators. The dominant scholars should affirmatively encourage their minority colleagues to move in this direction, as well as simply make the change possible.<sup>46</sup>

The strategy to completely take over the field of civil rights in the academy was also carried out with demands, protests, and sit-ins, unless non-white professors were hired or given tenure by law schools. In 1985, Derrick Bell resigned in protest his position as dean of the University of Oregon School of Law because the school refused to hire an Asian American woman to teach corporate law after three faculty members expressed “substantial objections” on merits, a deal killer at the school. Bell returned to Harvard Law, where he had been the first black tenured professor in 1971. But again, in 1990, he took an unpaid leave of absence until the school hired a black woman to teach CRT.<sup>47</sup> Though Bell’s stand effectively ended his employment at Harvard, he simply moved to New York University, where he continued to preach CRT. Harvard in 1997 hired Lani Guinier—known for calling for “proportional voting,” “participatory democracy,” and equal outcomes, not just equal opportunity—to teach CRT in 1998.<sup>48</sup>

These strategies worked. Writing a year after the Guinier hire in the Cornell University *Journal of Law and Public Policy*, Daniel Subotnik pointed out that “[w]ithin a few short years, in a remarkable turnabout, not only black, but also Latino/a and Asian writers were deeply engaged in race scholarship. Their works, appearing in all the elite journals, were regularly cited and the new school came to dominate race discourse.

How did CRT manage such a stunning reversal? The most successful campaigns result from drawing opponents away from the battlefield. The CRATs [CRT advocates] did this with a potent weapon. White males tempted to participate in the conversation were condemned in advance as interlopers, even imperialists.<sup>49</sup>

What CRT seeks, and was quite successful at gaining, was the domination of civil rights discourse in legal circles by black neo-Marxists. All the main architects—Bell, Delgado, Crenshaw, Harris, Williams, Matsuda, Gotanda, and others—are non-white professors who either are outright Marxists or at least dislike free markets and would like to see the capitalist system replaced with another system.

## CRT's Concepts

CRT from its start shared the two key ideas of CT and CRT. The first idea is that there is a superstructure created by the concepts of the rulers and that it must be exposed so that those who are subordinated by it can understand their servitude and work to tear down the entire conceptual structure. The second idea is the Marxian belief that the purpose of theory is revolution, not just intellectual debate. In one of the most important CRT texts, Crenshaw and a host of other authors write:

Although Critical Race scholarship differs in object, argument, accent, and emphasis, it is nevertheless unified by two common interests. The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure, and professed ideals such as “the rule of law” and “equal protection.” The second is a desire not merely to understand the vexed bond between law and racial power but *to change it*.<sup>50</sup>

CRT, thus, is nothing less or more than the use of racial issues to ram through Marxian ideas.

The only difference between CRT and its American parent, CLS, and its German grandparent, CT, is that it maintains that the purpose of the superstructure is to uphold “white supremacy” and those who have been subordinated are “people of color.” White supremacy, incidentally, is not simply—or even primarily—the belief in the superiority of members of the white race; it is the entire superstructure, especially, but not only, the legal system. Frances Lee Ansley makes this clear when she writes:

By “white supremacy” I do not mean to allude only to the self-conscious racism of white supremacist hate groups. I refer instead to a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings.<sup>51</sup>

“White supremacy” is thus the American version of the Italian “cultural hegemony” and the German “conceptual superstructure.” One of the things this American iteration did was advance the idea that the

white proletariat, far from being the revolutionary subject or even an ally to the new agent of change—minorities—has become now often an enemy of change.

A bedrock principle of CRT is also the belief that racism is not an individual act but something systemic and pervasive. As Angela Harris explains:

The crisis in our social system is our collective failure to adequately perceive or to address racism. This crisis, according to CRT, is at least in part caused by a false understanding of “racism” as an intentional, isolated, individual phenomenon, equivalent to prejudice. This false understanding, however, can be corrected by CRT, which redefines racism as a structural flaw in our society. Through these explanations, readers will come to a new and deeper understanding of reality, an enlightenment which in turn will lead to legal and political struggle that ultimately results in racial liberation. Under CRT, as Brian Fay remarks of critical social science in general, “the truth shall set you free.”<sup>52</sup>

## Effects of CRT

If CRT’s most destructive impact on the world was to sow distrust in the main pillars of society, and CRT’s was to undermine enforcement of the law and popular deference to it, CRT’s most devastating impact may be what it does to the black community and the black family. By withdrawing individual agency and responsibility from human action and outcomes, and placing all the emphasis on “systemic racism,” CRT proponents absolve individuals from any accountability and eliminate any hope of success. Indeed, CRT tells black individuals that the future will forever be bleak, no matter how hard they strive. “Black people will never gain full equality in this country,” wrote no less a figure than Derrick Bell. Blacks had to accept “the permanence of our subordinate status.”

Black people will never gain full equality in this country. Even those herculean efforts we hail as successful will produce no more than temporary “peaks of progress,” short-lived victories that slide into irrelevance as racial patterns adapt in ways that maintain white dominance. This is a hard-to-accept fact that all history verifies. We must acknowledge it and move on to adopt policies based on what I call: “Racial Realism.” This mind-set or philosophy requires

us to acknowledge the permanence of our subordinate status. That acknowledgement enables us to avoid despair, and frees us to imagine and implement racial strategies that can bring fulfillment and even triumph.<sup>53</sup>

This message, repeated to young children, whether in the form of Bell’s brutal statement or in more subtle forms, such as the “oppressor-oppressed” narrative, or the fiction Americans live under a system of oppression, will only sap their ability and desire to thrive.

And that is the most dangerous effect of all the critical theories. Since they are, at the end of the day, attempts at dismantling hegemonic narratives, at destroying the systems of concepts by which Americans order society, they will eventually narrow their focus on schoolchildren. If, from the start, one teaches the young population that the system of beliefs of their parents and grandparents has produced an oppressive conceptual superstructure, and that they must begin *de novo*, then one can change society’s blueprint in a generation or two. The saving grace for all Americans is that parents have begun to understand what is being attempted and are rising to thwart the effort.

## Endnotes

1. Derrick Bell, long recognized as godfather of CRT, taught for most of his career at Harvard Law School. Kimberle Crenshaw, who gave CRT its name, teaches at the Columbia School of Law and the UCLA School of Law. Richard Delgado, who co-wrote the main primer on CRT, teaches at the University of Alabama School of Law. Other main architects of CRT were law professors: Angela Harris, Patricia Williams, Mari Matsuda, Neil Gotanda, and Cheryl Harris have taught, respectively, at the UC Davis School of Law, Columbia Law School, the William S. Richardson School of Law at the University of Hawaii, Western State College of Law, and the UCLA School of Law.
2. Derrick A. Bell, "David C. Baum Memorial Lecture: Who's Afraid of Critical Race Theory?" *University of Illinois Law Review* (1995), p. 898, <http://publish.illinois.edu/lawreview/archives/volume-1995/> (accessed January 27, 2022).
3. *Ibid.*, pp. 893 and 898.
4. "Critical Legal Studies" (interview with CLS godfather Duncan Kennedy), in James R. Hackney, Jr., *Legal Intellectuals in Conversation: Reflections on the Construction of Contemporary American Legal Theory*, 2012, p. 23, <https://nyu.universitypressscholarship.com/view/10.18574/nyu/9780814737071.001.0001/upso-9780814737071-chapter-001> (accessed January 27, 2022).
5. Kimberlé Crenshaw, Neil T. Gotanda, Gary Peller, and Kendall Thomas, eds., *Critical Race Theory: The Key Writings That Formed the Movement* (New York: The New Press, 1996), p. xxiv.
6. David W. Kennedy, "Critical Theory, Structuralism and Contemporary Legal Scholarship," *New England Law Review*, Vol. 21, No. 2 (1985-1986), p. 243, <http://nrs.harvard.edu/urn-3:HUL.InstRepos:16084569> (accessed January 27, 2022).
7. Karl Marx, "Theses on Feuerbach," 1845, <https://www.marxists.org/archive/marx/works/1845/theses/> (accessed January 27, 2022), in Anton Pannekoek, "Marxism as Action," 1915, <https://www.marxists.org/archive/pannekoek/1915/marxism-action.htm> (accessed January 27, 2022).
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9. Martin Jay, *The Dialectical Imagination: A History of the Frankfurt School and the Institute of [sic] Social Research, 1923-1950* (Boston: Little Brown and Co., 1973), p. 36.
10. *Ibid.*, p. 13.
11. Andrei Znamenski, *Socialism as a Secular Creed: A Modern Global History* (Lanham, MD: Lexington Books, Lanham, 2021), p. 348.
12. Jay, *The Dialectical Imagination*, p. 8.
13. *Ibid.*, p. 12.
14. Jay, *The Dialectical Imagination*, p. 44.
15. Stuart Jeffries, *Grand Hotel Abyss: The Lives of the Frankfurt School* (Brooklyn, NY: Verso, 2016).
16. Max Horkheimer, *Critical Theory, Selected Essays* trans. by Matthew J. O'Connell et al. (New York: Continuum, 2002), p. 246, <http://blogs.law.columbia.edu/critique1313/files/2019/09/Horkheimer-Traditional-and-Critical-Theory-2.pdf> (accessed February 10, 2022).
17. *Ibid.*
18. Herbert Marcuse, *One Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (Boston: Beacon Press, 1991), p. 4. (Originally published in 1964.)
19. Herbert Marcuse, *An Essay on Liberation* (Boston: Beacon Press, 1969), p. 17, <https://www.marxists.org/reference/archive/marcuse/works/1969/essay-liberation.htm> (accessed January 27, 2022).
20. Znamenski, *Socialism as a Secular Creed*, p. 359.
21. Horkheimer, *Critical Theory: Selected Essays*, p. 196. See also Jeffrey A. Standen, "Critical Legal Studies as an Anti-Positivist Phenomenon," *Virginia Law Review*, Vol. 72, No. 5 (August 1986), p. 993, <https://www.jstor.org/stable/1072930> (accessed January 28, 2022).
22. Horkheimer, *Critical Theory: Selected Essays*, p. 213.
23. *Ibid.*, p. 207.
24. *Ibid.*, p. 219.
25. Kennedy, "Critical Theory, Structuralism and Contemporary Legal Scholarship," pp. 216 and 217.
26. Marcuse, *One Dimensional Man*, p. 9.
27. Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment: Philosophical Fragments*, ed. by Gunzelin Schmid Noerr, trans. by Edmund Jephcott (Stanford, CA: Stanford University Press, 2002), p. 106.
28. Marcuse, *An Essay on Liberation* (Boston: Beacon Press, 1969), p. 19.

29. Znamenski, *Socialism as a Secular Creed*.
30. Jason E. Whitehead, "From Criticism to Critique: Preserving the Radical Potential of Critical Legal Studies Through a Reexamination of Frankfurt School Critical Theory," *Florida State University Law Review*, Vol. 26, No. 3 (1999), pp. 727 and 728, <https://ir.law.fsu.edu/ir/vol26/iss3/3> (accessed January 28, 2022).
31. *Ibid.*, p. 728.
32. Irving Howe, "The Decade That Failed," *The New York Times*, September 19, 1982, <https://www.nytimes.com/1982/09/19/magazine/the-decade-that-failed.html> (accessed January 28, 2022).
33. "In Vietnam, in Cuba, in China, a revolution is being defended and driven forward which struggles to eschew the bureaucratic administration of socialism. The guerrilla forces in Latin America seem to be animated by that same subversive impulse: liberation," Marcuse wrote in *An Essay on Liberation*, p. 7.
34. Marcuse, *An Essay on Liberation*, p. 7.
35. Marcuse, *One Dimensional Man*, pp. 256 and 257.
36. In his line on liberation depending on consciousness of servitude, Marcuse adds that "the emergence of this consciousness is always hampered by the predominance of needs and satisfactions which, to a great extent, have become the individual's own." *Ibid.*
37. Marcuse, *An Essay on Liberation*, p. 9.
38. Marcuse further wrote that "intolerance even toward thought, opinion, and word, and finally, intolerance in the opposite direction, that is, toward the self-styled conservatives, to the political Right—these anti-democratic notions respond to the actual development of the democratic society which has destroyed the basis for universal tolerance." "Repressive Tolerance," 1969, <https://www.marcuse.org/herbert/publications/1960s/1965-repressive-tolerance-fulltext.html> (accessed January 28, 2022).
39. Crenshaw et al., *Critical Race Theory: The Key Writings That Formed the Movement*, p. xxii.
40. *Ibid.*, p. xviii.
41. *Ibid.*
42. *Ibid.*, p. xxiv.
43. *Ibid.*, p. xxii.
44. See a video of the 2019 event: American Studies Association, "Presidential Session: Intersectionality and Critical Race Theory," <https://www.youtube.com/watch?v=elalUgX-zZE> (accessed January 28, 2022).
45. Richard Delgado, "The Imperial Scholar: Reflections on a Review of Civil Rights Literature," *University of Pennsylvania Law Review*, Vol. 132 (1984), p. 4, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1992111](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992111) (accessed January 28, 2022).
46. *Ibid.*, p. 577.
47. Both these cases are discussed in Charles R. Lawrence III, "Doing 'the James Brown' at Harvard: Derrick Bell as Liberationist Teacher," *Harvard Blackletter Journal*, Vol. 8 (1991), <https://scholarspace.manoa.hawaii.edu/bitstream/10125/65960/1/Doing%20the%20James%20Brown.pdf> (accessed January 28, 2022).
48. A 1998 *Harvard Crimson* article on the hire includes this line: "Harvard Law School currently has only one tenured minority woman, Gottlieb Professor of Law Elizabeth Warren, who is Native American." See "Welcome Guinier," *The Harvard Crimson*, February 4, 1998, <https://www.thecrimson.com/article/1998/2/4/welcome-guinier-pwe-welcome-the-announcement/> (accessed January 28, 2022).
49. Daniel Subotnik, "What's Wrong with Critical Race Theory: Reopening the Case for Middle Class Values," *Cornell Journal of Law and Public Policy*, Vol. 7, No. 3 (1998), p. 684, <http://scholarship.law.cornell.edu/cjlp/vol7/iss3/1> (accessed January 28, 2022).
50. Crenshaw et al., *Critical Race Theory: The Key Writings that Formed the Movement*, p. xiii. (Emphasis in original.)
51. Frances Lee Ansley, "White Supremacy (and What We Should Do About It)," in Richard Delgado and Jean Stefancic, eds., *Critical White Studies: Looking Behind the Mirror* (Philadelphia: Temple University Press, 1997), p. 592.
52. Angela P. Harris, "Foreword: The Jurisprudence of Reconstruction," *California Law Review*, Vol. 82, No. 4 (July 1994), p. 752, <https://www.jstor.org/stable/3480931> (accessed January 28, 2022).
53. Derrick Bell, "Racial Realism," *Connecticut Law Review*, Vol. 24, No. 2 (Winter 1992), pp. 373 and 374, <http://blog.richmond.edu/criticalracetheory/files/2019/02/Bell-Racial-Realism.pdf> (accessed January 28, 2022). In this essay, Bell warns that reliance on "abstract legal rights, such as equality" will mislead blacks into hopes that will be constantly dashed. Rather, Bell calls for self-reflection on the part of black Americans (p. 373), an examination that he says must start by accepting the statement quoted here.





# Critical Race Theory: Its Harmful Effect on Entrepreneurship and Innovation

*John Sibley Butler, PhD*

**T**his chapter examines the inability of critical race theory (CRT) to capture the dynamics of success within the American tradition, which at its core is innovation, entrepreneurship, and free enterprise. The first part of the chapter introduces experiences of individuals from “marginalized” groups and how they turn to entrepreneurship for success, which in turn launches the next generation toward economic security. The second part shows how CRT cannot explain this success because its intellectual roots are grounded in closed-system analysis, an organization theory applied to management systems that operate with limited outside influence. The final section contrasts entrepreneurship with ideologies rooted in CRT.

## **Entrepreneurship and Success: The Rejected Strain of Race and Ethnic Theory**

Scholarship on entrepreneurship overlaps with the study of race and ethnic assimilation. In a real sense, it is a rejected tradition because it focuses on economic and educational success, concentrating on what groups can accomplish rather than what they cannot accomplish. This scholarship shows how many Caucasian groups that immigrated to the United States in the 19th and 20th centuries developed an economic tradition through small shops and helped their children climb the ladder of economic mobility. This is seen as homophily, or people coming together from the same tradition in a spirit of trust, in this case creating ethnic business enclaves within their communities.<sup>1</sup>

One may imagine taking this data and examining how different racial and ethnic groups, such as Chinese, Japanese, and Mexican immigrants, came to America, started small shops, and produced the same results for their children. One may imagine that the similarities in educational attainment, as measured by a college degree, is about the same. Yet “mainstream” scholarship designated these groups as marginalized or oppressed people. Individuals who used their creative abilities in America’s free-market system, becoming self-employed entrepreneurs, for example, created a cultural environment in which the second generation was able to adjust to American society. Research supporting this development is strong, and black Americans, the sons and daughters of slaves, did it better than most, forced to do so by legal and societal segregation. Entrepreneurship is one of the primary factors undergirding group success among black Americans today.<sup>2</sup>

The study of innovation and entrepreneurship and how “marginalized and oppressed” people used the free market to shape their future has a long history. For example, Max Weber and Georg Simmel tried to account for the development of self-employment and entrepreneurship among groups who were discriminated against or marginalized in Europe, such as Jews. In Weber’s groundbreaking 1905 work *The Protestant Ethic and the Spirit of Capitalism*, he confirmed the idea that “marginalized groups,” because of religion or other rejected characteristics by the larger society, turned to the market and self-employment to provide economic stability. He noted that this was true for the Huguenots of France, the Poles under Lewis XIV, and the Jews for hundreds of years across Europe and the world.<sup>3</sup> Simmel referred to these marginalized groups as “strangers” and wrote about their role as traders in societies as they morphed from traditional agricultural societies to market economies.<sup>4</sup>

One of the most celebrated debates in history took place between Weber and Werner Sombart. While Weber tried to establish Protestantism as the greatest influence on capitalism, Sombart, in the 1911 *The Jews and Modern Capitalism*, noted that Weber was wrong and that it was an outsider in Europe, the marginalized Jewish group, that deserves the mantle for creating capitalism in Europe. Indeed, in the book chapter “The Contribution of the Jews to Modern Economic Life,” Sombart traced the movement of the Jews to the burst of economic activity in Europe.<sup>5</sup> This proposition about how strangers and outsiders develop economic activity can also be found in literature on ancient pre-European societies. As noted by Karl Moore and David Lewis in *Birth of the Multi-National: 2000 Years of Ancient Business History*, Assyrian merchants developed

residences in foreign countries hundreds of miles from their homeland and were welcomed by the princes of Babylon, Aram, and Anatolia as an economic blessing.<sup>6</sup>

In a real sense, America became a significant laboratory for the experiment that shows how, when members of a group must deal with racism, marginalization, and discrimination, they turn to markets to ensure their future success and that of their children. In order to understand the data, one has to place the concepts of homophily and networking at the very center of the experiment.

Here, Mary Pattillo, in a 2021 paper titled “Black Advantage Vision: Flipping the Script on Racial Inequality Research,” presents a framework for examining areas where, on the whole, blacks outperform whites. She notes that first,

[s]ociology—and the social sciences more generally—reproduces stigma in our research and teaching, which then perpetuates negative information about Black people that permeates U.S. and world culture; and second, that Black people internalize the stigma of Black disadvantage research and start believing that we are cursed. Black Advantage Vision reminds Black people of our worth, strengths, resilience, care, and accomplishments.<sup>7</sup>

Pattillo’s paper is a theoretical throwback to literature that examines the relationship between entrepreneurship/self-employment and black America. Indeed, if this research had been continued, there would be a line of unbroken scholarship from the 1800s to the present discussing black success. This research would have specified models for black success that continue today. Weber’s hypothesis on marginalized groups’ use of the market, matched with the research on entrepreneurship and black America, brings the Weber hypothesis squarely to the American continent, something that scholarship has refused to acknowledge.

In a research paper titled “A Critical Race Theory Approach to Black American Entrepreneurship,” Steven Gold argues that black Americans do not have a tradition of entrepreneurship and concludes “that the critical race view provides the most convincing explanation for black Americans’ limited entrepreneurial achievements.”<sup>8</sup> His theoretical approach prevented him from stepping outside of critical race theory and understanding how blacks as newcomers just freed from slavery were more likely by 1910 than white Americans to be employers and almost as likely as whites to be self-employed. In a detailed analysis of black

self-employment, Margaret Levenstein wondered how scholars could miss the historical tradition of black entrepreneurship.<sup>9</sup>

Indeed, scholars have missed this strong tradition of black entrepreneurship because they have been concerned with terms, such as “institutional racism” and “critical race theory,” rather than how blacks have been successful in America. Although not acknowledged by this tradition, black Americans created some of the strongest communities in the country, and the documentation of their strength started with W. E. B. Du Bois’s 1907 work *Economic Co-operation Among Negroes*.<sup>10</sup> These strong communities, which Du Bois called the group economy, dominated the literature on entrepreneurship and black Americans. In “Forgotten Citations,” my two co-authors and I closed the gap in the literature by showcasing this forgotten research.<sup>11</sup> Works include E. Franklin Frazier’s 1925 essay “Durham: Capital of the Black Middle Class,” Booker T. Washington’s 1911 essay “Durham, North Carolina: A City of Negro Enterprise,”<sup>12</sup> Edward H. Bonekemper III’s “Negro Ownership of Real Property in Hampton and Elizabeth City Country, Virginia, 1860–1870,” Leo Hirsh’s “The Free Negro in New York,” Richard Wade’s “The Negro in Cincinnati 1800–1830,” and Junius B. Wood’s 1916 book *The Negro in Chicago*. Wood’s book also highlights the institutions that were founded in these cities and allowed black Americans to achieve financial and educational success.<sup>13</sup> It is instructive that these communities had more of an effect on future generations in part because they all created universities. This research had its inception in works such as Du Bois’s *The College-Bred Negro*<sup>14</sup> and Daniel Thompson’s *A Black Elite*.<sup>15</sup>

My work has also shown that blacks who moved beyond the group economy launched future generations into society.<sup>16</sup> Over the past hundred-plus years, blacks as a group have been very successful in America in the face of discrimination. When racism and discrimination was the worst in America, black Americans who participated in the group economy were at their best, as measured by intact families, the development of private schools, and the continuation of private enterprise and organizations. One should not confuse how blacks reacted to legal segregation with networking under homophily. One has to understand homophily, or people coming together, to solve problems. Even in the old South today, wealthy blacks continue to support organizations founded during the worst period of segregation. As I noted in my essay “Straight Out of the Black Bourgeoisie: Lessons for the Twenty-First Century,” when Du Bois was writing about how racism affected a black ghetto in Philadelphia, black and white scholars were also writing

about how successful communities based on the group economy, such as Durham, North Carolina, had all the characteristics of middle-class respectability.<sup>17</sup>

Another social change has to do with the Japanese on the West Coast, a group that came to America as immigrants. The big difference to black Americans is that the Japanese immigrants were able to place their enterprises in the hearts of the cities, something that legal segregation prevented black Americans from doing. Edna Bonacich and John Model's work *The Economic Basis of Ethnic Solidarity: Small Business in the Japanese American Community* shows how the first generation of Japanese Americans went heavily into business enterprise and enabled future generations to become successful. Even with the World War II experience, where Japanese Americans were sent to internment camps for fear that they would side with Japan instead of the U.S., their value structure created an education path for the following generation. More than 100,000 Japanese Americans were removed from their enterprises and homes and placed in internment camps. Despite that injustice, they continued to work in enterprises, maintained their families, and even joined the military to fight against Japan. After the war, they continued their strategy of entrepreneurship, supporting future generations; they launched their children from the business enclave to college. As Bonacich and Model note, "For all cohorts, college education was a steppingstone to leaving the ethnic economy by the 1960s, though the proportion of college educated who could or did avail themselves of this opportunity was substantially greater among the later born."<sup>18</sup>

One can also consider the experience of Mexicans who immigrated to the United States. In *An American Story: Mexican American Entrepreneurship & Wealth Creation*, the authors examine the very strong Mexican American tradition of wealth creation and education, which itself rests on a strong tradition of entrepreneurship. Concentrating on large enterprises, mid-size enterprises, and small stores, the book shows how the Mexican American entrepreneurial tradition continues to shape communities while turning to the market for success.<sup>19</sup>

Finally, one can give consideration to Min Zhou's book *Chinatown: The Socioeconomic Potential of an Urban Enclave*.<sup>20</sup> Zhou goes to great lengths to explain how Chinatowns across America provide an alternative means of incorporation in American society as enterprises are established and children are launched into the American middle class and compete for jobs that require higher education.

All of these examples point to how members of different groups find success through entrepreneurship. These examples, and many more,<sup>21</sup>

have been at the center of debates since market economies developed. As Deirdre McCloskey reminds her readers in *The Bourgeois Virtues: Ethnics for an Age of Commerce*, capitalism has been a worldwide success because entrepreneurial families are seeking to do well, educate their children, and maintain a strong family structure. Indeed, capitalism is dependent on entrepreneurial firms. The elephant in the room that most scholars have missed is the relationship between bourgeois culture (small shops, family, education of children) and what the literature on race calls “marginalized” people in market economies.<sup>22</sup> As noted, the contribution of marginalized groups began to appear in works by Simmel as societies were moving toward market economies; he called such entrepreneurs, people who were locked out of opportunities by the larger society, strangers. Ancient literature on commerce and entrepreneurship includes the Chinese in Singapore; Coptic Christians in Egypt; Jews in the United States and Europe; the Ibo in Nigeria; Greeks in Egypt; and Armenians, Greeks, and Balkan peoples in Asia Minor. The stranger as trader and the trader as stranger, that was Simmel’s idea.<sup>23</sup>

### Closed-System Analysis and Critical Race Theory

Critical race theory has to be seen in context: how it relates to other theories that are trying to explain social phenomena. In academia, one can look at theories that operate in closed systems. One can think of ideas being placed in a box, and within that box closed theories produce their own data, with little or no data coming from the outside. One may think of trying to keep all the elements in the box in static equilibrium or, in the case of race, how “whites” are responsible for controlling everything in the box. This is operating in a closed system, and these kinds of systems have trouble with change coming from outside of the box.

This same debate takes place in economics, where the macro-economy of Keynes, for example, is a closed system and has trouble with innovation from the outside. This leads scholars to faulty conclusions because systems are not closed and static but organic and changing. In economics, Joseph Schumpeter pointed out that closed systems could not handle innovation and entrepreneurship and thus are inadequate for understanding the movement of economies. Indeed, he argued that it was things that were outside of the equilibrium system, entrepreneurs and their new technologies, that made economies move.<sup>24</sup>

CRT operates in a closed theoretical box and thus makes it difficult to see black success from the outside. Because it is a closed system that is not dynamic, it could not bring in data that demonstrate models of black

success. But when one examines black America without the distortive lens of CRT, the tradition of Weber bursts open. People who are seen as marginalized suddenly become empowered. Thus, black Southerners, in the tradition of self-help and Simmel's strangers, are more likely to be third-generation and fourth-generation college graduates because they are standing on the shoulders of black entrepreneurs when racism was the strongest.

Data have shown that during the heyday of black self-help and homophily (which was during the time of legal segregation), the black entrepreneurial sector "produced 56 percent of the next generation's professional and businessmen who were listed in *Who's Who in Colored America*. More importantly, this entrepreneurial sector produced slightly more than half (54 percent) of the college graduates from this community."<sup>25</sup> Staying close to the relationship between racism and legal segregation, and following the theory that Simmel mentioned above, it has been found that the areas of the country where blacks make up the largest percentage of total enrollment in higher education, or college matriculation, are the old Confederate states. In Mississippi, 27.9 percent of students enrolled in college are black. This is followed by Louisiana (24.6 percent), Georgia (23.3 percent), South Carolina (18.7 percent), Alabama (20.1 percent), and North Carolina (18.7 percent).<sup>26</sup> When Charles Johnson completed *The Negro College Graduate* in 1938, most black graduates were second-generation graduates.<sup>27</sup>

In 1986, Daniel Thompson wrote *A Black Elite: A Profile of Graduates of UNCF Colleges* and concluded that "the respondents of this survey are very satisfied with their occupational choices and their advancement. Fully 97 percent feel well qualified for their work in which they are engaged; about half (47%) believe that they are even better qualified than are their immediate white peers, and only 3 percent felt less well qualified than their white peers."<sup>28</sup> These are results found in the history of black America that follows the expatiations of theories as old as Weber and Simmel. This adjustment by blacks predates legal segregation, and it also happened among the best and brightest during segregation. What blacks have done, rather than what they allegedly cannot do, has been buried under ideologies, such as CRT, which avoids all data.

In my current hometown of Austin, Texas, the first black educational institutions set up for future generations were Huston and Tillotson Colleges. (They later merged into Huston-Tillotson College.) Black entrepreneur Jacob Fontaine, who organized students at these colleges to help get out the vote among a white Southern population in Texas, gave

birth to a school that would become the University of Texas at Austin.<sup>29</sup> Although it would take black students more than 60 years to be able to attend that university, black students demonstrated they did not need the University of Texas at Austin to become successful. It is their relationship with entrepreneurship, found throughout so much of history, that turns marginalized people into empowered people.<sup>30</sup>

Although CRT's roots are found in Marxism, often overlooked is Marx's contribution to dialectic thinking, in which everything contains the seeds of its opposites. But the dynamics of America have proved Marx wrong on the crucial idea of all "oppressed" people coming together to destroy the capitalist oppressor system. And, as the tradition of black shopkeepers developed, or what scholars called the black bourgeoisie, American Marxists could not stand the trend. As noted by Harold Cruse in *The Crisis of the Negro Intellectual*:

American Marxists have ... misled, disoriented, and retarded Negro intellectuals.... Marxism as a method of social inquiry is not native to America but to Europe—it was transplanted to America by Europeans who never ceased being Europeans. But there has never been a nation that developed like the United States, or a system that developed like capitalism within the United States.... Thus, the American Negro tradition in this country must be separated from Marxian conclusions in order to be seen in the light of its own Native American Dynamic.<sup>31</sup>

Seeing black achievement in its own native dynamic means separating the black experience from Marx's disproven idea that all "oppressed" people will join together to overthrow the capitalist system. But scholars merely overlook that dynamic and continue to push a theory that has no data to support it.

One can say that CRT tried to patch up this reality by introducing the term intersectionality.<sup>32</sup> Critical gender studies adds sexual orientation as a variable, something of which Marx could not even conceive. It is argued that the social categories of gender create interactions with categories of race and sexual orientation heightening discrimination and disadvantage. This attempt to patch up Marx's original concept has not worked at the group level in America. By giving in to CRT and the idea of intersectionality, black Americans have given up their strong history and methods of self-help by identifying not as black Americans but as "diverse," "people of color," and members of "minorities." The historical era of bait and



switch has settled in, upending the civil rights movement's goal of equality (as measured by opportunity), trading it instead for a forced and meaningless "diversity."

## Conclusion: Modeling the Future of America

Theoretical ideas flow down through history, and CRT is in the tradition of closed systems. Such a system discourages innovation and entrepreneurship for all Americans. As movements try to draw in new "marginalized" groups for their cause, these groups have accepted capitalism and thrived in different generations. During the heyday of Silicon Valley, "Almost one-quarter (23 percent) of Silicon Valley's high-tech firms are run by Chinese [Americans] or Indian [Americans].... All told, Chinese- and Indian-run firms accounted for a total of \$12.5 billion in sales and 46,290 jobs in Silicon Valley in 1996."<sup>33</sup> Immigrant Nigerians are also following and organizing around the group economy as they have some of the strongest entrepreneurial traditions among immigrants.<sup>34</sup> The effects of college attendance and other contributions can be seen in Tod Hamilton's award-winning work *Immigration and the Remaking of Black America*.<sup>35</sup> When one moves away from closed theories, especially in the history of black Americans, and considers the dynamic ideas of changing systems, one can see that whom CRT calls marginalized people are the source of the continuous rebuilding of America.

The reality is that many immigrants have forged their way in America by embracing entrepreneurship and capitalism and building strong communities. To be sure, not all people in America, whether immigrant or native born, adjusted through innovation and entrepreneurship. But the model for success in black America will always be related to two kinds of **factors**: The first is labor, and the second is entrepreneurship, with entrepreneurs and community builders at the top of the success ladder. Calling people racist and spreading CRT's discriminatory idea that black Americans are victims with no agency due to immutable characteristics, such as skin color, will never create an opportunity structure for any group. Of course, this overall analysis applies to all Americans: Those who are deep in the entrepreneurial tradition are well-positioned to climb the ladder of upward economic mobility.

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PART II

*Critical Legal Theory's  
Impact on the Schoolhouse*



# Critical Race Theory in Practice: A Violation of Federal Law

*Jonathan Butcher & Sarah Parshall Perry*

**M**artin Luther King, Jr., called the 1964 Civil Rights Act a “second emancipation proclamation.”<sup>1</sup> President Lyndon Johnson, who signed the act into law, said it was “a proud triumph.”<sup>2</sup> But critical race theorists dismiss the Civil Rights Act, calling it nothing but “paper-promises” that “have held out as many illusions as gains.”<sup>3</sup>

While no law can ever truly eliminate a behavior—despite outlawing theft, thieves remain; despite outlawing race discrimination, racists remain—the Civil Rights Act did, however, end government-sanctioned discrimination. This means that *acting* on one’s racial prejudice was no longer just a moral violation but a legal one.

The winding path that federal lawmakers followed to eradicate racial discrimination in America began with a series of constitutional amendments passed after the Civil War during the Reconstruction Era. The 13th Amendment to the U.S. Constitution<sup>4</sup> was the first of these amendments and abolished slavery in 1865. It was followed by the 14th Amendment to the U.S. Constitution<sup>5</sup> in 1868. Among other purposes, the 14th Amendment guaranteed citizenship for all persons “born or naturalized” in the United States while also procuring civil and legal rights for all newly emancipated black Americans. While all citizens enjoyed its assurances of “equal protection of the laws”<sup>6</sup> prior to 1964, just how those assurances would apply in practice within the context of modern life remained unclear. The enactment of Jim Crow laws and “black codes”—a series of state and local laws diminishing and segregating black

Americans—necessitated a remedy to the pernicious reality of continuing racial discrimination.

The Supreme Court had previously upheld the use of some Jim Crow laws in *Plessy v. Ferguson*,<sup>7</sup> determining at that time that government-sanctioned racial segregation that purported to be “separate but equal” was constitutional. This finding was subsequently overruled in the series of landmark decisions beginning with *Brown v. Board of Education of Topeka*.<sup>8</sup> In *Brown*, the Supreme Court determined that the segregation of children in public schools based solely on their race, even though the physical facilities and other tangible factors may be equal (although they rarely, if ever, were), deprived minority children of equal educational opportunities in contravention of the Equal Protection Clause of the 14th Amendment. Writing for the unanimous Court in *Brown*, Chief Justice Earl Warren noted, “To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>9</sup>

Subsequent to the High Court’s decision in *Brown*, and prompted by massive resistance to desegregation, President John Kennedy pushed Congress to pass a comprehensive civil rights bill in 1963. President Lyndon Johnson continued to pressure both chambers for a bill after President Kennedy’s death. The result was the 1964 Civil Rights Act,<sup>10</sup> the nation’s benchmark civil rights legislation, which outlaws discrimination based on race, color, religion, sex, and national origin and which prohibits the unequal application of voter registration requirements, racial segregation in schools and public accommodations, and employment discrimination.

Yet critical race theorists have argued that policymakers enacted the law to preserve the power of white individuals. Richard Delgado, chair of the law school at the University of Alabama, claims that “elite white self-interest” was what allowed for the law’s passage.<sup>11</sup> According to the late Harvard Law School professor Derrick Bell, considered the godfather of critical race theory, the “interest convergence” surrounding the Civil Rights Act meant that the interests of whites in being morally superior to communist nations during the Cold War aligned with the interests of black Americans in having the same freedoms as white Americans. Accordingly, Delgado wrote that white Americans merely allowed civil rights advances in order to protect their own power.

As Delgado says, in summarizing Bell’s positions: “American civil rights law is not aimed at improving conditions for blacks, except on the rare



occasions when doing so coincides with whites' self-interest. Instead, our system of civil rights statutes and case law serves a homeostatic function, assuring that society has exactly the right amount of racism."<sup>12</sup> Delgado also wrote that "if you want to understand the zigs and zags of racial history, you need to pay attention to interest convergence. Racial progress for blacks came, he [Bell] wrote, when such progress also lay in the best interest of elite whites."<sup>13</sup>

The election of a black American to the presidency in 2008, another to the vice presidency in 2020, the appointments and confirmations of others to the U.S. Supreme Court beginning with Thurgood Marshall in 1967, still more to executive Cabinet positions and to the U.S. House and Senate, and others rising to the rank of general in the U.S. military—according to critical race theorists, it is the selfish interests of elite white individuals that made these accomplishments possible. These black individuals' successes are not due to their personal efforts, skills, sacrifices, or hard work but are the results of white actors in an oppressive system who allowed these ethnic minorities to be successful.

It is curious that critical race theorists today, calling themselves "woke," are not doubling down on their rejection of racial prejudice but are promoting it themselves. These 21st-century theorists have found that the greatest form of societal behavior they can muster is to commit their own racial discrimination, thereby violating the sacrifices of all those who marched, went to prison, and faced fire hoses and snarling dogs to fight racial bias.

## Critical Race Theory and the Civil Rights Act

For schools and institutions of higher education, two important provisions of the Civil Rights Act apply: Title IV<sup>14</sup> and Title VI.<sup>15</sup>

Title IV promotes the desegregation of public schools and authorizes the U.S. Attorney General to file lawsuits to enforce the provisions of the Civil Rights Act. It defines "desegregation" as "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin," thereby removing government-sanctioned racial discrimination in schools and concretizing the Supreme Court's holding in *Brown* that racial separation is a violation of the Equal Protection Clause of the 14th Amendment.<sup>16</sup>

Title VI requires that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance."<sup>17</sup>

In recognition of Americans' shared equality and support for a pluralistic society, federal lawmakers have worked to abolish institutional racism and government-sponsored racial prejudice with these Civil Rights Act provisions. Recent litigation against educators' applications of critical race theory, however, signal the return of racial discrimination under the guise of a new, "equity"-driven pedagogy.

In June 2021, the Southeastern Legal Foundation filed a lawsuit against the Board of Education in Evanston, Illinois, on behalf of an Illinois teacher who said that officials at her school separated teachers and students into different groups according to race for school activities, including "affinity groups" and "privilege walks"<sup>18</sup> in a clear violation of the intent of Title VI. As the Southeastern Legal Foundation's general counsel Kimberly Hermann says, "By vowing to define its teachers and students solely by their race, District 65 promotes and reinforces a view of race essentialism that divides Americans into groups based solely on their skin color."<sup>19</sup>

Officials in other districts have engaged in similar actions. Investigative reporting in North Carolina found that educators from the state's largest school district in Wake County used racially segregated affinity groups.<sup>20</sup> Boston Public Schools encourages racial affinity groups where school employees can discuss "systemic racism," despite the Civil Rights Act's elimination of government-sponsored discriminatory activity.<sup>21</sup> New York City teachers who participated in discussion groups after the May 2020 death of George Floyd, a black man, at the hands of a white Minneapolis police officer were divided into racially separate affinity groups for different sessions.<sup>22</sup>

Parents, reporters, and public interest law firms are not the only ones who recognize that critical race theory's application violates federal civil rights law. In an opinion released in May 2021, Montana Attorney General Austin Knudsen wrote:

In many instances, the use of "Critical Race Theory" and "antiracism" programming discriminates on the basis of race, color, or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, Article II, Section 4 of the Montana Constitution, and the Montana Human Rights Act.<sup>23</sup>

Knudsen affirms the importance of Title VI of the Civil Rights Act in "protect[ing] all students who attend institutions receiving federal funding from being treated differently based on their actual or perceived race color, or national origin."<sup>24</sup> He then adds:

A school unlawfully discriminates on the basis of race if it has effectively caused, encouraged, accepted, tolerated or failed to correct a racially hostile environment.... Notably, racial acts need not be targeted at any particular individual in order to create a racially hostile environment.<sup>25</sup>

School officials' use of affinity groups violates the Civil Rights Act's prohibition of treating students differently based on race, but Knudsen's explanation that "racial acts need not be targeted at any particular individual" would apply to other school content based on critical race theory's principles, too.

Examples abound in the coursework to which Knudsen is referring. For example, the Iowa City School District posted a lesson on its website created by Learning for Justice, an arm of the radical left-wing Southern Poverty Law Center, titled "What Is White Privilege, Really?"<sup>26</sup> The lesson teaches that the "legacy of white supremacy endures," precisely the message that Bell and Delgado used to argue that the interests of white Americans allowed the Civil Rights Act to become law for selfish purposes, as opposed to people from different races working together to ensure the that act became law.

Thus, the school district is using a lesson targeting a particular racial ethnicity, regardless of the behavior of specific individuals—and creating a racially hostile environment. School officials around the country use Learning for Justice's materials. In fact, a coalition of national organizations under the banner of Educating for American Democracy that advocate national civics standards recommends Learning for Justice's lessons.<sup>27</sup> Policymakers, parents, and courts should not allow education officials to trample the proper implementation of the Civil Rights Act.

As the Supreme Court made clear in *Shaw v. Reno* in 1993:

Classifications of citizens solely on the basis of race are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.<sup>28</sup>

Preventing this type of stigmatization and racial hostility was precisely why the 14th Amendment was added and the Civil Rights Act was enacted. Critical race theory threatens to upend the gains of the civil rights movement and return American classrooms to the pre-*Brown* era.

## State Proposals

Lawmakers in more than two dozen states introduced legislative proposals in 2021 to respond to educators' use of critical race theory's racially discriminatory material in classrooms. While these proposals are all different, they can be categorized into three groups: (1) proposals defining and prohibiting the use of "divisive concepts" in public institutions, including schools; (2) proposals recommending or mandating the teaching of certain documents or ideas central to the nation's creed and ideals, such as the Founding documents; and (3) proposals that prohibit compelled speech and reinforce the Civil Rights Act.

National interest groups, such as the National Education Association (NEA), the nation's largest teachers union, have announced that they are directing members to continue teaching critical race theory's prejudice in classrooms regardless of opposition. This means that state proposals responding to critical race theory—many of which are already underway across the country—will almost certainly face legal challenges.<sup>29</sup> As a result, any state legislative proposal responding to a racially discriminatory philosophy, such as critical race theory, must be constitutionally and legally sound.

Some state proposals have attempted to define "divisive concepts" in the way President Donald Trump's executive order rejecting racial discrimination in federal workforce employee training programs did in 2020.<sup>30</sup> Executive Order 13590 described such "divisive concepts" as those that teach

that (1) one race or sex is inherently superior to another race or sex; (2) the United States is fundamentally racist or sexist; (3) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (4) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (5) members of one race or sex cannot and should not attempt to treat others without respect to race or sex; (6) an individual's moral character is necessarily determined by his or her race or sex; (7) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; (8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or (9) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race. The

term “divisive concepts” also includes any other form of race or sex stereotyping or any other form of race or sex scapegoating.<sup>31</sup>

Lawmakers in Louisiana considered such a proposal (the proposal did not advance), while Arkansas lawmakers adopted similar language for their definition of “divisive concepts.”<sup>32</sup>

Still other state proposals have contained provisions that introduced material that teachers should include in state civics education standards. In Texas, lawmakers both cited prohibitions on “race or sex stereotyping” and listed materials that educators should use to replace discriminatory ideas, such as teaching about the U.S. Constitution and the Declaration of Independence.<sup>33</sup> Texas lawmakers have also included the first Lincoln–Douglas debate and Alex de Tocqueville’s *Democracy in America* on their list of required teaching materials.

A third category of proposals simply rejects compelling educators or students to profess or affirm a particular idea. Arkansas’s proposal, for example, contains a provision that says, “A state entity shall not teach, instruct, or train any employee, contractor, staff member, or any other individual or group, to adopt or believe any divisive concepts.” This means that not only are Arkansas lawmakers introducing a new legislative idea (“divisive concepts”), but they are also preventing a violation of the Civil Rights Act while simultaneously avoiding forcing teachers and students to engage in compelled speech in violation of their First Amendment rights under the Constitution.

## Critical Race Theory and the First Amendment

In interpreting the First Amendment to the Constitution’s guarantee of freedom of speech, the Supreme Court has affirmed that such freedom of speech and expression encompass not only the right to say what one wants but the right to *avoid* speaking<sup>34</sup> and to avoid affirming a message with which the speaker does not agree.

The Court has likewise held, in such cases as *West Virginia State Board of Education v. Barnette*, that public institutions cannot compel speech.<sup>35</sup> In that case, the Court held that a student who was a Jehovah’s Witness could not be compelled to salute the American flag and say the pledge of allegiance.

In the majority opinion, Justice Robert Jackson noted:

If there is any fixed star in our constitutional constellation, it is that *no official, high or petty, can prescribe what shall be orthodox in*

*politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.... We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.*<sup>36</sup> (Emphasis added.)

In *Rumsfeld v. Forum for Academic and Institutional Rights*,<sup>37</sup> the Supreme Court was tasked with considering the constitutionality of a federal law that denied certain federal funding to higher education institutions that prohibited military representatives from having access to campuses for recruiting purposes. Several institutions claimed that the law violated their First Amendment rights by compelling them to send a message that they endorsed the activities and views of these military recruiters. In rejecting this claim, the Court unanimously held that the law did not compel schools to speak the government’s message and did not violate the schools’ First Amendment freedom of expressive association. In writing the opinion for the Court, Chief Justice John Roberts noted, “Some of this Court’s leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say.”<sup>38</sup>

However, public employees’ free speech rights are more limited than those of private individuals when it comes to comments related to their jobs, and the Supreme Court has ruled that public institutions may restrict the free speech rights of public employees within the course of their official duties.<sup>39</sup>

Speech restrictions, however—whether for public school teachers or students—are not absolute. Public employees, such as school teachers or staff, are entitled to First Amendment protection for speech on matters of public concern, like racial discrimination.<sup>40</sup> The Supreme Court has also clarified that students do not “shed their constitutional rights to freedom of speech or expression,” even “at the school house gate.”<sup>41</sup> In fact, as recently as 2021, the Supreme Court has identified the importance of protecting unpopular opinions expressed within public education.

In *Mahanoy Area School District v. B. L.*, Justice Stephen Breyer, writing for the majority, noted:

America’s public schools are the nurseries of democracy. Our representative democracy only works if we protect the “marketplace

of ideas.” This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People’s will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection. Thus, schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, “I disapprove of what you say, but I will defend to the death your right to say it.”<sup>42</sup>

Idaho lawmakers have accounted for the critical importance of free speech as a central element in their proposal rejecting critical race theory.<sup>43</sup> Their proposal contains text that says, “No public institution of higher education, school district, or public school, including a public charter school, shall direct or otherwise compel students to personally affirm, adopt, or adhere to any of the following,” and then lists ideas which, when acted upon, might violate the Civil Rights Act—such as treating individuals “adversely” based on their immutable characteristics. Federal lawmakers introduced a similar provision for Washington, DC, public schools, over which they have jurisdiction.<sup>44</sup>

## Recommendations for Lawmakers

Based on previous U.S. Supreme Court rulings and the Civil Rights Act’s “second emancipation proclamation,” state policymakers should design proposals that declare:

No public education employee shall compel a teacher or student to adopt, affirm, adhere to, profess or act upon ideas in violation of Title IV and Title VI of the Civil Rights Act of 1964, including but not limited to the following:

1. That individuals of any race, ethnicity, color, or national origin are inherently superior or inferior;
2. That individuals should be adversely or advantageously treated on the basis of their race, ethnicity, color, or national origin;
3. That individuals by virtue of race, ethnicity, color, or national origin, bear collective guilt and are inherently responsible for actions committed in the past by other members of the same race, ethnicity, color, or national origin.<sup>45</sup>

Likewise, federal lawmakers should consider such proposals for K–12 systems within their purview, including District of Columbia Public Schools, schools funded by the Bureau of Indian Education, and schools operated by the U.S. Department of Defense. In 2021, Representative Glenn Grothman (R–WI) introduced a proposal that contained these provisions and would apply to public schools in the District of Columbia.<sup>46</sup> Federal officials should stay within the bounds of their authority as they reject racial discrimination in education and design proposals that do not expand the federal footprint in local schools.

Lawmakers can promote these proposals without prohibiting the discussion of ideas in the classroom. The University of Chicago’s “Report of the Committee on Freedom of Expression” contains ideas vital to the preservation of a robust learning environment. The committee designed the report to apply to higher education institutions, but the ideas contained therein can apply to any classroom. In the report, the committee wrote: “But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”<sup>47</sup>

Such discussions, though, should not compel speech or beliefs, or dictate action that violates federal law for teachers and students. Forcing children to participate in school activities according to skin color is different from an educator leading a class in a discussion and evaluation of the Civil Rights Act and even an evaluation of critical race theory’s analysis of the Civil Rights Act itself.

## Conclusion

Critical race theory is a philosophy that asserts that everything in public and private life, from social relationships to the media to public policy and everything in between, must consider race. It is the notion that one’s behavior and decisions are inconsequential in relation to the immutable characteristics that define one’s membership in a particular racial group. Furthermore, for the critical race theorist, there are no solutions. According to Bell, racism is permanent, which means that ethnic minorities have no hope for the American Dream—only reasons to rebel against and destabilize social and political institutions.<sup>48</sup> This makes critical race theory particularly dangerous to American education, where intellect and young minds are formed.

While the Freedom Riders of the civil rights movement protested and put themselves in harm’s way to abolish discrimination, critical race theorists endeavor to bring it back. As the contemporary critical race theorist



and academic favorite Ibram X. Kendi says, “The only remedy to present discrimination is future discrimination.”<sup>49</sup> Abundant examples from K–12 schools around the country demonstrate how critical race theorists are applying this theory—contra the Civil Rights Act.

Derrick Bell said that critical race theorists are “committed to the struggle against racism” but argued that the federal government’s most significant addition to this country’s body of laws, the Civil Rights Act of 1964, is itself a representation of racism.<sup>50</sup>

In a direct violation of federal law and of the moral urgency that inspired those who led the civil rights movement, some educators are now literally and directly compelling racially discriminatory behavior in K–12 schools. Contrary to Kendi’s prejudice, Montana Attorney General Knudsen writes, “The only viable path to a more just future and a more perfect union is to live up to our creed, not to abandon it.”<sup>51</sup> While it should not take legal action to affirm this truth, such activity may be necessary, and lawmakers should carefully design protections for children against discrimination accordingly.

When teachers unions and other special interest groups protest state provisions intended to prevent critical race theory proponents from injecting race discrimination into K–12 classrooms—even if some of those preventative provisions are imperfect—they are, in fact, advocating racial prejudice. Some state officials, and a growing number of parents, have finally recognized critical race theory for what it is—racial discrimination—and they are rejecting it. State proposals designed to reject the imposition of critical race theory in the classroom must be careful not to run afoul of the First Amendment and, therefore, must avoid compelling the speech of teachers, students, and administrators while, at the same time, reinforcing the provisions and protections of the Civil Rights Act.

State officials can and should design such proposals without censoring the discussion of ideas in the classroom, particularly as the Supreme Court has reminded the public recently that classrooms are “nurseries of democracy”<sup>52</sup> and must facilitate the free exchange and examination of ideas. The Civil Rights Act’s prohibitions on race discrimination are one of this nation’s great triumphs, and for more than 150 years, America has sought to secure the protection of all individuals, no matter their skin color, under the law.

Legislation designed to curb the use of critical race theory appropriately will ensure that the vision and reality of who Americans are—a people of equals—will remain for generations to come.

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# Critical Race Theory Goes to Court

*Joshua Dunn, PhD*

In the wake of the George Floyd protests in 2021, many teachers, schools, and school boards sought to incorporate critical race theory (CRT) and its philosophical components, such as “intersectionality,” in their classrooms. Undoubtedly, many did so believing that it would improve race relations or reduce racial inequality; however, they are quickly learning that many parents and students do not share their enthusiasm and that the Constitution and civil rights statutes could be an obstacle to their goals.

These legal impediments should not be surprising considering the basic claims of CRT. In *Critical Race Theory: An Introduction*, Richard Delgado, one of the founders of CRT, and Jean Stefanic say that CRT “questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”<sup>1</sup> Thus, the law consolidates and sustains white supremacy and privilege. Intersectionality, an offshoot of CRT, maintains that race, gender, class, religion, and other categories confer advantages on people if they are in the dominant group and disadvantages if they are not. Under this belief system, a white Muslim woman, for instance, receives privileges because of her race but is subject to oppression because of her gender and religion.

This rejection of liberal theory creates one fundamental problem for CRT advocates: The American legal system is a liberal one and rests on principles of equality. Applying ideas that reject these principles and

forcing students and teachers to confess them as dogma very quickly conflicts with both constitutional doctrine and civil rights statutes. These conflicts have led to the initial lawsuits challenging the application of CRT in schools.

This chapter analyzes the three most common types of litigation that CRT is likely to generate. The first will be challenges from students and parents. The second will be teachers objecting to CRT-based training and curricula. A third type of litigation is also likely to emerge in defense of CRT from teachers who have been punished or removed for violating school district policies or state statutes prohibiting CRT in the classroom. Unlike the first two, these lawsuits are unlikely to be successful largely because under the law, teachers have extremely limited autonomy and free speech rights in the classroom. Even though in practice, teachers can often introduce their preferred positions in the classroom, that is done so only at the pleasure of the school board or state legislature and can be limited at their discretion.

## Student Litigation

Students have already filed several lawsuits around the country, but the first and farthest along provides a template of what is likely to happen elsewhere. Last December, high school senior William Clark sued Democracy Prep, a charter school network, after an incident involving compelled speech at the Las Vegas campus that he attended. Clark alleged that the school gave him a failing grade in his “Sociology of Change” course, a class required for graduation, because he refused to confess his alleged racial, gender, and religious privilege as the CRT-based curriculum demanded.

In 2016, Democracy Prep took over the Andre Agassi Preparatory Academy in Las Vegas and promptly modified the school’s civics curriculum to emphasize intersectionality and CRT. As part of its civics programs, the school required all students to take its yearlong “Sociology of Change” course, which required students to “label and identify” their racial, religious, sexual, and gender identities and then declare whether “that part of your identity have [*sic*] privilege or oppression attached to it.”<sup>2</sup> White, male, Christian, and heterosexual identities were, according to the class, inherently oppressive and privileged because of their social dominance. The teacher labelled her own white race as privileged, her female gender as oppressed, her religious agnosticism as oppressed, and her bisexuality as both privileged and oppressed. The course materials also informed students that “REVERSE RACISM IS NOT REAL!”<sup>3</sup>

Clark enrolled in the class for the fall 2020 semester. He almost immediately protested the requirement to label any aspect of his identity as having “privilege or oppression attached to it.”<sup>4</sup> Clark is biracial—his mother is black and his late father was white—but he calls himself white because he has “green eyes and blondish hair” and, according to his complaint, “is generally regarded as white by his peers.”<sup>5</sup> When he and his mother objected to the forced confessions of “privilege” and asked for an alternative accommodation, the school told him that if he did not complete the class, he would not graduate. Because he would not complete his required assignments, the teacher gave him a D-, a failing grade, prompting him to file suit.

Clark contended that the course violated his constitutional rights to freedom of speech, due process, and equal protection, as well as civil rights statutes protecting him from a hostile educational environment based on race and sex. These claims will serve as a template for other litigation across the country.

Pointing to *West Virginia v. Barnette* (1943),<sup>6</sup> Clark contended that requiring him to confess his privilege as a white, male Christian and attach “official, derogatory labels”<sup>7</sup> to them violated the First Amendment’s prohibition of compelled speech. In *Barnette*, the Supreme Court struck down West Virginia’s mandatory flag salute for public school students. Writing for the majority, Justice Robert Jackson famously said that “if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

Citing Supreme Court precedents, such as *Meyer v. Nebraska* and *Troxel v. Granville*, Clark’s mother contended that the class’s condemnation of Christianity violated her parental right to control the education of her son under the due process clause of the 14th Amendment. The school’s policy, she alleged, undermined her authority by requiring William to “unlearn” the “Christian precepts” she had taught him because the class “labeled Christianity as an example of an oppressive ideology.”<sup>8</sup>

Furthermore, Clark contended that the class violated Titles VI and IX of the Civil Rights Act of 1964. Title VI says that: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>9</sup> Courts and the Office for Civil Rights (OCR) in the U.S. Department of Education have interpreted that to mean that schools cannot create a “hostile educational environment” based on race.

Similarly, Clark contended that the class violated Title IX, which forbids sex discrimination. Designating him as an “oppressor” based on his sex and “categoriz[ing] and stereotyp[ing]” that male sex in a “deliberately pejorative and offensive manner” constitutes sexual harassment under today’s interpretation of Title IX.<sup>10</sup>

In response, the school contended that Clark was not, in fact, compelled to speak at all, because the assignments did not require him to publicly affirm his identities and that he did not have to support any particular belief.<sup>11</sup> Clark’s attorneys pointed out that he, in fact, had to affirm his identities to his teacher and the staff of the school who had access to his assignments. Additionally, simply not having to state them to the entire class is irrelevant, as “speech is not less compelled because the speaker is not required to speak to the largest possible audience.”<sup>12</sup> Furthermore, the course required students to assent to “highly contested” claims, such as “people of color cannot be racist.” Strangely, the school also claimed that giving Clark a failing grade and threatening to not let him graduate was only a “discouragement,” not a penalty.

Despite its claims that the class and Clark’s punishment were legally unobjectionable, the school relented in early April, offering to expunge his grade and let him opt out of the course. This retreat was no doubt encouraged by a federal judge’s declaration at a February 2021 hearing that Clark was “likely to succeed on the merits” since speech is likely compelled. The defendants, the judge said, would therefore have to “justify the curriculum under a strict scrutiny test,” the court’s most exacting level of review, which he said the class exercises probably could not survive.<sup>13</sup> Since the school relented, it is now asking the judge to dismiss the case as moot.

More lawsuits like Clark’s will be filed. To evaluate whether they will succeed it is helpful to ask how a court would rule if the identities were reversed. What if a teacher forced female students or minority students to attach an inherently negative label to their identity? (This is, of course, different from requiring students to acknowledge historical facts like the exclusion of women from the franchise or the existence of slavery and Jim Crow laws.) It is hard to imagine a court saying that doing so would not violate the Constitution and civil rights statutes. The dogmas of CRT and intersectionality forbid reversing those categories, but those dogmas are not the law.

Moreover, some minority parents object to CRT and intersectionality because they regard its labels as demeaning and damaging to their children. Telling them that they are inherently oppressed because of their race might reduce their sense of agency and ability. Thus, some lawsuits with minority parents as the plaintiffs can be expected.



## Teacher Challenges

A second type of case will involve teachers who object to mandated CRT-based and intersectionality-based training and curricula. Here, too, there is already a case, *Deemar v. Evanston* in suburban Chicago, that offers a road map for how these claims will likely be litigated.

Stacey Deemar, a drama teacher for Evanston/Skokie School District 65, had initially filed a complaint with the U.S. Department of Education’s OCR in 2019 claiming that the district had violated Title VI of the Civil Rights Act by “segregating teacher meetings by race, imposing hiring quotas based on race, hosting racial affinity groups for staff, forcing teachers and students to undergo frequent race-based programming, and maintaining general policies and practices that classified individuals based on race.”<sup>14</sup> The OCR investigated and concluded that the district had in fact violated the Civil Rights Act; however, before the determination could be officially released, the Biden Administration took office and the OCR suspended the investigation.<sup>15</sup> This led Deemar to sue in federal court in June 2021.

Deemar’s lawsuit recapitulated many of the claims from the OCR complaint. The district superintendent, Devon Horton, she alleged, had for years been implementing “race-based” programming under the guise of “equity.” *Equity* in the parlance of social justice means giving people what they “need and deserve” rather than treating them equally. This focus on equity led the district to explicitly focus “on race as one of the first indicators of identity” in its official Racial and Educational Equity Policy.<sup>16</sup> Additionally, all teachers were required to undergo “anti-racist” training. The training required them to accept such claims as “white individuals are ‘loud, authoritative [and] controlling’”; “to be less white is to be less racially oppressive”; and “white identity is inherently racist.” Teachers were then required to implement that training in their classes. For instance, the district’s K–8 curriculum taught students that

- “Whiteness is a bad deal. It always was.”
- “Racism is a white person’s problem and we are all caught up in it.”
- Students should consider what it means “to be white but not be a part of ‘whiteness[.]’”
- “White people have a very, very serious problem and they should start thinking about what they should do about it.”

- “In the same way that the systems and the government are controlled by White people and racism being a result of it, so is it with men controlling systems and government and messages about women being dumb, weak, and inferior being a result.”
- “It [is] important to disrupt the Western nuclear family dynamics as the best/proper way to have a family[.]”
- “Racial injustice” means “an act/occurrence motivated by anti-blackness or racism.”
- “White people play a big role in the problems of racism today and throughout world history.”
- To “treat everybody equally” is a colorblind message, and “color blindness helps racism.”
- “[B]urying the truth ... is something many White people do to ignore racism.”
- “Because of the overt and subliminal messages about Black people being bad, ugly, and inferior to White people, Black people feel pressure to assimilate, or throw away their culture in order to become more like White people in the hopes to be more accepted by society.”
- Students should sign a pledge to be anti-racist.
- Students should gather in affinity groups segregated by skin color.
- Students should participate in privilege walks.
- White students should understand “white privilege, internalized dominance, [and] microaggressions.”<sup>17</sup>

Deemar contends that these practices violate the equal protection clause of the 14th Amendment and Title VI of the Civil Rights Act.

As does William Clark, she seems likely to succeed. Under the Supreme Court’s equal protection doctrine, racial classifications are inherently suspect and can survive scrutiny only if they serve a compelling government interest and use the least restrictive means possible. It is difficult

to see how segregated racial-affinity groups could satisfy judicial inquiry. In *Parents Involved in Community Schools v. Seattle School District No. 1*, the Supreme Court held that in the absence of unconstitutional segregation racial classifications could not be a compelling government interest in student assignments in K–12 education. If the Court was unwilling to accept racial classifications for assigning students to schools, it is difficult to imagine the Court accepting state-mandated segregation in teacher and student affinity groups. Justice Anthony Kennedy infamously wrote a concurring opinion in *Parents Involved* that left a slight opening for the use of race in student assignments so long as they did not involve “systematic, individual typing by race.”<sup>18</sup> Of course, affinity groups require systematically typing race, so even under Kennedy’s opaque opinion the Evanston/Skokie School District’s practices could not survive. Furthermore, Justice Kennedy is no longer on the Court. With its current composition, there would likely be six votes against Evanston/Skokie.

Deemar’s Title VI claims also have a strong chance of success. The fact that the OCR already found in her favor is just one indicator. In general, the evidence produced in her claim seems difficult to reconcile with existing interpretations of what constitutes a hostile educational environment. As with William Clark, one can simply imagine reversing the races. If doing so would lead to a finding of a violation of the Civil Rights Act, then doing so here would as well. This simply points to the tension between CRT and liberal principles of equality. CRT maintains that these liberal principles are deficient, but they are the principles embodied in the Civil Rights Act. Absent a legislative revision and a drastic change in the composition of the Supreme Court that would be required to sanction explicitly segregating and derogatorily labelling individuals by race, many of Evanston/Skokie’s practices are almost certain to be ruled violations of Title VI.

## Pro-CRT Lawsuits

There will also likely be lawsuits in defense of CRT filed by teachers who have been punished or fired for violating local or state prohibitions on teaching CRT in class. Randi Weingarten, the president of the American Federation of Teachers, says that the union already has a fund to “defend any member who gets in trouble for teaching honest history.”<sup>19</sup> This deceptive description ignores the fact that laws passed by various states restricting the teaching of CRT in no way limit teaching about slavery or racism in America’s past. Critics of the laws are willfully conflating history with CRT. Schools have been teaching the dark parts of American

history long before CRT was ever created. Far from being “honest history,” CRT is an ideological re-interpretation of history that imputes characteristics to individuals based on their race or sex. The fact that Weingarten deliberately misstated the nature of the issue shows the legal weakness of her position. If teachers were to be punished for teaching facts of American history, such as slavery or Jim Crow laws, judges would be on their side. But if teachers were to be punished for forcing white students to state that their skin color makes them part of white supremacy culture when a school board has told them not to, they should not expect much legal support.

Unlike college professors, K–12 teachers have limited First Amendment rights in the classroom and limited academic freedom. Curricular decisions remain under the purview of the local school board. States can restrict the authority of the local school, and that authority devolves down to the individual teacher. Thus, it has long been known that teachers cannot point to the First Amendment as a defense when they violate the instructions of school boards or state legislatures. This point was made even clearer by the Supreme Court in *Garcetti v. Cabellos* (2006), when it held that government employees cannot claim First Amendment protection for speech “made pursuant to the employee’s official duties.”<sup>20</sup> Since teaching is a teacher’s official duty, a First Amendment claim is unlikely to gain any traction.

The case of high school teacher Matthew Hawn is an example. Hawn was a teacher and baseball coach at Central High School in Sullivan County, Tennessee, who taught a course called “Contemporary Issues.” In spring 2021, he received two official reprimands from the school board. One was because he assigned an article by Ta-Nehisi Coates called “The First White President,” which was highly critical of President Donald Trump. A parent complained about the article, specifically citing its vulgar language and use of a racial epithet. When the school board asked Hawn why he assigned the article and why he did not also assign a position expressing an alternative point of view, Hawn said that he thought the students “were mature enough to handle the language” and, speciously, that “[t]here is no credible source for a different point of view.”<sup>21</sup> The Tennessee Teacher Code of Ethics, however, says that teachers cannot “unreasonably deny the students access to varying points of view.”<sup>22</sup> He then received another reprimand for showing a YouTube video of Kyla Jenee Lacey reciting her spoken word poem “White Privilege.” The poem used a variety of racial slurs and vulgarities that the board deemed inappropriate for high school students.

After this second reprimand, the district fired Hawn, who had been tenured for 13 years. Tennessee recently passed an anti-CRT law, but that played no role in the decision. In fact, the board told Hawn that teaching students about white privilege was fine.<sup>23</sup> When firing him, it pointed to his violation of state law requiring the presentation of alternative viewpoints and his insubordination. Hawn is appealing his dismissal but faces long administrative and legal odds.

## Conclusion

These three forms of CRT litigation certainly do not exhaust all possibilities. This is America, so there will always be a rich litigious harvest. For instance, parents have already filed lawsuits against Catholic schools contending that the infusion of CRT into the schools' curricula led to racial discrimination against their children.<sup>24</sup> Since private schools are not bound by the First Amendment, these lawsuits have a much lower chance of succeeding. Other lawsuits could involve students opposed to laws forbidding CRT in school. The students might claim a "right to receive information" in the same way that students challenged an Arizona law banning ethnic studies in public schools. In that case, *González v. Douglas*, a federal district court judge, Wallace Tashima, ruled that Arizona's law, while facially neutral, had a discriminatory purpose and also violated students' "First Amendment right to receive information and ideas."<sup>25</sup>

The judge cited the Supreme Court's decision in *Island Trees School District v. Pico*, which involved the removal of books from junior high and high school libraries.<sup>26</sup> But this decision was very narrow, applying only to library books, and no position commanded a majority. At the same time, the Court reiterated that "local school boards have broad discretion in the management of school affairs," particularly in establishing curricula. Thus, the legal basis for these sorts of challenges is thin but could be successful before the right judge. But even if successful, the most a judge would do is to tell schools that they must make the claims of CRT available to students. The judge would certainly reject the idea that schools must force students to express agreement with the principles of CRT.

Perhaps recognizing their vulnerable position, one teachers union has already sued a parent who filed a public records request to see the curriculum her daughter would be taught in kindergarten. In spring 2021, Nicole Solas, who lives in the South Kingstown School District of Rhode Island, asked the principal of her daughter's school to provide the kindergarten curriculum because she was worried that it was politicized. When the school was nonresponsive, she filed public records requests. In turn, the

school district sent her a \$74,000 bill for fulfilling her requests. That bill was then followed by a lawsuit from the National Education Association (NEA) of Rhode Island, which sued the school district but also named Solas as a defendant simply for filing the requests. While obviously an attempt to intimidate Solas, the lawsuit also indicates weakness.<sup>27</sup> Clearly the NEA is afraid of having the material in the public eye.

Nevertheless, the most likely lawsuits will be ones driven by students, parents, and teachers who are opposed to CRT. Because of the strong First Amendment, equal protection, and statutory claims buttressing those opposed to CRT, one would expect schools and school districts to pull back on explicitly CRT-based instruction and training. The school districts that want to keep it will likely retreat to the far safer ground of simply offering it as one explanation among many for the racial disparities of today and of the past. That is, they will simply say that it is a theory of which students should be aware. After all, if schools cannot force students to say that they believe in evolution (as opposed to knowing what it means), they will not be able to force them to confess that they believe in the nostrums of CRT.

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# Critical Race Theory and School Discipline

*Max Eden*

**I**n 2018, a *New York Times* profile of the effects of “restorative justice” school discipline reform in the Minneapolis school district contained this telling passage:

Simon Whitehead, a former physical education teacher at Southwest High School in Minneapolis, said he had watched the district’s discipline policy play out in his classes. Name-calling escalated to shoving, and then physical assaults. Profanity was redefined as a “cultural dialect,” he said.

“It [the reform] threw the school district into chaos,” he said. “The kids knew they weren’t going to go home.”

Mr. Whitehead said he learned not to call his students out in front of their peers. He did not use the word “detention” but rather “quality time.” Eventually, he would just “sweep a lot under the rug.”

The discipline model that he said had worked for him for 25 years—a warning, then a consequence—was no longer recognized by his bosses. He retired last year, labeled a racist.<sup>1</sup>

**Give a warning. Follow it with a consequence. Then be labeled a racist. What is truly at work behind the push to replace traditional school**

discipline (that is, warnings and escalating consequences ranging from detention to expulsion) goes far beyond policy preference, striking at core questions of morality and justice.

Although the argument for “restorative justice,” an approach that eschews “exclusionary punishment” in favor of “guided dialogue” intended to repair social harm and address root causes of misbehavior, was not developed directly from canonical works of critical race theory (CRT), in practice they fit together hand in glove. When parents hear that their school districts have adopted a “restorative” approach to school discipline, they have good reason to fear that the adults to whom they entrust their children are willing to sacrifice classroom order and student safety for the alleged greater good of morally transforming a “fundamentally racist” society.

## The Argument for Restorative Justice

Those who advocate restorative justice open their argument by citing substantial disparities in the rates of school suspensions, noting that black students are disciplined at about three times the rate of white students.<sup>2</sup> Advocates then claim either that there are no actual behavioral differences by race<sup>3</sup> or that controlling for poverty fails to fully account for the discipline gap.<sup>4</sup> Either way, a substantial share of the discipline gap is attributed to racially biased responses by school officials. Advocates then argue that traditional discipline does not work to maintain safe and orderly school environments and that it does substantial and lasting harm to students who are punished for their misbehavior. Rather than engaging in racially biased, useless, and harmful “exclusionary discipline,” they argue, schools should limit teacher discretion when it comes to meting out punishments and instead adopt “restorative” circles that provide an avenue through “guided dialogue” to understand the trauma that is causing an offending student’s misbehavior and to repair the social harm caused by the student’s action.

## How Critical Race Theorists Have Co-Opted Restorative Justice

Although not developed directly by seminal critical race theorists, the argument for practicing restorative justice has been claimed and influenced by promoters of CRT.

**CRT and the Argument for Restorative Justice.** Ibram X. Kendi, CRT’s key popularizer, has infamously stated that, “as an anti-racist, when I see racial disparities, I see racism.”<sup>5</sup> The argument that racial disparities in school discipline are a product of systemic racism was developed

with only slightly more nuance. Researchers who conducted empirical assessments of racial disproportionality in school discipline controlled for statistically observable factors and found that even after doing so, race remained a statistically significant factor.<sup>6</sup> Advocates of restorative justice claim that because controlling for socioeconomic factors does not eliminate the disparity, racism must explain the rest. In making this claim, they are following the fallacious reasoning that CRT critic James Lindsay has dubbed “racism of the gaps,” drawing a parallel between some religious thinkers’ claim that any question that science cannot answer must be proof of God and CRT adherents’ propensity to claim that any gap that social science cannot explain must be proof of racism.

In the past five years, more rigorous social science has further shrunk the disparity that could plausibly be attributed to racism (at times to a vanishing point). But critical race theorists have also provided an ideological account of how racism is to blame for racial disparity in school discipline. David Simson gives a representative account in his 2014 *UCLA Law Review* article titled “Exclusion, Punishment, Racism and our Schools: A Critical Race Theory Perspective on School Discipline.”<sup>7</sup>

Simson argues that, despite the 1964 Civil Rights Act and today’s code of political correctness, “the longstanding idea that African Americans are inferior to whites and somehow do not belong within this ‘white man’s country’ has shown remarkable staying power.”<sup>8</sup> After providing an account of how social stigmatization and stereotyping affects human decisions, Simson writes that teachers will be “guided by the subconscious idea that the African American student did not truly belong in the school to begin with ... and was already facing a future with dim or no prospects for success. If that is so, why not suspend the student?”

Beyond that indictment of America’s teachers, Simson cites a 1993 article by critical race theory professor Barbara Flagg to make an even bolder claim:

[O]ne should not readily assume that seemingly neutral decision making and behavioral evaluation criteria, especially in issues that involve race, are in fact race neutral. Instead, one should be strongly suspicious that these criteria might “misidentify as race-neutral personal characteristics, traits, and behaviors that are in fact closely associated with whiteness.”<sup>9</sup>

Schools expect students to conform to certain behavioral norms, and Simson notes that “schools have always played a very important role in

preparing children for proper and successful participation in civic life and in inculcating in its youth the values society considers most important.” But, according to Simson, “the very civic life for which students are being prepared is one that has always been dominated by white interests, preferences, values, and norms.” Therefore, African American students are “set up for disproportionate treatment and punishment because decision-makers perceive them as extraneous bodies engaging in inappropriate behavior within a societal fabric structured around white interests.”

Not only are normative behavioral expectations, such as arriving to class on time, not cursing at teachers, and not disrupting learning, cast by critical race theorists as “white” rather than universal norms; the very structure of enforcing these norms through consequences for norm violation is also allegedly an inherent injustice against African American students.

In a 2014 article in the *Journal of Black Studies*,<sup>10</sup> Theo Gavrielides, founder of the Restorative Justice for All Institute, cites a “folkography” (a qualitative cultural study aiming to understand the “collective voice” of a distinct group of people) of South Carolina’s Gullah Island, which concludes that the black communities there have two forms of justice: “just law” and “unjust law.” The “just law is an approach that is restorative in nature,” whereas “the unjust law is the formal law of the state that is grounded in Eurocentric principles.”<sup>11</sup> Other scholars further claim that the foundation of restorative justice is the pan-African concept of *ubuntu*—a Nguni Bantu term that roughly translates to “I am because we are”—and that this “intersection of restorative justice and *ubuntu* philosophies is of broader relevance as it demonstrates how global and African philosophies have the potential to contribute to restoration and conflict resolution in diverse societies.”<sup>12</sup>

While Gavrielides recognizes and respects the perspective that restorative justice is Afrocentric rather than Eurocentric, he holds rather that it has “multicultural roots” from aboriginal, African, indigenous, and Eskimo communities, among others. Recapturing this wisdom is important because, Gavrielides writes, “[c]ritical race theory teaches us that the structured means of delivering justice through the law are born with the intention of maintaining racial hierarchy.” But, quoting another critical race theorist, he notes that it also “offers an opportunity to imagine processes that challenge these systems of domination.”<sup>13</sup>

These arguments help to make sense of certain claims found within the Abolitionist Teaching Network’s “Guide for Racial Justice & Abolitionist Social and Emotional Learning,” which was recommended to

school districts by the Biden Department of Education in its guidance on how to best use COVID-19 recovery funds.<sup>14</sup> The guide recommends that schools “remove all punitive or disciplinary practices that spirit murder Black, Brown, and Indigenous children” and instead adopt a “school-wide culture committed to restorative justice for all members of the school community.”<sup>15</sup>

The argument for restorative justice, which had been developed on the simple theory that teachers’ and principals’ disciplinary decisions were being driven by explicit or implicit biases, has—under the influence of CRT—evolved into an argument that teachers subconsciously believe that black students do not belong in school, that traditional behavioral standards are a manifestation of “whiteness,” and that issuing consequences for failure to adhere to “white” standards is an inherently “Eurocentric” practice at odds with “Afrocentric” or “indigenous” notions of justice.

**CRT and the Practice of Restorative Justice.** More recent works of CRT scholarship, such as *Colorizing Restorative Justice*, have sought to address “the contradiction between restorative practices and the Western, white supremacist, settler societies,” in which it is practiced.<sup>16</sup> Given that CRT has dramatically expanded the definition of “racism” to include all human affairs at all times, restorative justice must—according to *The Little Book of Race and Restorative Justice*—not only “identify how racism permeates the individual, institutional, and wider structural levels” but also offer “concrete recommendations about the role that RJ [restorative justice] must play in disrupting and repairing the harm caused by these dynamics.”<sup>17</sup>

In “Critical Race Theory and Restorative Justice in Education,” a chapter in *Listening to the Movement*, Brenda Morrison and Dorothy Vaandering explain that restorative justice “is not merely a set of practices, but rather a philosophical stance, a theoretical framework through which educators view their classroom, their students, and their whole lives.” The two restorative-justice practitioners further claim that “without a comprehensive understanding of justice, restorative justice cannot address issues of power and inequity that often create toxic learning conditions for vulnerable populations.”<sup>18</sup>

For evidence that the understanding of “justice” that drives restorative justice is being supplied by CRT, one can consider a 2018 article in the prestigious *Teachers College Record* titled “Implementing Restorative Justice as a Step Toward Racial Equity in School Discipline.”<sup>19</sup> In a section called “First things first,” the authors note that “the true base for school readiness to implement restorative practices is faculty recognizing

there is a need for change” and that educators must “contend, along with numerous other scholars, that centering race and understanding Whiteness is the first step.”

Informed by CRT, the three authors argue that “Whiteness” is a collection of strategies “characterized by the unwillingness to name the contours of racism” and that therefore “participation in Whiteness has helped create the milieu where racism thrives” and where “teachers do not discuss their identities or question White supremacy.” They then contend that “in order to rout discipline gaps, school people must first unhook from Whiteness.” In other words, CRT activists are claiming that before a school can implement restorative justice with fidelity, it must first wholeheartedly adopt CRT ideology.

Morrison and Vaandering warn that “[w]ithout an understanding of power and the way power shows up in educational spaces ... Circle processes have the potential to inadvertently perpetuate injustices and maintain racial hierarchies.”<sup>20</sup> The “Circle” is a central practice in restorative justice. After a student commits an offending behavior, the class forms a physical circle and discusses what happened and tries to identify and address the root causes of the misbehavior and the ways in which that behavior harmed the social fabric of the school. The character of this exercise is fundamentally altered if the root cause is seen to lie outside—rather than within—the offending student. Morrison and Vaandering, for example, contend that “much of what has been framed as misbehavior, and often labeled with vague and imprecise language such as non-compliance,” “insubordination,” or “oppositional defiance” might reflect students’ resistance to what they perceive to be unjust and inequitable treatment in schools.

To the degree to which school administrators have absorbed the CRT ideology that conventional behavioral standards are a manifestation of “whiteness,” misbehavior becomes justified, and, in practice “restorative circles” become vehicles for further agitation against conventional norms. This may sound like an extreme conclusion to draw, but it was all but directly articulated by Dorothy Vaandering in a 2010 article in the *Journal of Education, Pedagogy, and Cultural Studies*.<sup>21</sup> Drawing on the work of Marxist educational theorist Paulo Freire, Vaandering explains how restorative circles should destabilize and morally revolutionize school environments:

This will require systemic change when the dialogue reveals how institutional structures and assumptions contributed to the harm.

[Restorative justice] in its encouragement of conscientization will not allow for predictable order to govern the daily experience of the institution which will then also require revolutionary leadership.

### **In an ideal restorative circle, she writes:**

Oppressive intent on controlling social behavior may be uncovered. Where is this apprehension coming from? Are administrators fearful of what may be requested of them? Are the participants afraid of their responsibility in the event being revealed? Is the administration intent on controlling who is included and excluded from the circles? Do participants invited decline the invitation? If a circle is convened, is dialogue interrupted and manipulated by those in authority? Are ideas generated by the group dismissed by those responsible for school structure?

Every restorative justice circle, conducted by administrators who have imbibed CRT ideology, runs the risk of devolving into a struggle session in which adults, the school, or society is blamed for the misbehavior of individual students, which is then implicitly justified as a justifiable political act. While these ideas are extremely unlikely to become an explicit aspect of pedagogical practice in schools that have adopted restorative justice, they are implicitly inescapable assumptions. Even without a concomitant inculcation of CRT ideology, restorative justice is still predicated on the assumption that differential rates of school discipline are attributable to racial bias. Therefore, when teachers attempt to discipline students of color they may be presumed to be engaging in unjust racial discrimination. It is extremely common to find in anonymous teacher surveys—and I have found in many conversations with teachers—the complaint that when they attempt to discipline a student of color they end up getting into trouble with their school administrators who accuse them of discrimination.

This all explains how a teacher like Simon Whitehead, profiled in *The New York Times* story cited at the beginning of this chapter, would be labeled a racist for continuing to believe that warnings and consequences were an appropriate method to maintain school order.<sup>22</sup>

## **The Data on School Discipline and Restorative Justice**

While parents should be aware that the arguments for restorative justice have been co-opted by CRT, they will likely find that any direct complaint lodged against “CRT school discipline” will be deflected by

school board members who—as other contributors to this volume have noted—tend to deflect criticism by defying any such association. It may be more useful, rather, to confront school board members with what is, at this point, rather plain empirically: By and large, the effort to replace traditional discipline with “restorative justice” is not adequately justified and has done more harm than good.

In the past several years, social scientists have applied more rigorous methodologies to the examination of disciplinary disparities and found that they shrink or vanish once measures of misbehavior are factored in. A 2010 study found that without a measure of teacher-reported misbehavior, black students were about three times as likely as white students to be disciplined; with a measure of teacher-reported misbehavior, they were only 30 percent more likely to.<sup>23</sup> Stated simply: When adjusted for the type and severity of student misbehavior, the racial gaps in punishment between black and white students are significantly reduced or even disappear completely. The study authors suggested that further studies could try to incorporate measures of past behavior. When researchers did so in 2014, they found that race ceased to be a statistically significant factor.<sup>24</sup> Researchers reviewing data in three different states have found no statistically significant evidence that principals treat students of different races sent to their office differently.<sup>25</sup>

This is not to say that some teachers may treat students differently on the basis of race; it is to say that whereas discrimination may account for a portion of the disparity, it is all but certain that it is a far smaller factor than readily assumed. This should not be surprising given unequitable social realities. Students from single-family homes, for example, are about twice as likely to be disciplined as students from two-parent households,<sup>26</sup> and African American students are nearly three times as likely to come from single-parent homes as their white peers.<sup>27</sup>

Teachers believe that traditional discipline works. Roughly 80 percent of teachers believe that suspensions are useful to send a signal to students’ parents that serious misbehavior will not be tolerated, and around 85 percent believe that temporarily removing disruptive students helps well-behaved students to learn. Meanwhile, nearly 80 percent of teachers believe that suspensions help to ensure a safe school environment, and almost 70 percent think that suspensions encourage other students to follow the rules.<sup>28</sup> By contrast, in districts that have implemented restorative justice, teachers have testified that it does not work. In liberal Madison, Wisconsin, 78 percent of teachers say that they understand the new approach, but only 48 percent say that it aligns with their values, and



only 13 percent say that it has a positive effect on student behavior. In Denver, only 23 percent of teachers say that the new system improves behavior. In Charleston, South Carolina, about 13 percent of teachers think that the new discipline system works, that the consequences are appropriate, and that it represents an improved approach. In Buffalo, New York, only 9 percent of teachers say that their administrators support them when it comes to discipline. In Oklahoma City, only 11 percent of teachers say that a more progressive approach to discipline would help.<sup>29</sup>

When it comes to academic studies, researchers found that a suspension ban in Philadelphia caused substantial declines in reading and math achievement.<sup>30</sup> A researcher examining suspension bans in four California districts documented substantial harm to math achievement.<sup>31</sup> And the best evidence on faithful implementation of restorative justice suggests that it harms student perceptions of classroom environment and has a genuine, statistically significant, negative disparate impact on black student achievement.<sup>32</sup>

Under the Obama Administration, the Department of Education's Office for Civil Rights pressured school districts to adopt these dangerous and ideologically misguided policies through a Dear Colleague letter issued in 2014. This letter formalized a shift in civil rights enforcement from disparate treatment (addressing instances where individual students were treated differently on the basis of race) to disparate impact (addressing instances where students of a certain group were disciplined more frequently than another).

In practice, this letter provided the pretext for invasive civil rights "investigations" that could end only when school districts agreed to adopt more lenient school discipline policies. The Biden Administration is expected to reinstate this Dear Colleague letter—and perhaps go even further than the Obama Administration. This means that school boards will be under intense bureaucratic pressure to adopt a "restorative justice" approach to school discipline. Parents, therefore, should be prepared to provide a counter pressure if they do not want their children to be taught that maintaining a code of conduct through warnings and consequences is racist.

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PART III

*Curriculum and Instruction*



# How Critical Race Theory Undermines Individual Agency

*Ian V. Rowe*

In his September 2021 *Wall Street Journal* op-ed “The Real Structural Racism,”<sup>1</sup> William McGurn outlines in meticulous detail the depressing reality that, “by any objective measure,” America’s big city public school systems “consistently fail to provide their African-American students with the basic education they will need to get ahead.”

As evidence, McGurn cites data from the 2019 National Assessment of Educational Progress (NAEP). Administered every two years in reading and math, NAEP is often referred to as the nation’s report card because it provides a consistent, longitudinal tool for assessing student performance state by state and at the district level, with further sub-categorizations to evaluate progress by race, class, and gender.

McGurn writes that

[f]or the past 20 years, achievement has been broken down by school district level in its [the NAEP’s] Trial Urban District Assessment. Of the 27 U.S. urban school districts that reported their results for 2019—from Boston and Chicago to Fort Worth, Texas, and Los Angeles—not a single one can say a majority of the black eighth graders in their care are proficient in either math or reading. It isn’t even close. In a number of these school districts, proficiency rates for black eighth graders are down in the single digits (see Detroit’s 4% for math and 5% for reading, or Milwaukee’s 5% for math and 7% for reading). Most are in the low teens.

Throughout the piece, McGurn emphasizes the abysmal outcomes for black students and clearly rules *out* certain potential factors that could be causing them. For example, he asserts that “[c]ertainly it’s not for lack of money.” This is how the U.S. Census Bureau put it:

Of the 100 largest public school systems (based on enrollment), the six that spent the most per pupil in FY 2019 were the New York City School District in New York (\$28,004), Boston City Schools in Massachusetts (\$25,653), Washington Schools in the District of Columbia (\$22,406), San Francisco Unified in California (\$17,228), Atlanta School District in Georgia (\$17,112), and Seattle Public Schools in Washington (\$16,543).<sup>2</sup>

If the issue of widespread and poor academic performance among black students is not due to their schools’ lack of money, nor to the repulsive notion that black students are inherently inferior, what could explain the phenomenon of such dismal outcomes?

The title of McGurn’s piece gives away the all too familiar stock answer: “structural racism.” The addition of “Real” highlights the fact that the quality of the school system itself, and the lack of parental choice, are the determinative factors in explaining negative outcomes, as opposed to the “go-to” omnipresent sole force of an invidious anti-black institutional barrier. What McGurn is calling out is a common consequence of the practice of critical race theory (CRT): the constant invoking of “structural racism” as the reductive, all-purpose explanation of inadequate black results. CRT tends not only to suppress needed debate about which dynamics most cause disproportionate black student failure; it also narrows the ability to carefully consider the *multiple* factors that drive down the performance of students of all races.

CRT advocates in education reform consistently mistake correlation (poor outcomes by a majority of black students) for causation (the poor outcomes must be due to anti-black racism), completely ignoring other demographic or public policy factors—such as the decades-long explosion in non-marital birth rates or trapping students in dysfunctional school systems—that are taboo to discuss. The fundamental approach by critical race theorists is to reject a multicausal analysis and to insist that black children be viewed solely through the prism of race and to accept that they have no agency to overcome the insurmountable racial discrimination they may face.

Stunningly, the American Bar Association (ABA) has jumped on the bandwagon of this perverse ideology, publishing “A Lesson on Critical



Race Theory,”<sup>3</sup> apparently without any sense of irony, in its magazine called *Human Rights*. The author argues that CRT

critiques how the social construction of race and institutionalized racism perpetuate a racial caste system that relegates people of color to the bottom tiers.... It acknowledges that the legacy of slavery, segregation, and the imposition of second-class citizenship on Black Americans and other people of color continue to permeate the social fabric of this nation.<sup>4</sup>

Any non-white person, then, is trapped in a “racial caste system.” One can imagine a seven-year-old black boy (or his teacher) hearing that kind of rhetoric repeatedly and reasonably believing that the country is rigged against him and that he has no chance to succeed in life.

This ideology hurts not only black students. Presumably the ABA’s corollary is that all white people suffer no such racial constraints and are endowed with limitless powers regardless of their individual circumstances. This is the prototypical “oppressor” versus “oppressed” race-reductionist ideology that CRT perpetuates, robbing both black and white people of the agency to determine their own destiny.

As Brown University Professor Glenn Loury often asserts, this insistence on viewing the world solely through a racial lens “is a bluff and a bludgeon.”<sup>5</sup> Shouting “systemic racism becomes a kind of rhetorical weapon to try to get the moral high ground in a debate about racial disparity.”<sup>6</sup> It also provides a safe catchphrase for people to signal the moral virtue of their own innocence and their saintly ability to implicate the “oppressor” (anyone white) and absolve the oppressed (anyone non-white). As Loury writes,

I’ve spent a lot of time pushing back against the idea that something called “systemic racism” is the primary cause of racial disparities in the US. Not only is this idea overly simplistic and ahistorical, it’s often invoked by so-called antiracist activists in order to cow their opponents into silence. If you question the idea that systemic racism is responsible for black academic underperformance, black poverty, or black crime, you’re denying the existence of the problem, and so you’re part of the problem, and so you’re likely a racist yourself. Or so the argument goes.

A case in point is Ibram X. Kendi (born Ibram Henry Rogers), author of *How to Be an Anti-Racist* and ultimate bluffer, known for dividing humanity

between the binary universe of racists and anti-racists. Kendi is notorious for declaring: “When I see racial disparities, I see racism.”<sup>7</sup> Full stop. As Loury explains, when people cite “systemic racism” as the obvious explanation for black underperformance, “they’re daring you to give any alternative account of the phenomenon.”<sup>8</sup> It is time to push back. Americans should call the bluff of Kendi and his ilk who incessantly cry systemic racism.

To understand why this race-only analysis is so harmful to all children, one may consider this analysis from a different vantage point. In “White Kids Can’t Read, Either,”<sup>9</sup> I highlighted West Virginia’s 2013 poor eighth-grade reading achievement using NAEP data, where only 18.7 percent of black boys were reading at proficiency. On its own, the so-called anti-racist contingent would quickly point to “structural racism” as the culprit, and shouts to “close the racial achievement gap” would soon follow. But an inconvenient fact challenges a diagnosis of “structural racism.” It turns out that, also in 2013, according to NAEP data, white eighth-grade boys in West Virginia were reading proficient at a just slightly less horrific rate of 19.7 percent. Systemic racism is unlikely to be the force driving such terrible outcomes for white eighth-grade boys. Furthermore, seeking equal racial outcomes would be the height of cynicism if that whopping one-percentage-point achievement gap were closed, and the tragedy still remained that fewer than one in five black *and* white eighth-grade boys in West Virginia were reading at NAEP proficiency rates.

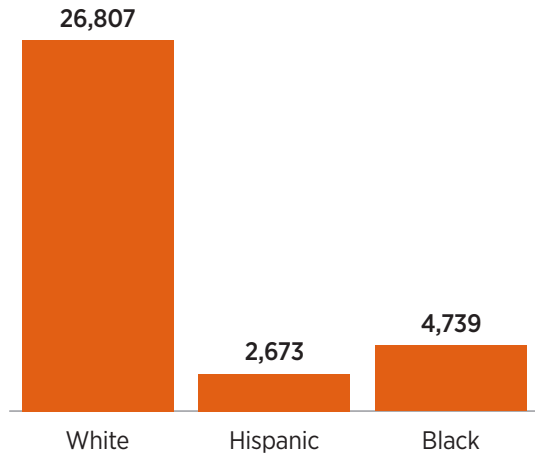
Similarly, in 2021, I testified before the Joint Committee on Education of the Kentucky State Legislature with remarks titled “Preparing Students of All Races to Achieve Greatness.”<sup>10</sup> I also testified before the Rhode Island State Legislature in remarks titled “We Have Fought Racial Segregation Before, We Can Fight Racial Segregation Again.”<sup>11</sup>

For both states, I relied on the raw numbers of eighth graders who were not reading at NAEP proficiency levels in 2019. Chart 1 shows that far more white eighth graders in Kentucky are not reading at proficient rates than black eighth-graders. In Rhode Island, the numbers tell a similar story.

While preparing for the Rhode Island testimony, I also examined eighth-grade NAEP reading proficiency scores since 1998. As is the case in most other states, in each year since the nation’s report card was first administered in Rhode Island in 1998, fewer than half of Rhode Island’s white students in the eighth grade achieved NAEP proficiency in reading. Given the higher number of white students overall, it makes sense that there are more white students who are not reading at NAEP proficiency levels.

CHART 1

## Number of Kentucky 8th Graders Reading Below Proficiency in 2019, by Race



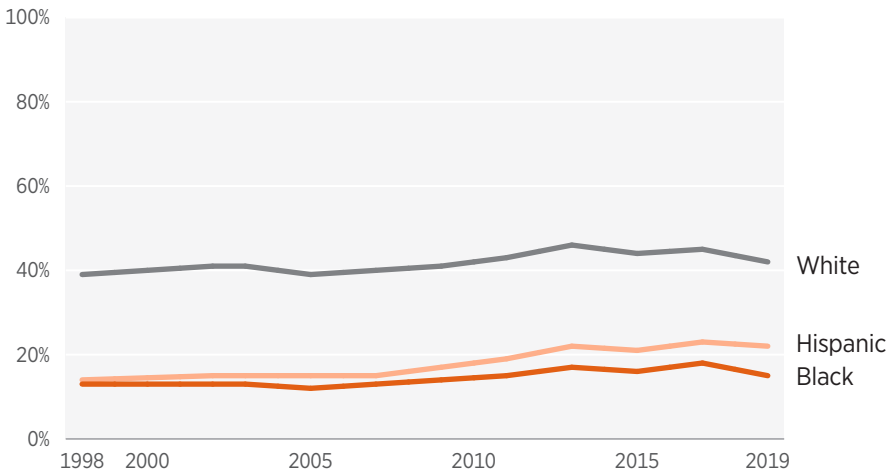
**SOURCES:** National Assessment of Educational Progress Data Explorer, and the Kentucky Department of Education.

heritage.org

CHART 2

## Reading Proficiency Among Eighth-Grade Rhode Island Students

PERCENTAGE SCORING "PROFICIENT" OR HIGHER ON NAEP ASSESSMENT



**SOURCE:** National Assessment of Educational Progress Data Explorer.

heritage.org

The sad irony remains that closing the black-to-white, or the Hispanic-to-white, achievement gap, without improving outcomes for *all* students, would mean that black and Hispanic student outcomes would only grow from sub-mediocrity to full mediocrity in terms of reading due to misguided attempts at achieving racial “equity.”

All this is to say that while racism could play a role in explaining why individual black children are not succeeding, the low proficiency rates across the board for black, white, and Hispanic children shows that it is clearly far less of a factor in causing failure rates. To unshackle themselves from a race-only analysis, Americans should hone in on factors like unstable family structures, lack of curricula that help young people to build personal agency, and lack of parental choice in education. Moreover, believers in CRT and “systemic racism” rarely take responsibility for how their rhetoric depresses human motivation and leads to unacceptable academic outcomes.

Eric Kaufmann, professor of politics at the University of London and an adjunct fellow of the Manhattan Institute, conducted a study to explore the “possibly detrimental effect of CRT narratives on the black people whom it is ostensibly designed to help.” In “The Social Construction of Racism in the United States,”<sup>12</sup> Kaufmann explains his thesis that “the work of critical race theory authors such as Ibram X. Kendi, Ta-Nehisi Coates, and Robin DiAngelo tends to endow whites with the power to change themselves while portraying blacks as passive subjects whose fate is dependent on the goodwill of white people.” In order to assess this possible adverse impact on black empowerment, Kaufmann asked one group of black people to read a passage from Coates’s “Letter to My Son,” which includes:

Here is what I would like for you to know: In America, it is traditional to destroy the black body—it is heritage....

Turn into a dark stairwell and your body can be destroyed. The destroyers will rarely be held accountable. Mostly they will receive pensions....

And now, in your time, the law has become an excuse for stopping and frisking you, which is to say, for furthering the assault on your body.<sup>13</sup>

Another group of black participants read nothing before responding to Kaufmann’s inquiries, while a third group of black participants read a

text that Kaufman composed, which focused on African Americans as the descendants of conquerors with a proud heritage.

Kaufmann notes that only 68 percent of blacks who read the Coates passage agreed or strongly agreed with the following statement: “When I make plans, I am almost certain that I can make them work.” By contrast, 83 percent of those who did *not* read Coates but read Kaufmann’s passage said that they could do so. According to Kaufmann, “The impact of even one short passage of CRT was enough to reduce black respondents’ sense of control over their lives.”

While reading CRT messages can be directly harmful to black confidence and self-reliance, referring to performance disparities as “racial achievement gaps” can undermine academic performance in minority students due to increased psychological threats, such as white students questioning the intelligence of their minority peers. Geoffrey Cohen, a professor at the Graduate School of Education at Stanford University, tested whether a social-psychological intervention—designed to improve minority student performance and increase the understanding of the impact of psychological threats on performance—would lessen these threats. The intervention asked students to reaffirm their sense of “self-integrity” through an in-class writing assignment, and two randomized experiments showed that the intervention reduced the racial achievement gap by 40 percent.<sup>14</sup> Instilling self-worth in students and treating them as individuals was far more effective than framing educational disparities primarily through a racialized lens.

Another study,<sup>15</sup> conducted by David Quinn, assistant professor of education at the Rossier School of Education at the University of Southern California, assessed the impact of framing opportunity from an “achievement gap” perspective. Through his investigation of three randomized experiments, he shows that a TV news story about racial achievement gaps led viewers to express biased and exaggerated stereotypes of black Americans in regard to their level of education and intellectual capability. In other words, talking about “achievement gaps” caused people to believe in myths, such as an inequality of skills based on race, gender, or other immutable characteristics.

With all this evidence of how disempowering CRT is for the very black people it is claiming to empower, it is a wonder that the ideology has gained traction at all. The late, great economist and educator Walter E. Williams speculated that these harmful theories spread only because its advocates preyed on collective white guilt. The work of Kendi, Coates, and others has created a syncretic relationship between white liberals who are looking for absolution for sins that they did not commit and black liberals

who are looking to be affirmed for injustices that they did not suffer. To address this issue, Williams issued a “Proclamation of Amnesty and Pardon Granted to All Persons of European Descent.” It reads:

Whereas, Europeans kept my forebears in bondage some three centuries toiling without pay,

Whereas, Europeans ignored the human rights pledges of the Declaration of Independence and the United States Constitution,

Whereas, the Emancipation Proclamation, the Thirteenth and Fourteenth Amendments meant little more than empty words,

Therefore, Americans of European ancestry are guilty of great crimes against my ancestors and their progeny.

But, in the recognition Europeans themselves have been victims of various and sundry human rights violations to wit: the Norman Conquest, the Irish Potato Famine, Decline of the Hapsburg Dynasty, Napoleonic and Czarist adventurism, and gratuitous insults and speculations about the intelligence of Europeans of Polish descent

I, Walter E. Williams, do declare full and general amnesty and pardon to all persons of European ancestry for both their own grievances and those of their forebears against my people.

Therefore, from this day forward Americans of European ancestry can stand straight and proud knowing they are without guilt and thus obliged not to act like damn fools in their relationships with Americans of African ancestry.<sup>16</sup>

With both seriousness and humor, Williams was trying to find a path forward by offering a level of forgiveness while acknowledging the human suffering that has occurred among people of all races. As someone who grew up in the Jim Crow South, Williams recognized that if discussions about human development are always hemmed in by race, no one will ever be able to find broader solutions that uplift people of every background.

McGurn outlined the consequences of ideologies that insist on “structural racism as the only cause” and the limited solutions its purveyors often propose:

Instead of addressing achievement head on, the progressive answer is to funnel yet more money into the existing failed structure, eliminate tests that expose its failure, and impose race-based preferences to make up for it....

Embarrassed by the way our big city public school systems are failing black children, progressives answer not by making it easier for these kids to get into schools where black children are achieving, whether this be charter or parochial schools. Instead, they focus on getting rid of the embarrassment by getting rid of the achievement tests that expose it, doubling down on race preferences and trying to hamstring the schools that show black children can and do learn in the right environment.<sup>17</sup>

As Williams said, white people do not have to be “damn fools.”

One can imagine again a seven-year-old black boy and how his sense of agency would be cultivated if he were exposed to a more empowering curriculum. For example, “Reconstruction,” a new online tutoring program that also offers individual courses founded by Kaya Henderson, former chancellor of District of Columbia Public Schools, was “created to show our kids that they are descendants of powerful, creative, and resilient ancestors whose contributions permeate every aspect of life across the globe; and that they too are called to contribute to this rich legacy.”<sup>18</sup>

One may further imagine an America where parents of all races can choose good schools and that they believe these schools will help their children to become all that they can be.

Maybe then all Americans can live in a country built not on white guilt and black dependence but on equality and individual agency, where students of all races can determine their own destiny.

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# Diversity, Equity, and Inclusion: What If Americans Have It All Wrong?

*Robert Pondiscio*

One may begin with the simple premise that no reasonable person wants anything other than that the United States benefit from the diversity of its people. One may include the premise that this value should not be assumed but nurtured as a matter of civic health and public policy. A strong and vibrant America should do all in its power to protect, defend, and leverage its great diversity and to forge from it a single, united people. *E pluribus unum*, earnestly and without apology.

But what if Americans are doing it wrong? Not a few degrees right or left of true north, but *completely* wrong, “up is down” wrong?

And what if “doing it wrong” is not simply keeping Americans from embracing diversity as fully as they could be but contributing to the problem they are trying to solve—even creating and exacerbating the tensions among groups of Americans?

## The Great American Melting Pot

Americans of a certain age, perhaps 40 or older, likely grew up and went to school in a vanished era of shared rituals, common culture, and a standard national narrative. They stood at their desks with their hands over their hearts and recited the “Pledge of Allegiance” every morning. They sang “The Star-Spangled Banner” at assemblies and before high school football games. For good or ill, news arrived in their homes via three major news networks with familiar avuncular figures behind the anchor desk every evening. On Saturday mornings (and only then) those

same three networks showed cartoons. To this day, older Americans probably remember the words to every *Schoolhouse Rock!* song, including “The Great American Melting Pot,” which first aired in 1977 and would likely be condemned today for ignoring cultural differences and imposing assimilation, even white supremacy, as a cultural norm. To wit, when the Disney+ streaming service added the nostalgic cartoon music videos about history, grammar, and math to its lineup last year, it felt compelled to append an “Outdated Cultural Depiction” warning,<sup>1</sup> despite—perhaps because of—these lyrics in the “Melting Pot” song:

It doesn't matter what your skin.  
It doesn't matter where you're from,  
Or your religion, you jump right in  
To the great American melting pot....  
What good ingredients,  
Liberty and immigrants.  
They brought the country's customs,  
Their language and their ways.  
They filled the factories, tilled the soil,  
Helped build the U.S.A.  
Go on and ask your grandma,  
Hear what she has to tell  
How great to be an American  
And something else as well.

To say “it doesn’t matter what your skin” is not a fashionable notion these days. A central tenet of current pedagogical thought and practice, deeply informed by critical race theory, is that “skin” matters quite a lot. “White identity is inherently racist,” claimed Robin DiAngelo, the white author of the 2018 bestseller *White Fragility: Why It's So Hard for White People to Talk About Racism*. “Internalized white superiority is seeping out of my pores,” she claims.

The melting pot as a metaphor for American assimilation gained prominence during the great wave of immigration in the first decade of the 20th century. Hoover Institution historian Bruce Thornton notes that in 1908, Israel Zangwill’s play *The Melting Pot*—Teddy Roosevelt’s favorite play—features a character who declares enthusiastically: “America is God’s crucible, the great melting-pot where all the races of Europe are melting and re-forming!”<sup>2</sup> The association of the melting pot solely with European immigration, functionally excluding the tens of millions of

Americans whose ancestors were enslaved, was one of the reasons for the term's falling into disfavor, then disuse, then abuse. The melting pot was out; the salad bowl or mosaic became the more common metaphor, even though, as Thornton noted, the original impulse was to unite a disparate people, communicating that

the historically exceptional notion of American identity as one formed not by the accidents of blood, sect, or race, but by the unifying beliefs and political ideals enshrined in the Declaration of Independence and the Constitution: the notion of individual, inalienable human rights that transcend group identity.<sup>3</sup>

The decision to become American conferred upon immigrants the responsibility “to learn the language, history, political principles, and civic customs that identified one as an American,” Thornton continued.

This demand was necessarily in conflict with the immigrants' old culture and its values, and, at times, led to a painful loss of old ways and customs. But how immigrants negotiated the conflicts and trade-offs between their new and old identities was up to them. Moreover, they remained free in civil society to celebrate and retain those cultures through fraternal organizations, ethnic festivals, language schools, and religious guilds.

The point is not to nurture misplaced nostalgia or a rose-tinted view of history that, whether deliberately or through carelessness, excluded broad swaths of the nation's citizenry. For all the lack of nuance in the melting pot as the central metaphor in American life, there is good reason to valorize the common narratives, symbols, and rituals inherent in its ideal. Moreover, there is compelling evidence to suggest that the wholesale repudiation of the impulse to embrace a common identity as Americans was a serious mistake.

## The Authoritarian Dynamic

In 2005, Karen Stenner, a political scientist and behavioral economist, wrote *The Authoritarian Dynamic*, an astute and sobering work describing the conditions that drive intolerance, including racism and political division.<sup>4</sup>

Stenner's description of her own work concerns a particular type of person “who cannot treat with natural ease or generosity those who are not his own kindred or kind.” Because of “deep-seated predispositions

*neither they nor we have much capacity to alter*” (emphasis added), these individuals, who, according to Stenner, comprise approximately one-third of the population, are predisposed to authoritarianism. At the opposite pole are those who naturally interact well with all manner of people. “The rest of us fall somewhere in between,” Stenner writes, “not openly averse to other peoples but usually favoring our own.”

Individuals with an intolerance of difference “will always be imperfect democratic citizens” who can be “only discouraged from infringing others’ rights and liberties by the force of law, fortuitous social conditions, and near-constant reassurance,” Stenner concludes. Most chillingly, she observes that “liberal democracy has now exceeded many people’s capacity to tolerate it.”

This is not to suggest that one-third of Americans—right, left, or center—are fascists-in-waiting, eager to impose their will on their fellow citizens. Jonathan Haidt, a social psychologist who writes extensively on morality and moral emotions, summarized Stenner’s insights thusly:

It’s as though some people have a button on their foreheads, and when the button is pushed, they suddenly become intensely focused on defending their in-group, kicking out foreigners and non-conformists, and stamping out dissent within the group. At those times they are more attracted to strongmen and the use of force. At other times, when they perceive no such threat, they are not unusually intolerant. So the key is to understand what pushes that button.<sup>5</sup>

The factor that activates the authoritarian impulse is what Stenner calls a “normative threat,” which she defines as “threats to ‘oneness’ and ‘sameness.’”<sup>6</sup> “Normative threat”—the authoritarian button on some people’s foreheads, in Haidt’s memorable image—is activated by loss of trust in institutions, fear of change, and an aversion to complexity.

In their politics, media, and culture, but most particularly in schools, Americans have made a virtue of diversity, drawing attention to and celebrating it. This seems an obvious and laudable solution to tensions inherent in diversity but paradoxically incorrect when seen through the lens of the authoritarian disposition. “The things that multiculturalists believe will help people appreciate and thrive in democracy—appreciating difference, talking about difference, displaying and applauding difference—are the very conditions that encourage authoritarians not to heights of tolerance, but to their intolerant extremes,” write Stenner and Haidt.<sup>7</sup>

Stenner’s and Haidt’s insights deserve careful consideration among K–12 education policymakers and practitioners. They suggest the need for a re-evaluation of the direction and weight of current K–12 thought and practice, particularly diversity, equity, and inclusion (DEI) initiatives informed by critical race theory and “antiracism,” which dwell on race, identity, and difference as a heuristic, practically to the exclusion of all other factors, to explain disparate education and life outcomes.

It is hard to overstate the amount of time, energy, and resources currently consumed by diversity initiatives at all levels of American education. While no reasonable objection can be made to serious studies of other nations and cultures, or the kind of “food and fiesta” celebrations that have long been a staple of American elementary education, more recent pedagogical and curricular initiatives have taken on an ominous cast.

Diversity is now literally divisive, dwelling on difference to the point of fetishization. In “privilege walks,” for example, students stand in a straight line and respond to teacher prompts, such as “If you are a white male, take one step forward.” By the end of the activity, members of “oppressed” groups, such as non-white, female, and LGBT students, will be toward the rear, ostensibly to illustrate “how power and privilege affect their lives, even if they are unaware that it is happening.”<sup>8</sup> Identity mapping activities encourage students to complete worksheets describing how they perceive themselves—and “how they are perceived by society”—based on their gender, race, religion, sexuality, and other traits.<sup>9</sup> Most controversially, public schools have created racial “affinity spaces” separating students by race and ethnicity to discuss sensitive issues. “Supporters routinely assert that there’s evidence to justify this practice, despite a startling lack of research actually supporting it,” note Rick Hess and Mike Goldstein.<sup>10</sup>

A recent report for The Heritage Foundation by Jay Greene and James Paul noted the “DEI bloat” in universities, with diversity initiatives becoming “a primary function” at 65 universities studied by the authors.

DEI staff listed by universities totaled 4.2 times the number of staff who assist students with disabilities in receiving reasonable accommodations, as required by law. DEI staff levels were 1.4 times larger than the number of professors in these universities’ corresponding history departments. Moreover, the average university had 3.4 people working to promote DEI for every 100 tenured or tenure-track faculty members.<sup>11</sup>

Seen through the lens of Stenner’s insights on intolerance and authoritarianism, the rise of DEI, antiracism, and the kinds of ideas and practices enumerated above, which would fall generally if imprecisely under critical race theory, are not just counterproductive but aggressively antagonistic, not merely disregarding the “authoritarian button” but effectively hammering it. The possibility should be seriously considered that an entire suite of policies, programs, and initiatives aimed at ameliorating differences across lines of diversity are, in fact, having *precisely the opposite effect*—not combating what remains of white supremacy in this country but creating the conditions likely to contribute to it among segments of the population with a predisposition for intolerance.

Critically, that predisposition cuts across political lines. Stenner takes care in her work to differentiate between conservatives, who are resistant to change, and authoritarians, who are resistant to *complexity*—a condition not unique to political conservatives.<sup>12</sup> While her groundbreaking book predates the term “woke,” in a recent interview with the BBC, she cited the “super woke” as an example of left-wing authoritarianism in which “you’re so committed to your idea of tolerance and diversity that you’re dogmatic and rigid in your reinforcement of that and demand that the authority of the state is used to constrain people’s speech and behavior, in the interest of upholding norms of diversity and tolerance.”<sup>13</sup>

It is tempting to dismiss this as a problem of what Stenner describes euphemistically as “people of limited cognitive capacity” to deal with diversity and complexity. But if a substantial number of people are predisposed to struggle with it, it is impractical to ignore it. If Stenner is correct that one cannot change the fixed personality trait that favors order, struggles with complexity, and reacts strongly to normative threats, one must consider the nature of those threats and how to reduce them. The most common impulse, particularly among educators, is to attempt to educate the intolerant out of their intolerance. But a fixed trait is not a habit of thought that can be learned and unlearned. As Stenner said in her BBC interview:

[t]he thing that people find hardest to understand is [that] a lot of people think that you increase tolerance of diversity by educating people about the value of diversity and singing about it and celebrating it and applauding it in our various multicultural rituals. And that’s guaranteed to push people of the authoritarian predisposition, not to the limits of their tolerance, but to their intolerant extremes.

And so, conversely, what most enhances authoritarians' ability to tolerate difference is creating a feeling or appearance of oneness and sameness.

## The Making of Americans

Some may perceive a moral hazard in following this idea where it leads. Ceasing to celebrate diversity in order not to trigger the intolerant may strike some as enabling or appeasing intolerance rather than condemning it. On the one hand, making a virtue of “oneness and sameness” would return public schools to a role that they have historically played. But doing the same thing to appease those vulnerable to normative threats may seem untoward, as if one is asking racially and morally diverse Americans to hide their difference in order to prompt better behavior from those predisposed to intolerance or who have an authoritarian disposition.

If any institution in civil society enjoys the permission structure to make a virtue of “oneness and sameness,” it is the American public school. It would be a revival of the purpose envisioned by its first great theorists. Lawrence Cremin, in his Pulitzer Prize–winning history, *American Education: The National Experience, 1783–1876*, describes “an age of exuberant faith in the power and possibility of education” led by thinkers of the Founding generation.<sup>14</sup> Men like Benjamin Rush and Noah Webster argued “for a truly American education, purged of all vestiges of older monarchical forms and dedicated to the creation of a cohesive and independent citizenry.” They urged “the deliberate fashioning of a new republican character, rooted in the American soil, based on an American language and literature, steeped in American art, history, and law, and committed to the promise of an American culture,” Cremin wrote. Rush, most particularly, recognized that the security and advancement of the infant American experiment required converting men into “republican machines.” This implied creating and maintaining a uniform system of public education.

America’s early educators “thought the school would be the institution that would transform future citizens into loyal Americans,” elaborates E. D. Hirsch, Jr., in *How to Educate a Citizen*.<sup>15</sup> The school “would teach common knowledge, virtues, ideals, language, and commitments.” Not just Rush but the era’s titans—Washington, Jefferson, Madison, Franklin, and others—believed, as Hirsch writes,

that a mortal danger lay in our potential internal conflicts—Germans against English inside Pennsylvania, state against state, region against region, local interests against national interests, personal ambition against personal ambition, religion against religion, poor against rich, uneducated against educated. Unless controlled, these hostile “factions” would subvert the common good, breed demagogues, and finally turn the republic into a military dictatorship, just as in ancient Rome.

Heeding the admonitions of Noah Webster to forge from different backgrounds a single people, the U.S. became “the first big modern democracy, and along with Prussia the first society with free public schooling nationwide.”<sup>16</sup>

Americans have become unused to thinking of education as a matter of national security, unless they think in terms of the threat of Soviet space domination that led to a prioritization of science education post-Sputnik or, to a somewhat lesser degree, the emphasis on STEM (science, technology, engineering, and math) education to maintain American’s scientific, technological, and economic advantages over international competitors today.<sup>17</sup>

But there can be little doubt that in forgetting the concerns of America’s Founding generation today’s Americans have fallen into the trap they clearly foresaw. It is not a stretch to suggest that Rush and other early theorists about public education would be appalled at how far the country has drifted from its Founding impulses and ideals. They would surely see much current fashionable education thought and practice not as making a virtue of diversity, but as fomenting factionalism.

The moral marker set down by the Founders, and the work of Karen Stenner and others today, strongly suggests a mission for public education aimed explicitly at social cohesion. “For the past fifty years we have tiptoed around the idea that the schools should form Americans,” Hirsch wrote in his 2009 book *The Making of Americans*:

Child-centered theories of education have focused more on individual formation than on citizen-making. More recently, identity politics has emphasized membership in subgroups over participation in the larger national community and viewed traditional goals like assimilation and Americanization with suspicion, as an ideology promoted by long established WASP groups to continue their domination.<sup>18</sup>



According to Hirsch, the strong patriotic impulse of most Americans “is not an accident, but the fortunate residue of a time when the writers of American school books deliberately instilled common ideals and shared knowledge.”<sup>19</sup>

As evidence of how far American education has drifted from those common ideals and citizen-making, a 2015 review of the mission and vision statements of the nation’s 100 largest school districts, collectively responsible for the education of more than 11 million U.S. students, showed minimal concern with the civic mission of education.<sup>20</sup> The personal and private purposes of education—preparation for college and career, for example—are much more likely to be reflected in school district mission statements than civics and citizenship. The words “patriotic” and “patriotism” did not occur in even one of the mission statements reviewed. More tellingly, neither did the words “America” or “American.” When the word “citizen” appears, it is often in the phrase “global citizens.”

Certainly, a school district’s mission statement should not be mistaken for a reliable guide to the pedagogical practice, school culture, or routines within those districts. Such statements are, however, suggestive of the mindset, values, and ideals communicated to students. It is instructive that, when the leaders of America’s largest school districts put pen to paper to conceive, draft, and seek public approval for statements that ostensibly reflect their stakeholders’ and communities’ highest aspirations for their children, there is no evidence to suggest that social cohesion is prioritized, legitimized, or even considered.

In sum, it may be an overstatement to say that current American education thought and practice is determined to ignore entirely the insights surfaced by Stenner. But if so, it is only a mild overstatement. This reality represents a particular challenge for the political Left, which feels uncomfortable with patriotism as a specific end of education because of the nation’s shameful experience with slavery, Jim Crow laws, and segregation. But it is also the Left’s dilemma to acknowledge and resolve. If it can be empirically demonstrated, as Stenner has, that making a virtue of sameness is essential to creating the conditions that allow diversity to flourish, it should be uncontroversial to insist that Americans should resolve this dilemma: whether the impulse to celebrate diversity, however laudable, should be allowed to undermine the tolerance and fellow-feeling that is essential to sustain a multicultural nation.

Most urgently, this may no longer be subject to debate but a matter of national security. In *Can It Happen Here?* Stenner and Haidt remind their readers, as noted above, that “Western liberal democracies have

now exceeded many people's capacity to tolerate them."<sup>21</sup> This is a storm warning not just about the unintended effects of diversity, equity, and inclusion initiatives but about national stability and, ultimately, the country's survival. America's schools have no more urgent mission than to prepare this country's children for productive and fulfilling adult lives. That requires that Americans follow the evidence where it leads without being guided by impulse or assumptions or, worse, by where they *wish* the evidence would lead.

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# “Critical Math” Doesn’t Add Up: Race Consciousness and Radical Egalitarianism in the Curriculum

*Williamson M. Evers, PhD & Ze’ev Wurman*

Most people think that chess is a nonideological game. Soviet commissar Nikolai Krylenko did not think so. In 1932, in Stalin’s USSR, Krylenko declared that: “We must finish once and for all with the neutrality of chess. We must condemn once and for all the formula ‘chess for the sake of chess,’ like the formula ‘art for art’s sake.’”<sup>1</sup> Chess, Krylenko believed, was an ideological battlefield. Krylenko argued that since chess was “a weapon of cultural revolution,” it needed to be imbued with “political content,” and chess players must be “political workers” who were active participants in building a socialist society.<sup>2</sup>

Most people think that mathematics is a nonideological discipline.<sup>3</sup> They think of it as an objective discipline that is socially and politically neutral and independent of the society in which it is studied.<sup>4</sup> But the promoters of “critical math” in the United States do not think so—they likewise see math as an ideological battlefield—and they are increasingly influential in schools of education and public K–12 classrooms.<sup>5</sup>

## The Roots of Critical Mathematics

The advocates of critical mathematics argue that children can make meaningful sense of math only if they do so based on their own lives and social interactions.<sup>6</sup> The advocates go on to argue that, outside school, math is used almost entirely “to advance or block a particular agenda.” Since, the advocates say, mathematics is inextricably bound up with social

conflict, the duty of the math teacher is to prepare the student to challenge the use of math by those who dominate American society.<sup>7</sup>

Critical math advocates argue that mathematics is “inherently political” and “rife with issues of domination and power.”<sup>8</sup> They maintain that conventional math education serves “nationalism, xenophobia, militarism, and racial capitalism.”<sup>9</sup>

Beginning in the 1980s, certain professors from university schools of education began to argue that teaching methods in the K–12 classroom needed to match (in whole or in part) the cultural practices in students’ home communities.<sup>10</sup> Ethnomathematics, an anthropological view of math, began to develop at that time. Critical mathematics and teaching math for social justice then came to the fore in the early 1990s, followed by applying critical race theory to math instruction in the mid-1990s.

In 1992, Walter Secada (then a professor of mathematics education at the University of Wisconsin-Madison, now a professor and department chair of teaching and learning at the University of Miami) wrote that some math educators (including himself) take disparities in math achievement among different groups as “evidence of deep structural injustices.” These math educators set about remedying what they described as “inequities.”<sup>11</sup> Secada pointed to the national curriculum reform efforts in science, technology, engineering, and math (STEM) in the 1980s and 1990s and suggested that, for certain groups, math teaching was not reformed or restructured enough.<sup>12</sup>

Secada also argued that math reform was designed with the general student population in mind (and then applied to minority students along with others), whereas it should instead be designed with minority groups in mind and then applied to others.<sup>13</sup> Jeannie Oakes (an education theorist and founder of University of California, Los Angeles’s Institute for Democracy, Education and Access) and others proposed that “certain constructs from sociocultural perspectives on learning” should inform teachers’ general understanding of learning and contribute to “all students’ multiple ways of knowing math and science.”<sup>14</sup>

Senior research fellow at the Learning Policy Institute Gloria Ladson-Billings (who retired as professor of education at the University of Wisconsin-Madison in 2018 and was president of the American Educational Research Association in 2006) likewise wrote that by 1995, many teacher training programs throughout the nation had already “coupled” their efforts at curriculum reform based on discovery learning with a commitment to “social justice and equity.”<sup>15</sup>

But Ladson-Billings and Eric Gutstein, an education professor at the University of Illinois-Chicago, objected that such culturally appropriate pedagogy as conventionally conceived just sought to improve minority students' performance so that they could merely take an improved and warranted place in mainstream society and the existing meritocracy. Ladson-Billings complained that these efforts simply retained the current imperfect system. She speaks of the system with its "current inequities."<sup>16</sup>

Gutstein complained that such efforts were being undertaken in order to improve worker productivity and for the sake of the goal—which the authors of this chapter call mercantilist—of improving U.S. international competitiveness. A competitiveness focus, Gutstein argues, lessens the "moral imperative and urgency" of equity.<sup>17</sup>

Ladson-Billings and others of her persuasion argued that "the source of cultural mismatch" is to be found in the structure of the larger society and that schools mirror the unequal, nonutopian society and serve to slot students into the functional roles in that society. The only effective way to be culturally sensitive and the only solution to cultural mismatch was, these radical social justice activists thought, to embrace the politics of social transformation, not to teach pure math or even to include culturally appropriate contexts.<sup>18</sup>

What these woke activists wanted were teaching practices that improved student achievement and led students to embrace a politically sensitive cultural identity. At the same time and—more important—those favoring Critical Pedagogy wanted the students to engage in activities to radically change the existing social institutions, structure, and society as a whole.

Jean Anyon, the late professor of education at the City University of New York and a Washington, DC, public school teacher, for example, wrote that a goal of her teaching as a critical educator is "the politicization of students." She wanted her lessons to push students to become involved in the "public contention" that is part of what she called "the political struggle for equity."<sup>19</sup> Progressives want teaching practices that lead to academic success and cultural and political change in a complementary way. They ask, "How can pedagogy promote the kind of student success that engages larger social structural issues in a critical way?"<sup>20</sup> Critical math has sought to train students and make them part of "the solution to injustice," both as young people and later as adults. As these progressives argue, students must, as part of their math education, come to "deeply" understand the "sociopolitical dynamics" of the society in which they live.<sup>21</sup>

The favorite theoretical source for proponents of critical math is *Pedagogy of the Oppressed* by Brazilian radical Paulo Freire.<sup>22</sup> The proponents of critical math cite, echo, and rephrase his ideas throughout their writings.<sup>23</sup> According to reliable sources, his book, with over a million copies sold, is—aside from a technical guide—the most widely assigned reading in teacher training schools in the United States.<sup>24</sup>

Freire contends that the oppressed in capitalist societies will create their own pedagogy out of their experience—a pedagogy that arms them with the consciousness needed to struggle for the overthrow of capitalism.<sup>25</sup> When Freire speaks of “pedagogy,” he does not mean teaching methods founded on careful research and designed to result in student academic gains. Rather, Freire’s approach focuses on raising the political consciousness of the oppressed. (His model for successful education is Mao Zedong’s socially destructive Cultural Revolution of the 1960s.)

Freire takes a strong stand against concentrating on student mastery of academic content, which he scorns as “official knowledge.” He contends that mastery of such knowledge changes nothing within the unequal capitalist society.

Freire rejects teacher-led classrooms as sites of passivity where students file facts into their minds as if they were depositing money in a bank. Instead of this “banking concept” of instruction, Freire recommends that teachers treat their students as equals and that they learn from each other through dialogue and projects.

Critical math advocates have sought to instill in students a critical consciousness so that they could participate in creating an egalitarian world.<sup>26</sup> As a leading Freire interpreter Antonia Darder, former professor of educational policy at the University of Illinois at Urbana-Champaign and current chair in Ethics and Moral Leadership in the School of Education at Loyola Marymount University, writes, “A revolutionary pedagogy discards the uncritical acceptance of the prevailing social order and its structures of capitalist exploitation, and embraces the empowerment of the dispossessed populations as the primary purpose of schooling.”<sup>27</sup>

To return to the form that critical math was taking in the United States, Michael Apple, former professor of curriculum and instruction at the University of Wisconsin-Madison, has said that the “principal purpose” in both the 1989 Curriculum Standards and the 1991 Professional Standards for Teaching Mathematics of the National Council of Teachers of Mathematics was “a just society.”<sup>28</sup> How, Apple asked, can K–12 teaching of mathematics serve this goal?<sup>29</sup> This approach came to have many names for virtually identical practices: equitable mathematics, equity-focused mathematics



instruction, liberatory mathematics education, radical mathematics, critical mathematics education, culturally responsive or culturally relevant mathematics pedagogy, and teaching mathematics for social justice.<sup>30</sup>

Critical race theory then came on the scene as a way to rework and reformulate critical math. The ideology of critical race theory sees everything through the lens of race. It argues that racism is omnipresent and permanent (absent an egalitarian revolution) and woven throughout current American institutions.<sup>31</sup> It rejects assertions that those institutions are capable of neutrality and objectivity or capable of permitting a genuine meritocracy. It presumes that racism has contributed substantially to all disparate outcomes. It specifically dismisses any sort of liberalism that “holds that the purpose of government is to maximize liberty” and a liberalism that calls for equal rights before the law.<sup>32</sup>

Critical race theory could also be useful, as legal scholar Randall Kennedy points out, to those who—merely as a stratagem—want to brand rivals and opponents as “racist” or to those who seek special privilege and want to carve out protected jobs as professors, schoolteachers, or providers of teaching materials. Critical race theory can be a vehicle for grabbing and building out turf. Critical race theorists can use it as a device for protecting their market share and eliminating dissenters from job competition.<sup>33</sup>

William F. Tate IV, the current president of the Louisiana State University system and a pioneer in applying critical race theory to education in general and to the teaching of mathematics in particular, concurred with scholars who claimed that the curriculum and teaching of mathematics was too tied to “Eurocentric precepts” that were irrelevant to African American experiences.<sup>34</sup>

Ladson-Billings summed up the critical math effort to prioritize political skills and consciousness over academic achievement quite outspokenly:

Parents, teachers, and neighbors need to help arm African American children with the knowledge, skills, and attitude needed to struggle successfully against oppression. These, more than test scores, more than high grade-point averages, are the crucial features of education for African Americans.<sup>35</sup>

## Pushing Critical Math in the Classroom

Progressives have made putting such teaching practices into effect their goal. And they have decided that teachers’ beliefs and ideologies are

key to having these teaching practices adopted.<sup>36</sup> As Ladson-Billings puts it, “Not only must teachers encourage academic success and cultural competence, they must help students to recognize, understand, and critique current social inequities. This notion presumes that teachers themselves recognize social inequities and their causes.”<sup>37</sup>

They have also sought to have teachers discourage individualism and competition and encourage thoroughgoing egalitarianism in the classroom:

All of the [culturally relevant] teachers gave students opportunities to act as teachers. In one class, the teacher regularly sat at a student’s desk, while the student stood at the front of the room and explained a concept or some aspect of student culture. Another teacher highlighted the expertise of various students and required other students to consult those students before coming to her for help.... The culturally relevant teachers encouraged a community of learners rather than competitive, individual achievement.<sup>38</sup>

An influential critical race theory math document, “A Pathway to Equitable Math Instruction: Dismantling Racism in Mathematics Instruction,” has figured in curriculum controversies in Oregon and California.<sup>39</sup> This 82-page manual asserts that teachers pointing out students’ mistakes is a form of white supremacy. The manual provides indicators of “white supremacy culture in the mathematics classroom,” including a focus on “getting the right answer,” teaching math in a “linear fashion,” telling students to “show their work,” and grading them on demonstrated knowledge of the subject matter. “Upholding the idea that there are always right and wrong answers perpetuates ‘objectivity.’” Objectivity, of course, is another racist concept. “The concept of mathematics being purely objective is unequivocally false,” the manual originally explained, but this sentence was so controversial it has been deleted. According to the “Pathway” manual, teachers should investigate and oppose ways in which math is used “to uphold capitalist, imperialist, and racist views.”<sup>40</sup>

## Pushing Socialism as Part of Critical Math

For many of the leading figures in the critical math movement, the goal is a socialist society in the United States.<sup>41</sup> At times, they reveal this explicitly. One of those figures, Marilyn Frankenstein, professor at the Center for Applied Language and Mathematics at the University of Massachusetts, Boston, writes that traditional math “supports the hegemonic

ideologies of society.” Even a real-world math problem like adding up a grocery bill carries “the ideological message that paying for food is natural” and that a normal society is one in which “people buy food from grocery stores.”<sup>42</sup>

Tate, another such leading figure, claims that in American society, the use of math is “almost always” linked to “an attempt by one group or individual to secure control of property.”<sup>43</sup> This explicit advocacy of socialism comes out in actual proposed K–12 lessons:

- Marilyn Frankenstein bases some multiplication and division problems on an ideological manifesto by Cuban communist dictator Fidel Castro. John Rodden, a communications professor at the University of Texas, has conducted a detailed study of textbooks in communist East Germany; Frankenstein’s math problems are all too reminiscent of the propaganda-laden problems in East German textbooks.<sup>44</sup>
- In another teacher’s sample lesson on distribution of wealth and income, those students “who are worried about socialism” are told that “they have nothing to fear.” The teacher asks students in his simulation why they do not “get organized to force a redistribution of wealth.” The teacher induces the students to make statements like “I want a revolution.”<sup>45</sup>
- In still another lesson, designed by a different teacher, students looked at a photo of a billboard showing Che Guevara, one of the leaders of communist Cuba. The billboard read: “We are not a minority.” The purpose of the lesson is to have Latino students realize that there are far more non-white people in the world than there are white people.<sup>46</sup> (While that is certainly true, the term “minority” in this example applies to the United States, not the world.)

Why would a proponent of critical pedagogy deploy the image of Guevara? Peter McLaren, professor at UCLA’s School of Education and Information Studies and “the poet laureate of the educational left,” explains why in his book *Che Guevara, Paulo Freire, and the Pedagogy of Revolution*. According to McLaren, the image of Guevara imbeds “the mythic” in the everyday and gathers the past and the future together in a “promise of redemption” and the “anticipation of a new order of being and becoming.” The ideas and example of Che Guevara and Paulo Freire, McLaren contends, can play “a signal role” in helping teachers to remake

schools into “sites for social justice and revolutionary socialist praxis.” McLaren maintains that this potential is particularly important for professors who work in teacher training institutions.<sup>47</sup>

McLaren says that efforts to reform school practices in existing societies in terms of curriculum and classroom pedagogy must be undertaken—in the spirit of Guevara and Freire—from “the overall perspective of the struggle against capitalist social relations.” The pedagogy of Guevara, according to McLaren, not only “shatters the welter of illusions and delirious and paranoiac fantasies” of the bourgeoisie but also sets the stage for “the kind of intellectual labor and formation of political will” that can combine theory and practice “in the service of social justice.”<sup>48</sup>

Holding up Che Guevara as an icon ignores both his vicious killings (he called himself “bloodthirsty”) and his relentless persecution of political opponents. As Peruvian intellectual Alvaro Vagas Llosa writes, Guevara possessed “a lust for totalitarian power.”<sup>49</sup> Guevara also, working as a Cuban official, helped to destroy the country’s economy in pursuit of an impossible utopia. (He favored an end to material incentives and creation of a moneyless economy.)<sup>50</sup> In the interpretation of a rival variety of socialists, Guevara worked to put in place a bureaucratic state run by an oligarchical party.<sup>51</sup>

## Critical Math Teaching Practices

Praised by contemporary critical theorists for his contributions to the development of critical mathematics is influential curriculum specialist Eric Gutstein of the University of Illinois.<sup>52</sup> According to Google Scholar, Gutstein’s academic papers have been cited over 4,400 times.<sup>53</sup> Gutstein says that analyzing the world by way of mathematics entails using math to understand “relations of power, resource inequalities, and disparate opportunities” among different groups and to understand “explicit discrimination” based on race, class, sex, and language.<sup>54</sup> All too often classes devoted to critical math, like those promoted by Gutstein, are notably mired in sloppy social science and deficient in math itself. The students are not told that they are being fed a political ideology, but they certainly are.

**Gutstein’s Honors Math Class of Latino Seventh Graders Analyzed Racial Data on Traffic Stops.**<sup>55</sup> The phrase “driving while black” has often been used since the 1990s to make claims about racial profiling of black drivers. But, as economist Thomas Sowell explained, racial profiling statistics wrongly compare police stops to the percentage of blacks in the population, not to the percentage of blacks who “do the kinds of things

that cause police to stop people and question them.” Sowell points to data from the book *Are Cops Racist?* by Heather Mac Donald in which she writes that a careful analysis of data does not show a systematic anti-black bias in traffic stops.<sup>56</sup>

**Gutstein’s Honors Class Analyzed Racial Data on Mortgage Lending.**<sup>57</sup>

Different political groups have long been concerned about affordable housing. Often progressives say they are worried about housing for the poor and minority groups—though they often support land-use planning and zoning that in effect excludes the poor.<sup>58</sup> Conservatives say that they want to foster the bourgeois values that are associated with home owning. However, these concerns about housing costs can lead to catastrophic policy decisions. Government pressure for lowered mortgage lending standards triggered the Great Recession of 2008.<sup>59</sup> Analysis of housing policy belongs in a college economics class, not a seventh-grade math class.

**Gutstein’s Class Analyzed Different Kinds of “Map Projections” (Ways of Representing Parts of Earth’s Rounded Surface in a Flat Format), What the Projections Displayed, and Why.**

His students concluded that Mercator projection maps—the standard map for navigation, which shows “North” at the top and landmasses stretched from the equator—were a deliberate lie meant to mislead them and that such maps were racist.<sup>60</sup> One might call this critical map theory. Gutstein is proud that, under his tutelage, a majority of his students said that they had been “lied to” by the hanging of Mercator projection maps in classrooms. Several students said that the use of Mercator projection maps was intended to teach students that whites are superior to Latinos.<sup>61</sup>

Gutstein deliberately misleads his students when he guides them to see racist intent in the Mercator map. He himself acknowledges that he does not care “whether or not Mercator meant consciously to diminish the [global] South.”<sup>62</sup> All he cares about is making a misleading political point. Gutstein favors the Gall-Peters projection—which supposedly shows all landmasses as the correct size relative to other landmasses.

But cartography expert Mark Monmonier has criticized the embrace of the Gall-Peters projection by advocates for developing countries and political activists because they ignore the fact that Gall-Peters grossly deforms the shape of those same developing countries. Journalists who reported on this controversy in the 1970s and 1980s neglected alternative projections. Social justice activists who have promoted the Gall-Peters projection ludicrously exaggerate the power of maps.<sup>63</sup> Amazingly, Gutstein maintains that the supposedly innocuous “larger goal” of this classroom map project was to improve critical thinking skills, thus to

assist students in gaining “a more critical outlook toward knowledge in general.” He congratulates himself that he does not want his students to take his word for something without questioning it.<sup>64</sup>

But the students may not buy the teacher’s preferred theory of cartography. One critical math teacher found that after teaching Gutstein’s lesson, most of his students dismissed the idea that the design of the Mercator projection was founded in racism or Eurocentrism.<sup>65</sup>

**Gutstein’s Class Examined the Distribution of Wealth by World Continents and Within American Society.**<sup>66</sup> One student contrasted his low family income with that of professional basketball player Michael Jordan, but the student accepted the gap. Gutstein would think that the student was wrong to accept the gap because Gutstein thinks all differences from a pattern of exact equality is unjust. The student’s comparison resembles nothing so much as philosopher Robert Nozick’s famous Wilt Chamberlain example, which Nozick uses to teach that the basis for justice in property holdings lies in the history of transactions.

Assume, Nozick says, that the pattern in which property is distributed in a hypothetical society is in accordance with one’s favorite theory of justice about property holdings. This could even be a pattern of the strict equality that social justice proponents appear to favor (but for which they never supply an explicit argument).<sup>67</sup> This pattern is the starting point for Nozick’s parable. In this society, Wilt Chamberlain is an outstanding basketball player (as he was in real life). Chamberlain signs up to play, with the agreement that anyone who goes to a game in which he plays puts a set small amount of money in a designated box at the gate, with these proceeds going to him.

During the season, a multitude of people attend the team’s games, and Chamberlain ends up with hundreds of thousands of dollars. The previous pattern of supposed justice (perhaps, strict equality) is now upset. Is this new distribution unjust? Chamberlain acquired his income by free agreement and with the consent of the attending fans. Nozick points out that any static theory of justice in property would be upset by normal and acceptable transactions like this hypothetical one of basketball player rewards. Nozick concludes that any society that tried to put into effect a concept of justice based on a static pattern would have to grossly and constantly invade the liberty of its inhabitants in order to compel the distribution it proclaims as just. “The socialist society,” as he puts it, “would have to forbid capitalist acts between consenting adults.”<sup>68</sup>

Nozick teaches us through the Chamberlain example that the history of why an income comes about (here through a free agreement to

exchange money for Chamberlain’s athletic work) is what makes it just. In a free society, justice based on history can work. But socialist justice—which Gutstein wants—cannot work because it is based on a pattern that is supposedly strict but is in practice always disintegrating. Attempting to enforce this pattern will be an excuse for socialist tyranny. The reality is that a rigid pattern will not work. Gutstein’s student, despite not having Nozick’s analysis, would be right to accept the income disparity between his family and Michael Jordan.

Students do not necessarily like bringing political philosophy into a math class, one critical math teacher noted, with some of his students saying, “This is not what we’re here for” and “You should teach history if you want to discuss politics.”<sup>69</sup> In a critical math class on the unfairness of the distribution of income in the United States, some students “complained that neither writing about nor discussing social matters” was appropriate in a math class.<sup>70</sup>

**A Class of Black Middle-School Students in Dallas (Not Gutstein’s) Decided That the Heavy Presence of Liquor Stores in the Vicinity of Their School Constituted an “Inequity.”** The students sought, using math in their endeavors, to remove the liquor stores by getting the existing zoning regulations changed.<sup>71</sup> Suppressing the liquor trade and exorcising demon rum are time-honored goals of Victorian-era teetotalers, progressive reformers, and evangelical preachers, but such an anti-alcohol crusade does not belong in a middle-school math class.<sup>72</sup>

Not only is the social science and the political thinking in critical math classes dubious, it also distracts from actual math. One high school teacher concludes that his students resisted critical math because they “did not see it as good preparation” for future study of math.<sup>73</sup>

## Ethnomathematics

Ethnomathematics in its original meaning was simply a subfield of anthropology, the study of human societies and cultures. It investigated how different cultures treated mathematics and performed simple mathematical operations—such as adding and subtracting, calculating change, or measuring weight, area, and volume. Ethnomathematics’s early goals were part of a general interest in observing how different cultures treated various mathematical subjects, not much different from archeology, linguistic, biological, and sociocultural anthropology, and had no particular ambitions of contributing to the body of mathematics itself.

Mathematics as a discipline already draws on multiple cultures over the centuries, from Greek geometry and logic to the Babylonian “base 60”

counting method still present in Western notation of time (minutes in an hour, seconds in a minute) and angle measures, to the Arabic numerals used today and the notation of zero that came to math via India, to the name for algebra from mathematician Muhammad ibn Musa al-Khwarizmi's Arabic book title. Many cultures contributed over time to mathematics, yet the real power of mathematics was not unveiled until standardized concepts and notations evolved, allowing math to be understood in multiple cultures, with multiple cultures contributing to its mainstream development. Fields Medal winners—"the Nobel Prize of mathematics"—include Japanese, Vietnamese, Indians, Chinese, Iranians, Kurds, Brazilians, and more, attesting to the universal culture of mathematics.

Early ethnomathematics studies in the 1980s and 1990s focused on issues of cognition: how different cultures "understand" mathematics. For example, how street vendors in Brazil or Lebanon, who lack any formal education, calculate the price of multiple items and know how to give correct change to the purchaser.<sup>74</sup> Another example is studying how Oksapmin children of Papua New Guinea, without any formal education, measure length, an important attribute of string bags that are a common cultural artifact in their society.<sup>75</sup> Yet those culturally interesting observations were quickly transformed into explanations of why minority children fail to succeed in "American" school mathematics, arguing that school mathematics does not offer support for "cultural understanding" of mathematics as practiced in students' native cultures.<sup>76</sup>

The proponents of this culturally deficient theory of school mathematics have ignored the fact that few if any students from those cultures in Western public schools were actually exposed to, not to mention steeped in, such rather exotic practice of mathematics. Another ignored aspect was the fact that immigrant students from challenging backgrounds often had to attend low-quality schools with low-quality teachers, particularly in the United States, where schools are allocated by ZIP code, which likely accounts for much of their academic lag. The support for those non-cultural explanations, rather than for ethnomathematical causes, can be seen among some successful minority students from South and East Asia and even some Caribbean and African societies despite their supposedly similar "cultural handicap."

In recent years, ethnomathematics aligned itself with critical race theory, arguing not only that school mathematics is insensitive to some children's cultural heritage but also that the accepted values and methods of school mathematics are racist in nature and reflect what critical



race theory calls “white oppression” and “white privilege.” For example, in 2020, the Smithsonian Institution’s National Museum of African American History and Culture listed “objective rational linear thinking,” “cause and effect relationships,” and “quantitative emphasis” among its assumptions of “white culture.”<sup>77</sup> One wonders how one can contribute anything to school mathematics if objective rational thinking, or quantitative emphasis, is to be discouraged or how one can expect minority participation in a technological society to increase by peddling such counterproductive folly.

Rochelle Gutiérrez, a professor of curriculum and instruction at the University of Illinois at Urbana-Champaign, has established a high profile pushing such messages. She has been influential in setting the math curriculum in Seattle, where “equity” takes precedence over knowing math, and similarly in California’s proposed 2022 Mathematics Framework, where she is cited. Here is what Gutiérrez has to say about her approach to teaching mathematics:

I’m not just interested in getting more diverse peoples to enter mathematics and do well in it.... Lately, that work has shifted to what I call *rehumanizing mathematics*, which aims to capture more of the connections with emotions, the body, and our relationships with each other on this planet.<sup>78</sup>

It is difficult to understand what such psychobabble means in the context of mathematics, but whatever it means, it certainly has nothing to do with math as practiced by millions of mathematicians, scientists, and engineers. Yet such nonsense seems to spread among K–12 teachers like a brush fire.

Perhaps it is best to view ethnomathematics as a form of substitute cultural nationalism. Critical curriculum writers do not approve of the American political system or Western civilization, so they want students to identify with other cultures that contrast with America and the West.<sup>79</sup> They want to use the existence of mathematical practices in these other cultures to undermine any sense that a student might have that Western civilization (which readily uses symbols like Hindu-Arabic numerals) is a culture that should be sustained. Paul Ernest, emeritus professor of the philosophy of mathematics education at Exeter University in the United Kingdom, seems to have this goal and writes that a historical and ethnomathematical approach can “serve to counter the received Eurocentric view and promote elements of a multicultural and anti-racist mathematics.”<sup>80</sup>

Despite this allegedly progressive goal of many proponents of ethnomathematics, the approach is quite susceptible to illiberal use. As education professors Renuka Vithal and Ole Skovsmose point out, ethnomathematics with its rhetoric of cultural differences could quite easily be used as part of Bantustan basics in a racially separatist mathematics curriculum in Apartheid-era South Africa<sup>81</sup> or, one might add, any similar society—such as the segregated Jim Crow South in the United States.<sup>82</sup>

## The Attacks on Excellence

Public education has had potentially contradictory goals since its early days. On one hand, it had committed itself to educating the masses, and, on the other hand, it had recognized the need to provide a more elite education to the selected few to develop the society's leadership, whether political, social, or technological. K–12 education in the United States, as opposed to many “Old World” countries, did not have as strong a component of private education for the elite. Further, the stronger egalitarian ethos in early America militated against nonpublic education serving more than a small segment of the population, typically less than 10 percent, once public education was broadly established starting in the mid-19th century.<sup>83</sup> Consequently, the widespread expansion of public education in America created even larger tensions between education for the masses and education for the elites than existed in countries with more established private education or a less egalitarian ethos.

American public education tried to solve this constant tension in multiple meritocratic ways: school tracking; college-level electives, such as Advanced Placement (AP); special examination schools and other magnet schools; Gifted and Talented (GATE) programs; and general curricular acceleration. Some of these programs became highly successful—examination schools, such as Thomas Jefferson High School for Science and Technology in Virginia or Stuyvesant High School in New York City, acquired nationwide fame for their excellence. Over 4 million AP exams are taken every year by more than a million students.

Yet the recent push for equality of outcomes rather than increased opportunity—“equity” versus equality in “woke” lingo—created a backlash against such successes, as advanced educational programs clearly fly in the face of equal outcomes. In fact, they are structured to provide unequal outcomes that are tailored to the interest and talents of students. And yet it is an aspect of reality that students' interests, talents, and willingness to do hard work vary.

## Tracking, Laning, and Homogenous Grouping

Until the second half of the 20th century, school *tracking* was commonly practiced. Students identified as gifted or talented were presumed to be gifted in all subject matter and hence were placed in special (“tracked”) classes with their similarly identified peers. This practice came under justified criticism for two reasons. First, a child gifted in one subject was placed in advanced classes in all subjects. Furthermore, giftedness frequently was not identified professionally but by untrained teachers, often resulting in discriminatory patterns of assignment to tracked classes, with the untracked classes offering watered-down curricula and less-qualified teachers.

Tracking was really an effort to create more homogenous classes, known as *homogenous grouping*, to allow teachers to teach more effectively without the need to address students of widely differing abilities. Yet, as already mentioned, students are often talented in one or few subjects while their ability is average or below in others. Hence a solution to tracking came forward where students were evaluated on their achievements in different subjects and placed in accelerated classes only in the subjects they excelled.

In contrast with tracking, this was called *laning*, and it eliminated most negative effects of tracking: students of similar abilities in a given subject were placed together, and no one was automatically assigned to all accelerated or all regular classes. Yet here again the proponents of equal outcomes—the equity warriors—objected because it still allowed some students to excel over others. No matter that those students otherwise treaded water in regular classes and often tuned out, or that teacher effectiveness in both regular and accelerated classes increased as teachers did not have to deal with such a wide spread of ability and achievement within a single class.

Laning has been used typically from middle grades and up, while, in high school, electives provide a similar mechanism—one can take honors biology and stay in regular English class. Yet the equity warriors try to clamp down on differentiated outcomes for students, so not only would they like to eliminate laning in middle school, but they also attempt to limit electives in high school. For example, the proposed 2022 Mathematics Framework in California suggests keeping all students together in the same math classes until grade 11, disingenuously arguing that this practice does not harm high-achieving students.<sup>84</sup>

It is worth mentioning that when opponents of excellence in education attack *laning*, they tend to use the words *tracking* and *detracking* instead,

hoping to confuse and evoke negative feelings that are associated with tracking—as if old-style tracking were still practiced.

## Programs for Gifted and High-Achieving Students

For a long time, American education has recognized that some students have more-than-average talents in mathematics (among other subjects) and created programs for such students in grade schools. In recent years, such programs were attacked with claims of racial discrimination in their admissions, and, if true, rather than correcting admission procedures, the programs have been either completely eliminated or reworked to effectively admit students by racial quotas. For example, in 2013 the California state legislature took away dedicated funding for GATE as a categorical program and has folded the money into the general Local Control Fund, which allows districts to reduce or completely eliminate GATE programs.<sup>85</sup> Not surprisingly, in just one year, GATE participation in California dropped from 8.2 percent to 7.8 percent.<sup>86</sup>

The AP program (and its associated test) promoted by the College Board and intended for high-achieving students has a somewhat similar story. As the popularity of AP courses and tests grew among students, teachers—rather than parents—started to complain and attempt to limit students’ access to them, overtly in the name of “reducing stress.”<sup>87</sup> Another worrisome symptom is the addition of easier AP courses that draw the bulk of increases in AP taking, such as AP Statistics rather than AP Calculus, AP Computer Science Principles rather than AP Computer Science AB, or adding an undemanding AP Human Geography course, which is intended for ninth graders.<sup>88</sup> Despite such introduction of easier courses, the average scores on the AP examinations have dropped over the past 20 years.<sup>89</sup>

But in recent times, nothing shows the disdain for excellence more than the focused attacks on selective schools that have colorblind admissions that rely on qualifying examinations. The renowned Thomas Jefferson High School for Science and Technology in Virginia has recently removed its qualification by examination and replaced it with racial quotas.<sup>90</sup> A similar effort to replace academic testing with racial quotas took place in New York City.<sup>91</sup> Then-Mayor Bill de Blasio unilaterally removed admission testing wherever he could, but in the case of the city’s nine specialized high schools (such as Stuyvesant and Brooklyn Tech), he could not stop such testing because their admissions criteria are codified in state law.<sup>92</sup> An ongoing effort in the New York legislature is attempting to remove the legal protection those schools have.<sup>93</sup> San

Francisco’s famous—and academically selective—Lowell High School also had to revise its admission policy in 2021 to allow admission based on racial quotas.<sup>94</sup>

Those cases all reflect a concentrated attack on academic excellence in this country, attempting to replace it, in the name of equity, with—as Diane Ravitch puts it—“the political designs” of a self-selected group of teachers and professors.<sup>95</sup>

## Conclusion

Critiques of mathematics by racial justice activists and ethnomathematicians have little to do with actual mathematics or mathematical learning and everything to do with undermining the discipline of mathematics in the name of racial equity and combating an ideologically conceived “white privilege.” One can find nary a real mathematician or scientist who promotes such “critical” ideas. Instead, the criticism comes from math *educators* and from race activists from various social disciplines.

The reason for the attacks is reasonably understandable. Mathematics is the foundation underlying most of the progress in technology and economics of the modern world. Since the mathematical achievement of some preferred minorities—but not those from South and East Asia or Nigeria—is lagging in school, rather than focus on the question why public schools are ineffective, social justice activists are willing to destroy a “gatekeeper” of upward mobility, whatever the consequences.

Those “social justice” activists are joined by others who simply seem to hate the American ideal and, as such, have little compunction in undermining the principle of rewarding excellence and hard work in the education of all children. They seem either to hope that this undermining will eventually undermine the achievements of American society or to believe that education has little importance and that society will keep developing on its own without the need for excellence and nurturing of particular talents.

Almost 40 years ago, an influential report read: “If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war.”<sup>96</sup> At the time, it was clear that the mediocrity was the result of ignorance, bad labor relations, and low-quality teaching. Forty years later, the picture is less clear—we do know much more about education, yet many refuse to apply that knowledge.<sup>97</sup> At the same time, strategically placed political activists within the education community are intentionally undermining the foundations of our society’s success.

## Endnotes

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# The Problem with Critical Race Theory and the 1619 Project—and What to Do About Them

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In recent years the U.S. has faced a growing threat: a broad set of interlocking movements, slogans, protests, books, school curricula, and government bureaucracies that advocate the principle that American society is institutionally racist. Although critical race theory (CRT), and critical legal theory (CLT) before it, have been around for decades, only recently have they come to dominate elite discourse, spreading beliefs that any and all gaps in group performance demonstrate racism and that solutions require precise proportional representation, now termed “equity.”

The “woke” ideologues making these claims employ a set of terms from the leftmost corners of universities, such as law schools teaching CLT. These terms include “white fragility,” “anti-racism,” and, often, “diversity, equity, and inclusion” (DEI). Use of these terms has grown in accord with the increasing use of demonstrably unscientific methods for detecting supposed racism, such as the Implicit Association Test and microaggressions.<sup>1</sup>

As Helen Pluckrose and James Lindsay write in *Cynical Theories*, all of these movements, including CRT and “social justice,” align with postmodernism.<sup>2</sup> Although CRT and CLT before it have been around for decades, changing patterns of media exposure may explain the rise of once-fringe theories and the constant, propagandistic repetition of extremely rare events, such as police killings of black people.<sup>3</sup> Media scholar Zach Goldberg makes a compelling empirical case that, starting in 2014, white

liberals increasingly got their news from *The New York Times* rather than from dying, and more centrist, local sources. As this leading institution moved far to the left on race-related issues, white liberal elites followed, moving well to the left of minorities.<sup>4</sup> In part, the *Times* shift reflected its profit-seeking adaptations to the market, favoring highly emotional content to engage liberal viewers online even when such content had little relation to reality.<sup>5</sup>

This chapter outlines commonalities among the authors, bureaucrats, foundations, and, increasingly, educators who fit under the broad CRT umbrella and describes how their common assumptions make highly questionable educational adventures, such as the 1619 Project, inevitable and largely resistant to scientific refutation. Those who question today's attacks on objective knowledge include many from the center-left as well as from the center-right. Debunking the "Great Awakening" should not be ideological, pitting left against right, but noncontroversial, pitting accurate against inaccurate, data against fabricated stories.

The criticisms of CRT, and by extension the 1619 Project, in this chapter are threefold. First, these intellectual movements pretend to be what they are not. CRT practitioners implicitly appeal to authority by virtue of their degrees but in fact eschew key tenants of science, including empiricism and transmissibility. Second, *CRT is racist*, fueling racial essentialism and exacerbating racism by making all issues revolve around race. Relatedly, CRT seeks to wreck, and with some success has wrecked, merit systems. Ironically, this insulates today's white elites from competition from less-privileged newcomers who might displace them. Third, in seeking to centralize power through a particular and particularly unkind style of activism, CRT spreads fear, shredding free speech and free inquiry rights.

Dangerously, CRT is becoming ever more institutionalized, increasingly taking over key segments of academia, private and government bureaucracies, personnel functions within corporations, and legacy media.

## CRT Is Anti-Science

Pluckrose and Lindsay see CRT as part of a broader suite of post-modern approaches, which is to say paradigms that see all knowledge as contingent on identity and socially constructed.<sup>6</sup> While typically promoted by professors and bureaucrats with advanced degrees and fancy titles, CRT disdains science and the objective truths it seeks. Science is a process, ideally embraced by those of varying biases for self-correction, seeking to arrive at objective knowledge by developing and testing

theories and narrower hypotheses, using replicable data that is transmissible to all. This builds knowledge and may sometimes lessen social problems over the long term. Scientific studies of both crime and police brutality, for example, require measuring variables like homicide rates, rates of police killings of civilians, and poverty rates, the latter since high poverty renders policing more difficult. Less successful police departments, for instance, should copy what more successful departments do—that would save lives, particularly black lives, since young black men face particularly notable risks from homicide.<sup>7</sup>

In contrast, CRT sees knowledge not as objective but as “socially constructed” to justify the continued rule by the powerful, hence the frequent disparagement of science in favor of “alternative ways of knowing” and “lived experiences” of the traditionally marginalized, approaches that elude empirical measurement. This approach is inherent to postmodernism. As Audre Lorde argues in “The Master’s Tools Will Never Dismantle the Master’s House,” emotion and solidarity must replace knowledge in order for the revolution to occur.<sup>8</sup>

At academic conferences, one now sees what was unthinkable a few decades ago: white people and men told to “check their privilege” when referencing empirical research—just as in the early 20th century when some derided the theory of relativity as “Jewish science” rather than engage in empirical debates about its accuracy.<sup>9</sup> To give one rather extreme example, some professors insist that obesity is not an objective health problem but a normal and, indeed, laudable condition stigmatized by scientific “hatred” of fat people combined with misogyny and racism.<sup>10</sup> In the field of education, it is now common for “scholarly” articles to eschew carefully designed quantitative analyses to instead focus on one or two individual cases or even “me-search” of one’s own subjective perceptions.

Thus, dubious work like *The New York Times’s* 1619 Project, whose primary author implicitly uses Standpoint Theory (the academic idea that one’s demographic position, not objective truth, determines one’s views), become literally impossible to disprove since critics are dismissed as white supremacists, even if they are black, like Senator Tim Scott.<sup>11</sup> Kentucky State University’s Wilfred Reilly and I are among many who have pointed out numerous factual errors in the 1619 Project.<sup>12</sup> A professional historian hired as one of the primary fact-checkers for the 1619 Project lamented that lead writer Nikole Hannah-Jones simply refused to accept facts that contradicted her simple narrative of racial oppression.<sup>13</sup> Supporters appear not to care. In place of the traditional and quite

rigorous methods used in academic history, 1619 proponents insist that demographic identities determine historical realities, just as a century ago, pro-Confederate activists who erected various statues that are now being removed placed their own *lived experiences* over the objective history that slavery contradicted the ideals of the U.S. Revolution, exploited those enslaved, and was the key cause of the Civil War.<sup>14</sup>

Notably, Hannah-Jones, Ibram X. Kendi, Robin DiAngelo, and others on the CRT Left have consistently refused to debate opponents, instead calling them racists, a tradition some see as dating back to the start of CLT.<sup>15</sup> John McWhorter argues that having grown up in ideologically homogenous university or media settings, their ideas unquestioned, renders CRT proponents preachers, not intellectuals.<sup>16</sup>

## CRT Racializes All Social Phenomena

This is not a bug of CRT but its key feature: CRT proponents see race as the root of everything that matters. Individuals are little more than their race. In this respect, CRT is the opposite, rather than the inheritor, of the legacy of America's 20th-century civil rights movement, which sought to convince citizens to define others by, as Martin Luther King, Jr., put it, the content of their character rather than the color of their skin. King sought to and, to a surprising degree, succeeded in undoing the racial essentialism spread by neo-confederates in the early 20th century through scientific racism, tabloid journalism, and artistic endeavors like the melodramatic film *The Birth of a Nation* (based on the bestselling novel *The Clansman*), which spread the myth that black men who were not submissive were dangerous, obsessed with preying on whites, particularly white women.<sup>17</sup>

Kendi, perhaps most notably, argues that *only* racism or genetic determinism (and who wants to favor the latter?) could possibly explain measurable racial differences across those metrics on which whites seem to do better than blacks. Kendi is seemingly unaware of more than a half-century of research from sociology, history, and economics on how culture and differential opportunities explain mean group differences between blacks and whites and even greater differences between ethnic groups within those often-arbitrary racial categories. Typically, controlling for just a few variables, most significantly family structure, eliminates or significantly reduces cross-group differences.<sup>18</sup> As Thomas Sowell pointed out more than 40 years ago, whole "racial" groups have changed their mean intelligence quotients (IQs) by over a standard deviation in a single generation, showing that there is nothing inherently white, black,



or Asian about a particular mean IQ or Scholastic Assessment Test (SAT) score, variables that then, in conjunction with other life choices, largely determine income.<sup>19</sup>

Racial essentialism, focused on a simple world of white villains and black victims, dominates the 1619 Project, which sees racism lurking at the root of literally everything from traffic jams in the South to unhealthy diets.<sup>20</sup> This turns America’s rich, complex history into a simple morality play in which most whites are robbed of all humanity and all blacks are robbed of all agency. This has had tragic consequences for black Americans in the form of (mainly white) educators who have done everything in their power to support public schools that continuously fail to teach black children while attacking schools that close racial achievement gaps.<sup>21</sup> Educators in most public schools simply refuse to copy practices, typically used in charter or private schools, that close achievement gaps.<sup>22</sup> On more than one occasion white educators have even gone so far as to claim that closing achievement gaps is racist—since teaching black students to excel in reading and math somehow makes them “white.” Indeed, more than a decade ago, such opposition blocked my own efforts to build an alliance between a university and public schools that close achievement gaps.

According to the National Equity Project, traits like hard work, politeness, and “objective, rational linear thinking” are quintessential *white* characteristics.<sup>23</sup> The National Equity Project is not a marginal player but a well-funded organization with backers including the Bill and Melinda Gates Foundation, operating in more than 40 school districts and charter systems including Chicago Public Schools, Los Angeles Unified Public Schools, and the KIPP public charter school network. This is no outlier but rather typifies a common approach to diversity training: the portrayal of academic success as *white*. For example, in language reminiscent of Old South racists, New York City public schools adopted diversity training schemes portraying academic success as a *white* characteristic. A black consultant charged with increasing the percentage of New York City’s black and Hispanic students in advanced classes complained bitterly about such racist approaches in a *New York Times* piece:

The city has tens of millions invested in A.P. [Advanced Placement] for All, so my team can give [minority] kids access to A.P. classes and help them prepare for A.P. exams that will help them get college degrees, and we’re all supposed to think that writing and data are white values? How do all these people not see how inconsistent this is?<sup>24</sup>

One explanation for the view that academic achievement is somehow white is that, as in postmodern thought generally, CRT has less to do with idealism or accuracy than with audaciously taking power, in part by enlisting allies. One sees this in CRT's assault on merit systems in education, which has enjoyed enormous support from *white* elites. For example, the referendum to bring back ethnic quotas and thus limit academic merit criteria for admission to University of California campuses had enormous support from wealthy whites, including near-universal newspaper and corporate backing. The anti-merit "Yes on Proposition 16" campaign outspent opponents by 16 to 1 and still lost by a large margin, since most non-elites of all races believe in merit systems.<sup>25</sup>

As journalist Kenny Xu shows in *An Inconvenient Minority*, it is hardly an accident that woke whites embraced dumping merit (standardized-test-based) admissions to elite universities like the Ivy Leagues and elite secondary schools like Thomas Jefferson High School in Virginia and Bronx Science in New York at the very time that many of "their" spots were being taken by relatively recent Asian immigrants.<sup>26</sup> Lacking money and connections, these first- and second-generation Asian strivers *worked* their way into elite institutions. In savaging merit systems, CRT has gained powerful allies among upper-class whites who want to protect their children from competition, much as in the early 20th century wealthy whites persuaded elite institutions to adopt non-academic admissions systems to limit the numbers of Jews, whom antisemitic whites derided as "greasy grinds" for their work ethic.<sup>27</sup> A friend-of-the-court brief from the National Association of Scholars shows that, had Harvard conducted admissions based wholly on scholarly and other objective measures of merit, the student body would be roughly 40 percent Asian rather than 20 percent.<sup>28</sup> Such ethnic quotas have been an open secret for decades, a matter Thomas Sowell wrote about in 1989.<sup>29</sup>

Two particular aspects of the efforts to limit academic merit in determining college admissions have been largely ignored by the media, perhaps since any reporter writing about them would risk denunciation as a racist. First, standardized tests like the SAT remain the best predictors of college grade-point averages and graduation.<sup>30</sup> This is empirically true across race and class lines, and in fact many white groups and Asian subgroups do poorly on these measures while some black groups do well.<sup>31</sup> Students with relatively low SAT or American College Testing (ACT) scores at a given institution are less likely to graduate, regardless of race, particularly in demanding science, technology, engineering, and math (STEM) fields. Thomas Sowell documented this relationship a half-century ago at

Cornell.<sup>32</sup> More recently, in *Mismatch*, Richard Sander and Stuart Taylor show that after a referendum forced the University of California at Los Angeles (UCLA) to drop most racial preferences, the *number* of black graduates stayed the same because their graduation *rate* doubled once UCLA could no longer admit ill-prepared minorities as academic cannon fodder to hit numerical goals dictated by politics and public relations.<sup>33</sup>

Second, as Xu shows and as documented by Max Eden, reducing the role of academic merit in admissions only modestly increases the percentages of blacks and Hispanics in a given elite institution while halving the percentage of Asians and enormously increasing the percentage of wealthy whites.<sup>34</sup> Thus, CRT-savvy whites can claim to support black interests while in fact promoting their own self-interest and deriding Asians as somehow disreputable “white-adjacents,” an insult now commonly used against Asian Americans.

## CRT and the 1619 Project Threaten Free Inquiry and Democracy

The proliferation of CRT and related notions threatens core American values like free speech while degrading higher education and weakening national unity. Readers of a book like this are certainly aware of the proliferation of “cancel culture,” the destruction of normal citizens’ reputations and careers for voicing ordinary opinions. The popular play-by-play man for the Sacramento Kings basketball team was fired for texting the phrase “All Lives Matter” to a player with whom he enjoyed arguing politics.<sup>35</sup> In the same state, UCLA Professor Gordon Klein was suspended from his university, and at one point placed under armed guard at home, for daring to tell students that the death of George Floyd in May 2020 at the hands of a white policeman did not justify allowing black students to skip law school finals; indeed, Klein cited Martin Luther King’s desire to avoid treating people differently based on color.<sup>36</sup>

Elite higher education pioneered cancel culture. To a large extent, ivory tower wokeness reflects DEI ideology. Books like *The Fall of the Faculty* have long documented “the rise of the all-administrative university,” pointing out that administrators and mid-level bureaucrats outnumber faculty members on most campuses.<sup>37</sup> Less noted is how many of these “deanlets” focus specifically on issues of “diversity, equity, and inclusion.” The Heritage Foundation recently pointed out that promoting CRT-compliant “diversity” has become a “primary” function of U.S. higher education, with 3.4 DEI bureaucrats employed for every 100 faculty members.<sup>38</sup>

The University of Michigan's chief diversity officer (CDO) receives a salary of \$396,550, and the associate dean of Michigan's office of Health Equity and Inclusion earns \$220,000. Perhaps unsurprisingly, given these potential earnings, at least six mainstream universities now offer a master's degree in diversity or an essentially identical field; many more offer a bachelor's degree.<sup>39</sup> These degrees provide graduates with a well-compensated path to stay in academia or to join the corporate sector, where many or most major firms now have a CDO and a CRT-friendly diversity office.

Beyond the threat to individual speech, the institutional presence of the woke inside the power chambers of education and even business is creating a new and fairly unpopular American mythos. As noted, the 1619 Project, sponsored by *The New York Times*, sought to link virtually everything that is distinctive about the United States to the singular evil of slavery.

Peter Wood, the author of *1620: A Critical Response to the 1619 Project*, describes the project's argument as "an effort to destroy America—by teaching children that America never really existed, except as a lie told by white people in an effort to control black people."<sup>40</sup> However inaccurate, this narrative has become influential. The 1619 Project produced a children's curriculum<sup>41</sup> for K–12 education that has already been adopted by more than 4,500 school districts.<sup>42</sup>

## Solutions

What are the solutions to the problem of CRT and of "wokeness" more broadly? First, people who know the truth need to speak the truth. The plain empirical reality is that many citizens know that the wilder claims of CRT and related ideologies are highly problematic but fear saying so. To give just one example: The much-cited black/white disparity in police shooting rates vanishes completely given a simple adjustment for the fact that the black crime rate is currently 2.4 times the white crime rate, a statistic widely known in the field of criminal justice. Harvard University's Roland Fryer has demonstrated that black suspects are 27.4 percent *less* likely than white suspects to be shot by police when relevant variables are controlled for. To be clear, this does not mean that racist law enforcement never occurs but does show that dominant media narratives about police use of deadly force are wildly inaccurate: We must correct those falsehoods.<sup>43</sup> Professors—certainly those of us with tenure—need to use facts like these to overcome some of today's most harmful misconceptions. What is the purpose of tenure if not to protect professors when they question powerful interests?

Second, in addition to debunking critical claims, scholars need to aggressively advance solutions to achievement gaps that do exist between racial (and regional and class) groups in the United States. Simply put, no one in modern America wants to be called racist. As noted, “anti-racist” writers, such as Kendi, argue that the only two possible explanations for minority struggles are racism and genetic inferiority. Kendi’s dichotomy is false. In proposing it, he ignores more than a half-century of social science by conservatives like Thomas Sowell, centrists like Nathan Glazer and Daniel Patrick Moynihan, and more than a few liberals like William Julius Wilson and Elijah Anderson.<sup>44</sup> Adjusting for characteristics like aptitude test scores, region of residence, years of education, and family structure closes almost all gaps between groups regarding dependent variables like income.<sup>45</sup> Further, these traits themselves are not simply “evidence of systemic racism.”

Tools for helping low-income minorities achieve class mobility and educational advancement exist. In *Charter Schools and Their Enemies*, conservative *eminence noir* Thomas Sowell points out that the overwhelmingly black and Latino charter school students in New York City perform as well as New York State’s far wealthier white population.<sup>46</sup> This fact, which takes one sentence to summarize, is the most important and least discussed reality of contemporary American education. The factors underlying it are not great mysteries. We have known since the no-nonsense John Ogbu wrote decades ago that black teenagers study substantially less than white peers and that this simple fact explains most of the black-white performance gap.<sup>47</sup> Charter schools are less likely to tolerate slacking than district schools, and it shows. Many other institutions that focus on colorblind performance, notably the U.S. Army, similarly achieved great success in teaching the knowledge and skills that make class mobility possible.<sup>48</sup>

One excellent source for such information is the website and network of resources maintained by the 1776 Unites initiative, a direct counter to the 1619 Project.<sup>49</sup> In addition to noting realities that most outside academia would find obvious—such as the fact that 21st-century America is neither legally nor institutionally racist—the essays and links on the website outline a list of very practical guideposts for black success. Like many 1776 authors, Wilfred Reilly notes that numerous ethnic groups, including Nigerian Americans, have incomes exceeding those of whites, proving that success is possible with the right behaviors.<sup>50</sup> Guideposts outlined in just one piece range from “[r]ejection of racism as a catch-all explanation for black problems” to learning “useful skills, rather than basket-weaving

‘intersectional’ nonsense.”<sup>51</sup> Materials illustrating how to do each of these things are often linked; there is even a 1776 Unites curriculum—currently used in many schools.

Four things help young people avoid poverty: (1) graduate from high school; (2) do not commit a felony; (3) accept, and take seriously, any job after completing education; and (4) wait until marriage to have children. This common sense has been empirically verified by social science.<sup>52</sup> The ultimate rebuttal to CRT is teaching this rule, instead of ambiguous and ever-changing new theories of racism, to as many young men and women as possible. Let’s do it.

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# Critical Race Theory Is Incompatible with Christian Education

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A Christian school is a school whose educational philosophy, curriculum, administrative policies, and daily operations are built, to varying degrees, on explicit Christian principles drawn from the Bible (particularly the New Testament) or a school that is run by an explicitly Christian organization.<sup>1</sup>

Within the United States, there are over 23,000 preschool, primary, and secondary religious schools, over a third of which are Christian.<sup>2</sup> There are also numerous schools and education associations that purport to offer a distinctively Christian education directly—as well as providing administrative, accreditation, and curricular oversight.<sup>3</sup> In all Christian schools, the Bible is taught as a necessary component of the school curriculum, which also includes the teaching of academic skills. In addition to the Bible, schools may include the specific teachings of a particular Christian denomination (which may include extra-Biblical elements). In some schools, the “classical Christian education” model is followed, which in addition to the Bible incorporates reading, math, writing, Latin, logic, science, rhetoric, and the fine arts.<sup>4</sup>

Christian organizations and secondary and post-secondary Christian schools are not insulated from the infiltration of the radical ideology of critical race theory (CRT). In his excellent book *A Corruption of Consequence: Adding Social Justice to the Gospel*, Ronnie Rogers details how CRT concepts infiltrated Southern Baptist seminaries through the teachings and writings of seminary professors and high-level administrators.<sup>5</sup>

In 2019, the Southern Baptist Convention (SBC), an organizational body of over 50,000 Southern Baptist churches and missions, passed Resolution 9, which included language adopting CRT and “intersectionality” as useful “analytical tools” for understanding racial issues, though its advocates claimed that they remain subordinate to Scripture.<sup>6</sup> Resolution 9 was adopted after a previous anti-CRT/intersectionality resolution was rejected by the resolutions committee.<sup>7</sup> The passing of Resolution 9 led to the voicing of concerns by the SBC membership, Southern Baptist seminary presidents, and outside conservative organizations. Responses were published related to these concerns by the resolutions committee, which led to unsuccessful efforts to add numerous amendments to Resolution 9.<sup>8</sup>

All this activity culminated in several threatened walkouts from pro-CRT SBC members (many of whom are black pastors) if Resolution 9 were rescinded.<sup>9</sup> This episode had ripple effects throughout the Christian school community because so many Christian schools are ministries of, or remain in close partnership with, churches.

Information related to the CRT infiltration of Christian private and parochial schools, as well as public charter schools, is scarce compared to the volume of published information on secular public schools. However, what little published information exists is consistent with the sequence of events that have played out in secular schools. Often, CRT infiltration begins with a partnership between a school district or organization and a company that produces instructional materials for K–12 schools.<sup>10</sup>

Secular public education is beginning to see a critical mass of materials that parents, students, and teachers can use to identify and resist CRT infiltration in schools.<sup>11</sup> This task is difficult for supporters of Christian education, as the language of CRT is often softened, made to sound “reasonable,” and is promoted as if its goals are consistent with Biblical teaching and the Christian church’s obligations to secular society.<sup>12</sup> The message of this chapter is that the principles of CRT and those of the Bible *are profoundly incompatible*, which has direct implications for Christian education.

## Three Principles That Christian Schools Must Understand in Fighting CRT

**Principle 1: CRT Infiltration Capitalizes on Racial Anxieties in Order to Gain Influence.** The primary avenue through which CRT secures inroads into schooling (whether Christian or not) is through educators’ guilt, anxiety, insecurity, and feelings of being blindsided by their sudden awareness of matters involving race. These include the existence of simmering

racial tensions that percolate among students or faculty, explosive and unwelcome racial incidents that would be potentially embarrassing to the school's reputation if not decisively addressed, or the emergence of embarrassing racial achievement gaps.<sup>13</sup>

A common leitmotif in the history of American race relations is sharp criticism from secular historians and political figures, Christian and non-Christian leftists, and “woke” black theologians of the perceived shortcomings of “white Christianity” in addressing racial issues.<sup>14</sup> The most salient criticisms are that American Christian worship on Sunday mornings is too racially segregated<sup>15</sup> and that white evangelicals are generally ignorant and unaware of racial concerns, issues, and problems faced by black evangelicals. Other criticisms include the idea that the church does not do enough to fight perceived racism or “white supremacy” in church culture and society.

Critics will highlight the obvious hypocrisy of early American slaveholders, who justified race-based slavery with Bible passages.<sup>16</sup> Although the Reverend Martin Luther King, Jr., also recognized this hypocrisy, the Baptist preacher used the strategy of *moral persuasion* to awaken the conscience of white America—through the use of Biblical stories (such as the parable of the Good Samaritan)—and to underscore the dignity of all human beings as created in the image of God.<sup>17</sup>

Malcolm X was a different political animal altogether. Although black history textbooks often superficially lump him and King together as “important figures in black civil rights,” the two men could not be more different in their religious loyalties, ultimate objectives, and political strategies for accomplishing objectives. Whereas King appealed to white Americans' sense of moral conscience, Malcolm X's strategy was to activate white racial guilt and compensatory obligation to blacks, whom he characterized as perpetual victims of American white racism.<sup>18</sup> Although the idea may not have originated with Malcolm X, it was he who popularized among disaffected blacks the notion that Christianity (as practiced in America) was the “white man's religion”—which in his view was the greatest single ideological weapon responsible for making victimized blacks docile in the face of what he perceived as glacial improvement in American race relations.<sup>19</sup>

Although at first glance these two perspectives appear as incompatible as oil and water, James Cone (1938–2018) attempted to forge the two into an entity called “black liberation theology,”<sup>20</sup> a religious ideology that permits black believers to harmonize Christianity with a more militant black identity.

**Principle 2: CRT Advocates Counterfeit Religious Terminology in an Attempt to Make It Palatable for Christians.** At the time of this writing, numerous books are being published within both secular and Christian publishing, which argue that CRT can be compared to a secular religion.<sup>21</sup> As counterfeits, secular religions have their own unique “theology of sin.” One author, in his strong reaction against CRT and its offshoots, sarcastically titled his book *Whiteness: The Original Sin*.<sup>22</sup> In some respects, this religious imagery mirrors the early speeches of the late Malcolm X, who referred to Caucasians as “white devils.”<sup>23</sup>

The late Professor Derrick Bell, considered by many to be the godfather of CRT, is on record as affirming the “undeniable fact”—in his view—that most racists are also Christians.<sup>24</sup>

CRT teaches that the sin of whiteness is assumed to be more fundamental and wide-ranging than merely the behaviors and ideologies of self-styled white supremacist groups like the Ku Klux Klan.<sup>25</sup> According to CRT, white supremacy refers to

a political, economic, and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily re-enacted across a broad array of institutions and social settings.<sup>26</sup>

One teacher at a private church school was criticized for publicly speaking out against the school’s new “anti-racist” curriculum. When he was called on the carpet by the school’s principal, he secretly recorded the conversation. In the conversation, the principal opined that the curriculum demonizes white people for being born.<sup>27</sup>

In orthodox Christianity, however, all persons are born sinful (Psalm 51:5). Given this dim assessment of humankind by both Biblical Christianity and secular CRT, what do both views say about how to address humanity’s sin problem?

For Christianity, the only way that human sin can be dealt with in the eyes of a holy God is through the death and sinless life of Jesus Christ—God the Son. In Christianity, salvation is a concept that is also communicated by the phrases “saved,” “converted,” “regenerated,” or “born again.”<sup>28</sup> This comes about only when a person recognizes his or her inability to be reconciled to God through his or her own merit and good works, and trusts the substitutionary work of Jesus Christ (the second

member of the Holy Trinity) as atonement for sin through Christ's death on the cross. When this happens, the believer's sins (past, present, and future) are forgiven. At this juncture, the Holy Spirit (the third member of the Holy Trinity) indwells the believer—guiding his behavior, enlightening his understanding of spiritual matters, and guaranteeing his presence with God in Heaven for all eternity.<sup>29</sup> In contrast, the seduction of the CRT message, whether explicit or hidden, is built on a fundamental misinterpretation of Christian truths by people who are no doubt sincere in wanting to see tangible progress in “racial reconciliation” within American society—but, in reality, their views *worsen* race relations.

CRT's counterfeit copy of Biblical salvation is to become ‘woke’, whereby newly “awakened” whites pledge their loyalty to becoming committed anti-racists as a means of atoning for their sin of whiteness.<sup>30</sup> This atonement is illusory, as there is nothing that whites can do to escape the racial prison in which they find themselves. If whites vow to say nothing that would cause offense, they are reminded that “silence is violence.”<sup>31</sup> In some venues, whites are forbidden to attend certain activities—being told that their mere presence threatens vulnerable minorities.<sup>32</sup> If they attempt to be complimentary to minorities, their words are mercilessly picked apart and analyzed through a microscope for signs of “microaggressions.”<sup>33</sup> If whites muster up enough courage in futile attempts to defend themselves, they are called “fragile racists.”<sup>34</sup> Any attempt by whites to point out the bankruptcy of CRT results in accusations of self-protective fear and “white rage”—which CRT proponents simply view as further proof of whites' buried racism.<sup>35</sup>

This is the rotten fruit of CRT and its most militant advocates of which both secular and Christian educators need to be aware—as these are diametrically opposed to the Christian messages of forgiveness, mercy, grace, and true justice.

The Bible teaches that Christian believers of all nationalities, languages, and ethnicities are instructed to behave while on earth in a manner that is consistent with their status as God's children through the work of Christ.<sup>36</sup> There is no standard for one racial group and a different standard for another racial group. In the realm of their relationships with their fellow men, Christian believers are commanded to love one another, be at peace with all men, be slow to anger, and share the message of forgiveness of sins and reconciliation to God through belief in the atoning work of Jesus Christ.<sup>37</sup>

Whereas CRT encourages adherents to develop a heightened hypersensitivity to the smallest microaggressions, the Bible counsels the godly

to overlook such offenses.<sup>38</sup> Unbelieving persons of different races or ethnicities are not the enemy but represent the mission field to believers (of all backgrounds) who truly understand the message of the gospel.<sup>39</sup>

In the realm of negative prohibitions from Scripture, Christians are commanded to avoid judging the quality of a person's heart from their outer appearance, to not keep a record of perceived wrongs committed by others, to not let bitterness consume a forgiving heart, to avoid seeking personal revenge for real or imagined slights, to avoid bearing false witness against one's neighbor or to covet what he has, to not return evil for evil, and to avoid conforming to the latest fashionable ideologies of the secular-world system that clearly violates God's word in the Bible.<sup>40</sup>

**Principle 3: Christian Educators Do Not Need Extra-Biblical Sources to Teach Students How to Deal with Race in Daily Life.** The issue that obviously differentiates Christian schools from secular schools rests in their freedom to discuss and teach religious principles—particularly those found in the Bible.

Christian educators may be somewhat surprised, however, to learn that the word “racism” is not found anywhere in Scripture. This does not mean, however, that the negative human attitudes and actions commonly associated with the contemporary understanding of the racism concept are not found in Scripture—they clearly are. Biblically translated words, such as “enmity,” “hatred,” and “partiality,” are frequently found in Scripture, but their usage within the appropriate Biblical contexts confounds the tidy racial narratives of modern-day CRT advocates.<sup>41</sup>

Nearly all Bible stories involving animosity between groups involve conflicts within families, conflicts between tribes belonging to the same Semitic groups, or conflicts between different ethnic groups that have their ultimate roots in religious—not racial—differences.<sup>42</sup> To borrow an unoriginal but pithy saying, the issue is “sin, not skin.”<sup>43</sup> That is to say, what modern-day secularists call “racism” was not unknown to writers of Scripture.

In contrast, CRT fashions its own secular morality that seems to provide neatly packaged answers and solutions for society's racial problems. But the roots of CRT contradict the superficial impression of compatibility with Christianity. In fact, the supporters of Marxist ideas (from which CRT was birthed) have voiced outright contempt for religion, especially Christianity—and at best a profound misunderstanding of its central purpose. Karl Marx (1818–1883) famously believed that religion was an invention of man that functioned as the “opium of the people.”<sup>44</sup> Max Horkheimer (1894–1972), a philosopher, social theorist, and member of



the Marxist Frankfurt School noted for his writings on critical theory, saw religion as little more than an expression of human misery;<sup>45</sup> Horkheimer saw religion as a practical form of resistance against all forms of social exploitation and domination and a yearning for a better society.<sup>46</sup>

Antonio Gramsci (1891–1937) was an Italian Marxist philosopher who originated the theory of *cultural hegemony* (hegemony means domination), a term frequently used in contemporary cultural Marxist writings on race.<sup>47</sup> Although he was a professed atheist and despised religion in his pre-prison writings, he nevertheless considered some practices in Italian Catholicism as relevant for strengthening Marxism—which he called a secular religion.<sup>48</sup> Herbert Marcuse (1898–1979), a philosopher also associated with the Frankfurt School of critical theory, criticized the role of religion in peoples’ lives on the grounds that it failed to challenge the status quo, blinding people to the reality of their political oppression.<sup>49</sup>

CRT and “social justice” zealots subjectively and arbitrarily use the words “racism” and “racist” as shock words to demean whatever, or intimidate whomever, they do not agree with on matters of race.<sup>50</sup> In the final analysis, however, this approach renders these words practically meaningless. When Christian educators take the bait and attempt to argue over race using terms, concepts, and rules established by critical race theorists (whether they be secular or religious), they will most assuredly lose.

Christian schools have a particularly urgent responsibility to beware of the seductive siren song of CRT.<sup>51</sup> In Biblical imagery, a little CRT leavening corrupts the entire batch of dough.<sup>52</sup>

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PART IV

*Higher Education's Role  
in Critical Race Theory*





# The Credential Cartel—How Colleges of Education Spread Critical Race Theory

*Lindsey M. Burke, PhD*

Critical race theory (CRT) has been infiltrating K–12 education through numerous avenues: curricula, teacher training and professional development, and the hiring of chief diversity officers (CDOs). It is also shepherded from university-based colleges of education down to the K–12 classroom through teacher-education programs maintained through state teacher-certification requirements. Although colleges of education enjoy a long history of teacher credentialing in the United States, they have become the primary way in which aspiring teachers encounter CRT while at the same time doing little to boost teacher effectiveness in the classroom. This chapter examines the history of these schools of education, their impact on teacher effectiveness, and their role in spreading CRT.

## History of Colleges of Education

The seeds of teacher certification in America were planted as early as 1647, when Massachusetts passed the Old Deluder Satan Act, which mandated that a town with a population in excess of 50 households establish a school. Selectmen, with the blessing of the town minister, issued licenses for teachers in those schools. In 1686, Virginia’s General Assembly began requesting that every county appoint someone to license “schoolmasters.” These licenses, however, were not granted due to completion of a training program and were not signals of competence; rather, they indicated a teacher’s ability to maintain classroom order and reflected general

character attributes, such as prudence, temper, and “sober and pure conversation.”<sup>1</sup>

In the wake of the Revolutionary War, selectmen and local school committees would grant licenses, after oral inquiry, based on the character and perceived competence of the aspiring teacher. In most cases, these licenses were valid for approximately one year and were subject to annual re-evaluation. By 1826, however, granting of such licenses became slightly more formalized, with Massachusetts requiring a personal inquiry into “every teacher’s literary qualifications and capacity for government of the school.”<sup>2</sup>

In the 1830s, informal schooling in homes and churches gave way to a more formal system of common schools—the precursor to modern public schools in America. The arrival of common schools also heralded an effort to professionalize teaching. Proponents of the common school, such as Horace Mann, were also supporters of formal teacher preparation, and in the mid-1800s such preparation became more commonplace through “summer teacher institutes.”<sup>3</sup>

In the mid- to late 19th century, state-funded “normal schools” emerged as institutions to educate aspiring teachers, with the first normal school opening in 1839 in Lexington, Massachusetts—a figure that grew to 11 normal schools in eight states by 1860.<sup>4</sup> Prior to the advent of normal schools, most teachers did not complete any type of teacher preparation.

Common school teachers were appointed by the local school board and were public employees and had to have a level of education at least one level higher than the grade they were teaching. As Stanford University’s David Labaree notes, this was not unique to teaching, as individuals in most professions prior to the 20th century gained education and experience through apprenticeships rather than through programs of professional education. Teacher preparation was distinct in America in that it included neither professional coursework nor apprenticeships.<sup>5</sup>

Normal schools were “the major teacher education initiative that came out of the common school movement,” which had begun to standardize the K–12 schooling model while leading to increased demand for new teachers.<sup>6</sup> Prior to the introduction of these normal schools, teacher education, when it occurred, took place organically in a myriad of different settings. Normal schools, by contrast, “were expected to set the standard—the norm—for good teaching.”<sup>7</sup> Prospective teachers generally attended a year-long program, earning a “certification of qualification” upon completion. Although the certificate did not connote legal licensure, “it was a forerunner of the practice of accepting college credentials as evidence

for legal certification.”<sup>8</sup> Indeed, New York State established a law in 1849 providing that “the possession of a diploma from that school should be deemed evidence that the holder was ‘a qualified teacher.’”<sup>9</sup>

The rapid growth in elementary and secondary schooling following the Civil War increased demand for teacher education. Normal schools began expanding their programming in the late 19th century to attract tuition dollars and to fulfill demand, which had increased as a function of the schools being “a local, inexpensive, and accessible form of a liberal arts college.”<sup>10</sup> By the beginning of the 20th century, states had established the “general outline” of teacher certification.<sup>11</sup> The normal school model evolved further into bachelor’s-degree-granting state teachers colleges in the early 20th century, shedding the term “teachers college” in exchange for the “state college” moniker. Concurrently, and bolstering the increase in these institutions, was “the growth of a new discipline of ‘education’ and the establishment of local and state educational requirements for admission to teaching accompanied by the enforcement of such requirements through teacher certification.”<sup>12</sup>

By 1921, 14 states required a high school diploma to become certified to teach, and by 1931, a majority of states required between one and four years of college in order to teach secondary school. States also began requiring student teaching, and by 1955, 31 states had implemented bachelor’s degree requirements to teach elementary school, and 45 states had implemented a bachelor’s degree requirement to teach high school.<sup>13</sup> By the 1970s, teacher education had transformed into a “wholly owned subsidiary of the university.”<sup>14</sup>

The relationship between the teaching profession and the university became and remains interdependent, even parasitic. As Labaree describes it:

Each needs the other in significant ways, but each risks something important by being tied to the other. The university offers status and academic credibility, and teacher education offers students and social utility [to the university]. But in maintaining this marriage of convenience, the university risks undermining its academic standing, and teacher education risks undermining its professional mission.<sup>15</sup>

Thus, the proliferation of bachelor’s degree requirements for teacher licensure heightened the dependence that teacher education had on universities. More recently, the No Child Left Behind Act of 2001 went even further, injecting the federal government into decisions about who

constitutes a qualified teacher and who could enter school classrooms across America.

## Contemporary Teacher-Certification Requirements

No Child Left Behind (NCLB)—the seventh reauthorization of the Elementary and Secondary Education Act of 1965—mandated that all children be taught by a “highly qualified teacher” by the 2005–2006 school year. This mandate applied to teachers of “core” academic subjects (including math, reading, English, science, foreign languages, history, geography, arts, economics, civics, and government) and held that a teacher had to have a bachelor’s degree, demonstrate subject matter expertise, *and* be state certified or pass the state licensing exam.<sup>16</sup>

NCLB’s state-certification requirement likely contributed to increased enrollment in colleges of education in the early 21st century. Prior to NCLB’s passage, 85 percent of secondary school teachers held state teaching licenses—a figure that increased by five percentage points to 90 percent by the 2017–2018 school year.<sup>17</sup>

Obtaining state certification per NCLB has most often meant attending a university-based college of education. Although there are alternative teacher-certification programs in most states, including national providers, such as the American Board for the Certification of Teacher Excellence (ABCTE), and local options like Arkansas Teacher Corps, over 70 percent of the 600,000 prospective teachers pursuing licensure in 2018 were enrolled in traditional college-based preparation programs. Moreover, approximately one in 10 college students were majoring in “education” in 2018.<sup>18</sup>

As with the Left’s slow but steady march through the institutions of media, corporate boardrooms, and higher education, colleges of education have cornered the market on teacher training, becoming a near-monopoly conveyor of teacher certification since the mid-20th century.

## Teacher Certification’s Lack of Connection to Student Outcomes

Despite the ubiquity of university-conferred teacher certification, research has demonstrated that there is little, if any, connection between teacher certification and a teacher’s impact on student academic achievement. Although some scholars have identified positive student effects as a result of additional teacher education training,<sup>19</sup> others have found that a teacher’s certification status upon entry into the classroom has only a small impact on student academic performance and varies little

by program type.<sup>20</sup> The absence of a relationship between teacher certification and teacher effectiveness is most noticeable in the negligible differences in outcomes among traditionally certified, alternatively certified, and uncertified teachers.

Differences in teacher effectiveness *within* these groups is large, however. As researchers Thomas Kane, Jonah Rockoff, and Douglas Staiger found, “the difference between the 75th percentile teacher and the 50th percentile teacher for all three groups of teachers was roughly five times as large as the difference between the average certified teacher and the average uncertified teacher.”<sup>21</sup> As they conclude: “To put it simply, teachers vary considerably in the extent to which they promote student learning, but whether a teacher is certified or not is largely irrelevant to predicting his or her effectiveness.”<sup>22</sup>

Indeed, teacher performance during the first two years on the job is a stronger predictor of future effectiveness than certification status.<sup>23</sup> Yet states maintain this system of teacher-certification requirements despite it having little if any bearing on teacher effectiveness. Even though the 2015 reauthorization of the Elementary and Secondary Education Act eliminated NCLB’s highly qualified teacher mandate, states largely continue to keep these ineffective requirements in place.

Why, then, do states maintain teacher-certification requirements, largely conferred through university-based colleges of education?

Generally speaking, the justification for requiring certification in a given profession, such as medicine and law, lies in the idea that “the potential costs to clients of an unregulated market are high, and thus professional licensing to enforce standards is an efficient way to ensure competent practice in a field.”<sup>24</sup> But, as discussed, the value of teacher certification is debatable. The maintenance of certification despite its lack of efficacy may be explained by a second force at play—the normative pressure produced through a desire for professionalization.

Despite the ineffectiveness of teacher certification, efforts to professionalize a field, including professional associations, credentialing, and university training, are examples of powerful forces that create normative isomorphism in education by establishing organizational mores that “create a pool of almost interchangeable individuals who occupy similar positions across a range of organizations.”<sup>25</sup> The filtering of personnel occurs in both initial hiring practices and through career advancement, ensuring that those individuals who “make it to the top are virtually indistinguishable.”<sup>26</sup> Teacher-certification requirements also contribute to schools being caught in a century-long organizational form that has

become deeply institutionalized.<sup>27</sup> As institutional theorists Paul DiMaggio and Walter Powell identified in 1983, “The greater the extent to which the organizations in a field transact with agencies of the state, the greater the extent of isomorphism in the field as a whole.”<sup>28</sup>

Regardless of the rationale, and despite the fact that these regulations continually fail to improve student learning, states maintain a system of teacher certification that creates a lucrative supply of students and dollars for universities, generally, and colleges of education, specifically.

## Colleges of Education and Critical Race Theory

What, exactly, is happening within the halls of these colleges of education? Are colleges of education advancing CRT by imparting it to aspiring teachers?

Colleges of education are the training grounds for translating the leftist ideology of CRT into K–12 pedagogy and practice. They are the settings in which prospective teachers learn their craft—which includes critical pedagogy, a theory grounded in the work of Antonio Gramsci. Gramsci, who founded Italy’s Communist Party in the 1920s, sought to produce students who would lead the socialist revolution, using education to advance socialism through a “counternarrative.” Today, this ideology is advanced in schools of education through the works of Paulo Freire—chiefly his foundational book, *Pedagogy of the Oppressed* (1968), which, like other forms of critical theory, divides individuals into groups of “oppressors” and “oppressed.” As the James G. Martin Center’s Jay Schalin found, Freire was among the most-assigned authors at colleges of education in the nearly 300 syllabi used at three prominent colleges of education reviewed in his analysis.<sup>29</sup>

Yet there are those who claim that colleges of education shortchange teacher candidates on issues of race. For example, pop critical race theorist Robin DiAngelo, author of *White Fragility*, laments in that book, “I can get through graduate school without ever discussing racism. I can graduate from law school without ever discussing racism. I can get through a teacher-education program without ever discussing racism.”<sup>30</sup> However, as the American Enterprise Institute’s Rick Hess and I recently documented, college of education faculty devote a substantial amount of time and energy to the topic.

We sampled two sets of colleges of education: the top 20 schools of education as ranked by *U.S. News & World Report’s* 2020 Education School Rankings and the top 20 schools of education by volume of teachers produced annually. Our analysis included reviews of the webpages, biographies, and syllabi of 3,190 core faculty at these institutions, combing

those sources for terms like “critical race theory,” “intersectionality,” “postcolonial theory,” “QuantCrit,” “Queer theory,” and “whiteness.”

Our review showed clearly that colleges of education are steeped in critical theory. Among the top-ranked colleges of education, 48 percent of faculty had a research interest or area of study that included one of the diversity keywords, 24 percent of whom listed race, diversity, or equity as their *primary* area of study. Among the colleges of education that produce the most teachers each year, 40 percent of faculty report that diversity is a research interest (17 percent of whom said it was their *primary* area of study). Notably, between one-quarter and one-third of scholars who focus on race and diversity do so as critical theorists.<sup>31</sup>

Not only is CRT being widely studied among higher education faculty, but it is also being reified through university hiring practices.

The Heritage Foundation’s Jay Greene, along with James Paul of the University of Arkansas, recently documented the prevalence of diversity, equity, and inclusion (DEI) staff in 65 universities. They revealed that the average university they sampled employed 45 individuals who have formal responsibility for advancing a DEI agenda. Universities employed more than four times the number of DEI staff as staff required by law to assist with disabilities, 1.4 times more DEI staff than history professors, and 3.4 DEI staff for every 100 tenured faculty. Moreover, as Greene and Paul explain,

this research suggests that large DEI bureaucracies appear to make little positive contribution to campus climate. Rather than being an effective tool for welcoming students from different backgrounds, DEI personnel may be better understood as a signal of adherence to ideological, political, and activist goals.<sup>32</sup>

Although colleges of education may preach the CRT doctrine, hire an increasing number of DEI staff, have a significant proportion of faculty who study race through a “critical” lens, and be generally steeped in CRT orthodoxy, the good news—if one can call it such—is that colleges of education have not historically done a great job of teaching teachers how to teach the basics, such as reading and math (these subjects having been labeled both “academically weak and professionally irrelevant”),<sup>33</sup> let alone of indoctrinating students in Freire, Michel Foucault, and Derrick Bell. There is evidence for this in additional work from Greene and Paul, who recently surveyed teachers on their opinions on a host of issues pertaining directly or tangentially to CRT.<sup>34</sup>

Overall, Greene and Paul find that “while teachers tend to be somewhat left of center on many topics, their responses were not particularly close to the average liberal.”<sup>35</sup> For example:

- 36 percent of teachers agreed with the statement: “In America, individuals are mostly judged by the content of their character rather than the color of their skin,” a number similar to the overall population (40 percent) who agreed and considerably higher than the number of liberals who agreed (18 percent).
- 41 percent of teachers agreed with the statement: “There is no better country in the world for minorities to thrive than America,” compared to just 27 percent of liberals who agreed; 52 percent of respondents overall agreed.
- The exact same percentage of teachers (27 percent) and overall respondents (27 percent) agreed that the birth of America was 1619 rather than 1776—a figure far below liberal respondents (52 percent).
- 29 percent of all respondents agreed that CRT should be taught in schools, compared to 37 percent of teachers and 60 percent of liberals.

As Greene and Paul conclude, “these results could be good news for parents who are concerned about the growing influence of progressive ideology in public schools. Teachers may very well be allies, rather than opponents, in the pushback against the use of CRT and other divisive ideologies in the classroom.”<sup>36</sup>

There are, of course, radical teachers, but they appear for now to be the exception. One professor in George Washington University’s College of Education recently said that she had to have “somatic embodied training” to “learn that she was white,” that her “positionality as a white person complicates things,” and that she needed to have the “willingness to decenter my power in the classroom in research.”<sup>37</sup>

Although it appears that the teaching profession has not *yet* been wholly captured by the virus of CRT, K–12 curricula, school-based teacher trainings and professional development, and current hiring practices are cementing the discriminatory doctrine in the classroom. While CRT may not be popular with parents (and even teachers), DEI staff bloat in higher education is being replicated through CDOs in public K–12 school districts.



Nearly 40 percent of the 554 school districts with more than 15,000 students (totaling more than 22.5 million students in all) now employ CDOs. Among large school districts with more than 100,000 students, nearly 80 percent have CDOs. These findings are spelled out in a 2021 study of K–12 CDOs by Greene and Paul, in which they suggest that

CDOs may be best understood as political activists who articulate and enforce an ideological orthodoxy within school districts. They help to mobilize and strengthen the political influence of small groups of teachers, parents, or students whose preferences may be at odds with the majority of teachers, parents, and students.<sup>38</sup>

## Breaking the College of Education Cartel

Expelling CRT from American education requires a multipronged policy approach: maximal transparency for parents of what is taught in their children’s classrooms, prohibitions on compelled speech that violates the act, giving parents an exit option through school choice when public schools do not align with their values and needs, and, as this chapter suggests, weakening the grip of higher education on teacher credentialing. To that end, policymakers should do two things, at a minimum:

1. **End teacher-certification requirements in the states.** University-based teacher certification has little or no connection to teacher effectiveness, with traditionally certified teachers performing no worse or better than alternatively certified or uncertified teachers. States should eliminate these costly certification requirements, which increasingly put prospective teachers through a CRT training program, and instead allow subject matter expertise and on-the-job mentoring to be gateways to the K–12 classroom. Doing so would not only increase (and potentially improve) the number and quality of teachers, it would also limit would-be teacher exposure to CRT.
2. **Cut off the open spigot of federal subsidies to universities.** For its part, Congress should eliminate the federal Grad PLUS loan program, which provides taxpayer-subsidized loans to graduate students. The PLUS loan program is a leading cause of tuition inflation and student debt, much of which is slated to be forgiven on the backs of taxpayers through income-based repayment programs in the coming years. Doing so would help to drive down costs while making room for

market-based higher education financing—which would provide better signals of quality teacher education programs through tailored interest rates and repayment options.

## Conclusion

As institutional theory scholars Heinz-Dieter Meyer and Brian Rowan observe, “the dominant institutional forms of schooling no longer serve as unrivalled models for emulation.”<sup>39</sup> Indeed, it is long past time to move away from what has been the dominant (and ineffective and costly) form of teacher certification for nearly a century. The university-based model of credentialing is an outmoded method for determining and fostering quality assurance and is one of the ways in which policy is enabling CRT to make its way into the K–12 classroom. As Americans push back against CRT’s discrimination, reforming teacher credentialing is one more tool that policymakers have at their disposal to defeat it.

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## Political and Elite Support for CRT Started in the University

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**A**cademia is the cradle of critical race theory (CRT). The radical theory was developed among legal scholars in universities, who gave it its name. That theory spread to other academic fields, which began to offer courses featuring CRT and where it shaped scholarship. Students steeped in CRT graduated and exported the theory into corporations, the media, and K–12 education, exposing the broader population to its worldview.

But the spread of CRT is not primarily a story of its intellectual development and appeal. The ideas and values promoted by CRT remain broadly unpopular.<sup>1</sup> CRT can best be understood as a political movement that has thrived not because of the strength of its ideas but through the development of mechanisms for institutional control and coercion. These mechanisms, like the ideas of CRT, were first developed in higher education. Understanding how universities built an infrastructure to advance CRT helps to recognize the arrangements that need to be blocked or dismantled if the spread of CRT is to be curtailed.

Because this chapter considers CRT more a political movement than an academic theory, one may define the term differently than scholars would. For the purposes here, CRT should be understood as embracing Ibram X. Kendi’s claim that “[t]he only remedy to past discrimination is present discrimination.” Rather than aspiring toward non-discrimination policies, CRT as a political movement rejects the goal of colorblindness. It sees racism and oppression as inherent in America’s political and social

institutions, requiring a radical restructuring of those institutions in order to undo those past practices. Traditionally liberal policies that seek to treat people equally as individuals need to be replaced with policies that treat individuals based on their group memberships. The world is divided into oppressors and oppressed, according to the CRT political movement, and the way individuals are treated depends on whether they are members of advantaged or disadvantaged groups.

Despite the general unpopularity of CRT's political agenda, it has made great strides in transforming how American universities operate and seeks to export those changes to K–12 schools and other institutions. How does CRT make these gains despite popular resistance?<sup>2</sup> The primary mechanism for advancing CRT in higher education is the diversity, equity, and inclusion (DEI) staff that universities have implemented and expanded over the past few decades. Like the political officers that the Soviet Union assigned to military units to enforce ideological discipline, the role of DEI staff is to identify and denounce deviations from CRT dogma. This chapter explores how this DEI infrastructure in higher education was built, how it operates, and how it can be blocked.

## Building the DEI Bureaucracy

DEI bureaucracies in higher education began in reaction to the rising number of black and Hispanic college students in the 1970s. Many universities created multicultural centers in the 1980s to provide safe havens for students who might feel out of place in predominantly white institutions, in the same way that Jewish fraternities provided support to Jewish students or FarmHouse supported rural students.<sup>3</sup> These multicultural centers had only a few staff members, whose responsibilities largely focused on welcoming minority students and integrating them into campus life. This multiculturalism of the 1980s comfortably fit within the liberal pluralistic vision that universities had of themselves. Students from different backgrounds could learn about each other as they assimilated into the common culture.

Multicultural centers were often most focused on serving black students, and over time, other ethnic groups began to demand separate centers geared toward them. In addition to the proliferation of Hispanic and sometimes Native American or Asian centers, the paid staff in these centers began to grow. In the case of any negative racial incidents on or off campus, universities felt pressure to demonstrate their support for minority groups, regardless of the reasons for the incidents. The easiest way for universities to do so was by hiring additional staff for ethnic

centers as a symbolic commitment of their concern for these groups. As sexual identity and gender issues became more prominent, universities also created centers for women, as well as centers to address the needs of LGBTQ students.

By the turn of the century, universities increasingly saw the need to appoint a senior official to coordinate and adjudicate competing resource demands from all these ethnic and sexual identity centers. Universities began to create chief diversity officer (CDO) positions. By 2003, enough universities had CDOs that they began to gather during American Council on Education conferences, and by 2007, they had created their own organization, the National Association of Diversity Officers in Higher Education.<sup>4</sup>

As the number of DEI staff grew, the staffers began to assume new roles that deviated from the liberal pluralistic vision of helping students to learn about each other while assimilating. In part influenced by the spread of CRT ideas in academic units, DEI staff began to see themselves as political advocates for the groups they represented and to demand deeper changes in how universities and other institutions were run. Rather than working on behalf of the university to help students from different backgrounds adjust and succeed in college, DEI staff began to understand their role as working to change the broader society.<sup>5</sup>

To change the broader society, DEI staff had to shift their attention from primarily serving their racial or sexual identity constituencies directly to assuming responsibility for ensuring that other faculty, students, and staff on campus had the proper ideas and behaved in accordance with those ideas. DEI staff developed trainings, lectures, and seminars to promote CRT.

The result of the 2016 presidential election created a panicked atmosphere on many college campuses, which universities attempted to mollify by significantly strengthening their DEI measures. In addition to creating more DEI positions in racial and sexual identity centers as well as CDOs, universities began to replicate these offices within each of their colleges and sometimes even within each academic department. They appointed associate deans for diversity and inclusion who chaired diversity task forces within colleges, such as of business, engineering, liberal arts, and medicine. Universities also began to make an expanded set of staff-created or staff-supervised trainings mandatory for faculty, students, and other staff. Student housing and student life staff also began to coordinate more closely with DEI staff to incorporate CRT ideas into student orientations and activities.

## The Scope of DEI Bureaucracy

In the span of less than 40 years, DEI bureaucracies went from non-existent to being among the largest set of staff on many college campuses. In a recent study, James Paul and I examined the extent of DEI staff at the 65 universities in the “Power 5” athletic conferences.<sup>6</sup> Those institutions represent 16 percent of all students enrolled in four-year colleges and include many of the leading flagship state universities.

We searched those universities’ websites to find lists of all staff with formal responsibility for promoting diversity, equity, and inclusion. We did not include faculty and staff in ethnic or gender studies departments, as they primarily engage in the traditional academic activities of teaching and research, even if they also promote DEI. We did not count Title IX or other staff involved in ensuring that universities meet their legal obligations not to discriminate. We also did not count rape counseling or sexual health staff who sometimes work in women’s centers, as they primarily provide health care, not DEI promotion. Our count is very conservative in that it also does not include those housing and student life staff who work to promote DEI but do not have that responsibility in their job titles.

We found that the average university listed more than 45 people as having formal responsibility for promoting DEI goals. DEI staff listed by universities totaled 4.2 times the number of staff who assist students with disabilities, a remarkable ratio considering that staff to help students with special needs is required by law. DEI staff levels were 1.4 times larger than the number of professors in these universities’ corresponding history departments. Moreover, the average university had 3.4 people working to promote DEI for every 100 tenured or tenure-track faculty members.

Certain universities had strikingly large numbers of people officially tasked with DEI responsibilities. At the University of Michigan, for example, 163 people were identified as having formal responsibility for DEI programming and services. At the University of North Carolina at Chapel Hill (UNC), 13.3 times as many people were devoted to promoting DEI as providing services to people with disabilities. At Georgia Tech, there were 3.2 times as many DEI staff people as history professors. At the University of Louisville, the ratio of DEI personnel to history faculty was 2.9. The University of Virginia had 6.5 DEI staff members for every 100 professors.

Many universities that were examined administered surveys to students to collect information on their perceptions of campus climate. If larger DEI staff numbers help to achieve a positive, welcoming environment, one should see more positive responses at the universities with more DEI personnel. In general, however, this is not what was observed.



While we are constrained in making these comparisons by the fact that universities do not ask identical survey questions at the same time and in the same way, there appears to be little relationship between DEI staffing and the diversity climate on campus.

For example, the University of Michigan has the largest DEI staff on multiple measures. It has the most people working on DEI, and it has the highest ratio of DEI personnel to Americans with Disabilities Act (ADA)-compliance staff. In a recent survey, 72 percent of University of Michigan students report being satisfied or very satisfied with the campus climate.<sup>7</sup> Among underrepresented minority students, that figure drops to 62 percent for undergraduate students and 55 percent for graduate students.

These outcomes are not much different from Mississippi State University—an institution with far less DEI infrastructure. In a recent survey administered by Mississippi State, students were asked whether they felt “accepted, respected, and appreciated,” which is arguably a tougher bar to meet than simply being satisfied with the climate.<sup>8</sup>

Despite this tougher standard and a significantly smaller DEI staff, 72 percent of Mississippi State students report feeling accepted, respected, and appreciated by students who are different from them. Among black students, 68 percent reported being accepted, respected, and appreciated by students different from them—scarcely different than the overall result. Among Hispanic students the figure is 78 percent—higher than the overall Mississippi State result.

The lack of relationship between DEI staff and campus climate is also evident when comparing other schools. UNC has a large DEI emphasis, with the second-highest ratio of DEI personnel to ADA-compliance staff among the institutions sampled. In a campus climate survey, UNC students were asked whether they agreed that they “felt a sense of belonging to this campus.” Overall, 73 percent agreed with this statement, but among black students the figure drops to 54 percent. Again, having many people with job responsibilities to promote DEI does not seem to close the racial “belonging” gap.

The diversity climate at Baylor University, which has the smallest diversity staff on multiple measures, is more favorable than at North Carolina.<sup>9</sup> At Baylor, 76 percent of undergraduate students describe the campus climate as good or very good. That figure drops, but only slightly, to 69 percent among minority students. In general, student reports on campus climate are no better—and often worse, especially for minority students—at universities with more DEI staff.

## DEI Staff as Enforcers of Ideological Discipline

If DEI staff are not serving their original purpose of welcoming students from diverse backgrounds, what is their current role on campus? A large portion of their activity consists of offering diversity training, running lectures and seminars, and adjudicating complaints. Even with the increasing frequency of required training, it is unlikely that they are “brainwashing” faculty, students, and staff into accepting the CRT agenda. The ideas are simply not appealing enough to gain widespread support.<sup>10</sup> Instead, the purpose of these training programs, lectures, and seminars is to signal to everyone on campus what the accepted orthodoxy is and to suggest the possibility of consequences for deviating from it. In addition, the training, lectures, and seminars provide guidance to activist students or faculty about whom they should approach with complaints and how best to formulate those grievances. This gives a small number of campus activists disproportionate influence, because they are being assisted by an experienced and knowledgeable staff designed to organize them.

The net effect of this DEI effort is that people on campus are told that contradicting the CRT agenda might get them into trouble. And CRT activists are told how they can get those who oppose them into trouble. Wishing to avoid problems, most faculty, students, and staff prefer to stay quiet and let the activists advance their agenda unimpeded.

It is difficult to document the extent to which this ideological disciplining is occurring because, in most instances, it is like the dog that does not bark. One cannot easily detect the instances where faculty, students, or staff personally object to CRT efforts and refrain from doing so publicly for fear that they will, at a minimum, be hassled or even formally punished. The whispered grumbling of many dissenting faculty, students, and staff and the continued unpopularity of CRT ideas suggests that the suppressed dissent is widespread.<sup>11</sup>

One can also get some indication of the extent of ideological disciplining by DEI staff in some high-profile anecdotes that do become public. For example, in a recent incident, Carole Hooven, a Harvard professor of evolutionary biology, appeared on Fox News to affirm the scientific basis of sex differences.<sup>12</sup> A graduate student in Hooven’s department who identified herself as “the Director of the Diversity and Inclusion Task Force for my dept” then denounced Hooven for “the transphobic and harmful remarks made by a member of my dept in this interview with Fox and Friends.”<sup>13</sup>

In another incident, Jodi Shaw was pressured to resign from her position as a student support coordinator in the Department of Residence

Life at Smith College when she deviated from CRT orthodoxy.<sup>14</sup> As she described it in her resignation letter:

I can no longer continue to work in an environment where I am constantly subjected to additional scrutiny because of my skin color. I can no longer work in an environment where I am told, publicly, that my personal feelings of discomfort under such scrutiny are not legitimate but instead are a manifestation of white supremacy. Perhaps most importantly, I can no longer work in an environment where I am expected to apply similar race-based stereotypes and assumptions to others, and where I am told—when I complain about having to engage in what I believe to be discriminatory practices—that there are “legitimate reasons for asking employees to consider race” in order to achieve the college’s “social justice objectives.”

In a third high-profile instance, Nicholas and Erika Christakis, both prominent Yale professors, were removed from their positions as “masters” of a house (as dorms are called at Yale) over an e-mail that Erika Christakis sent to students suggesting that they feel free to make their own decisions about which Halloween costumes are appropriate. The e-mail led to a group of students, caught on video, berating Nicholas Christakis in the courtyard of the house, telling the professor who was in charge of their dorm: “You should not sleep at night! You are disgusting!”<sup>15</sup> As an account of the event in *The Atlantic* explained the vitriol: “The ire that student activists directed at the couple is inseparable from the larger protest movement that roiled American campuses last fall. Many black students at Yale felt that the institution has failed to create an inclusive environment on campus.”<sup>16</sup> While the Christakis did not say or do anything to make black students unwelcome, they were nevertheless casualties of an empowered set of activist students equipped and supported by DEI staff.

It is interesting that in none of these instances did the universities fire someone. They do not have to. All they have to do is to permit activists to harass the blasphemers until they choose to leave or are sufficiently sanctioned as to have learnt their lesson. Jodi Shaw was denied a promotion to a better job she was seeking, Erika Christakis was “not renewed” as a non-tenured instructor, and both Christakis were removed from their positions in charge of the dorm. There are plenty of punishments short of dismissal that ensure that others will be deterred from violating ideological discipline.

While these are just three of many anecdotes one could describe, some may assert that many anecdotes still do not constitute data and refuse to accept that this problem is widespread. It is unclear whether any data might satisfy some skeptics. Any honest and objective examination of the state of affairs in higher education would have to recognize that deviations from CRT orthodoxy are receiving increasingly hostile responses on campus, thereby silencing others who might express those concerns.

### **Implications for CRT in K-12 Education**

The experience in higher education is beginning to repeat in K-12 schools. Public education systems are beginning to adopt curricula that advance CRT ideas. And to enforce the adoption of that curricula in the face of parental and teacher objections, K-12 schools are creating a set of positions comparable to DEI staff in universities. It is increasingly common to find school districts with Diversity and Inclusion Offices and CDO positions.<sup>17</sup> If K-12 schools can build the same infrastructure as higher education's DEI bureaucracy, they can also empower small groups of activists to exercise disproportionate influence to promote CRT agendas. Blocking the spread of CRT will require blocking or dismantling DEI staffs in K-12 education. Effective parental and teacher mobilization against CRT will be stymied if school DEI staff are able to elevate smaller groups in support of CRT.

The fight against CRT in K-12 schools is not just a debate over the merits of CRT ideas. It is a political conflict in which one side is currently being organized and empowered by expanding DEI staffs and offices in those schools. As the experience in higher education suggests, opposing CRT effectively will also require diminishing the political and organizational advantages that DEI staff offer.

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# Diversity, Equity, and Inclusion in the Academic Sciences

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**T**he diversity, equity, and inclusion (DEI) mantra is a virulent mind-worm that has spread like a pandemic through American society.<sup>1</sup> Universities, in particular, have become super-spreaders of this ideology, and the academic sciences, where one might expect to find a stout immunity, have been thoroughly infected. University College of London’s Professor Tim Hunt,<sup>2</sup> Drs. Bret Weinstein and Heather Heying at Evergreen State College,<sup>3</sup> and Harvard President Lawrence Summers<sup>4</sup> are three high-profile examples of how deeply DEI ideology has penetrated the sciences: All lost their positions not for any misconduct but for running afoul of DEI dogma. The problem runs considerably deeper than this, however. According to the Foundation for Individual Rights in Education (FIRE), 426 professors have been targeted in the past six years for departing from DEI orthodoxy: 74 percent of these resulted in some sort of sanction levied against the accused professors, including being fired.<sup>5</sup> The National Association of Scholars has documented similar abuse, with examples going back to 1975.<sup>6</sup> DEI ideology now runs rampant through physics, mathematics, the earth sciences, biology, and even seemingly mundane fields like fisheries and paleontology.<sup>7</sup>

DEI ideology poses a unique challenge to the sciences because it can exist and spread only by undermining the scientific ethos, which is based on free discourse, freedom of thought, critical analysis, and empiricism—the “Mertonian norms,” as they have been called.<sup>8</sup> DEI’s spread in the sciences is owed, in part, to being a stealth ideology, its falsehoods cloaked

in myth. One prominent myth is that DEI is a benign corrective to centuries of white male hegemony in the sciences. This crude reductionism is unsupported by even a rudimentary understanding of the history and culture of science.<sup>9</sup> Here is another myth, this one cloaked in practicality: Looming shortfalls in the science and engineering workforces require aggressive recruitment of supposedly “underrepresented” women and minorities into the sciences, there not being enough white males to fill the gap.<sup>10</sup> Without such extraordinary measures, the argument goes, the economy will lag. Yet American universities and colleges are turning out more graduates in science, technology, engineering, and math (STEM) than can fill jobs in STEM fields now or in the projected future.<sup>11</sup> Finally, there is the “diversity is our strength” meme. Science will benefit, it is asserted, from the “different perspectives” that women and protected minorities will bring *by virtue of them being women and protected minorities*.<sup>12</sup> This claim skirts closely to the otherwise forbidden idea that there are race-based and gender-based differences in cognitive ability and general intelligence.<sup>13</sup> Yet scientific discovery and innovation are, by their nature, idiosyncratic and rare, and there is no evidence that novel insights into nature are more likely to arise *between* racial or gender groups than from *within* them.<sup>14</sup> Scientific discovery should therefore proceed according to the same pace, irrespective of the racial or gender mix of working scientists.

DEI ideology is rife with such incoherencies. Little is to be gained here by cataloging them further, because doing so deflects from the real concern: that DEI has become an unquestionable article of faith, even in the sciences, and even in those sciences where the connection to social issues is remote at best.<sup>15</sup> Criticism of, or resistance to, DEI ideology has now become tantamount to punishable heresy—something that is as contrary as it possibly could be to the Enlightenment foundations of the scientific ethos. Even so, the sciences have adopted DEI wholly and enthusiastically.<sup>16</sup> Can the sciences be rescued from this self-destructive folly?

## The Problem

No rescue will be possible without a clear understanding of how DEI arose, what drives it, and, most important, how it is supported and enabled. Another myth stands in the way of clarity on this score: that DEI has somehow invaded the sciences from its origin in the deconstructionist and post-modernist humanities.<sup>17</sup> To believe this is to seriously miss the point. The intersectional Left might be providing the ideological window dressing, but DEI draws substantial sustenance from the sciences for the



simple reason that there is far more money flowing through the sciences than through the humanities.<sup>18</sup> The simple narrative of the sciences becoming “infected” by DEI is thereby turned on its head.<sup>19</sup> The sciences have not been invaded by DEI ideology. To the contrary, it is the sciences, not the humanities, that sustain the DEI succubus.

DEI and the sciences were brought together through a Faustian bargain.<sup>20</sup> The devil’s bargain was struck in the aftermath of World War II, which saw an unprecedented federal mobilization of scientific expertise, the Manhattan Project being the best-known example.<sup>21</sup> Following the Allied victory, the question arose whether to continue the mobilization and, if so, what form should it take.<sup>22</sup> Those questions were settled with the enactment in 1950 of the National Science Foundation Act. Federal support of the academic sciences would continue and expand through a program of research grants administered by the eponymous National Science Foundation (NSF).<sup>23</sup> Since 1950, federal support of academic science has grown exponentially to a current annual expenditure of roughly \$50 billion, administered through a growing roster of federal agencies modeled after the original NSF.<sup>24</sup> The federal government is presently the dominant funder of scientific research in the universities, by far.<sup>25</sup>

As with all devil’s bargains, the federalization of science did not start badly. The founding manifesto of the NSF was a 1945 position paper, “Science, the Endless Frontier,” authored by Dr. Vannevar Bush, who was effectively President Franklin Roosevelt’s science advisor.<sup>26</sup> In that document, Bush laid out a pragmatic defense of the basic sciences as essential to a liberal society. While Allied victory had been won on the battlefields, victory there had been assured by the fruits of curiosity-driven research based in the universities. The scientists who sought to understand the nature of the atom, for example, had no idea that this knowledge would play a decisive role in securing the Allied victory. Yet it was they who planted the seeds that would. The post-war world would be facing entirely new challenges—technological, social, and political. Bush argued that the basic sciences would provide the new knowledge that would secure the peace as they had done for victory in the war. The prudent course for the federal government, therefore, would be to fertilize the basic sciences with generous funding. The natural home of the basic sciences would be the universities, which would be the conduits for this new federal largesse.

The vision outlined in “Science, the Endless Frontier” was suffused with technocratic idealism, and it proved to be a compelling selling point.<sup>27</sup> There was another, essentially political, agenda at work, however, and this was to bring the academic sciences into the orbit of New

Deal progressivism.<sup>28</sup> Prior to the war, the academic sciences had been supported through a loose agglomeration of institutional, philanthropic, and ad hoc commercial interests: what one might call the “small science ecosystem.”<sup>29</sup> Federal spending on research then was confined mostly to government research laboratories in defense, public health, exploration, and conservation.<sup>30</sup> Universities (and university scientists, for their parts) mostly held the federal government at arm’s length for fear they would become dominated by the state.<sup>31</sup> “Science, the Endless Frontier” proposed to plant an entirely new scientific ecosystem—Big Science—that would assuage those fears with generous offerings of cash: the devil’s bargain.

To sell this idea, two fundamentally incompatible sets of interests and motivations somehow had to be reconciled.<sup>32</sup> To scientists, discovery of new knowledge simply would not be possible without a firm underpinning of intellectual freedom and autonomy.<sup>33</sup> For institutions, whether these be university administrations or government-funding agencies, the highest values were accountability, control, and return on investment. These are values that do not sit comfortably with the essentially anarchic intellectual culture of basic science, hence the fundamental incompatibility. Working out just how these incompatible interests could be brought under a single umbrella took five years of political wrangling.<sup>34</sup> The “NSF model” was the hopeful compromise that embodied the reconciliation.

For roughly two decades, the compromise held together: Scientists got their grants, science was done, and students were trained, all mostly insulated from the political and commercial dominance that scientists had feared. The NSF model contained a poison pill, however, that ensured that the compromise would eventually unravel. It has been unravelling for several decades, and as it has, the interests of university scientists have come to be fatally subordinated to political and commercial demands: the antithesis of Vannevar Bush’s idealistic vision of science. The increasingly strident politicization of the sciences is one of the toxic fruits of that unraveling. DEI is better understood as the latest, and perhaps fatal, fruit to drop.

The poison pill is to be found in a seemingly mundane feature of the NSF model known as *indirect costs*. These are surcharges imposed by universities as ostensible reimbursement for administrative and other costs of supporting the research. In the NSF model, indirect costs are assessed as a proportion of a research project’s *direct costs*, which are the funds needed to carry out the actual scientific research. This proportion presently averages a little over 50 percent of direct costs. At some universities, indirect-cost assessments exceed 90 percent of a grant’s direct costs.<sup>35</sup>

Indirect costs fund institutions, not science. Scientists never see, nor do they control, the spending of these funds. As the federalization of the sciences has expanded, indirect costs have grown into a substantial revenue stream for universities (\$28 billion in 2019).<sup>36</sup> As fiscal troubles have come to envelop the higher education sector,<sup>37</sup> the incentives for universities to maximize their indirect-cost revenues have grown commensurably, which universities do by driving up indirect-cost *rates*. Prior to 1966, for example, indirect-cost rates were set by Congress, and these ranged from 8 percent to 20 percent of direct costs. In 1966, Congress turned the setting of indirect-cost rates over to universities and funding agencies to negotiate, with the predictable result that these rates quickly doubled (and for some universities, quadrupled).<sup>38</sup>

Indirect costs are a notorious source of administrative flimflamery.<sup>39</sup> The negotiations that universities use to set indirect-cost rates are complex, arcane, shrouded in secrecy, and built around dubious and unverifiable projections of universities' actual indirect costs.<sup>40</sup> This has essentially turned indirect-cost revenues into discretionary funds that universities can use to support all sorts of administrative mischief. Among these are funding the growing and very costly DEI administrative bureaucracies that are springing up on campuses everywhere.<sup>41</sup> Indirect-cost revenues, in short, are how the sciences have nurtured DEI. Those expensive bureaucracies have to be paid for, and expanding indirect-cost revenues are largely footing the bill.

There is another poison pill embedded in the NSF model. A university scientist might win a research grant from, say, the NSF, but research grants are not granted to scientists. Rather, the grants come in the form of contracts with institutions: The scientist is the employee who carries out the terms of the contract. This seemingly conventional relationship is actually contrary to what Vannevar Bush asserted would be essential to fostering scientific discovery in the universities.<sup>42</sup> He did not see scientists as employees but as equal partners with their institutions, with their own unique traditions of academic self-governance (including robust tenure). Partners, institutions, and scientists alike would be obliged to respect each other's interests for the compromise to work.

Yet, being employees, academic scientists enjoy no more legal protection than the humblest janitor or groundskeeper. Here is where the second poison pill kicks in. The Civil Rights Act of 1964 established a sweeping regulatory regime for employment practices, which was extended in 1972 to colleges and universities. Arbitrary interpretations of civil rights law, most notoriously of Title IX of the 1972 Education

Amendments Act, have come to be an increasingly powerful tool for imposing DEI ideology on campuses.<sup>43</sup> The infamous 2011 “Dear Colleague” letter, for example, issued to the nation’s universities by the Obama Administration’s Department of Education, used an overly broad interpretation of Title IX to impose sweeping changes in how universities adjudicate accusations of sexual misconduct, including overt denial of elementary due process rights for accused male students.<sup>44</sup> As these changes have come increasingly to be applied to university scientists,<sup>45</sup> traditions of academic self-governance and tenure are revealed as ephemeral as the proverbial mist.

These developments have radically changed the culture of the academic sciences. Scientists no longer work in an independent culture of discovery. What now matters in the Big Science ecosystem is “production,” in which career success depends ever more on conformity to the political demands of the institutions and funding agencies. Promotion, tenure, and other rewards turn on measures of how “productive” a scientist is, which boil down ultimately to the indirect-cost revenues that a scientist can generate.<sup>46</sup> Independence of thought, risk-taking, skepticism, and other non-conformist behaviors can now jeopardize a scientist’s career and reputation.<sup>47</sup>

Among the dogmas that scientists may no longer question is DEI ideology, which is ever more stringently enforced throughout the Big Science ecosystem. Applicants for university faculty positions have long been required to profess a DEI loyalty pledge for their applications even to be considered.<sup>48</sup> Research grant proposals also have long required applicants to file “Broader Impacts” statements: These were traditionally limited to hoped-for educational and social benefits that the proposed research would bring.<sup>49</sup> DEI ideology is now becoming a mandatory part of applicants’ Broader Impacts statements.<sup>50</sup> In some funding programs, adherence to DEI ideology, not quality of the science, is the decisive factor in funding decisions.<sup>51</sup> Since 2001, for example, the NSF has spent more than \$270 million on a grant program—Project ADVANCE<sup>52</sup>—that expects proposals “to use intersectional approaches in the design of systemic change.” Pure woke boilerplate. Project ADVANCE is only the tip of the iceberg: Since 2010, research grants totaling more than \$4 billion have gone to proposals that incorporate DEI aims in the research.<sup>53</sup> Academic scientists generally have no choice but to go along with these impositions, because careers are at stake. So high are the stakes that academic scientists themselves have become zealous enforcers of DEI ideology, again for the simple reason that career and financial rewards follow from doing so.<sup>54</sup>

Thus have the sciences become deeply corrupted: Big Science has now come to be a cartel, organized not around the pursuit of scientific knowledge but around the relentless pursuit of federal money.<sup>55</sup> And DEI, not science, is now solidly in the driver's seat.

## The Solution

Obligatory disclaimer: No one disputes that the sciences should be open to anyone who wants to explore science's "endless frontier." The frontier *is*, in fact, wide open to anyone with the curiosity and capability to explore it.

That disclaimer has to be followed, nevertheless, by two hard truths. The first is that DEI has nothing to do with the benign ideals of diversity, (unattainable) equity, and inclusion. Rather, it is about the pursuit of money and power. That is also the motivator of the Big Science cartel, which binds DEI and Big Science together into a toxic symbiosis, both fed by ever-growing gushers of federal research money.<sup>56</sup> The logic is clear: DEI will wither if the corrupt Big Science cartel can be fixed. Which leads to the second hard truth: No cartel can ever be expected to go against its own entrenched interests. Vannevar Bush's 1945 hope that a self-governing, and self-correcting, community of scientists will be an effective barrier to intellectual corruption is revealed in hindsight as self-delusional naïveté. It is by now crystal clear that the universities, and the sciences, will not reform themselves. The fix will have to be imposed.

But what fix? And imposed by whom? One possible solution could be to reform the current indirect-cost regime. Congress could, as it has in the past, step back in and cap indirect-cost rates—a reasonable upper limit could be 10 percent of direct costs rather than the grossly inflated rates that now prevail.<sup>57</sup> There is nothing radical about this solution; many philanthropic grant programs cap indirect costs at similar levels, which has not affected the quality of the science they support. Where Congress is loath to act, state legislatures could act on their own and impose indirect-cost caps on the state universities under their control.

Even better, the contradictory interests of scientists and universities, now inextricably bound together to the detriment of scientists' interests, could be disentangled altogether. The NSF model could, for example, be amended to allow scientists to routinely apply for research funds as independent contractors rather than as university employees. To meet the legitimate costs of administering a research program, universities could be allowed to apply entirely separately for indirect-cost funds, as is done, in fact, in other countries.<sup>58</sup> Such reforms would elicit howls of anguished

protests about the “end of science,” but it would mean no such thing.<sup>59</sup> What they might actually do, one can hope, is rein in the institutional and political grift that is overburdening the sciences and destroying the universities.

Another fruitful area for reform would involve recalibrating the professional relationship of academic scientists with their universities. Vannevar Bush’s ideal of scientists and universities as equal partners has now been ground into the dust, and with it has gone scientists’ intellectual freedom and integrity. Tenure and academic self-governance are now so debased as to be worthless. Even the illusory protection of tenure can easily be nullified by dragging an inconvenient professor before human resources tribunals on ginned-up accusations of DEI heterodoxy—a favorite tactic, it must be said, of enforcing conformity to DEI orthodoxy.<sup>60</sup>

What reform, then? At present, tenure is usually granted upon promotion to a professorial rank of associate professor. Perhaps, instead of a grant of debased tenure, a scientist could be granted something akin to shares in the university “firm.” Actually making scientists partners, in other words, similar to the partnership structures in other professional organizations, such as law firms or medical practices. Such a relationship would not only put scientists on a more equitable footing with their universities; it would bind all partners—the university, one’s colleagues, and oneself—into a compact to ensure everyone’s mutual success. Such an arrangement would not only restore the power balance between scientists and institutions that Vannevar Bush envisioned; it would impose tangible costs on sordid practices like academic mobbing of faculty that hold unpopular opinions or bullying by tyrannical deans or department chairs or domineering and unaccountable human resources bureaucracies that are increasingly under the control of DEI ideologues.<sup>61</sup>

The elements of such a relationship are already found in a common provision of research grants whereby grant monies (including indirect-cost revenues) follow a scientist to wherever he goes (the “key man” clause). Effective reform has to go beyond this, however, because it merely shifts the corrupting problem of indirect costs from one university to another. Grant-following also puts undue leverage into the hands of holders of large research grants. What, then, about scholars whose work does not require large grants, which includes not only many scientists but the humanities and the arts as well?<sup>62</sup> The goal of any reform should be to restore the intellectual integrity and freedom of the university, not solely for the “grant-rich.” A partnership relationship would go further than “key man” clauses to meet that goal.

Finally, policymakers could take steps to rectify a fundamental imbalance that has developed between civil rights and constitutionally guaranteed rights, such as freedom of expression, religion, assembly, and speech. As some have argued, civil rights law is enforceable everywhere, while constitutional rights are not, to the detriment of the latter.<sup>63</sup> The First Amendment’s functional protections are generally considered to apply only to government restrictions on individuals or organizations within government contexts. Constitutional rights do not extend to employees in a private workspace, however, allowing employers to impose all manner of restrictions on their employees, including suppression of free speech and expression. But what about employees in workplaces whose entire existence is predicated upon freedom of expression and speech, namely universities and colleges? Whereas public universities, being agencies of government, are generally obliged to honor constitutional rights, private universities hold themselves exempt from respecting constitutional rights on their campuses. Judging by a recent survey, neither private nor public universities score particularly well on campus climate for freedom of speech and expression.<sup>64</sup>

States can correct this disparity by advancing policies that ensure freedom of expression and unfettered debate in universities and colleges. This includes freedom of inquiry—that is, research. The “Chicago Statement on Free Expression” provides a useful model for such policies.<sup>65</sup> According to FIRE, 83 of 478 colleges and universities studied in the United States have adopted the Chicago Statement. Particularly where the Chicago Statement has been adopted by boards of trustees and college administrations, there have been measurable improvements in climate for free expression.<sup>66</sup> There is ample scope for states to put their imprimatur on public universities and colleges to adopt the Chicago Statement, as the governor of Florida did in 2019 for the 12 campuses of the University of Florida system.<sup>67</sup> Additionally, colleges should be expected to actively affirm their commitment to free expression, debate, thought, and inquiry to students as soon as they arrive on campus and regularly to their faculty. States should also require public universities to allow anyone lawfully present on their campuses to exercise the freedoms guaranteed by the First Amendment. Any party—student, faculty, or administration—who interferes with the free expression rights of others to hear speakers or to be heard, or to freely inquire into any topic, should face sanctions.

## Prospects

Would any such reforms work? For the sciences, there has been no shortage of such reformist ideas over the years: I have written about some of them before.<sup>68</sup> None has gained traction, thus posing the question: Why not? The reason is quite simple, even as it is difficult to acknowledge: Big Science was a political project to impose New Deal progressivism onto the unruly enterprise of scientific inquiry. As this project has come to fruition, Big Science is no longer about science any more than DEI is about diversity, equity, and inclusion: It is all about the pursuit of money and power. All the pathologies that presently afflict the scientific enterprise stream logically from that starting point.<sup>69</sup>

As the past few election cycles have demonstrated, the reigning ideology of both the Democratic and Republican Parties remains New Deal progressivism. This further diminishes any prospect that government can steer science and the universities away from their relentless lurch toward the cliff. There is too much money and power at stake. What will happen then? The most likely consequence will be collapse, as the once-rich panoply of American colleges and universities are sucked into spreading financial crisis and bankruptcy.<sup>70</sup>

Perhaps the rescue will come from a revitalized “small science” ecosystem, built anew from the rubble, that is, from outside the class of publicly supported professional scientists and universities.<sup>71</sup> That was science’s origin, after all. Perhaps a return to its origins can be science’s renewal? One thing is near certain: It will not return there on its own.



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PART V

*Fighting Back*



## Parents on the Front Lines

*Erika Sanzi*

Parents from California to Texas to New England have a sinking feeling in their gut that something is awry in their children’s classrooms.<sup>1</sup> These are public and private school parents. They are Democrats, independents, and Republicans; they are self-described liberals, progressives, conservatives, and libertarians. They represent every race and creed and include people who fled to America from communist countries to escape the very suppression of thought and speech that has become ubiquitous in American K–12 classrooms and is even written into official school policy. One can imagine the cognitive dissonance they feel when school officials explain that the instructional and classroom practices focused on identity, race, and gender ideology, where dissent is characterized as “unsafe” or “hateful,” are in service of the schools’ commitment to equity, antiracism, and social justice.

Remote schooling during COVID-19 lockdowns provided parents with a real-time window into what their children were learning, and it has awakened a sleeping giant. The number of parents (and grandparents!) who have stepped into the arena has increased exponentially since 2020 as they find the courage to push through the intimidation and name-calling in order to make their concerns known, to demand transparency, and to hold local school officials accountable. They are forming their own grassroots organizations, waiting in line for hours to speak at school board meetings, combing through district websites, and making their voices heard at the ballot box.

Parents have understandably struggled to pin down in words the phenomenon they are witnessing—how does one succinctly describe Black Lives Matter flags, banners, and curricula; anti-police propaganda; intrusive survey questions about fifth graders’ sexual orientation and gender identity; racially based group meetings during and after school; teaching that “capitalism and racism are conjoined twins;” a commitment to “decentering whiteness;” and the sudden and strict adherence to the oppressor-versus-oppressed paradigm?

Critical race theory (CRT) has become a shorthand. Often, it provides the perfect explanation for the ideas and practices that have come to permeate children’s classrooms, but it can also be an imprecise and clumsy descriptor. It does not matter. The attempts by public officials and media personalities to play “gotcha” with parents over the CRT label is a deflection from what is happening to children in their classrooms. It is undeniable that CRT (and critical gender theory) is infiltrating schools, despite claims to the contrary.

CRT proponents are working hard to deliberately misrepresent parents in two ways: First, they play a rhetorical game of gotcha with parents who say that their children’s schools are “teaching critical race theory,” implying that the parents are so clueless as to believe that their third grader is sitting through a law-school-level class on the theory itself. What parents are saying is that CRT is underlying the learning materials being used in their children’s classrooms as well as in teacher training. There are mountains of evidence to confirm that they are right.

The second way that school officials, media pundits, and academics misrepresent and smear parents is by claiming that the uproar is rooted in fear and opposition to “teaching honest history” and “the truth.” The presidents of the country’s two largest teachers unions are on record making the false and unfounded claim that this debate is about honest history after first asserting that CRT is not taught in schools—then coming out days later in support of CRT being used to inform instruction in schools. By definition, CRT is not about honesty and truth.

There are others, of course, who simply try to shut parents down by accusing them of “white supremacy,” “white adjacency,” “internalized white supremacy,” and “transphobia.” An example is the case of Elina Kaplan, a suburban California mother who immigrated to America from the Soviet Union. She became so alarmed by her state’s model ethnic studies curriculum that she founded an organization, the Alliance for Constructive Ethnic Studies. Part of the reason for her concern is that the new curriculum cites CRT as a “key theoretical framework and pedagogy.”<sup>2</sup>



“What I hear over and over again is that people who are against CRT in schools are just against talking about racism. We believe strongly in teaching [against] racism, in confronting racism,” Kaplan says.

In some schools, parents (and staff, who are also often parents) describe a slow creep from the occasional mention of “equity” and “anti-racism” to the unapologetic separation of students and staff based on the color of their skin. In others, the hyperfocus on racial categories, “whiteness,” and gender identity has come barreling in like a freight train since the death of George Floyd in May 2020 and, in short order, transformed their schools into places they hardly recognize.

## Connecting the Dots

Parents sense that their schools have been ideologically captured by wokeness, and that seems to be the motivation for so many of them to roll up their sleeves to dig through school policies, watch footage of past board meetings, send e-mails to school officials, and file public records requests when repeated inquiries go unanswered. They are trying to connect the dots. It does not take long for most of them to discover that the red flags go much deeper than one rogue teacher or principal and that they are unwitting participants in the very real consequences of groupthink on school boards, changes to state standards, and high-priced contracts with outside diversity consultants.

With this realization begins the journey of finding like-minded parents in their community, forming groups on Facebook or on encrypted platforms like Signal, and then seeking out parents in other cities and states to try to ascertain whether the brush fire of CRT sweeping across the nation has landed at their schoolhouse door.

They study the patterns and trends in other districts, near and far, and more often than not recognize that their own district is on an identical path, using the same playbook in the name of diversity, equity, and inclusion (DEI). The jargon is the same. The action steps and timeline are the same. The recommended resources and reading lists are the same. The condescension, and even character assassination directed at the skeptics, is the same, and so are the attempts to silence and shame anyone who raises concerns.

One common argument against limiting or rejecting CRT in K–12 classrooms is that it would violate the academic freedom and First Amendment rights of the teachers. This is a fundamental misunderstanding of the law. In Paso Robles, California, the school district was very responsive and proactive when questions and concerns arose about which

materials could be displayed in the video backgrounds of students and teachers during distance learning. The superintendent promptly sent a letter to all students, parents, teachers, and staff on the subject of the First Amendment to explain that when teachers are on the clock they are *hired speech* and do not have the same rights as when they are not on the job. In addition to citing relevant case law, the letter cited district policy, which states: “In the classroom, teachers act on behalf of the district and are expected to follow the adopted curriculum. In leading or guiding discussions about issues that may be controversial, a teacher may not advocate his/her personal opinion or viewpoint.”<sup>3</sup>

Parents in other districts would be wise to ask for the same clarity from their districts if they want to mitigate the inevitable conflicts that arise when teachers turn their classrooms into ideological and political spaces that discourage and even prohibit dissent. Districts run by boards and superintendents who also promote activism and ideological conformity will obviously be far less receptive to parents who crave the clarity found in the Paso Robles letter, but parents can at least get school officials on the record explaining exactly what their policy is and whether it aligns with case law. As stated in the Paso Robles letter:

The U.S. Supreme Court held in the case of *Garcetti v. Ceballos*, 547 U.C. 410 (2006) that public employees are not insulated from employer discipline under the First Amendment when they make statements pursuant to their official duties. Teachers speak on behalf of the school district when performing their duties and accordingly must comply with school policy on controversial subjects. *Brown v. Chicago Board of Education*, No. 15-1857 (7th Cir. 2016). Courts have consistently held that when teachers make statements, advocate for particular points of view, and/or post specific items on walls or bulletin boards—they are acting pursuant to their official duties and their speech is not protected under the First Amendment.<sup>4</sup>

## Pumping the Brakes

When it comes to parents raising concerns about class materials, the simplest of cases are ones in which a few e-mails to the principal lead to a quick investigation and parents learn that a single teacher has gone rogue, the district does not condone or endorse what happened, and the materials used were not approved. One elementary school principal in Missouri

sent this statement to Parents Defending Education after one class of fifth graders was given a handout with extreme and factually inaccurate excerpts written by the co-founder of Black Lives Matter: “This [handout] was used by a teacher and is not a Rockwood approved resource. I am working with the teacher to ensure that only Rockwood curricular resources are used when teaching lessons.”<sup>5</sup>

In the case of Rockwood, however, the problems ran deeper than one rogue elementary teacher. The district found itself again in the crosshairs of parents and the national media when a literacy and speech coordinator for grades six through 12 explicitly instructed teachers in an e-mail to remove material from the online learning platform “so parents cannot see it.”<sup>6</sup> Assistant Superintendent Shelley Willott called the e-mail “unacceptable.” The staff member who sent the e-mail has since been terminated.

The national notoriety and pressure from parents are likely what led the district communications director to also say that, moving forward, all the curriculum will be available to parents online even after remote learning concludes. Curriculum transparency should be a given, but in many schools, it is practically non-existent. Parents and others in Rockwood are certain that the race-based content is a direct result of the district’s decision to hire an outside equity consultant.<sup>7</sup> The consultant with which the district contracts works with 26 other districts in Missouri, and its website is blanketed in the same jargon used in schools nationwide that have adopted DEI programs based on CRT. Whether Rockwood’s mea culpas materialize into a substantive shift from CRT-inspired programs remains to be seen, but a promise of curricular transparency is a win.

The chair of the Colorado Senate Education Committee has said that “we have used critical race theory as this lens on how you view history and we’ve been doing it for years—in my mind it’s not new. It’s appropriate—we should be more inclusive and teach from this perspective.”<sup>8</sup> But in Douglas County, Colorado, school officials have repeatedly denied that their schools teach CRT even though statements made during training workshops and school assemblies contradict the claim. Like so many districts across the country, the consternation in Douglas County all started with an *equity policy*, the usual starting point for schools headed down the road of critical theory and race and gender essentialism. Baked into the policy was a “system-wide shift” that embraced the notion that meritocracy is a myth. The district signed a contract for \$36,900 with the Gemini Group, a diversity consulting firm that came in and taught teachers that equity is about outcomes, not opportunity, that “white, male, Christian, straight” culture has “harmed so many,” and that these “systems ... need

to be dismantled.” The Gemini Group had a name for parents who did not agree with them: “dissenters.”<sup>9</sup>

After e-mails and calls from concerned parents, and several highly contentious school board meetings, the Douglas County school district paused its relationship with the Gemini Group. One phenomenon in Douglas County that plays out over and over in districts around the country is that the school district defines *equity* differently than do the consultants it hires. While districts often define *equity* as equal opportunity, their own diversity and equity directors, as well as outside consultants, see equity as the necessary lever to dismantle all systems throughout the U.S. in order to create “equitable” outcomes.

Dudley-Charlton regional school district in Massachusetts is a good example of how parents doing some digging and speaking out at meetings can put the brakes on a misguided equity plan. A major complaint of parents in Dudley-Charlton was that a district equity committee had been formed in July with no oversight from the school board and zero transparency with the public. The assistant superintendent wrote in multiple e-mails to parents that “there are no plans to incorporate CRT into our curriculum. We are not using CRT in our curriculum now.”<sup>10</sup> Parents and members of the public, however, obtained slides from a training event with an outside firm, Leading Equity Organization, headed by Dr. Sheldon Eakins, in which he actively discusses with teachers the importance of incorporating CRT in the classroom. According to people personally familiar with the training, Eakins asked teachers at the end how they plan to incorporate his training in their classrooms. The district website has recently been updated to say that the equity committee has been “discontinued as it is now” and may relaunch in the future “with more specific processes and procedures to be presented to the school committee and DCRSD community.”<sup>11</sup>

In Coronado, California, four school board members recently went on the record at a board meeting against CRT after hours of public comment and months of parent outcry. One father who spoke at the podium echoed the sentiments of so many parents when he said that there are too many classrooms in the district where students know they must regurgitate the teachers’ opinions in order to do well.<sup>12</sup> Those same four board members also went on record against the recently adopted No Place for Hate (NPFH) curriculum, an ideological project<sup>13</sup> of the Anti-Defamation League (ADL) that is currently in more than 1,600 schools. At first glance, the program sounds virtuous in its condemnation of bullying and bias and promotion of empathy. A deeper look reveals red flags everywhere,

including that schools “are expected to notify ADL when any incident of bias, bullying, discrimination or harassment occurs” and to work with ADL to address them or risk revocation of their NPFH designation. The program also requires that 75 percent of the student body sign a pledge and teaches students to “move on from kindness”—which refers to a shift to social justice—and “understand how to engage in changing systems and society.” In Coronado, parents successfully made the case that the program does not belong in their schools.

## The Power of Public Documents

Public records requests have proven to be an effective strategy for parents as they work to connect the dots of what is happening in their children’s schools. While far too many districts limit these requests by making them prohibitively expensive or simply ignoring them, such requests have proven to be the best way to lay eyes on the actual contracts and signed invoices with outside diversity consultants. These requests can also help parents to piece together how assemblies and presentations by guest speakers riddled with the ideas and language of CRT and gender ideology end up on their school calendars. The records can be extremely informative about who is driving the radical shift—in one district, all roads may lead to the director of equity and inclusion. In another, they may all lead to one specific board member or reveal coordination with the local teachers union.

In addition, a school’s or district’s resistance to sharing records is revealing and confirms for parents that they are right to follow their gut and keep pushing for information. The question becomes: What are the schools and districts hiding? When the South Kingstown school district in Rhode Island publicly threatened to sue a mother for filing too many public records requests, after directing her to do exactly that, it was clear that something was not right. The exposure by this mother and others of the dishonesty and dysfunction in the district was a game changer; the superintendent and school committee chair resigned within weeks.<sup>14</sup>

## School Boards in the Middle of the Debate

In addition to packing school board meetings and speaking up during public comment, parents have found some success at the ballot box. The recent local election results in Southlake, Texas, illustrate how the power of parent organizing and CRT pushback can flip a school board. Turnout was massive with three times as many voters casting ballots as in similar contests in the past. Voters made clear their rejection of a far-reaching

plan that came with a price tag of \$1.4 million and explicitly mandated<sup>15</sup> diversity and inclusion training, culturally responsive teaching, and the monitoring of microaggressions. School board and city council candidates who supported the plan lost by a 70-to-30 margin.<sup>16</sup>

After the election, Southlake's outgoing mayor, Laura Hill, wrote in a letter to *The Wall Street Journal* that "this wasn't a political fight—it was an ideological war. Critical race theory attacks the root system of a healthy community. It pits neighbor against neighbor, divides where no division exists and poisons thought rather than teaches shared human values."<sup>17</sup>

Efforts to recall school board members have skyrocketed over the past year. Ballotpedia has tracked 92 school board recall efforts against 237 board members in 2021. Parents in Mequon, Wisconsin, launched a recall campaign against four school board members in the Mequon Thiensville School District, alleging that the board members have engaged in wasteful spending (\$42,000 on equity consultants) and an "abdication of voting rights" after they gave the superintendent sole decision-making power over many policy issues in August 2020. The parent group says that the suburban Milwaukee district has seen a sharp decline in academic achievement since the district began to implement an "equity" plan, and the group is "advocating for the return of academic excellence and stakeholder engagement in our district."<sup>18</sup>

In San Francisco, voters recalled three school board commissioners in a landslide. Parents were furious that in January 2021 the school board prioritized renaming schools over reopening them after COVID-19-related school closures. They also said that the board was governed by an ideological litmus test that cast out all who refused to conform, rejected merit, and eschewed academic excellence.<sup>19</sup>

The recall effort in Loudoun County, Virginia, is a direct response to board members' involvement in private Facebook groups that targeted parents by name who were opposed to CRT in schools.

Moses Lake, Washington, is a unique case in that its voters did not reject a person but a funding increase for the schools. In April 2021, Governor Jay Inslee signed a bill that required mandatory CRT training in every public school in the state. Moses Lake school board members underwent the training that included an identity map, a mandatory privilege walk, and identity cards assigned on the basis of sex, race, and religion. Fast-forward barely five weeks and Moses Lake voters defeated a \$7 million school-operations tax increase. It is impossible to say for sure, but it appears that the refusal of the district to listen to parents contributed to the defeat. This could become a trend.<sup>20</sup>

Parents in Carmel Clay, Indiana, quickly organized themselves into a grassroots organization called Unify Carmel. In addition to concerns they have about sexually explicit and profane books in the schools' libraries, including at the elementary schools, they object to the intrusive "well-being" survey administered by the outside consulting group, Panorama. Unify Carmel e-mailed parents with information on how to opt their children out of the survey and why parents should be concerned about the surveys. Those concerns include data privacy and future use of student data that parents cannot access. Unify Carmel also sent out a mailer to 40,000 households with specific examples of CRT in their schools and some general information about why parents should be concerned about the negative impact it has on the academic performance and psychological health of a school community.

It is not sustainable for parents to only *oppose* what is happening in their schools; they also need and crave the opportunity to be *for* something. In fall 2020, the New Trier High School Board of Education in Illinois adopted a statement officially setting expectations for civil, diverse discourse. The statement reads:

New Trier Township High School believes that a fundamental aspect of our mission is to develop critical thinkers who can navigate a complex world through civil discourse, respectful inquiry, engaged listening and open consideration of multiple perspectives. Key to fulfilling this charge is the cultivation of a school environment in which all students feel welcome and free to explore a wide range of ideas. Our firm commitment to this principle reflects not only New Trier's obligation to prepare our students for their future but our belief that the open exchange of ideas lies at the core of a democratic society in which individuals are accountable for their actions and treat one another with dignity, compassion, and respect.<sup>21</sup>

The board said that the statement was loosely based on the "Chicago Principles" of free, robust, and uninhibited debate. There is no reason why every board of education cannot make it a priority to adopt something similar.<sup>22</sup>

One local parent group, the New Trier Neighbors, publicly celebrated the adoption of the statement. The group had lobbied for something similar at a board of education meeting a few months earlier. The statement is obviously more symbolic than substantive, but it is an important start.<sup>23</sup>

## A Marathon, Not a Sprint

There is no doubt that parents are having some success in fighting this national wildfire of CRT-inspired curricula, but the headwinds they face are formidable. American parents are up against a multi-billion-dollar diversity and equity industry; all of higher education, including the education schools; and most of the media. They need to keep knocking at the door, asking questions, demanding transparency, and fighting their way through the intimidation and personal smears.

The parents who have the most success and do not burn out are those who find strength in numbers. That way they are not fighting an uphill battle alone. As more parents find the courage to come out of the shadows and say out loud what they have long kept inside, the groundswell to remove CRT curricula and practices from K-12 classrooms will be massive. Every knock at the door, every e-mail, every public records request, every vote, every minute speaking during public comment at a school board meeting, every meeting with the principal—it all matters.



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# How School Boards Should Reject Critical Race Theory

*Jonathan Butcher*

“This is the most radical plan we’ve seen anywhere in the country.”<sup>1</sup> That’s how an attorney specializing in constitutional law described Carroll Independent School District’s (ISD’s) Cultural Competence Action Plan (CCAP) to Hannah Smith. Smith, a resident of Southlake, Texas, home to Carroll ISD, is an attorney herself who specializes in cases protecting religious liberty. After her own review of the CCAP, Smith said she knew enough to be concerned, and her fears were only confirmed after consulting with other legal professionals about the plan.

The CCAP, Smith explains, called for “equity audits” of Carroll ISD, along with processes for tracking microaggressions between faculty and students and training students and teachers to discover their own “implicit biases,” all ideas and applications of the Marxist philosophy known as critical race theory.<sup>2</sup>

“It would have also created a teacher evaluation mechanism where teachers would be evaluated based on how woke they are. And if they weren’t woke enough, they couldn’t keep their job,” Smith explained to *The Daily Signal* in June 2021.<sup>3</sup>

For Smith—and 70 percent of the voters in the 2021 Carroll ISD school board election—such race-obsessed curricula and instructional practices did not represent the beliefs and priorities of their community. Smith decided something had to be done to stop the prejudice that the CCAP would teach Carroll ISD students and, along with another Carroll resident, ran for the district school board. In May 2021, the two candidates replaced district board members who had approved the CCAP.

The community turnout at this election really sent a message to our district and gave us a mandate going in to say, “We don’t want critical race theory in our schools. We don’t want the CCAP plan and we’re watching, and we’re going to turn out to make sure that this stays out of our schools,” Smith says.<sup>4</sup>

The school board election results from a small district of 8,400 students located 30 miles northwest of Dallas typically would have gone unnoticed. But teachers’ application of critical race theory in K–12 schools and the racially discriminatory results have renewed local voters’ interest in these small elections.

The election results are also attracting attention from the mainstream media and state and local policymakers. Usually mundane affairs, school board elections have been marked by low voter turnout and little public interest for decades.<sup>5</sup> Research finds that, on average, as little as 10 percent of the eligible voters in an area participate in the elections. Voter and media attention to the elections surged in 2021, however. According to *Axios*, local voters in at least 51 communities around the U.S. had started or completed board recall efforts by July 2021—twice the *annual* figure for such activities.<sup>6</sup> *USA Today* reports that board members who are “used to sleepy and ill-attended public meetings” are “reeling.”<sup>7</sup>

## School Boards and Classroom Content

Local voters’ and parents’ involvement in school board activities has ebbed and flowed over the past 200 years. During the days of one-room schoolhouses in the 19th century, local taxpayers were sure to tell school board members any of their concerns about local school activities, such as calling for a teacher’s pay to be docked if he or she was absent for even one school day.<sup>8</sup> In the decades that followed, well into the 20th century, state legislators typically deferred to local school boards to decide issues related to education reform proposals, evidence of the power that local boards had over district school operations, explains Dartmouth professor William Fischel in *Making the Grade*. Fischel writes that local school operations and even national education reform movements may originate outside school board meetings, but school board officials must approve such changes before they take effect.<sup>9</sup>

At the beginning of the 21st century, federal authorities began to exert heretofore unprecedented control over local school operations by revising testing and school assignment policies as part of the No Child Left Behind Act, the 2001 reauthorization of the largest federal K–12 law.<sup>10</sup>

Later, federal officials under President Barack Obama’s Administration coerced state departments of education and state boards of education to adopt national academic standards in math and reading as part of the Common Core national standards movement.<sup>11</sup> Still, state boards had to approve the new standards, and local boards had to comply—state legislatures generally did not enact the national standards as part of state law—demonstrating that state and local boards held important positions of authority over the content that educators were assigned to use in classrooms.

Thus, one of school district board members’ primary responsibilities remains intact today: choosing classroom curricular materials. As explained by the radical National School Boards Association (NSBA), “[t]he school board sets the standard for achievement in the school district, incorporating the community’s view of what students should know and be able to accomplish at each grade level.”<sup>12</sup> Recently, however, the NSBA has demonstrated that the organization is willing to intimidate parents and local voters when district residents do not share the organization’s progressive view. And many voters do not.

The remarkable number of recall elections in school districts such as Carroll is evidence that on issues related to racial discrimination, boards are not always attuned to “the community’s view of what students should know.”<sup>13</sup> As Adam Kissel explains in Chapter 16, parent and teacher surveys demonstrate that families and educators around the country are rejecting the inclusion of critical race theory’s racially biased principles in K–12 lessons.

Media outlets such as *USA Today* and NBC News claim that critical race theory is not taught in schools. But public officials and education interest groups, such as the NSBA, have provided ample evidence that educators are teaching ideas based on this theory.<sup>14</sup> At its 2021 national conference, the United States Conference of Mayors adopted a resolution stating that the organization supports “the implementation of CRT [critical race theory] in the public education curriculum.”<sup>15</sup> The National Education Association (NEA), the nation’s largest teachers union, adopted a similar provision at its annual conference in 2021.<sup>16</sup>

In the NSBA’s recommendations to the Biden Administration, the organization said that the new White House should reverse President Donald Trump’s executive order blocking the use of federal funds for so-called diversity training in the federal workforce, training that whistleblower documents found compelled participants to affirm racially prejudicial ideas and behaviors.<sup>17</sup> Such diversity training programs inform

white individuals that they oppress others because of the color of their skin and must “take responsibility for their ‘white privilege,’” among other claims, irrespective of their behavior.<sup>18</sup> Guilt for being oppressive is determined by skin color, not personal behavior. The NSBA said in its recommendation that school boards should use or continue to use such discriminatory trainings in their districts.<sup>19</sup>

At the ballot box, parents and voters are demonstrating their disapproval for the NSBA’s position statements, along with those from teachers unions, such as the NEA and the American Federation of Teachers (AFT), which also advocates critical race theory.<sup>20</sup> Recent school board election results demonstrate that the average parent or voter does not agree with the racial prejudice of critical race theory. Local residents are not the leading actors trying to apply critical race theory in classrooms; it is the education interest groups that are driving the use of this ideology in schools.

In a nationally representative poll, Parents Defending Education found that 70 percent of American voters said that it is “not important” or “not at all important” for schools to “teach students that their race is the most important thing about them.” (See Chapter 16 for more examples from surveys such as this.)<sup>21</sup> Yet the NSBA claims that “institutional, structural, and systemic racism has been engrained in the history of America and throughout its public education system.”<sup>22</sup> The organization launched an initiative called Dismantling Institutional Racism in Education (DIRE) to push school board members to advocate critical race theory’s myths, such as systemic racism in America.

The NSBA took another shocking step in September 2021. The association colluded with the White House to produce a letter addressed to the Biden Administration asking federal officials to engage a long list of enforcement agencies, including the FBI and the U.S. Department of Homeland Security, to investigate community members who attend school board meetings.<sup>23</sup> The association’s letter characterized some community members’ comments disagreeing with local school board decisions as “equivalent to a form of domestic terrorism” and called on federal officials to use the PATRIOT Act and “enforce all applicable federal laws” to investigate those participating in school board meetings, a clear effort at intimidating community members. The NSBA’s letter did not list any examples—none—of threats to school board officials that would rise to the level of a federal investigation or a single incident involving violence against a school employee that resulted in local law enforcement action. In October 2021, the association’s own board of

directors apologized for the letter.<sup>24</sup> The extent of the collaboration with federal officials, however, and the specific policy recommendations in the letter were a clear message to parents and families that the association wanted federal officials to create obstacles for parents who wanted to express their concerns.

Despite the dearth of evidence that Washington should respond to parent activity at school board meetings, U.S. Attorney General Merrick Garland immediately issued a directive in response to the NSBA's letter that said the FBI and Justice Department should "launch a series of additional efforts in the coming days designed to address the rise in criminal conduct directed toward school personnel."<sup>25</sup> If a parent expresses disagreement with a school board member at a meeting, an ensuing FBI investigation would prevent others from doing so in the future—destroying a vital platform that parents have the right to use as they advocate for their children's education. And with the NSBA's support for the application of critical race theory in schools, as evidenced by its recommendations to the Biden Administration about diversity training, this association and the U.S. Attorney General are trying to silence parents who object to educators' use of the theory's racially discriminatory practices in classrooms.

Other progressive organizations, such as teachers unions, are also using intimidation and coercive methods to promote critical race theory through school boards. Prior to the passage of the NEA's business item promoting critical race theory in classrooms at its annual meeting in summer 2021, a May 2021 article in *NEA News* said that school board candidates who object to the theory are "stoking fears about public schools" and called efforts to reject critical race theory "disguised censorship."<sup>26</sup> AFT President Randi Weingarten criticized the Florida State School Board for banning the teaching of racial discrimination through the use of critical race theory in schools. Weingarten stated that the "far right has weaponized the academic study of critical race theory," even though 57 percent of all parents in a nationally representative survey conducted by The Heritage Foundation do not want educators to reframe American history and tell students that America is systemically racist.<sup>27</sup> The Zinn Education Project, an organization advocating for the work of the discredited radical activist Howard Zinn, collaborated with teachers unions in summer 2021 to lead protests against legislative efforts that reject the use of critical race theory in K–12 classrooms.<sup>28</sup>

The NSBA, the NEA and AFT, and the Zinn Education Project are all special interest groups whose radical political advocacy and revisionist

versions of U.S. history do not align with the opinions of parents and voters, according to surveys and elections. Local voters' opposition to critical race theory, when combined with interest groups' advocacy for the theory, means that special interest groups are trying to override community members on the teaching of critical race theory's racial prejudice in schools.

The presence of critical race theory in K–12 education can be attributed several factors, including the assignment of critical race theorists' work to college and graduate students in teachers colleges and federal advocacy for “critical” ideas. And unions and associations with progressive agendas should also be held responsible for pressuring educators and school officials to apply the Marxist theory in classrooms around the country.<sup>29</sup>

## What Should School Boards Do About Critical Race Theory's Racial Discrimination?

School board members are responsible for reflecting the values and interests of the families within their district borders. Board members are not foot soldiers for national education interest groups, such as the NSBA or teachers unions. School boards should consider resolutions that reject the practice of racially biased school activities and policies, such as mandatory affinity groups, where students and teachers are divided into groups according to race for different school functions or lessons. Such resolutions should also prohibit the use of classroom assignments that tell students that they are associated with oppressive movements based on the color of their skin or another immutable characteristic. Affinity groups and white privilege lessons are at the center of lawsuits in Illinois, Missouri, and Nevada involving students, parents, teachers, and district officials who have filed suits stating that the application of critical race theory in classrooms is racially discriminatory.<sup>30</sup>

Some state and local board members are rejecting the theory. The Alabama state school board, for example, adopted a resolution that can serve as a guide for other state and local school boards. Alabama's board adopted a resolution that condemns critical race theory's discriminatory philosophy, stating that

concepts that impute fault, blame, a tendency to oppress others, or the need to feel guilt or anguish to persons solely because of their race or sex violate the premises of individual rights, equal opportunity, and individual merit, and therefore have no place in professional development for teachers, administrators, or other employees of the public educational system.<sup>31</sup>



The resolution then recognizes that American history instruction in K–12 schools must include lessons that explain the failure of some Americans to live up to the message of equality under the law and ordered liberty in America’s Founding documents. The board wrote:

[T]he Alabama State Board of Education recognizes that slavery and racism are betrayals of the founding principles of the United States, including freedom, equality, justice, and humanity, and that individuals living today should not be punished or discriminated against because of past actions committed by members of the same race or sex, but that we should move forward to create a better future together.<sup>32</sup>

Alabama’s state board of education resolved to reject diversity training, classroom instruction, and federal grants that apply critical race theory’s central tenets to school activities.

In Washington State, the Chehalis School Board adopted a resolution with similar language, saying that in the past, “the United States has failed to live up to the ideals of the Nation’s founding” but that “understanding and learning from these failures is a necessary part of a quality education.”<sup>33</sup> Chehalis board members said in their statement:

We will not teach Chehalis students that people, due to their race or background are inherently good or bad, guilty or innocent, more or less capable than others. The United States is the most diverse country on earth, providing students the opportunity for significant understanding and growth.<sup>34</sup>

Other board resolutions have also specifically prohibited the application of the racially discriminatory activities that result from school officials’ application of critical race theory. In Colorado, District No. 49’s school board said, “Neither schools, nor instructors, shall assign individuals or groups of students to participate in class or complete assignments based on their racial identity.”<sup>35</sup>

Board members and parents should correct members of the mainstream media and critical race theory advocates who argue that rejecting critical race theory means rejecting a thorough history instruction. Neither the Alabama state board’s resolution nor the Colorado District No. 49’s board nor The Heritage Foundation’s model legislation for K–12 schools (which contains provisions that a state or local board could apply

to its school system) censor historical topics.<sup>36</sup> Instead, sound school board and legislative proposals are those that prohibit the application of critical race theory—which results in individuals discriminating against others based on the color of their skin.

In fact, Alabama’s board specifically stated that it does not want to limit the exchange of ideas in the classroom. The board affirmed a commitment to free speech and the free exchange of ideas in academic settings:

Rather, students and educators should be encouraged to engage in the marketplace of ideas, subject to developmental appropriateness.... [T]he Alabama State Board of Education acknowledges the right to express differing opinions, foster and defend intellectual honesty, engage in freedom of inquiry, and honor freedom of speech as required by the First Amendment of the U.S. Constitution in the public schools of Alabama.<sup>37</sup>

The Heritage Foundation’s model proposal intended for state lawmakers’ use in rejecting discriminatory teaching and actions in K–12 schools contains similar support for robust academic discussions in class. The provision, which state board members can adjust for their purposes, states: “Nothing in this statute prohibits teachers or students from discussing public policy issues of the day, or ideas that individuals may find unwelcome, disagreeable, or offensive.”<sup>38</sup>

School boards can also define the ideas and concepts that they want teachers to use in classrooms, along with prohibiting racist activities. In Texas, state legislators listed materials that lawmakers require the state board to include in its academic standards, including the Declaration of Independence; the U.S. Constitution; the *Federalist Papers*; and material that would explain why the Klu Klux Klan, slavery, and eugenics were “morally wrong.”<sup>39</sup> State and local boards can also include such recommendations in their resolutions against racial prejudice—school boards have a responsibility to outline the standards and facts that reflect an accurate portrayal of American history, with all its blemishes and its innovations, that district officials want educators to teach students.

## Conclusion

School boards should represent the interests and beliefs of their communities. There are some 14,000 school districts around the country, with another 7,500 boards governing charter schools and another 26,000 private schools, so one should expect that board representatives and their

policy positions and curricular choices will reflect the nation's diverse population.<sup>40</sup> But boards must also abide by state and federal laws prohibiting racism and discriminatory actions in K–12 schools. As local voters demonstrate their opposition to critical race theory's prejudicial applications, boards should respond to the feedback from voters about rejecting such discrimination.

As school boards reject the discriminatory ideas in critical race theory, board members can adopt position statements or resolutions that establish school officials' policies concerning the use of radical Marxist and racially biased material in class. School boards should:

- **Prohibit teaching that one race is superior to another or deserving of condemnation** because of the past actions of members of a certain race;
- **Declare that slavery, Jim Crow laws, and racist policies are inconsistent with America's Founding documents and national creed** and are illegal today under state and federal laws;
- **Prohibit the application of critical race theory in K–12 instruction and school activities** that result in discriminatory actions, such as mandatory affinity groupings or white privilege studies; and
- **Affirm their own position in favor of free speech and academic freedom** and state that educators should help students to understand challenging concepts at age-appropriate levels without compelling students to affirm, adopt, or profess any ideas that violate the Civil Rights Act of 1964.

School boards are located at the center of today's culture wars. Parents need school officials to protect their children from racism and adopt curricula that help students to conceive of an American dream that is available to them regardless of the color of their skin. Schools should equip the next generation of children to be Americans, aware of their nation's shortcomings in the past while confident and assured that the promise of hope and opportunity is available to everyone today and in the future.

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# American Parents Want American Civics Education

*Adam Kissel*

When Socrates explores in Plato’s *Meno* whether virtue can be taught, he asks Anytus how it can be that a virtuous father, who clearly wants his children to become virtuous and has great resources at his disposal, still ends up with bad kids. Socrates notes that Pericles, the great builder of Athenian democracy, taught his kids “to be the foremost horsemen of Athens, and trained them to excel in music and gymnastics and all else that comes under the head of the arts”—but neither Pericles nor any of his sons’ teachers educated them in virtue. What happened? “Had he no desire to make them good men?”<sup>1</sup>

One of the lessons from this part of Plato’s dialogue is opportunity cost: If a child spends time learning X, the child does not have time to learn Y. Today’s teachers know this lesson all too well. Each new content requirement squeezes out another topic.

Parents increasingly know this lesson, too. They do generally want their children to love America for the right reasons—to appreciate its truly amazing successes while seeing its blemishes honestly—and to know how to be a good citizen. But more and more parents are seeing that critical race theory (CRT) and related topics are pushing the overall story of American ideals and achievements out of the classroom. These parents see the CRT story of America teaching kids to despise some of America’s great individuals and great achievements and instead to value divisive identity politics. They see CRT advocates teaching children vice in the name of virtue, and they have had enough.

## What Parents Think About CRT and Civics

A January 2021 Heritage Foundation survey of more than 1,000 U.S. parents with school-age children<sup>2</sup> found that 63 percent believe that civics needs to be emphasized more in American secondary education (grades nine to 12). Only 7 percent believe that civics needs to be emphasized less. For kindergarten through grade eight, a plurality (42 percent) said that civics emphasis should stay about the same. Pluralities of parents said that students are becoming more divided on civics topics (31 percent) and that the classroom atmosphere has become less civil (34 percent).

The trend of attention to civics is going up, with 44 percent of parents saying that in the past five years, they developed an opinion that there is greater need for a civics curriculum, including a majority of Democratic parents (54 percent). Only 11 percent said they now see less need for civics.

What do parents want to see taught? Only 38 percent of parents expressed satisfaction with their schools' civics curriculum, while a plurality (43.5 percent) were neutral. About 35 percent claimed to be familiar with CRT, 61 percent felt neutral or unsure about it, 26 percent had a mostly positive opinion about it, and 14 percent had a mostly negative opinion about it.

Answering the question "What is the most important function of civics in modern-day America?" parents most often chose "practical information and guidance on how to carry out the duties of a citizen" (32 percent) among five choices. The other options were "ensure we are a united America going forward" (25 percent), "expose students to varying viewpoints about America" (21 percent), "transmit the values that define America" (15 percent), and "present alternative history accounts" (6 percent).

A related question was more nuanced, letting parents select multiple items from a list of seven elements that could "describe the focus of an ideal civics" curriculum. By far the most frequently selected item was "the study of the rights and duties of citizenship" (68 percent), followed by "structure and function of government" (58 percent) and "history" (55 percent). At the bottom of the list was "critical race theory/critical pedagogy," selected by 34 percent.

A third question went into more detail, asking parents to rank on a scale of 1 to 7 "the degree to which you believe each should or should not be included in a civics curriculum" for six items, where 7 was the top rating. Parents gave a rating of 6 or 7 most often to "philosophies leading to the Constitution and Founding Era" (56 percent), followed by "attitudes toward slavery by the Founders" (52 percent) and "gender roles throughout American history" (51 percent). The bottom three were "critical race theory/critical pedagogy" (50 percent), "biographies of the founders" (45 percent), and "modern portrayal of the founders" (44 percent). Parents



most often gave a rating of 1 to CRT (9 percent) and least often gave this lowest rating to Founding-era philosophies (2 percent).

In January 2021, America was experiencing a pandemic spike and a transition of power in the presidency. Additional surveys should be administered to determine trends as more parents come to understand CRT's racially discriminatory tenets.

In April 2021, the Sutherland Institute surveyed 600 Utahns, including 229 parents of school-age children, on similar topics. The organization reported the following selected findings:

- Civics education is a top-three priority for subjects covered in K–12 education, along with math and English;
- An understanding of laws and individual rights should be the key focus of civics education, followed by responsibilities and expectations of citizens, tolerance for others, historical context of government, and the powers and limits of government;
- Activism should come later, at the end of the civics education process;
- Testing is seen as less critical for parents than transparency of what is being taught in the educational system; and
- Half of parents are very/extremely likely to look up a specific curriculum being taught at their local schools.<sup>3</sup>

The Sutherland Institute survey also asked parents how likely they were to take various actions toward improving civic education in Utah's public schools. Fathers, much more often than the general population, reported “probably” or “definitely” taking several actions, including “attend a school board meeting to share thoughts” (40 percent), “call or write your state legislator to express your support” (37 percent), and “join a local group focused on improving civics education in Utah” (36 percent). Parents generally reported they “probably” or “definitely” would “talk with my student's teachers” (53 percent).<sup>4</sup>

## A Generation of Concern with CRT

Such parental concerns are not new. More than 20 years ago, the organization Public Agenda surveyed a set of 801 parents on similar topics. When asked which of two statements came closest to their own views about the

United States, 84 percent chose “The U.S. is a unique country that stands for something special in the world,” and only 13 percent chose “The U.S. is just another country whose system is no better or worse than other countries.” When asked, “Who should take most of the responsibility for teaching young people what America stands for?” the respondents chose families (52 percent) over schools (42 percent) by a considerable margin. Does learning what it means to be an American happen “naturally as kids grow up,” or “is it something society has to actively teach kids?” In 1998, 79 percent chose actively teaching kids, with just 17 percent thinking it happens naturally.<sup>5</sup>

When asked whether the public schools “pay enough attention to diversity and celebrating the holidays and traditions of different groups,” the parents of 1998 said that schools were getting it about right (55 percent), while 21 percent said schools were paying too much attention, and 19 percent said schools were not paying enough attention.<sup>6</sup>

The 1998 survey also asked whether parents would be concerned and complain to the school about a teacher who made various controversial statements. If a teacher “taught that America was and still is a fundamentally racist country,” 84 percent said they would be upset or somewhat concerned, and 65 percent of these parents said they would be concerned enough to complain to the school. If a teacher “spent all of class time teaching the history and experience of different ethnic groups” (known today as ethnic studies) “instead of common American history,” 74 percent said that they would be upset or somewhat concerned, and two-thirds of these (68 percent) would be concerned enough to complain to the school. If a teacher “emphasized that the U.S. mistreated minority groups throughout its history,” 59 percent said they would be upset or somewhat concerned, with half of that group (51 percent) saying they would complain to the school.<sup>7</sup>

Those three topics are core elements of CRT today. Additionally, 81 percent of parents “would be at least somewhat concerned if a youngster became very critical of the United States and believed ‘its system of government was unfair and should be replaced.’” Only 18 percent said that “it’s more important for the schools to focus on each student’s ethnic identity and for the students to feel proud of their group’s heritage” than to focus on “teaching kids to be proud of being a part of this country and to understand their rights and responsibilities.”<sup>8</sup>

## Parents Are Taking Action

The parents of 1998 are today’s grandparents, and their kids are today’s parents. What are today’s parents willing to do about the civic education of their children? Quite a lot.

More than 79 percent in the Heritage survey said that they would be open to spending more time with their children to ensure that they receive a civics education. A vast majority were open to strongly and publicly advocating civics education (61 percent “yes” to 13 percent “no”). And 32 percent already felt empowered to advocate new curriculum content.

The Heritage survey also asked, “Who should primarily be responsible for the content of a civics curriculum”—parents, teachers, schools, civil society, or state or federal government? Respondents were asked to choose their top three. Parents most often chose schools (33 percent) or themselves (31 percent) first, eclipsing the other choices (teachers, 12 percent; civil society, 9 percent; federal government, 8 percent; and state government, 7 percent). Notably, though, schools and parents scored about equally on this question, unlike for the similar 1998 question.

Parents today can share information like never before, and they are doing it through social media, websites, videos, and online discussion groups. Groups of concerned parents are growing like wildfire, and resource banks of high-quality civics curricula have sprung up to serve them. Some resource banks point to top existing providers, such as the Bill of Rights Institute, and others have developed their own materials, such as the Hillsdale College 1776 Curriculum and that of 1776 Unites.<sup>9</sup>

One group, Moms for Liberty, has 40,000 people following its Facebook posts as of March 2022. In Tennessee, its Williamson County chapter alone has 3,300 Facebook members. New members frequently show up asking how they can find curricula for their kids (whether homeschooling or to offer their current schools), start chapters in their own counties, find out what their public schools are teaching, how to opt out of questionable material and otherwise assert their rights as parents, and how to take other actions. Many existing members also read and discuss the U.S. Constitution and Declaration of Independence in regular Madison Meetups.<sup>10</sup>

Parents Defending Education supports such parents by providing them with information they need to engage their schools, including “know your rights” guides and advice for greater involvement. Such ideas include passing along an anonymous tip, filing a complaint with the federal Office for Civil Rights, filing a public-records request, and starting a new parent organization.

Parents Defending Education also provides litigation and state and national policy services. For example, after Wellesley Public Schools segregated students on the basis of race, Parents Defending Education filed a successful civil rights complaint. And after the U.S. Department of Education floated a policy of giving extra points for CRT in civics grant

competitions, Parents Defending Education organized parents and others to submit more than 10,000 public comments against the plan.<sup>11</sup>

The new Free to Learn Coalition fights CRT in the broader context of student success—how to help every student get a solid education. CRT is just one part of a larger crisis that has roots in how teachers are produced in America’s education schools. Education schools spend inordinate hours teaching CRT and trendy pedagogy at the expense of quality and factual content. As a result, many private schools become ideologically homogenous echo chambers, inspiring parents to speak out at the risk of having their children expelled. To help these parents as well as those at public schools, the Free to Learn Coalition has developed a world-class communications capability that exposes some of the worst abuses of CRT and related issues in public schools.<sup>12</sup>

Meanwhile, the Sutherland Institute, a new Level Up Civics coalition, and local groups of parents are supporting those parents who are ready to run for school boards and fight CRT from positions of government power. Noteworthy are the parents in Loudoun County, Virginia, who have organized as Fight for Schools; the Southlake Families organization in Southlake, Texas; and the Education First Alliance in North Carolina.<sup>13</sup>

## Why the Parental Anti-CRT Movement Will Last

The movement against CRT, considering its extremely fast rise, may seem a fad that will wane as new problems catch parents’ attention. This is unlikely. While CRT as an encompassing topic may be a new rallying point for parents, its underlying themes are far from new, and the problem of how to educate well-informed adults and citizens is a perennial one for Western civilization.

There are several additional reasons why parents will stay focused on CRT and high-quality civics alternatives into the long term. For one thing, curriculum wars are forever. So long as parents have children, they will express concern over what their children are being taught. So long as parent–teacher associations exist, there will be mothers and fathers who spend some of their effort on curriculum. And so long as education schools exist, teachers will be to the cultural left of the population they serve.

Similarly, the same parents who are active today will continue to have kids in school. A mother of a kindergartner has 12 years of involvement ahead of her, plus however many other children follow. Parents also increasingly know how to file Freedom of Information Act requests to get copies of their children’s curricula, and once they get the first-grade

and second-grade curricula, they will keep up the pressure into third grade and beyond.

Furthermore, CRT is at the core of a generations-long movement on the political Left, which will keep fighting, even under great pressure. As that side faces pressure, it will continue to use the tactic of changing the names of its themes while keeping the agenda the same. But parent groups now keep up with the changes in real time and educate parents about terms to watch out for. A notable recent example is “social and emotional learning” or “socio-emotional learning,” which often indoctrinates students with politically correct emotions and values about contested social issues, particularly race.<sup>14</sup>

In addition, CRT will continue to be an issue in many parents’ workplaces as more and more companies try to go woke, at least until the inevitable backlash. The themes that parents are fighting in school are the same themes that are colonizing their workplaces, appearing in the news sections of major newspapers, and permeating so many other areas of American culture. Americans who are concerned about America’s future will fight in the schools as well as elsewhere in the culture.

Next, the parent movement is generally decentralized. School issues play out at the local level, not just in state and federal policy. The battles that receive public attention may shift from place to place, but the movement will go on. In districts where school board elections are the primary focus, it may take several years to replace a majority of school board members.

Finally, for the reasons above, both CRT and CRT opposition are likely to be long-term donor interests. While one side is investing in themes that further divide Americans, the other is increasingly funding higher-quality civics. At least two dozen worthy providers offer high-quality options for parents, teachers, and students.

## President Reagan’s Great-Great-Grandchildren

President Ronald Reagan famously, repeatedly warned that each generation must fight anew for freedom, or else grandparents will tell strange old-timer tales about a lost, unimaginable era of liberty. His generation is all but gone today. But the concerned parents from the 1998 survey, now grandparents, have an opportunity to prevail over those whom Roger Kimball in 1990 called “tenured radicals,” the critical theorists and fellow travelers who had already colonized education schools and most of the rest of higher education.<sup>15</sup> Late-career grandmothers and grandfathers are in positions of moral authority and leadership and still have time to

help guide today's mothers and fathers, who have shown tremendous energy against CRT indoctrination over the past two years.

Parents, for their part, know that their kids, from an early age, watch and learn from their parents' words and actions. Watching parents show their love through civic engagement around civic education may teach kids more about civic life than any "action civics" projects their teachers cajole them into.

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# School Choice: Parents' Most Powerful Tool for Defeating Critical Race Theory

*Inez Feltscher Stepman*

**O**ptimistic PowerPoint presentations by scholars and conference speakers notwithstanding, the school choice movement of the past 30 years is still a long way from transforming education in America.

For the approximately 539,000 students across the nation—mostly lower-income or with special needs<sup>1</sup>—who received vouchers, tax-credit scholarships, or education savings accounts in 2019, these options have been more of a lifeline than a transformation of the traditional public school system. Even in Arizona and Florida, the country's two leading school choice states in terms of student participation in different learning options, the number of students utilizing private education choice has yet to push past 5 percent of the population of school-age children. Student-eligibility limitations and other barriers to expansion of these programs, even in the states furthest ahead in offering options to parents, have so far prevented such programs from making more than a modest impact on the education system at large.

Seen through the lens of transformational institutional change necessary at the country's cultural precipice, the modest and limited school choice programs enacted across the country have thus far not proved much of a barrier to the Left's long march through the education system. Leftist interest groups have maintained a monopoly on school operations and curricula and an ideological dominance over the instruction of the next generation of Americans.

So before the widespread parent revolt over the extended pandemic closures as well as lesson content that has characterized the past year and a half, what was and largely continues to be the state of American education?

During the riots of spring and summer 2020, I wrote in *The Federalist*:

Where does this poisonous anti-American idea, acceptance of which seems to be toppling institution after institution, come from, especially after the United States has advanced so far in living up to the promises of its birth?

As many of us warned years ago, the radical ideas born on campus have already metastasized across society. Today, K-12 public schools across the country increasingly teach some version of the lie....

Some Americans might comfort themselves with the notion that this is a passing madness, but it is instead the inescapable consequence of what is being taught from kindergarten through graduate school. A nation that teaches its children to hate their country cannot endure.<sup>2</sup>

Although critical race theory is not new, and its underlying concepts of racial essentialism and systemic American racism still less so, in the year and a half since that spring and summer of violence, the speed and boldness of the cultural revolutionary project in K-12 education has become clearer. These stories have become so common that they are both wearying and familiar.

In New York City, 10-year-olds are being taught to be ashamed of their whiteness and of their parents' alleged "racism" by virtue of their skin color.<sup>3</sup> In Portland, Oregon, students were taught that a "white identity" means "whites are born 'racist'" and were encouraged to participate in violent protests.<sup>4</sup>

Radicalism in public schools is not confined to blue states or cities. In Springfield, Missouri, teacher training for middle school educators included locating themselves on an "oppression matrix" and lessons for any white Christian males about their "covert white supremacy."<sup>5</sup>

And, of course, in the Loudoun County, Virginia, example that has made national news, a "gender-fluid" boy sexually assaulted one teenage girl and is accused of assaulting another, and the school and board covered it up.<sup>6</sup>

The state of indoctrination in education today reflects at least two factors: that progressives have considered public schools to be theirs to shape and that the education reform movement (largely of the Right) has failed to prioritize the content and cultural bent of public schools.

One of the original goals of the school choice movement was to provide students from low-income families or those otherwise poorly served by the public school system a lifeline to better education opportunities, which is certainly a laudable aim and has worked for a relative handful. But because of that focus, even those organizations fighting to reform the public school system have largely not directed their efforts toward the content taught in those schools.

There are exceptions to be sure: Former Reagan Education Secretary William Bennett has long been a champion of values-based content; the American Enterprise Institute's Robert Pondiscio, a fellow author in this volume, has cautioned that "there is a foreseeable price to be paid for the reluctance to engage on the foundational question of what the 45 million public school children across the country should know, and leaving it to chance or whim;"<sup>7</sup> and the classical education movement has gained momentum in recent years in pursuit of restoring an appreciation for great works of literature, history, mathematics, and philosophy in K–12 schools.

For its part, the Left has claimed the education system in its long march through the country's institutions of culture. The common school system that was designed—however poorly—to Americanize newcomers is now a key force in driving balkanization and in convincing its future citizenry that America has been an irredeemably evil place since its inception.

Many education organizations and reformers seem at a loss for how to respond to the thousands of parents who have flooded school board meetings with concerns about critical race theory, gender ideology, and other radical ideological content in public schools.

The good news is that the reform movement's primary preferred solution, school choice, forms a large and necessary part of any response to the ideas that have taken over the school system—if it is rethought and advanced on terms that resonate with parents.

In the past, education freedom has been sold nearly exclusively on liberal and libertarian terms, with the former view espousing that there are benefits to those least well served in the current system and the latter view espousing the benefit of free choice and competition on quality.<sup>8</sup> Both of these positions are perfectly true and worthwhile.

But in terms of countering the problem of indoctrination, the biggest cultural benefits of school choice are (1) leverage for parents opposing what is taught in schools and (2) denying the Left full cultural control over the enormous public investment in education.

Even acknowledging that school choice is no silver bullet, the Right can only gain by breaking the cultural monopoly that holds sway over the public education system and placing its bureaucratic indoctrinators in the position of depending on parent satisfaction for their paychecks.

The rot in the education system is deep. It is the result of decades of left-wing ideology seeping from the university system, and it has infected all but the hardiest of dissenters, not just teachers but those who sit on school boards; bureaucrats working in district offices; and diversity, equity, and inclusion (DEI) consultants who frame staff trainings, textbook companies, and more. This network is sustained and boosted, far above its popularity with the American people, by the dollars of taxpayers, against which any alternative must struggle.<sup>9</sup>

Without the seismic shift and realignment of incentives provided by universal school choice, which will finally make staff salaries dependent on parent satisfaction, other measures aimed at bringing the public school system to heel in terms of content are doomed to fail.

## Wokeness in Private Schools

Unfortunately, the hour is late. The underlying principles of the woke Left have controlled the education system for decades and higher education for far longer. A whole generation (millennials) and part of another (Gen Z) have graduated through the education system and have already advanced into corporations, tech start-ups, media, and the arts. They have brought with them what they learned: Only one in five Americans under 45 can pass the elementary citizenship test administered to naturalizing immigrants,<sup>10</sup> but polls have found that millennials and Gen Z'ers simultaneously are more ignorant about the country and have more hostile feelings towards it. Over 60 percent of millennials agree that the system they know little about is racist.<sup>11</sup>

Private schools have been no more exempt from this ideological tidal wave than Fortune 500 corporations, particularly those elite schools that serve as a pipeline for highly ranked universities.

Andrew Gutmann, a parent at the \$54,000-a-year Brearley School in Manhattan, described in an open letter how intensely the politics of wokeism has gripped some elite private schools:

I object, with as strong a sentiment as possible, that Brearley has begun to teach what to think, instead of how to think. I object that the school is now fostering an environment where our daughters, and our daughters' teachers, are afraid to speak their minds in class for fear of "consequences." I object that Brearley is trying to usurp the role of parents in teaching morality, and bullying parents to adopt that false morality at home. I object that Brearley is fostering a divisive community where families of different races, which until recently were part of the same community, are now segregated into two. These are the reasons why we can no longer send our daughter to Brearley.

Over the past several months, I have personally spoken to many Brearley parents as well as parents of children at peer institutions. It is abundantly clear that the majority of parents believe that Brearley's antiracism policies are misguided, divisive, counterproductive and cancerous.<sup>12</sup>

But the average private school is very different from the expensive, elite institutions that many imagine. According to the Council for American Private Education (CAPE), 78 percent of private school students attend a religiously affiliated school. Contrary to many people's gut instinct, the cost to attend a typical private school is considerably less than the average per-pupil expenditure in public schools. The vast majority of private schools, therefore, either have some defense against the ideological onslaught in the form of religious teaching or are distant from the elite networks where it is most rampant. Additionally, in many private school networks, certification at the ideological gauntlet of schools of education is not a requirement to teach.

However, private schools are not entirely insulated. A limited network of private school accrediting agencies, which act as gatekeepers to K–12 schools serving students in their state, have incorporated tenets of CRT and associated leftist viewpoints into their accrediting metrics. This has bound the hands of many private school leaders—including some of religiously affiliated schools—who must incorporate woke pedagogy into their curricula in order to retain accredited status and remain operational.<sup>13</sup>

That leftist ideology has bled into private schools is no surprise. Moreover, when nearly 90 percent of students attend some type of public school, and those students go on to shape the world, even the private sector transforms in their image. There is no true "Benedict Option:" As goes the whole of society, so too will many private schools.

Still, the typical private school provides an educational landscape far behind the typical public school in accepting woke doctrines. Because of their religious ties, different teacher certification requirements, and relative disconnection from some of the most rigidly woke institutions, it is safe to assume that a large part of the private school landscape is not fully captured by the same ideology that is gripping public schools and elite private schools.

The goal, then, is to preserve those private schools that refuse to buckle to the narrative, whether by defying gender mandates or by focusing on increasingly popular classical curricula. Conservatives should be exceedingly wary of any federal school choice programs that serve as a conduit of federal dollars to private schools. These programs can be easily brought into “compliance” with inventive interpretations of civil rights law that insert progressive priorities,<sup>14</sup> like eliminating boys’ and girls’ restrooms in the name of accommodating “gender identity” or forcing schools to adopt lenient and dangerous discipline practices in response to racial disparities in suspensions or expulsions.

The last thing that reformers want is to force private schools into the difficult choice of kicking out their low-income students on scholarship or buckling to woke doctrines on gender, critical race theory, or other flash-points. State programs can be overregulated, too, of course, but private school associations often have more sway with state legislatures, and the technocratic administrative bureaucracy often holds less power to make unilateral sweeping pronouncements.

## A New and Successful School Choice Coalition

Some school choice proponents are skeptical of the pivot toward the culture wars either because they themselves may be aligned with the aims of critical race theory and other ideological lessons or because they worry that such a pivot will cause the bipartisan support that peaked during the *Waiting for “Superman”* era to erode. But has Democratic assistance resulted in concrete benefits for families?

In a study for the American Enterprise Institute, Jay Greene and James Paul found that the answer is largely no.<sup>15</sup> Analyzing 70 legislative chamber votes on school choice programs, in 67 out of those 70, the rare Democratic crossover vote made no difference to the program’s passage. This is likely because while substantial Democratic constituencies, particularly black and Hispanic Democrats, favor school choice in polls, Democratic lawmakers feel free to vote against establishing programs because they are unlikely to be punished for doing so in the primaries and wish to avoid the wrath of big player teachers unions.

Chasing chimeric Democratic votes has come with major sacrifices for proponents of choice programs in both program design and developing grassroots enthusiasm. With regard to program design, many school choice programs place severe caps on income or target particularly needy families in an attempt to make them more politically palatable to the Left as an exercise in altruism. But in doing so, they foreclose the benefits of school choice to middle-class Republican voters, limiting the impact, and therefore investment, of Republican constituencies in school choice. And indeed, while large majorities of Republicans in every poll support school choice, the issue is rarely raised in primaries, and it is often conservative Republicans who end up stymieing bills in red states.

Nervousness about holding minimal Democratic support has also prevented many education reformers from making their case to the parents—conservative, moderate, or otherwise. Those same parents now fill school board meeting rooms and are forming, with that quintessentially American civic genius, organization after organization to push back against critical race theory and other objectionable lessons. If choice proponents can convince parents that school choice will provide them greater respect, control, and leverage in these battles—connecting problem to policy solution—there may well be another *real* “year of school choice,” like the 2020/2021 legislative sessions, during which 28 programs were created and expanded and more than one and a half million potential new scholarships were made available to families.

A few more years like this and the failure thus far of private school choice programs to truly transform the education system at large may turn into a great victory (perhaps, along with defeating the Equal Rights Amendment in the 1970s and the repeal of the Fairness Doctrine that enabled talk radio, the biggest *cultural* victory the Right will have had since the formation of the modern conservative movement).

Whether one cares primarily about opening the most private school choice spots or about reversing the pernicious indoctrination in America’s schools, the fate of these two issues may very well rise or fall together.

## Conclusion

There is no doubt that school choice is the prerequisite for the fight against woke doctrines, not an immediate victory. Robert Pondiscio is correct when he says that the values transmitted to the next generation are of genuinely *public* concern and will not be solved by a balkanization of right-leaning families while the power of the mainstream education system remains unabated.

But it cannot be anything but a big help to those opposed to woke policies to refuse to grant one side in the culture war's exclusive control over a public good like the education system. If parents could instead direct those dollars to classical-learning schools or parochial schools "clinging" to their religious doctrines, it would be a huge victory. Bigger still would be the victory for parents who want their children to remain in public schools but who in an education choice system would have the benefit of big new financial leverage in meetings with principals, teachers, and school board members. When districts know that parents are financially empowered by school choice to walk out *en masse*, parents' concerns will meet with swifter and more thorough positive response.

On the back of that transformational reform, other battles can and will need to be fought. School choice would create the conditions in which other victories will become possible, or at least much easier, but school choice does not fight the battles. Anyone concerned about the ideological tilt of the education system needs to look at a laundry list of important policy reforms beyond school choice.

First and foremost, parents cannot fight what they cannot see. State legislatures need to enforce absolute transparency of any materials available in the classroom. The fact that Freedom of Information Act requests are even necessary to uncover for the public what is taught in public schools is shameful; that districts are attempting to get parents to sign non-disclosure agreements to keep the public in the dark about what they are teaching is a scandal.

Teacher certification laws should be eliminated—or at the very least reformed—and additional apolitical and state lawmakers should develop programs that allow skilled professionals to more easily enter the teaching workforce.

Americans need to break what is essentially a three-company textbook monopoly and encourage testing alternatives like the Classical Learning Test, while simultaneously fighting ideological changes to the materials in advanced placement (AP) courses, such as APUSH (AP U.S. history).

State legislatures should not shirk their rightful democratic role in setting standards and curricula for public schools, including rejecting the application of pernicious doctrines like critical race theory, and enforcing the Civil Rights Act of 1964 and the First Amendment. While outside of their jobs they retain the same rights as any citizen, teachers do *not* have a First Amendment right to use their classrooms as political soapboxes.<sup>16</sup>

Of course, there is no replacing the valiant effort and direct democratic oversight now being provided by concerned parents. Their efforts to oust



intransigent school board members could be aided by a simple alignment of school board elections to other races statewide; currently many localities schedule school board elections during off years, leading to turnout as low as 4 percent and making them subject to outsized influence by organized interests, such as unions.

The problem of left-wing sway over education was not created overnight. Like the white racism that Ibram X. Kendi imagines embedded deep in America, the problem is *systemic*. Those concerned about critical race theory and other doctrines being taught in schools are up against woke schools of education and teachers subject to woke professional trainings governed by woke district bureaucrats and woke boards of education.

In such a system, a demand from the state legislature to teach students about George Washington is transformed into “Washington, notorious slaveowner.” Bans on critical race theory are likely to be circumvented by new names and points of introduction. Reforms to certification programs and contracts with DEI consultants will be reshuffled, renamed, and hidden from public view. Parents are battling a many-headed hydra.

While the policies listed above are necessary and worthwhile, they are unlikely to succeed without a fundamental shift of incentives within the public education system itself, which only universal education choice and parental control over dollars can provide.

When parents show up at school board meetings around the country, their anger and dissatisfaction should be directly tied to superintendent, principal, and teacher salaries. Without the leverage provided by linking parental control to paychecks—dollars following students, not systems—all other policies will be attempts to turn the *Titanic* with the rudder of a dinghy.

The most essential attribute for the job is, as Bari Weiss writes, courage, but the most essential *tool* is leverage. Nothing but broad-based education choice can provide the necessary leverage.

States should implement universal school choice and let the woke choose, as so many of the “cancelled” have had to do, between their doctrines and their paychecks.

Accountability, at last.

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# Conclusion and Policy Proposals

*Jonathan Butcher & Lindsey M. Burke, PhD*

Within these pages, the contributors have explained the nature of critical race theory, with all its racially discriminatory elements. The writers have discussed how critical race theorists apply the “critical” worldview in the classroom, and they have also considered the theory’s effects on students, parents, and educators. Perhaps most important, the contributors to this volume have explained how parents, teachers, and lawmakers are rejecting the Marxist philosophy.

Parents are attending and participating in local school board meetings and are choosing new schools for their children when they find prejudice in their children’s classrooms. Teachers and school board members are selecting different curricular materials as they discover bigotry in lessons tainted by critical race theory. And policymakers are considering proposals that prohibit school officials from compelling teachers and students to affirm ideas that violate federal law, namely the Civil Rights Act of 1964.

Censoring the teaching of history and banning books are neither necessary nor sufficient—nor even appropriate—responses to the application of critical race theory’s prejudicial ideas in K–12 schools. This message cannot be stated more simply—or often enough. Individuals on both sides of the ideological divide should protect teachers and students from discrimination, something that no parent or teacher should want a child to face. According to Adam Kissel in Chapter 16, a survey from 1998 found that parents would be “upset” if they learned that their children were “taught that America was and still is a fundamentally racist country.” More

recent survey evidence finds that parents still do not want their children to be taught this idea. Rather, in a Heritage Foundation survey from June 2021, 32 percent of parents—a plurality—said they thought the most important function of civics in modern-day America is to give students “practical information and guidance on how to carry out the duties of a citizen,” not lessons about systemic racism.

Conservatives value individual liberty, aspire to protect civil discourse, and respect the rule of law, which means that they have policy solutions that are more effective than censorship while also protecting free speech. And parents should be in the driver’s seat when it comes to what their children are learning in school. Those who followed the Virginia gubernatorial race in fall 2021 will remember that former Governor Terry McAuliffe faced significant criticism after he said he did not think that “parents should be telling schools what they should teach.”<sup>1</sup> But public institutions *should* be partners to parents and should not subordinate them to voiceless recipients of government-controlled schooling. Public schools are taxpayer-funded institutions that should reflect the desires of local families. Parents should be able to take their children’s shares of education funding to schools that align with their values.

## The Assault on American Values Continues

As this book goes to press, critical race theorists continue to claim that conservatives are trying to whitewash American history, making it sound as though critical race theory’s opponents are holding bonfires outside school libraries and using books as kindling. In November 2021, a Howard University professor wrote in *Education Week* that the school board elections in Southlake, Texas, have resulted in “larger attack[s] on schools’ efforts to make education more representative of the cultures and histories of students of color.”<sup>2</sup> (See Chapters 15 and 16.) The professor goes on to claim that “[t]he conservatives behind these attacks aim to ensure that schools do not offer education that encourages critique and interrogation of historical and present-day events.”

This is not true, of course. In fact, organizations such as The Heritage Foundation and 1776 Unites have created new curricula to reflect the importance of a thorough approach to teaching civics and to emphasize the success of black Americans throughout American history.<sup>3</sup> Scholars such as Wilfred McClay and Allen Guelzo have released books and articles just in the past two years that provide a comprehensive view of American history and respond to revisionist and inaccurate writings, such as those in *The New York Times Magazine*’s 1619 Project.<sup>4</sup> Nevertheless, this

question of the content of American history instruction is not the main concern of the professor who made false claims in *Education Week*. The writer is also upset that conservatives who oppose critical race theory’s discriminatory ideas are voting against proponents of critical race theory in school board elections and trying to have an impact on what educators teach students. “Institutional racism,” the Howard professor writes, “is upheld through political power granted to officials who establish policies that dictate our practices.”

The issue for critical race theorists, then, is not *school content* but *power*. Possessing the latter allows theorists to control the former. As our Heritage Foundation colleague and co-editor Jay Greene has demonstrated, power is exactly what radical leftists are consolidating in K–12 and postsecondary schools. Greene’s research, along with that of the University of Arkansas’s James Paul, has found that universities in the Power 5 athletic conferences have, on average, 45 staff working in the area of diversity, equity, and inclusion (DEI). (See Chapter 12.) Among some of the largest K–12 schools in the country (districts enrolling 100,000 students or more), 79 percent have “chief diversity officers.”<sup>5</sup> Americans’ tax dollars are paying for employees to organize and facilitate racially focused school activities.

## What Legislation Should, and Should Not, Do

In Chapter 3, Jonathan Butcher and Sarah Parshall Perry explained how lawmakers should design policy proposals to keep critical race theory out of the classroom and protect children from racial bias that results from educators’ application of the theory’s principles. No teacher or student should be forced to believe that race is the most important thing about them. (See the appendix for the full legislative proposal for state lawmakers.) As stated in Chapter 3, lawmakers in Idaho, South Carolina, and Texas, to name a few, along with federal officials overseeing schools in Washington, DC, have considered such policies.

There are additional ideas, though, that lawmakers should consider when protecting teachers and students from the discrimination of critical race theory while keeping legislative proposals away from actions that would result in censorship, prevent a thorough teaching of any subject, or limit the ideas that teachers and students could discuss in a classroom. State officials should make public K–12 curricula more accessible to parents and voters. Lawmakers in many states are actively considering such proposals.<sup>6</sup> Parents who want to see what educators are teaching their children should be able to see the list of textbooks used in class, along

with any other assigned reading materials and workbooks. They should not have to drive to the district office to get a list of the materials, call for a special meeting with a school principal and curriculum coordinator, or submit a Freedom of Information Act request to government officials to find out what their children are learning.

Colleges have posted course syllabi online for students for decades, and programs such as Canvas and Schoology already allow parents of K–12 students to access curricular content and see their children’s grades in some schools. And, during the pandemic lockdowns, nearly all schools delivered all content online, so it is reasonable for lawmakers to require school officials to make content available for parents to review. Some public charter schools boast about their curriculum, posting lists of classic works of literature that students are required to read and advertising their rigorous instructional materials.<sup>7</sup>

School officials should make sure that information about guest speakers, videos, and supplementary materials (in addition to assigned textbooks) is readily available to the public.<sup>8</sup> School leaders are not responsible for reproducing worksheets or for buying copies of books to send to families, but they are responsible for informing the public about the content that educators are providing to children. Lawmakers should make these requirements explicit in state law so that public school officials—and parents—have the same expectations of curricular transparency.

Transparency and prohibiting compelled speech form a package of ideas that lawmakers can use to protect teachers and students from racial discrimination. In the U.S. Supreme Court’s majority opinion in *Parents Involved in Community Schools v. Seattle*, written by Chief Justice John Roberts, the justices agreed: “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”<sup>9</sup> Sounds simple enough, but the complex mingling of “critical” ideas with K–12 instructional materials deserves an equally sophisticated response. The purpose of this book is to help lawmakers, educators, and parents as they guide students and schools away from bigotry and to the promise that America remains a country where freedom and opportunity are available to all, regardless of skin color.

Transparency and the prohibition of compelled speech are vital tools for families in the fight against critical race theory. Equally vital is an exit pass from schools that parents know, thanks to clarity around content, impart lessons that run counter to their values. As Inez Feltscher Stepman writes in Chapter 17: “Without the leverage provided by linking parental control to paychecks—dollars following students, not systems—all other policies will be attempts to turn the Titanic with the rudder of a dinghy.”

Fighting critical race theory’s prejudice requires a multipronged policy approach. In addition to prohibiting compelled speech, providing more transparency over curricula, and more education choice, state lawmakers should weaken one of the primary sources of *teacher* indoctrination in critical race theory: colleges of education. Lawmakers can do so by eliminating requirements that teachers be state-certified, which, for the vast majority of teacher candidates, means attending a traditional university-based college of education. Professors in colleges of education now dedicate considerable time and energy to the study of race through the lens of critical race theory. Marxist tracts, such as Paulo Freire’s *Pedagogy of the Oppressed*, is one of the most frequently assigned textbooks in colleges of education. A growing number of universities now offer degrees in DEI. Federal policymakers can do their part by curtailing the open spigot of federal subsidies to colleges. Both reforms—favoring subject-matter expertise over college of education–conferred teacher credentials and limiting federal higher education subsidies—are smart policies at any time.

Other opportunities to reject critical race theory and improve the overall responsiveness and accountability of American education abound. Those include aligning school board elections with general elections, instilling a sense of agency in students (contrary to the teachings of critical race theory) by explicitly teaching the “success sequence,” and equipping parents with a private right of action to sue schools that apply critical race theory’s discriminatory ideas.

Parents have rarely been more energized about engaging in the content and practices of their children’s schools. And rightly so. They see with their own eyes that too many public schools—and some private—are teaching ideas that weaken student agency, pit children against one another, reduce human behavior to immutable characteristics such as skin color, and teach that America is not a force for good in the world but a systemically racist country.

Policymakers have the tools to hold public schools accountable to families and to once and for all reject the discriminatory scourge of critical race theory.

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As we wrote in our previous project, *The Not-So-Great Society*, we are grateful to all the contributors to this book, both those from inside and outside The Heritage Foundation. We asked these experts and researchers to contribute their findings and analyses on specific questions, but the

conclusions and policy solutions represent those of Heritage Foundation analysts. The contributing authors may or may not agree with each ultimate recommendation, and we do not presume to speak on their behalf. We greatly appreciate their research and analysis and contend that these findings and conclusions support conservative solutions to the pressing problems of how to give every child the opportunity to succeed and how to protect students, parents, and educators from the racial discrimination that critical race theory causes.



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# Protecting K–12 Students from Discrimination

*This is a model bill meant for state lawmakers to use regarding K-12 schools:*

*Whereas*, the First Amendment of the U.S. Constitution protects the right to speak without government interference but not to compel others to adopt, affirm, adhere to, or profess specific beliefs;

*Whereas*, the 14th Amendment of the U.S. Constitution provides every American with equal protection under the law;

*Whereas*, slavery, legal racial discrimination, and racism are so inconsistent with the founding principles of the United States that Americans fought a civil war to eliminate the first, waged long-standing political campaigns to eradicate the second, and have made the third unacceptable in the court of public opinion, all of which means that America and its institutions are not systemically racist and confutes the notion that these should be at the center of public elementary, secondary, and postsecondary institutions; and

*Whereas*, in the words of civil rights activist Robert Woodson, Americans should be allowed an “aspirational and inspirational take on America’s history, debunking the misguided argument that the present-day problems of black Americans are caused by the injustices of past failures, such as slavery.”

*Therefore*, it is the intent of the legislature of this state that administrators, faculty, and other employees of public elementary and secondary education institutions maintain policies in accordance with Title IV and Title VI of the Civil Rights Act of 1964.

In order to promote the intellectual development of the elementary and secondary students of [this state] and protect the free exchange of ideas [according to the constitution of this state], the legislature enacts the following provisions:

- a. In accordance with these provisions, no public education employee shall compel a teacher or student to discuss public policy issues of the day without his or her consent.
- b. No public education employee shall compel a teacher or student to adopt, affirm, adhere to, or profess ideas in violation of Title IV and Title VI of the Civil Rights Act of 1964, including but not limited to the following:
  1. That individuals of any race, ethnicity, color, or national origin are inherently superior or inferior;
  2. That individuals should be adversely or advantageously treated on the basis of their race, ethnicity, color, or national origin;
  3. That individuals, by virtue of race, ethnicity, color, or national origin, bear collective guilt and are inherently responsible for actions committed in the past by other members of the same race, ethnicity, color, or national origin.
- c. No distinction or classification of students shall be made on account of race, ethnicity, color, or national origin.
- d. No course of instruction or unit of study may direct or otherwise compel students to personally affirm, adopt, or adhere to any of the tenets identified in section (b) and its subsections.
- e. No course of instruction, unit of study, professional development, or training program may direct or otherwise compel teachers to personally affirm, adopt, or adhere to any of the tenets identified in section (b) and its subsections.
- f. No employee of a public elementary or secondary school operating in this state, when acting in the course of his or her official duties, shall organize, participate in, or carry out any act or communication

that would violate section (b) and its subsections. This shall not be construed to prohibit an employee from discussing the ideas and history of the concepts described in section (b) and its subsections.

- g. Nothing in this statute prohibits teachers or students from discussing public policy issues of the day or ideas that individuals may find unwelcome, disagreeable, or offensive.
- h. Public institutions found in violation of this section are not eligible for state funding under [state K-12 education formula].
- i. In addition to any relief sought through the appropriate Office for Civil Rights at the U.S. Department of Education, an individual may, in the alternative, bring a private right of action against any institution engaged in such prohibited discrimination.

**SEVERABILITY.** The provisions of this act are hereby declared to be severable, and if any provision of this act, or the application of such provision to any person or circumstance, is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.



## APPENDIX OF TERMS

**Critical Race Theory:** A movement that is “a collection of activists and scholars interested in studying and transforming the relationship among race, racism, and power.”<sup>1</sup>

**De-colonialism:** An “applied postmodern mind-set” that believes “we must devalue white, Western ways of knowing for belonging to white Westerners and promote Eastern ones (in order to equalize the power imbalance.”<sup>2</sup>

**Disparate Impact:** An approach to civil rights enforcement that claims that an entirely neutral policy that does not discriminate on its face, is not intended to discriminate, and does not actually treat individuals differently based on their race *still* constitutes illegal racial discrimination if it has a “disproportionate” statistical effect among different racial and ethnic groups.<sup>3</sup>

**Diversity:** Diversity is desirable when it obtains organically as a result of meritocracy. Numerous reports show that companies with women and people from various demographic backgrounds in leadership out-earn companies without them. In one such report this year, McKinsey & Company found that “the relationship between diversity on executive teams and the likelihood of financial outperformance has strengthened over time.”<sup>4</sup>

What CRT adherents always mean when they use the term, however, is *enforced* diversity through the use of mandated or recommended quotas. This cannot but lead to worse outcomes if it results in the hiring of less-competent workforce or management. It is also coercive. To pretend, as Ibram X. Kendi does, that “[a] racist policy is any measure that produces or sustains racial inequity between racial groups. An antiracist policy is any measure that produces or sustains racial equity between racial groups” is to demand quotas in hiring, admissions, contracting, etc.<sup>5</sup>

**Equity:** The *Merriam-Webster Dictionary* defines equity as “justice according to natural law or right, specifically: freedom from bias or favoritism.”<sup>6</sup>

This meaning has been completely inverted in today’s usage. Today, equity has come to mean the opposite of equality. Again, we have Kendi to help us: “The defining question is whether the discrimination is creating

equity or inequity. If discrimination is creating equity, then it is antiracist. If discrimination is creating inequity, then it is racist. Someone reproducing inequity through permanently assisting an overrepresented racial group into wealth and power is entirely different than someone challenging that inequity by temporarily assisting an underrepresented racial group into relative wealth and power until equity is reached. The only remedy to racist discrimination is antiracist discrimination.”<sup>7</sup>

Equity, then, means inequality of treatment. Kris Putnam-Walkerly and Elizabeth Russell of the Putnam Consulting Group see equity as something even approaching the Marxian “to each according to his needs.” They write that equity is “different from ‘equality,’ in which everyone has the same amount of something (food, medicine, opportunity) despite their existing needs or assets. In other words, whether you are two feet tall or six, you still get a five-foot ladder to reach a 10-foot platform.” Equity, to them, “is about each of us getting what we need to survive or succeed—access to opportunity, networks, resources, and supports—based on where we are and where we want to go.”<sup>8</sup>

**Intersectionality:** A term that refers to the “multiple social forces, social identities, and ideological instruments through which power and disadvantage are expressed and legitimized.”<sup>9</sup>

**Minorities:** This term has evolved to include now the idea of “collective victimization” and is intricately tied to identity politics, which is a political project of the Left. This was not always the case, however. The modern-day usage of this word does not appear in a dictionary until 1961.<sup>10</sup> In the 18th century, James Madison and the other Founding Fathers used the term to mean those political factions that were numerically inferior to an ideological majority. In the 19th and early 20th centuries, the term was used to refer to ethnic minorities in Europe, especially those of the polyglot Ottoman, Russian, and Hapsburg empires.

The sociologist Philip Gleason says the media in 1929 mentioned “disgruntled minorities,” such as “growling Ruthenians” and “scowling Macedonians,” suggesting that “Americans found the spectacle of national minority bickering distasteful.”<sup>11</sup> In 1938, the U.S. Supreme Court used something close to the modern definition of the term when Justice Harlan Stone asked in footnote four of the *U.S. v. Carolene Products* decision (but leaving the question unanswered) whether “prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied



upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.”<sup>12</sup> This is known as the “most famous footnote in law” because it introduced the concept of strict scrutiny.

Louis Wirth, a German-born American sociologist and urbanist associated with the Frankfurt School, is credited with defining the term in the modern American meaning for the first time in 1945 in a foundational essay in which he stated: “We may define a minority as a group of people who, because of their physical or cultural characteristics, are singled out by the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination. The existence of a minority in a society implies the existence of a corresponding dominant group enjoying higher social status and greater privileges.” He cited “the Negro, the Indian, and the Oriental” as well as “Catholics, Jews, and Mormons” as examples of minorities in the United States.<sup>13</sup>

**People of Color:** This is one of the newest terms in the lexicon. In one of the most comprehensive accounts on the origin of such terms as minorities, Gleason speculates that it “owes part of its appeal to its implicit restriction of the special status accorded ‘designated minorities’ to those distinguished by a racially linked phenotypical feature.”<sup>14</sup> In an eye-opening op-ed in *The New York Times* in 2020—eye-opening because of what it said and where it was published—Haney Lopez and Tory Gavito reported on a survey they had just concluded, writing, “Progressives commonly categorize Latinos as people of color, no doubt partly because progressive Latinos see the group that way and encourage others to do so as well. Certainly, we both once took that perspective for granted. Yet in our survey, only one in four Hispanics saw the group as people of color. In contrast, the majority rejected this designation. They preferred to see Hispanics as a group integrating into the American mainstream, one not overly bound by racial constraints but instead able to get ahead through hard work.”<sup>15</sup>

**White Supremacy:** The term “white supremacy” can be confusing because it can mean an actual belief in the superiority of white people, in which case it is despicable. However, it is nearly *always* employed to mean something much larger—anything from classical philosophers to Enlightenment thinkers to the Industrial Revolution. It is constantly used in CRT discourses yet hardly ever defined. Robin DiAngelo does helpfully supply something close to a definition, one in which she tells us that employing

the term to define, say, the KKK, is “reductive” and obscures the entirety of the system.

“White supremacy,” she writes, “is a descriptive and useful term to capture the all-encompassing centrality and assumed superiority of people defined and perceived as white and the practices based on this assumption. White supremacy in this context does not refer to individual white people and their individual intentions or actions but to an overarching political, economic, and social system of domination.” She further states, “While hate groups that openly proclaim white superiority do exist and this term refers to them also, the popular consciousness solely associates white supremacy with these radical groups. This reductive definition obscures the reality of the larger system at work and prevents us from addressing this system.... I hope to have made clear that white supremacy is something much more pervasive and subtle than the actions of explicit white nationalists. White supremacy describes the culture we live in.”

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