

# Journal of Critical Race and Ethnic Studies

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Volume 1  
Issue 1  
*The Backlash to Non-dominant Cultural  
Narratives*

Article 5

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December 2023

## Who's Afraid of Being Woke? – Critical Theory as Awakening to Erascism and Other Injustices

Berta E. Hernández-Truyol  
*University of Florida Levin College of Law*

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### Recommended Citation

Hernández-Truyol, Berta E. (2023) "Who's Afraid of Being Woke? – Critical Theory as Awakening to Erascism and Other Injustices," *Journal of Critical Race and Ethnic Studies*: Vol. 1: Iss. 1, Article 5. Available at: <https://scholar.stjohns.edu/jcres/vol1/iss1/5>

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## WHO'S AFRAID OF BEING WOKE? – CRITICAL THEORY AS AWAKENING TO ERASCISM AND OTHER INJUSTICES

*Berta Esperanza Hernández-Truyol\**

Woke means “the belief there are systemic injustices in American society and the need to address them.” Ryan Newman, General Counsel to Governor of Florida<sup>1</sup>

Stopping wokeness is to combat the belief there are systemic injustices in American society which, true to form, does sound a lot like the opposite of being awake, and that is to say, totally asleep. Alex Wagner<sup>2</sup>

[B]y condemning the word “Woke” the establishment is not only attacking African American language. It also [is] disparaging the whole concept of being “awake” which I believe is one of the essential elements of moral and religious consciousness. Rev. Larry Reimer<sup>3</sup>

Woke is “the new N-Word.” Shevrin Jones<sup>4</sup>

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\* Berta Esperanza Hernández-Truyol, Stephen C. O’Connell Chair, University of Florida Levin College of Law. My deepest thanks to University of Florida Levin College of Law’s Professors Pedro Malavet, Professor; Kathryn Russell-Brown, Levin, Mabie & Levin Professor of Law and Director of Race and Crime Center for Justice; Christopher Hampson, Assistant Professor; and Sharon E. Rush, Emeritus Raymond & Miriam Ehrlich Chair in U.S. Constitutional Law for their consideration on an earlier draft. Much appreciation for the invaluable research assistance of Mary Rosado (UF ’24). Much gratitude to Victoria A. Redd for her assistance with the production of this Article for publication. Finally, I am very grateful for the University of Florida Levin College of Law Summer Research and Sabbatical Program that provides robust support for intellectual endeavors.

1. FOX 13 News staff, “What Does ‘Woke’ Mean? Gov. DeSantis Officials Answer During Andrew Warren Trial,” Dec. 5, 2022, <https://www.fox13news.com/news/what-does-woke-mean-gov-desantis-officials-answer-during-andrew-warren-trial>.

2. Alex Wagner, *Requisite for DeSantis’ War on ‘Woke’: Not Being Awake*, MSNBC, Dec. 8, 2022, <https://www.youtube.com/watch?v=a0Kpk7s9nL>.

3. Rev. Larry Reimer, “Woking” Up is Hard to Do, Seminar Presentation at United Church of Gainesville, Nov. 6, 2022, copy on file with author.

4. Charles M. Blow, *Opinion: Ron DeSantis and the “Wicked Wisdom” of Divide and Conquer*, N.Y. TIMES, Feb. 15, 2023 (Charles Blow quoting Shevrin Jones), *available at* <https://www.nytimes.com/2023/02/15/opinion/ron-desantis-black-history.html>

## INTRODUCTION

“Wokeness” is under attack. For over 100 years in African American communities the term has meant awareness of historical exclusions, injustices, and even dangers solely based on race. Yet, the term is being disingenuously weaponized against the conscious pursuit of social justice. For example, the Conservative Political Action Conference’s (CPAC) 2023 annual meeting’s poster announced the theme of the conference “Awake Not Woke.”<sup>5</sup> Considering the historic use of woke by African American persons, the poster’s presentations of CPAC’s theme constitutes an apparent contradiction in terms.

A Critical Race Theory (CRT) analysis, however, reveals that the apparent contradiction is an intentional linguistic inversion. The attack on woke emerging in the 2020s entails rejecting (and disparaging) certain “ideologies” such as CRT, a movement that “compels us to confront critically the most explosive issue in American Civilization: the historical centrality and complicity of law in upholding White supremacy (and concomitant hierarchies of gender, class, and sexual orientation).”<sup>6</sup> Anti-woke also specifically rebuffs the 1619 project—one that comfortably aligns with CRT—which has reframed U.S. history by utilizing the institution of slavery and the views and lives of enslaved persons as the perspective from which to view the country’s past.<sup>7</sup> Beyond indicting CRT, the anti-woke movement indicts inclusive visions of the country including feminist, gender, and queer visions, and condemns discomfort-inducing education in these fields.<sup>8</sup>

A critical analysis of the origins and meaning of “woke” renders the poster’s embrace of awake and rejection of “woke” particularly

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5. *De Santis Welcomes CPAC to Florida with an Anti-Woke . . .*, MIAMI HERALD, Feb. 24, 2022, <https://www.miamiherald.com › news › article258731918>.

6. KIMBERLÉ CRENSHAW ET AL., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, Foreword by Cornel West, at xi, (1995) (also noting that “Critical Race Theorists have, for the first time, examined the entire ediface [sic] of contemporary legal thought and doctrine from the viewpoint of law’s role in the construction and maintenance of social domination and subordination.”)

7. NIKOLE HANNAH-JONES & THE NEW YORK TIMES MAGAZINE, *THE 1619 PROJECT: ANEW ORIGIN STORY, ONE WORLD* (2021) [hereinafter HANNAH-JONES & N.Y. TIMES MAG.].

8. *See, e.g.*, Florida’s Stop Wrongs to Our Kids and Employees (WOKE) Act (HB7) 2022 Fla. Sess. Law Serv. ch. 72 (West) (prohibiting Florida’s public schools and private businesses from making people feel uncomfortable or guilty over their race, sex, or national origin). *See also* Katheryn Russell-Brown, “*The Stop WOKE Act*”: *HB 7, Race, and Florida’s 21st Century Anti-Literacy Campaign*, at \*13 (forthcoming N.Y.U. Rev. L. & Soc. Change 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4219891](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219891) (engaging in a race-based critique of Florida’s HB7 and positing that the law is in essence an anti-literacy bill and noting the troublesome history of slave codes and anti-literacy laws)

nonsensical. Woke, “identified as U.S. slang, . . . originated in African American English . . . and eas[ed] into the mainstream from some varieties of a dialect called African American Vernacular English (sometimes called AAVE) [in which] *awake* is often rendered as *woke*.”<sup>9</sup> In fact, that definition of “woke” made the Oxford Dictionary Word of the Year Shortlist in 2016.<sup>10</sup> The following year Merriam-Webster added the word, defining “woke” as “aware of and actively attentive to important facts and issues (especially issues of racial and social justice)”<sup>11</sup>—in other words, “awake.”

This Essay critically analyzes the “anti-woke” message deployed by the poster—the suggestion that awake is good and its synonym woke is bad—with the goal of establishing the importance of CRT in general and in education more specifically. This work shows how critical theories are key to deconstructing disingenuous messaging about the meaning of words, theoretical constructs, and historical realities.

The Work first elucidates that the meaning of awake, as utilized in myriad fields, addresses the concept of consciousness—awareness of injustices in society. Second, the Essay historicizes the origins and uses of the word woke to emphasize that it, indeed, is synonymous with awake. Following, it traces the development of critical thinking in law to establish the value and importance of critical approaches in analyzing language as well as in scrutinizing social (the family, educational and religious) institutions. The Work also shows how invaluable critical thinking is to unearthing legal structures’ often-skewed foundational values and thereby promoting a deeper understanding of constitutional values such as equality. Next, the work exposes critical analysis as a necessary precondition to the attainment of justice by utilizing the tools of CRT to unveil the intentional distortion of the meaning of woke as part of the strategy to entrench, maintain, and reify the status quo and marginalize, if not erase, difference—particularly racial, ethnic, and sexual hierarchies.

The Essay concludes that the attack on woke effectively is an erascist assault on African American language, values, and history. As such it is a symbol of the quest to perpetuate the status quo; an attempt to expunge the difficult truth of the country’s history on race unearthed by theoretical movements such as CRT’s unveiling of the racialized foundations of social institutions including law and the legal system. Erascism erasing uncomfortable racial and other social truths—appears to be the goal of the anti-woke fervor.

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9. *Id.* MERRIAM-WEBSTER, Meaning of Woke, <https://www.merriam-webster.com/words-at-play/woke-meaning-origin>.

10. How ‘woke’ fell asleep, <https://blog.oxforddictionaries.com/2016/11/woke/>.

11. MERRIAM-WEBSTER, *supra* note 9.

Being woke *is* being awake, the condition the poster urges and embraces. Finding the truth,<sup>12</sup> and the centering of outsiders, the disempowered, the marginable<sup>13</sup> are endeavors central to awakening justice. The deployment of the vernacular “woke” as a pejorative aimed at CRT, the 1619 Project, and similar racially (and socially) conscious projects, while embracing “awake” exposes alarmingly racialized underpinnings. Once the sleight of hand is unveiled through critical analysis, as the poster’s embrace of “awake” confirms, “we should all be woke.”<sup>14</sup>

## AWAKEN

To be awake—to have experienced an awakening—is the idea that one is seeking intentional consciousness. Myriad disciplines wholly embrace, cultivate, and promote the model of awakening to attain justice,

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12. Berta Esperanza Hernández-Truyol, *Awakening the Law: A LatCritical Perspective*, SEATTLE J. FOR SOC. JUST. 927, 955 (2022) [hereinafter Hernández-Truyol, *Awakening the Law*]. The methodological process for an awakened law is the

*Recognition* of the legal quandary . . . ; (2) *Exposure*—investigating and unveiling whether and, if so, how the legal quandary is biased; (3) *Deliberation* on the predicament—consideration of the bias and listening to narratives and counternarratives to ascertain the gravamen of the concern; and (4) proposal of a *Solution* that eliminates the unearthed injustice. This process bares the perceptual playbook upon which the quandary relies to appear neutral and considers alternatives that do not embed bias into law.

*Id.*; see also Berta Esperanza Hernández-Truyol, *Awakening the Law: Unmasking Free Exercise Exceptionalism*, 72 EMORY L.J. 1061 (2023) [hereinafter Hernández-Truyol, *Awakening FEE*]; Berta Esperanza Hernández-Truyol, *Awakening The Law: Kate Stoneman—An Awakened Woman: Based Upon Albany Law School’s Kate Stoneman Celebration Speech*, 86 ALBANY L. REV. 231 (2023) [hereinafter Hernández-Truyol, *Awakened Woman*].

13. *Marginable* is a word coined by the author to encompass marginalized and vulnerable people. Berta Esperanza Hernández-Truyol, *Globalizing Women’s Health and Safety: Migration, Work, and Labor*, 15 SANTA CLARA J. INT’L L. 48, 51 (2017) [hereinafter Hernández-Truyol, *Globalizing Women’s Health and Safety*]. Centering the marginable is one of the substantive pillars of the Awakening the Law paradigm that the author has developed. Hernández-Truyol, *Awakening the Law*, *supra* note 12, at 956-57 (proposing that “[b]eyond the essential element of *Dignity*, the three substantive pillars of an awakened law are *Antisubordination*, *Multidimensionality*, and *Marginability*”); see also Hernández-Truyol, *Awakening FEE*, *supra* note 12, at 1061; Hernández-Truyol, *Awakened Woman*, *supra* note 12, at 231.

14. Paul Kiernan, *The Cultural Misappropriation of Woke*, THOUGHTLAB, Feb. 15, 2023, <https://www.thoughtlab.com/blog/the-cultural-misappropriation-of-woke/>.

including political science,<sup>15</sup> theology,<sup>16</sup> psychology,<sup>17</sup> education,<sup>18</sup> economics,<sup>19</sup> and sociology.<sup>20</sup> Most recently I have advanced the paradigm in law<sup>21</sup>—a field in which it is crucially important but in which the concept had been lacking.

Awakening signifies not only the desire but also the willingness to engage in the complicated and challenging work of expanding one's consciousness to better understand the world outside of oneself—to have knowledge beyond one's experiential life bubble. To be awakened is to be cognizant of and attentive to masked issues and veiled injustices in society to which others might be asleep. In awakening, the heightened awareness of one's social, political, educational, cultural, religious milieus opens the door to relating and understanding a diverse and complex world replete with inequities. Being awake allows not only seeing but also understanding the roadblocks experienced by others—in particular those others who are different in race, sex, sexuality, culture, religion, education, age, and ability—in a deeper way. The idea of awakening dovetails with Paulo Freire's model of attaining a critical consciousness,<sup>22</sup> a concept originally developed to foster literacy among the oppressed.<sup>23</sup>

Regardless of discipline, the process of awakening consists of four essential elements and utilizes a methodology that I have labeled REDeS:

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15. See, e.g., Hsin-Yi Yeh, *Using an Awakening Narrative to Leave Behind a Former National-Identity: An Investigation of the Conversion of National-Identity in Taiwan*, 22 *NATIONS & NATIONALISM* 542 (2016). <https://doi.org/10.1111/nana.12161>.

16. See, e.g., Nancy Ross & Jessica Finnigan, *Mormon Feminist Perspectives on the Mormon Digital Awakening: A Study of Identity and Personal Narratives*, 47 *DIALOGUE: J. MORMON THOUGHT* 47 (2014).

17. See, e.g., DR. SHEFALI, *A RADICAL AWAKENING* (2021) [hereinafter SHEFALI]; TARA BRACH, *RADICAL ACCEPTANCE: EMBRACING YOUR LIFE WITH THE HEART OF A BUDDHA* (2004).

18. See, e.g., Saliha Kozan et al., *Awakening, Efficacy, and Action: A Qualitative Inquiry of a Social Justice-Infused, Science Education Program*, 17 *ANALYSES SOC. ISSUES & PUB. POL'Y* 205 (2017). <https://doi.org/10.1111/asap.12136>.

19. See, e.g., Alexis Habiyaremye, 'Angola-Mode' Trade Deals and the Awakening of African Lion Economies, 25 *AFR. DEV. REV.* 636 (2013). <https://doi.org/10.1111/1467-8268.12057>.

20. See, e.g., Patrick Michael Casey, *Conversion to Islam: Narratives of Awakening, Continuity, and Return*, 34 *SOC. F.* 752 (2019). <https://doi.org/10.1111/socf.12523>.

21. Berta Esperanza Hernández-Truyol, *Awakening FEE*, *supra* note 12; Hernández-Truyol, *Awakened Woman*, *supra* note 12, at 231; Hernández-Truyol, *Awakening the Law*, *supra* note 12, at 927.

22. Alexis Jemal, *Critical Consciousness: A Critique and Critical Analysis of the Literature*, 49(4) *URBAN REV.* 602 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5892452/#R35> (observing that “many scholars spanning the education, community psychology, social work, public health, and social science fields have adopted, interpreted, applied and expanded CC”). <https://doi.org/10.1007/s11256-017-0411-3>.

23. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (New York: Continuum 2000) (1970).

(1) Recognition: awareness that a problem/concern exists; (2) Exposure: naming the problem/concern; (3) Deliberation: reflection on the problem by all affected parties; (4) Solution: resolution/taking action on the problem in a manner that considers justice for all affected and rejects alternatives in which there exist inequities.<sup>24</sup> The awakening process requires introspection about the locations where justice is lacking.

Awakening entails interrogating the “what is”—the status quo,<sup>25</sup> a position that presents as objective—as the truth—although in reality it is far from neutral; the status quo reflects subjective dominant social, cultural, political, religious viewpoints. Such critical interrogation requires listening to, analyzing, and including in deliberations, narratives, and counternarratives, especially stories of groups whose voices have been excluded, erased, or marginalized by the dominant discourse. To deconstruct the biased foundations of the status quo, awakening requires the identification of ingroups and outgroups alike to ascertain whose stories the status quo confirms and whose it omits or erases.

For awakening one must locate the relevant sites of domination and identify the outsiders whose lives are affected by the normative standards being reviewed but whose voices have been omitted, suppressed, disregarded, or banished from the discourse.<sup>26</sup> “Others”—disempowered and marginable persons—tend to be aware of the injustices they experience as the use of “woke” by the African American community confirms. Yet, to deconstruct the status quo the empowered and the privileged must awaken to their own biases and the benefits inherent in their positions. Awakening requires systematically identifying the existence of sites of power, exclusion of voices, and presence of hierarchies. It engenders interrogations that examine whether the powerful exclude and erase the marginable.<sup>27</sup>

Engaging in systematic explorations of injustice requires much self-reflection. To be sure, everyone needs to develop consciousness—to awaken, to be woke. The advantaged need to awaken to their function in the system of “social injustice, unfair distribution of resources and opportunities, and inequity . . . .”<sup>28</sup> Attaining consciousness necessitates a “critical social analysis of [a circumstance such as] inequality and taking action to reduce [the problem such as] inequality [in order to]

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24. *REDeS* is Spanish for nets. See Hernández-Truyol, *Awakening the Law*, *supra* note 12, at 955. See also Saliha Kozan et al., *Awakening, Efficacy, and Action: A Qualitative Inquiry of a Social Justice-Infused, Science Education Program*, 17(1) ANALYSES OF SOC. ISSUES & PUB. POL’Y 205 (2017). <https://doi.org/10.1111/asap.12136>.

25. Melissa Summer, “You Are a Racist”: *An Early Educator’s Racialized Awakening*, 105 SOC. STUD. 193 (2014). <https://doi.org/10.1080/00377996.2014.894903>.

26. *Id.*

27. Hernández-Truyol, *Globalizing Women’s Health and Safety*, *supra* note 13, at 51.

28. Jemal, *supra* note 22.

unlock[] human agency,” that is, to experience liberation.<sup>29</sup>

A critical dynamic of the awakening process is the recognition and acceptance that perceptual playbooks<sup>30</sup>—the collection of systems of beliefs,<sup>31</sup> cognitive scripts,<sup>32</sup> created and passed down by families, religious traditions, cultures, the societies in which we live as well as by law—guide everyone’s actions and positions. Perceptual playbooks are the foundation of our viewpoints. Each perceptual playbook has embedded beliefs, values, philosophies, and tropes that define us as individuals, determine our human interactions, and define how we view society—both local and global.

When we are awake, we are aware that our everyday functioning and interactions are grounded on and determined by our playbooks. Upon such realization, we must critically consciously excavate our thinking to ascertain the underpinnings of the perceptual playbook. That analysis enables the identification of the foundations, an examination of the consequences, and action as necessary to resolve the tensions in the *raison d’être* of inequitable beliefs.

What does all this mean? For one, in questioning a particular norm or condition, interrogators must become conscious of and deconstruct their perceptual playbooks as a precondition to exploring and designing just solutions to any existing problem. Awareness of the playbooks is necessary to analyze the responses received in an awakened rather than in a reflexive status-quo-incorporating habitual manner.

Beyond the realities about ingrained biases that are unveiled by deconstructing perceptual playbooks, awakening requires accepting knowledge gaps—recognizing, there are matters we do not know or understand, experiences we are lacking. Therefore, awakening requires a conscious undertaking not to fill knowledge voids with information infused into perceptual playbooks’ invented narrative—an illusion that enables answering difficult questions without necessary real knowledge. Significantly, in this way awakening disrupts injustice by unearthing the unconscious biases posing as truth imbued in stereotypes, implicit biases, and structural biases.

Stereotypes are “a fixed, over generalized belief about a particular group or class of people.”<sup>33</sup> Perceptual playbooks use stereotypes based

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29. Kozan et al., *supra* note 25.

30. Hernández-Truyol, *Awakening the Law*, *supra* note 12; *see also* Hernández-Truyol, *Awakening FEE*, *supra* note 12; Hernández-Truyol, *Awakened Woman*, *supra* note 12.

31. SHEFALI, *supra* note 17.

32. Anna Welpinghus, *The Imagination Model of Implicit Bias*, 177(4) PHIL. STUD. 1611 (2020). <https://doi.org/10.1007/s11098-019-01277-1>.

33. Dr. Saul McLeod, *Stereotypes*, SIMPLY PSYCHOLOGY (2017), <https://www.simplypsychology.org/katz-braly.html>.



on race, ethnicity, sex, class, gender, ability, religion—usually negative and subordinating—to fabricate the character of strangers. Such baseless information fills in knowledge gaps by creating reflexive associations based on the stereotype.<sup>34</sup> Psychological studies have shown that these knowledge gap fillers activate in our brains even if we “disavow the normative content” of the stereotype.<sup>35</sup>

Implicit biases<sup>36</sup> are grounded in culture<sup>37</sup> and result when our perceptual playbook unconsciously links stereotypes to a class of persons,<sup>38</sup> generating a “[pre-]disposition for skewed evaluations, without intention, which may persist despite conflicting intentions or beliefs.”<sup>39</sup> The implicit biases engraved in our perceptual playbooks make blind judgments for us about who is worthy and who is not, because they deviate from the accepted norms affecting: how we react<sup>40</sup> to strangers, who we prefer as colleagues,<sup>41</sup> who we decide deserves justice.<sup>42</sup>

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34. Hernández-Truyol, *Awakening the Law*, *supra* note 12.

35. Tamar Szabó Gendler, *On the Epistemic Cost of Implicit Bias*, 156 PHIL. STUD. 33-63 (2011). <https://doi.org/10.1007/s11098-011-9801-7>.

36. See Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102(1) PSYCH. REV. 4 (1995) (coining the term implicit bias/implicit social cognition and explaining that, originating in culture, persons make unconscious associations and judgments that affect behavior). <https://doi.org/10.1037/0033-295x.102.1.4>.

37. CATHERINE HILL ET AL., WHY SO FEW? WOMEN IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS 78 (2010) (quoting Dr. Mahzarin R. Banaji) (noting that implicit biases are). In society, implicit bias has two components: 1. Possessing the bias; and 2. Performing based on the bias. Jules Holroyd, *Responsibility for Implicit Bias*, 43 J. SOC. PHIL. 274, 275 (2012). <https://doi.org/10.1111/j.1467-9833.2012.01565.x>.

38. See Kathleen Osta & Hugh Vasquez, *Implicit Bias and Structural Racialization*, NAT’L EQUITY PROJECT, <https://www.nationalequityproject.org/frameworks/implicit-bias-structural-racialization> [hereinafter Osta & Vasquez, *Implicit Bias*] (defining implicit bias as “the process of associating stereotypes or attitudes towards categories of people without conscious awareness which can result in actions and decisions that are at odds with one’s conscious beliefs about fairness and equality”); see also Kathleen Osta & Hugh Vasquez, *Don’t Talk about Implicit Bias Without Talking about Structural Racism*, NAT’L EQUITY PROJECT (June 13, 2019), <https://medium.com/national-equity-project/implicit-bias-structural-racism-6c52cf0f4a92> [hereinafter Osta & Vasquez, *Don’t Talk*].

39. Welpinghus, *supra* note 32, at 1629.

40. Hernández-Truyol, *Awakening the Law*, *supra* note 12; see also Osta & Vasquez, *Implicit Bias*, *supra* note 38.

Implicit biases result from the internalization and embrace of the daily messages delivered by the world that surrounds us about who belongs and who doesn’t belong; who is intelligent and who misses the mark; who is strong and who is weak; who is violent and who is passive—in sum, who is normal and who deviates from that norm.”

*Id.*

41. Yasir Billoo, *Implicit Bias and Its Application in the Life of a Lawyer*, FL. BAR J. 10 (2019) (showing that implicit bias results in people with White-sounding names being chosen for job interviews more frequently than people with Black-sounding names).

42. L. Elizabeth Sarine, *Regulating the Social Pollution of Systemic Discrimination Caused by Implicit Bias*, 100 CAL. L. REV. 1359, 1366 (positing that implicit bias can explain why

Awakened persons actively work not to act based on these biases, thereby opening the door to justice and fairness.

Structural bias, juxtaposed to implicit bias, is the institutional foundation for subordination of others and perpetuation of inequities.<sup>43</sup> Structural bias refers to the institutional patterns, policies, practices, and arrangements—perceptual playbooks—that privilege some and subordinate others based on identity.<sup>44</sup> For example, in one study on leadership researchers found that Whiteness is perceived as a characteristic of leaders.<sup>45</sup> Thus, unconscious bias—preferences ingrained in our perceptual playbook and ingrained in the created structures—favors hiring those *perceived* as leaders in leadership roles. Conversely, persons not perceived as leaders regardless of actual qualifications are excluded from such positions. Structural bias works with implicit bias, especially affinity bias—“the tendency to gravitate toward people like ourselves in appearance, beliefs, and background”<sup>46</sup>—to perpetuate subordination of “others,” meaning anyone unlike “us.”

Awakening is a life-long process. It unearths the biases imprinted into perceptual playbooks by cultural, religious, societal, and familial traditions. Awakening also deconstructs the structural playbooks created by and based upon the perceptual playbooks of those in power. Awakening urges systemic challenge to and dismantling of the perceptual and structural playbooks and creates new justice narratives/counternarratives.<sup>47</sup>

Awakening goes hand in hand with critical theory. Critical theoretical analyses provide the methodological and substantive underpinnings for

unarmed Black men are killed by law enforcement more than any other group).

43. Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM MAG. (July/Aug. 1989), at 10-12, <https://nationalseedproject.org/Key-SEED-Texts/white-privilege-unpacking-the-invisible-knapsack>; William M. Wiecek, *Structural Racism and the Law in America Today: An Introduction*, 100 KY. L.J., <https://uknowledge.uky.edu/klj/vol100/iss1/2> (defining structural bias, specifically focusing on racism, as “a complex, dynamic system of conferring social benefits on some groups and imposing burdens on others . . . [and] comprises cultural beliefs, historical legacies, and institutional policies within and among public and private organizations that interweave to create radical racial disparities in life outcomes”).

44. Osta & Vasquez, *Don't Talk*, *supra* note 38 (focusing on “institutional practices and structural arrangements that lead to racialized inequities—as we see in the case of education, health, housing, criminal justice, and even life expectancy”); Wiecek, *supra* note 43 (noting that structural racism results in “segregation, poverty, and denial of opportunity for millions of people of color”).

45. Ashleigh Shelby Rosette et al., *The White Standard: Racial Bias in Leader Categorization*, 93(4) J. APPLIED PSYCH. 758–77 (2008), <https://doi.org/10.1037/0021-9010.93.4.758>.

46. See What is Affinity Bias?, <https://leanin.org/education/what-is-affinity-bias>.

47. SHEFALI, *supra* note 17. On day 5, Shefali looks at the cycle of belief system, leading to a condition, which leads to a thought, which leads to a feeling, which leads to behavior.

the deconstruction of the status quo. Critical theory wakes us up by unearthing our perceptual playbooks' biases. Prohibiting the teaching of critical theory and gender studies is tantamount to mandating the status quo and promoting being asleep—unconscious of the injustices in the world.

Deploying critical theoretical analysis to effect an awakening elucidates that the current assault on woke—on being awake—opts to perpetuate the dominance of the biased, hierarchical status quo imprinted on perceptual playbooks rather than embrace a paradigm of antisubordination, multidimensionality, and inclusion of all viewpoints particularly of the marginable.

### WOKE

Words have meanings that can change over time. Communities intentionally craft words, such as “woke,” to share information couched in culture and history. Groups consciously create and utilize language to communicate culturally relevant, often sensitive information; to promote safety and safe spaces. As time passes and society evolves, language changes and different words emerge to refer to the same groups or characteristics.<sup>48</sup> Words, particularly those imbued with cultural meanings, can be utilized to express or describe significant cultural markers.

Take, for example, the word “queer.” In the late 19<sup>th</sup> and early to mid-twentieth centuries it was a derogatory and hateful term deployed mostly against gay men. Yet, by the mid-twentieth century, during the civil rights movement that promoted equality for sexual others, gay persons appropriated the word and reclaimed it from hurtful usage for positive self-identification.<sup>49</sup> By the late twentieth century, the appropriation of the term had expanded and “[q]ueer began to be used in a different way again: not only as a synonym for gay, but as a critical and political identity that challenged normative ideas about sexuality and gender.”<sup>50</sup> Starting in the early twenty-first century, “queer” became a more inclusive term to refer to a range of sexual and gender identities and is mostly viewed as a positive, affirming term.<sup>51</sup>

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48. See Kiernan, *supra* note 14 (noting the evolution of language and that “[e]ach year, on average, we add between 800 and 1000 words to the dictionary”).

49. Timothy W. Jones, The History of the Word ‘Queer,’ Jan. 19, 2023, L.A. TROPE UNIV. <https://www.latrobe.edu.au/news/articles/2023/opinion/the-history-of-the-word-queer#:~:text=Queer%20is%20a%20word%20of,to%20same%2Dsex%20attracted%20men>.

50. *Id.*

51. *Id.* A minority disagrees with the reclamation of “queer” as a positive identitarian identifier. For example, one individual writing an op-ed objected to the use

Unlike the reclaiming of “queer,” a move that largely has effected a widely accepted, positive transmogrification of the word’s meaning, words can also be *misappropriated* and weaponized to strike against the very group whose vernacular developed the word. One such word is woke.

Other than Professor Stephen Carter’s alternative view discussed below, there is a generally embraced narrative about the origins of the word<sup>52</sup> as well as wide-ranging agreement regarding the evolution of its meaning. Most writers trace the use of woke to a 1923 collection of philosopher Marcus Garvey’s aphorisms in which he beseeches “Wake up Ethiopia! Wake up Africa!” The words urge Black persons around the world to become more aware of the social and political circumstances surrounding them.<sup>53</sup>

The next step in the evolutionary story is the spoken afterword to a 1938 protest song, *Scottsboro Boys*, by Huddie Ledbetter, also known as Lead Belly. After meeting the Scottsboro defendants—9 young African American men falsely accused of raping two White women<sup>54</sup>—Lead Belly asked that Black Americans “stay woke,” that they be aware of racially motivated threats and other potential dangers in White society.<sup>55</sup>

The following stop in woke’s journey dates to William Melvin Kelley’s 1962 *New York Times* article, “If You’re Woke You Dig It.”<sup>56</sup>

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of the word “queer” as “insulting” and “derogatory” and rejected it as “reclaimed.” The writer suggested to the journal: “You wouldn’t use the N-word, so don’t use the Q-word.” *Letters: Please Don’t Use the Q Word*, GUARDIAN, Jan. 13, 2023, [https://www.theguardian.com/world/2023/jan/13/please-dont-use-the-q-word?utm\\_term=Autofeed&CMP=tw\\_gu&utm\\_medium&utm\\_source=Twitter#Echobox=1673635001](https://www.theguardian.com/world/2023/jan/13/please-dont-use-the-q-word?utm_term=Autofeed&CMP=tw_gu&utm_medium&utm_source=Twitter#Echobox=1673635001).

52. See, e.g., *How Has the Meaning of the Word “Woke” Evolved?*, ECONOMIST, July 30, 2021, <https://www.economist.com/the-economist-explains/2021/07/30/how-has-the-meaning-of-the-word-woke-evolved?>; Tiffany Markman, *The Evolution of “Woke,”* <https://tiffanymarkman.medium.com/the-evolution-of-woke-865c4e826e7f>; Kate Ng, *What is the History of the Word ‘Woke’ and Its Modern Uses?*, INDEPENDENCE, Jan. 22, 2021, <https://www.independent.co.uk/news/uk/home-news/woke-meaning-word-history-b1790787.html>; Aja Romano, *A History of ‘Wokeness,’* VOX, Oct. 9, 2020, <https://www.vox.com/culture/21437879/stay-woke-woke-ness-history-origin-evolution-controversy>; Ben Zimmer, *‘Woke,’ From a Sleepy Verb to a Badge of Awareness*, WASH. POST, Apr. 14, 2017, <https://www.wsj.com/articles/woke-from-a-sleepy-verb-to-a-badge-of-awareness-1492183857>.

53. Stephen L. Carter, *‘Woke’ Is a Political Term With a Long and Complicated History*, Dec. 31, 2022, [https://www.washingtonpost.com/business/woke-is-a-political-term-with-a-long-and-complicated-history/2022/12/31/3b53193a-8914-11ed-b5ac-411280b122ef\\_story.html](https://www.washingtonpost.com/business/woke-is-a-political-term-with-a-long-and-complicated-history/2022/12/31/3b53193a-8914-11ed-b5ac-411280b122ef_story.html); Romano, *supra* note 52.

54. See *Powell v. Alabama*, 287 U.S. 45 (1932) (overturning conviction of young men for denial of due process).

55. Carter, *supra* note 53; Romano, *supra* note 52.

56. Elijah C. Watson, *The Origin Of Woke: William Melvin Kelley Is The ‘Woke’ Godfather We Never Acknowledged*, OKAYPLAYER, Jan. 2023,

Kelley utilized the term as the need for Black persons' awareness of racial violence. Yet, in the article he focused on the appropriation of Black vernacular.<sup>57</sup> He posited that much of the "language of then-fashionable [White] beatnik culture" was appropriated from Black slang.<sup>58</sup> Supporting this author's account of the racialized underpinnings of the current misappropriation of "woke" by the anti-wokeness movement, one linguist has suggested that Kelley's article implies "that to be woke is to have a native relationship to Black language, culture, and knowledge of social issues that arise in our lived experiences."<sup>59</sup>

Stephen Carter presents an alternative analysis of the conventionally embraced evolutionary trajectory of "woke."<sup>60</sup> First, citing other examples of wake up calls—one in a 1904 Baltimore Afro-American on voting rights and another in a 1912 essay in the Chicago Defender regarding Black Activism—he posits that Garvey is not relevant in the analysis as there is no evidence to support the idea that "woke" emerged from or is linked to his call for Ethiopia and Africa to wake up. Second, Carter refers to a 1940 quote from a Black United Mine Workers official in West Virginia<sup>61</sup> who explicitly utilized the term: "Let me tell you, buddy. Waking up is a damn sight harder than going to sleep, but we'll stay woke up longer."<sup>62</sup>

Moreover, Carter suggests that Lead Belly's use "of 'woke' was likely a repurposing of the key line in 'Sawmill Moan,' a song recorded a decade earlier by blues artist Willard 'Ramblin' Thomas." Thus, Carter attributes the term, and gives credit for it, to Thomas, not Lead Belly. In support of his attribution to Thomas, Carter cites historians' speculation that blues lyrics often were "veiled protest against the atrocious conditions faced by Black workers in Southern sawmills . . . ." Carter insists that his "interpretation makes sense . . . because blues songs often included hidden meanings representing opposition to cultural norms, particularly about race [and because] [t]he timing is also right."<sup>63</sup> Regarding timing, Carter supports crediting Thomas for the term because

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<https://www.okayplayer.com/originals/what-does-woke-mean-history-origins-william-melvin-kelley.html>.

57. Romano, *supra* note 52.

58. *Id.*; see also John McWhorter, *How 'Woke' Became an Insult*, N.Y. TIMES, Aug. 17, 2021, <https://www.nytimes.com/2021/08/17/opinion/woke-politically-correct.html>; Thomas Chatterton Williams, *You Can't Define Woke*, ATLANTIC, Mar. 17, 2023, <https://www.theatlantic.com/ideas/archive/2023/03/wokeness-definition-social-justice-racism/673416/>.

59. Romano, *supra* note 52 (quoting Deandre Miles-Hercules).

60. Carter, *supra* note 53.

61. *Id.*

62. J. Saunders Redding, *A Negro Speaks for His People*, ATLANTIC, Mar. 1943, <https://www.theatlantic.com/magazine/archive/1943/03/a-negro-speaks-for-his-people/657170/>.

63. Carter, *supra* note 53; McWhorter, *supra* note 58.

the labor movement had utilized “wake up” dating to 1903 and repeated its use in 1918. Carter concludes that “the proper way to understand the history of our current usage of ‘woke’ is that the metaphor was popularized by the labor movement, then borrowed by Black activists early in the twentieth century before bursting into blues music in the 1920s.” This study of the evolution of “woke” establishes, according to Carter, the complexity of the narrative about the origins of the word.

To be sure, the origins narrative may be somewhat contested. Yet, even in Carter’s version, Black activists’ borrowing of “woke” from the labor movement was a positive redeployment of the word. Moreover, regardless of its origin story, woke’s meaning has been long tied to and identified with Black persons’ consciousness concerning challenging, unjust conditions facing Black individuals and communities in the United States because of their race. Thus, notwithstanding the competing origin narratives, there is no dispute that in the twentieth century, after the meaning was established as African American vernacular signifying alertness to racial prejudice and discrimination, the word’s meaning continued to evolve.

As Kelley anticipated in his 1962 *New York Times* article, the term entered widespread popular culture. In 2008 singer Erykah Badu used “stay woke” in her song *Master Teacher* and later utilized the term in social media to address issues of racial justice.<sup>64</sup> Following the killings of Trayvon Martin by George Zimmerman (and Zimmerman’s verdict of not guilty) in Florida in 2012<sup>65</sup> and of Michael Brown in Ferguson, MO, in 2014, the Black Lives Matter movement emerged<sup>66</sup> and “stay woke” became a cry for awareness of racial injustice<sup>67</sup> that was popularized by use in social media. The opening of Jordan Peele’s 2017 film about racism in suburbia, *Get Out*, used a 2016 Childish Gambino (also known as Donald Glover) song, “Redbone,” from an album titled *Awaken My Love!* and the phrase “stay woke” entered language mainstream.<sup>68</sup> It was

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64. Markman, *supra* note 52; Ng, *supra* note 52.

65. Markman, *supra* note 52.

66. *How Has the Meaning of the Word “Woke” Evolved?*, *supra* note 52 (noting that “[a]s the word spread into internet culture, thanks in part to the popular #staywoke hashtag, its usage quickly changed . . . [and] began to signify a progressive outlook on a host of issues as well as on race.”); Perry Bacon Jr., *Why Attacking ‘Cancel Culture’ And ‘Woke’ People is Becoming the GOP’s New Political Strategy*, FIFTYEIGHT, Mar. 17, 2021, <https://fivethirtyeight.com/features/why-attacking-cancel-culture-and-woke-people-is-becoming-the-gops-new-political-strategy/>.

67. *How Has the Meaning of the Word “Woke” Evolved?*, *supra* note 52; Bacon, *supra* note 66; Romano, *supra* note 52.

68. *Get Out* was something of a surprise critical and commercial hit (in terms of entering mainstream/dominant American discourse). Ryan Faughnder, *How the Horror Satire ‘Get Out’ Became an Unlikely Oscar Darling*, L.A. TIMES (Feb. 7, 2018, 5:00 AM), <https://www.latimes.com/business/hollywood/la-fi-ct-get-out-oscar-campaign-20180207-story.html>.



then that it started being more generally used for issues other than race, including the 2017 Women’s march.<sup>69</sup> The word became a stand-in for a quest for social justice.<sup>70</sup>

The African American community generally continues to utilize woke in its original sense. Yet “woke” has undergone a transformation to have “new meaning as an insult—a linguistic process called pejoration.”<sup>71</sup> Persons on the conservative side of the political spectrum have morphed its popular meaning to describe progressive political ideologies; it is being deployed as a judgmental, depreciatory, dismissive term.<sup>72</sup> This broader political usage has resulted in a backlash from which both left- and right-leaning persons are shying away.<sup>73</sup>

To be sure, the cooptation and weaponization of “woke” is not new. “Black folks[’] . . . language has been banned, stolen, stripped, and suppressed, and yet we continue to reclaim it.”<sup>74</sup> Currently, the pejoration of woke is part of the cooptation and weaponization<sup>75</sup> of language including CRT and “intersectionality”<sup>76</sup> by the anti-diversity, anti-equity, anti-inclusion movement.

The word’s transmogrification from a descriptive of a social condition to a criticism of progressiveness is problematic. To set the stage for a race-based critical analysis of the attempt to (mis)appropriate the word’s meaning, the section that follows first briefly describes various critical theoretical movements, centering CRT. Thereafter it engages in a critical race theoretical analysis of the attack on wokeness and unveils the foundation of this attack as eras(c)ist: a desire to perpetuate the status quo; the wish further to entrench the perceptual playbook that claims the superiority of “Western” values—deploying the West as a symbol for Whiteness and its desirability.

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69. Kiernan, *supra* note 14; *How has the Meaning of the Word “Woke” Evolved?*, *supra* note 52; Romano, *supra* note 52.

70. *How Has the Meaning of the Word “Woke” Evolved?*, *supra* note 52; Bacon, *supra* note 66; Romano, *supra* note 52.

71. *How Has the Meaning of the Word “Woke” Evolved?*, *supra* note 52.

72. Ng, *supra* note 52.

73. Charles M. Blow, *The War on ‘Wokeness,’* N.Y. TIMES, Nov. 10, 2021, <https://www.nytimes.com/2021/11/10/opinion/wokeness-racism-politics.html>.

74. Kathleen Newman-Bremang, *When Did “Woke” Lose Its Meaning & How Do We Get It Back?*, REFINERY29, Feb. 1, 2023, <https://www.refinery29.com/en-us/2023/02/11253627/woke-meaning-co-opted-politics>.

75. *Id.*; Romano, *supra* note 52 (noting an interviewee shared that “the term has become an insult that is used against anyone who is concerned about justice and racism and explaining that the term “has been plundered into conservative and right-wing discourse as a means of mocking and satirizing the politics of those on the other side of the proverbial aisle”).

76. Newman-Bremang, *supra* note 74.

## CRITICAL THEORY

Critical Race Theory (CRT), particularly in light of the anti-woke focus, is much in the news these days,<sup>77</sup> mostly because it has become the rallying cry for some conservative political ideologies that wholly misrepresent the theoretical movement. CRT, they claim, is but racial favoritism and anti-Whiteness.<sup>78</sup> But that claim has no foundation in truth; CRT simply unearths the anti-Black bias embedded in the law.

CRT explores the role of race in law's structure; it exposes the racial biases embedded in the legal playbook's fabric. CRT chronicles and details how law and legal systems have been weaponized to perpetuate racial subordination.<sup>79</sup> CRT traces how perceptual playbooks perpetuate the historical racial subordination that started with slavery and was incorporated into the national story by way of the belief systems of those who write, enforce, and interpret the law.<sup>80</sup>

CRT exposes the inherent racial biases of the existing legal system [and] seeks to eliminate the hidden and patent partiality with that revealed knowledge base. . . . [CRT] proposes a dismantling of the existing biased systems and a reconstruction of the law and legal structure that promotes equality and justice for all. In short, CRT teaches the systemic impacts of racial subordination that had been at best ignored and at worst erased from the prevalent history narratives contained in books and embraced and taught in this country.<sup>81</sup>

CRT, however, is but one piece—albeit a significantly important piece—of a complex puzzle of critical theoretical frameworks that

77. See generally Stephen Sawchuk, *What Is Critical Race Theory, and Why Is It Under Attack?*, EDUC. WK. (May 18, 2021), <https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05>; Pernell v. Fla. Bd. Governors St. Univ. Sys., No. 22-cv-304, 2022 U.S. Dist. LEXIS 208374, at \*70-71 (N.D. Fla. 2022) (noting that by teaching CRT professors would violate the law).

78. See Benjamin Wallace-Wells, *How A Conservative Activist Invented the Conflict over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory>; Trip Gabriel, *He Fuels the Right's Cultural Fires (and Spreads Them to Florida)*, N.Y. TIMES (Apr. 24, 2022), <https://www.nytimes.com/2022/04/24/us/politics/christopher-rufo-crt-lgbtq-florida.html>. But see RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 3 (Dev Publishers & Devs., 3d ed. 2017) (2001) (“Unlike traditional civil rights discourse, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”). <https://doi.org/10.2307/j.ctt1ggjjn3.4>.

79. See generally HANNAH-JONES & N.Y. TIMES MAG., *supra* note 7, DELGADO & STEFANCIC, *supra* note 78; CRENSHAW ET AL., *supra* note 6.

80. See Hernández-Truyol, *Awakening the Law*, *supra* note 12, at 934-35.

81. *Id.* at 935.



endeavor to unveil infirmities and biases in the legal status quo with the goal of rendering equality—justice—for all a reality. Throughout recent history, legal theoretical movements have unveiled the biases inherent in the law and legal systems. For example, starting in 1881 with Oliver Wendell Holmes and from the 1920s until the 1950s, legal realism exposed that the foundations of law and judges' decisions interpreting the law are not based on abstract rules but rather upon the judges' social interests and favored social policy.<sup>82</sup> Realists were the first to identify the role of perceptual playbooks in creating, interpreting, and applying the law, thereby exposing the law's limitations. Legal Realists revealed that the law is not an objective system of rules and that judges are not objective interpreters. They exposed legal interpretation and consequent results reflected the biases of individual judges and society's power elite who make the laws.<sup>83</sup>

In the 1970s Critical Legal Studies ("Crits") went beyond legal realism and showed how at every stage in law-making, law interpretation, and application, the laws as well as the legal system tips the justice scales in favor of the interests of those in power, maintains subordination of the marginable, and retains the status quo-dependent hierarchy.<sup>84</sup> Crits extended the idea of legal realism that law meshed with social issues to expose that the law itself is imbued with social biases.<sup>85</sup> Law makers, law enforcers, and law interpreters all are influenced by their perceptual playbooks and the hierarchies they have internalized and in their work proceed to externalize.

After the Crits, Feminist Legal theorists ("Femcrits") emerged to expose how even the progressive critical theoretical movements' perceptual playbooks ignored or buried the role of sex/gender in law and legal institutions.<sup>86</sup> Just like the Realists and the Crits before them, Femcrits unearthed biases in law because of the elite perspective upon which the law depended. Feminism exposed that law and history have been written from a male perspective. Thus, law's perceptual playbook embeds and reinforces male values. Femaleness becomes "less than"—unequal, different, and other—a deviation from the norm.<sup>87</sup>

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82. See generally WILLIAM W. FISHER III, MORTON J. HORWITZ & THOMAS A. REED, *AMERICAN LEGAL REALISM* (1993) (law is enmeshed with social issues).

83. See generally OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* (1881).

84. See generally *id.*

85. See generally ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986).

86. See generally Berta Esperanza Hernández-Truyol, *Crossing Borderlands of Inequality with International Legal Methodologies—The Promise of Multiple Feminisms*, 44 GERMAN Y.B. INT'L L. 113 (2001) (for a general description of diverse feminist legal theory).

87. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (deconstructing the meaning of "objectivity," which is invariably aligned to the "systemic" and

Femcrit sex/gender consciousness did not include race-consciousness and thus failed to result in a theoretical move that would guarantee equal justice for all. Thus, CRT emerged to elucidate how all prior movements failed to take into account the significant role of race in law. CRT unveils how law and legal systems have worked to preserve the country's history of racial subordination.<sup>88</sup> Once CRT exposed the racial biases of the legal system, its goal has been to attain the constitutional promise of equality and justice for all.

Other legal theoretical movements, often with parallel social movements, have followed CRT: all movements have the goal of exposing the law's inherent biases favoring the status quo. For example, queer critical scholars unveil the sexualized hierarchy favoring heteropatriarchy;<sup>89</sup> disability critical theorists challenge the entry in perceptual playbooks that presumes and normalizes a particular conceptualization of ability;<sup>90</sup> and class crits, coming full circle with legal realism, reveal how economic hierarchies are embedded in law.<sup>91</sup> Because Latines can be of any race, sex, sexuality, ability, economic class, etc., Latine Critical Theorists ("LatCrit") unveil bias and subordination from the perspective of the multidimensionality and complexity of every human being.<sup>92</sup>

CRT exposes the systemic impacts of racial subordination that had been at best ignored and at worst erased from the prevalent history narratives contained in books and embraced and taught in this country.<sup>93</sup> For example, the history of European colonialism prior to the founding

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"hegemonic" male perspective observing that

Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—defines history, their image defines god, and their genitals define sex.)

*Id.* at 36.

88. See generally HANNAH-JONES & N.Y. TIMES MAG., *supra* note 7; DELGADO & STEFANCIC, *supra* note 78; CRENSHAW ET AL., *supra* note 6.

89. See, e.g., NIKKI SULLIVAN, A CRITICAL INTRODUCTION TO QUEER THEORY (2003) (unveiling sexualized hierarchy favoring heteropatriarchy). <https://doi.org/10.1515/9781474472944>.

90. See, e.g., DISCRIT (David J. Connor, Beth A. Ferri & Subini A. Annamma eds., 2016) (unmasking the scripts embedding disability).

91. See, e.g., Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859 (2008).

92. See *About LatCrit*, LATCRIT, <https://latcrit.org/about-latcrit/>.

93. *Id.*; Hernández-Truyol, *Awakening the Law*, *supra* note 12, at 935.

of the United States is a history of violence—cultural/ethnic, medical, and spiritual. Not unlike contemporary efforts to erase racial subordination, the dominant Thanksgiving narrative is a myth as racial/ethnic violence has been present since the first pilgrims at Plymouth Colony.<sup>94</sup> The materials used to teach the country's early history incorrectly, but purposefully, describe the lands taken by European colonists as virginal.<sup>95</sup> The truth exposes that narrative as a disingenuous move because far from vacant, the area we now call North and South America was densely populated.<sup>96</sup> The Native population, however, was virtually decimated by genocidal colonial efforts, as well as by European diseases that caused immense numbers of deaths during the Columbian Exchange.<sup>97</sup>

That early-established hierarchy still exists. Western colonizers self-designated as superior to the “barely human . . . not readily open to Christianization”<sup>98</sup> Native population, and pursuant to that conclusion justified taking Native land. The colonists entrenched in law their perception of White superiority and Native inferiority.<sup>99</sup> The U.S. hierarchical perceptual playbook was created at the country's foundation, built upon prior European colonial logics and practices, and written into the social and legal fabric being challenged by critical theorists today.

The Constitution, a founding document written by and for land owning White men (often enslavers),<sup>100</sup> internalized conceptualizations of racial and gender supremacy and adopted a racialized caste system.<sup>101</sup>

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94. Claire Bugos, *The Myths of the Thanksgiving Story and the Lasting Damage They Imbue: In Truth, Massacres, Disease and American Indian Tribal Politics Are What Shaped the Pilgrim-Indian Alliance at the Root of the Holiday*, SMITHSONIAN MAG. (Nov. 26, 2019), <https://www.smithsonianmag.com/history/thanksgiving-myth-and-what-should-be-teaching-kids-180973655/>.

95. ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLE'S HISTORY OF THE UNITED STATES* (2015).

96. Simon Lewis et al., *Colonization of Americas Led to so Much Death It Caused a Period of Global Cooling*, NEWSWEEK (Dec. 8, 2021), available at <https://www.newsweek.com/americas-colonization-christopher-columbus-native-indigenous-death-global-1313097> (estimating the total pre-1492 population of 60 million people).

97. DUNBAR-ORTIZ, *supra* note 95.

98. Lewis et al., *supra* note 96.

99. *Johnson v. McIntosh*, 21 U.S. 543, 588 (1823) (upholding the idea that might makes right in holding that “Conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted.”).

100. Townhall Video: Jeffrey Rosen & David Rubenstein, *The Declaration of Independence, the U.S. Constitution, and the Bill of Rights* (National Constitution Center, Oct. 30, 2013), <https://constitutioncenter.org/news-debate/americas-town-hall-programs/from-the-declaration-to-the-bill-of-rights> (telling the story of how one landmark document led to the next in the context of the evolving story of America's battle for freedom).

101. Tally Botzer, *Myths and Misunderstandings: Slavery in the United States*, AM. CIV. WAR MUSEUM (Aug. 15, 2017), <https://acwm.org/blog/myths-and-misunderstandings-slavery->

The 3/5<sup>th</sup> clause, counting enslaved persons as 3/5<sup>th</sup> of a person simply to ensure enslavers' higher representation in Congress,<sup>102</sup> treats the lives of enslaved Black persons as currency to provide political power to propertied White persons in different regions. The early relationship of White male privilege and power results in the racialized and gendered structural bias in law and legal culture of today.<sup>103</sup>

Ultimately, enslaved persons were set free,<sup>104</sup> yet CRT teaches us that racial subordination persisted by exposing the cycles of racial progress marked by White backlash that entrenches the existing racial hierarchy.<sup>105</sup> The freeing of enslaved persons caused White fears that resulted in the emergence of organizations—such as the KKK—that sought to intimidate and perpetuate subordination.<sup>106</sup> Black persons' freedom also triggered laws—Black Codes—to limit the rights of Black persons and continue their labor exploitation.<sup>107</sup> The post-Civil War era of Reconstruction<sup>108</sup> saw backlashes—events like the Colfax, Louisiana

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[united-states/](#).

102. See HANNAH-JONES & N.Y. TIMES MAG., *supra* note 7 (discussing “the so-called Great Compromise” that resulted in a “Southern advantage conferred by the Three-fifths Clause” all in order to “protect slavery”).

103. See, e.g., *March 2020 Snapshot: Diversity of the Federal Bench: Current Statistics on the Gender and Racial Diversity of the Article III Courts*, AM. CONST. SOC'Y (Feb. 24, 2020), <https://www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench-march-2020/> (reporting that as of March 2020, 73% of Federal Judges are White, and 66% are men).

104. See Emancipation Proclamation, Jan. 1, 1863, <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html>.

105. See Black Awakening Movement Website, Aug. 31, 2015, <https://blackawakeningmovement.com/meetings/brotha-kaba-2/>; Cycle of White Backlash in Chart, Black Awakening Movement, <https://blackawakeningmovement.com/meetings/cycle-of-white-backlash-in-chart-4/>.

106. See *White Southern Responses to Black Emancipation*, PBS WUFT: AMERICAN EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/reconstruction-white-southern-responses-black-emancipation/> (presenting historians who “describe the thinking that gave rise to white supremacist groups like the Ku Klux Klan during Reconstruction”).

107. Nadra Kareem Nittle, *How the Black Codes Limited African American Progress After the Civil War: The Black Codes Effectively Continued Enslavement for African Americans by Restricting Their Rights and Exploiting Their Labor*, HISTORY.COM (Jan. 28, 2021), <https://www.history.com/news/black-codes-reconstruction-slavery> (reporting that the codes defined the work conditions and compensation for former slaves, “criminalized activity that would make it easy to imprison African Americans,” and sought to deny the vote, control places where to live or travel, and use children for labor).

108. *Reconstruction*, HISTORY.COM, <https://www.history.com/topics/american-civil-war/reconstruction>.

Massacre of 1873<sup>109</sup>—and the passage of Jim Crow laws.<sup>110</sup> The civil rights movement brought legal reform,<sup>111</sup> yet in 2023 there is a perverse proliferation of laws veiled as anti CRT, anti-woke, anti-Diversity Equity and Inclusion (DEI) that seek not only to prevent any progress towards racial equality but also, perhaps more insidious, to reverse progress achieved.

Notwithstanding the factual accuracy of CRT’s historical narrative about racial subordination, anti-CRT sentiments are high and anti-CRT mandates are proliferating.<sup>112</sup> And there can be no doubt that the attack on CRT is intentional and “anti-anti-racism.”<sup>113</sup> The onslaught against CRT was an act of calculated “disinformation”—much like, and as part of, the attack on “woke.” The blitz against CRT purposefully, wrongfully, deceitfully, and reprehensibly transmogrifies a justice-driven endeavor to unveil uncomfortable truths about race in American history as a source of inequality into a crusade that “connotes hostile, academic, divisive,

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109. Equal Justice Initiative, *Ch. 3, Documenting Reconstruction Violence: Known and Unknown Horrors, in RECONSTRUCTION IN AMERICA: RACIAL VIOLENCE AFTER THE CIVIL WAR, 1865-1876*, <https://eji.org/report/reconstruction-in-america/freedom-to-fear/#resisting-economic-exploitation>.

110. *Jim Crow Laws*, HISTORY.COM (Mar. 26, 2021), <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> (explaining the laws, based on the Black Codes, as intended “to marginalize African Americans by denying them the right to vote, hold jobs, get an education or other opportunities” with consequences of arrest, fines, jail, violence if defied).

111. Civil Rights Act of 1964 tit. 7, 42 U.S.C. § 2000e (1964).

112. TAIFHA ALEXANDER ET AL., CRT FORWARD: TRACKING THE ATTACK ON CRITICAL RACE THEORY, UCLA SCHOOL OF LAW CRITICAL RACE STUDIES, Apr. 2023, [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf); see also CRT Forward Tracking Project, <https://crtforward.law.ucla.edu/> (providing, as of June 30, 2023, that “since September 2020, a total of 214 local, state, and federal government entities across the United States have introduced 699 anti-Critical Race Theory bills, resolutions, executive orders, opinion letters, statements, and other measures”); David Theo Goldberg, *The War on Critical Race Theory*, B. REV. (May 7, 2021), <https://bostonreview.net/articles/the-war-on-critical-race-theory/> (describing former President Trump’s executive order “banning ‘diversity and race sensitivity training’ in government agencies, including all government ‘spending related to any training on critical race theory’” and states, including Arkansas, Florida, Oklahoma, and Utah, banning of teaching CRT); see also *Map: Where Critical Race Theory Is Under Attack*, EDUC. WKLY. (Dec. 3, 2021), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> (reporting that “[a]s of November 24, 29 states have introduced bills or taken other steps that would restrict teaching critical race theory or limit how teachers can discuss racism and sexism . . . Twelve states have enacted these bans, either through legislation or other avenues . . .” and also that legislation has been introduced at the national level to deny federal funding to schools that teach critical race theory and/or discussions of racism and sexism and attaching table listing states’ actions on banning CRT). See generally Sarah Schwartz, *Map! Where Critical Race Theory is Under Attack*, EDUC. WK., June 11, 2023 (updated June 13, 2023) [hereinafter *Map!*], available at <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> (noting multiple states in which anti-CRT legislation has been passed, introduced, vetoed, overturned, or stalled).

113. ALEXANDER ET AL., *supra* note 112, at 10.

race-obsessed, poisonous, elitist, anti-American” sentiments.<sup>114</sup> Confessing to a knowing “campaign” of “misinformation” the originator of the anti-CRT move stated

[w]e have successfully frozen their brand—“critical race theory”—into the public conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category. The goal is to have the public read something crazy in the newspaper and immediately think “critical race theory.” We have decodified the term and will recodify it to annex the entire range of cultural constructions that are unpopular with Americans.<sup>115</sup>

CRT antagonists seek to teach only a particular (Western) historical narrative and are legislating against hurting feelings<sup>116</sup>—the feelings of those who have been privileged by, and benefitted from, the hierarchy embedded in the status quo. Indeed, the erascist anti-CRT movement embedded in the anti-woke movement (interestingly confirming its racialized biases) seeks to expunge an unseemly and very long chapter, still being written, on the unfortunate racial history of the United States. The assault urges, and in some instances requires, the telling of fake history lessons that erase actual occurrences of anti-Black actions in this country.<sup>117</sup> Critical analysis unveils the raw truth of the erasure and subordination being effected by the anti-CRT legislation; it exposes the

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114. Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict Over Critical Race Theory*, NEW YORKER, June 18, 2021, available at <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory>.

115. ALEXANDER ET AL., *supra* note 112, at 10 (quoting Christopher F. Rufo (@realchrisrufo), TWITTER (Mar. 15, 2021), available at <https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law-CRT-Report-Final.pdf>).

116. *See, e.g.*, Bill No. A08253, Proposed Amendment to NY education law, § 801-b, [https://assembly.state.ny.us/leg/?default\\_fld=&bn=A08253&term=2021&Summary=Y&Action=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y#A08253](https://assembly.state.ny.us/leg/?default_fld=&bn=A08253&term=2021&Summary=Y&Action=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y#A08253). The proposed Amendment provides:

“Critical race theory prohibited. The regents and school districts in the state of New York shall not: . . . ; (2) require students to take part in a course that teaches individuals to *feel discomfort, guilt, anguish or any other form of psychological distress* due to the individual's race or religion; . . .

*Id.* (emphasis added); *see also* TENN. CODE ANN., tit. 49, ch. 6, pt. 10, § 51 (effective July 1, 2021), <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0580>.

117. *See* Letter from Moms for Liberty to Commissioner Penny Schwinn of the Tennessee Department of Education (June 30, 2021), <https://drive.google.com/file/d/16W9grkwSFsIPRQOSpQfnAHNJzvDH5Bkk/view> (requesting that books on civil rights heroes, including Martin Luther King Jr. and Ruby Bridges, be removed because they violate the Tennessee law).



at best incomplete, at worst false, “status-quo” preferred narrative of the history of race embedded in history books, school textbooks, and popular imagination.

In 2023 anti-CRT backlashes are rising to a fevered pitch. In an effort to discredit movements that have unveiled the racial biases in law, there is a proliferation of laws that patently seek to erase if not deny the country’s anti-Black history.<sup>118</sup> For example, in 2022 the state of Florida adopted HB7, the so-called Stop WOKE Act that constrains how workplaces and educational institutions can discuss racism, racial bias, race relations, and diversity; it bans teaching CRT in schools and universities—although an injunction was issued with respect to banning teaching CRT in higher education institutions.<sup>119</sup> Most recently, in January 2023, the Board of Education rejected an Advanced Placement course on African American Studies because it “lack[ed] educational value.”<sup>120</sup> In response to the potential economic loss if a large student population in Florida is prohibited from enrolling in the A.P. Course, the College Board subsequently stripped the course’s curriculum of much of the material to which Florida objected,<sup>121</sup> although it claims not to have been influenced by Florida’s objections.

To this day the founding script of racial subordination is part of the

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118. Bill Hutchinson, *Turning Point: Black Lives Matter Organizers Say Right-Wing Backlash Was Expected As Movement Grew*, ABC NEWS (Oct. 25, 2020, 10:00 AM), <https://abcnews.go.com/US/turning-point-black-lives-matter-organizers-wing-backlash/story?id=72863444>; see, e.g., 2022 Fla. Sess. Law Serv. ch. 72 (West) (Individual Freedom Act, formerly called the Florida Stop WOKE Act, amending the Florida Educational Equity Act to prohibit “training or instruction that espouses, promotes, advances, inculcates, or compels . . . student[s] or employee[s] to believe [eight specified concepts that revolve around race]”). See also *Map!*, *supra* note 112 (mapping legislation forgetting CRT).

119. See 2022 Fla. Sess. Law Serv. ch. 72 (West); *Pernell v. Fla. Bd. Governors St. Univ. Sys.*, No. 22-cv-304, 2022 U.S. Dist. LEXIS 208374, at \*152 (N.D. Fla. Nov. 17, 2022); see also *Governor Ron DeSantis Signs Legislation to Protect Floridians from Discrimination and Woke Indoctrination*, RON DESANTIS: 46TH GOVERNOR OF FLA. (Apr. 22, 2022), <https://www.flgov.com/2022/04/22/governor-ron-desantis-signs-legislation-to-protect-floridians-from-discrimination-and-woke-indoctrination/>.

120. Alison Durkee, *Rejecting AP Studies, Restricting Libraries: Here’s How DeSantis and His ‘Anti-Woke’ Policies Are Impacting Florida Education*, FORBES (Jan. 20, 2023, 11:02 AM), <https://www.forbes.com/sites/alisondurkee/2023/01/20/rejecting-ap-studies-restricting-libraries-heres-how-desantis-and-his-anti-woke-policies-are-impacting-florida-education/?sh=48190f2d7150>.

121. Anemona Hartocollis & Eliza Fawcett, *A.P. Curriculum for African American Studies*, N.Y. TIMES, Feb. 9, 2023, <https://www.nytimes.com/2023/02/01/us/college-board-advanced-placement-african-american-studies.html>. The State combines its work to mandate proper parameters of higher education with its latest battle cry of “education” (Civics) not “indoctrination” (CRT). Ironically, while the elimination of indoctrination includes not only excising CRT from the curriculum but also entire departments, African Studies and Women’s Studies, under the rubric of “education” the state is funding the establishments that promote Western values, such as the Hamilton Center at the University of Florida. See, e.g., UF Hamilton Center, <https://hamilton.center.ufl.edu/>.

fabric of the structures of U.S. law and society. By prohibiting Florida's public schools and private businesses from utilizing teaching or training materials that might make people feel uncomfortable or guilty over their race, sex, or national origin,<sup>122</sup> Florida's Stop WOKE Act<sup>123</sup>—an acronym for Stop Wrongs to Our Kids and Employees—seeks to perpetuate the status quo and further embed racial hierarchy in law and society.

A review of the teaching of history as well as of the materials banned for the teaching of history reveal the desire to entrench a biased story—the status quo—as an objective, unbiased narrative. For example, in response to HB7 in Florida, a publisher that provides educational materials for K-6<sup>th</sup> grades omitted race in a blurb on Rosa Parks as the reason she was asked to change seats on a bus.<sup>124</sup> HB7, an unawakened law if there ever was one, has banned the teaching of CRT because, contrary to CRT's desire to unveil truths about the racialized nature of the country's institution, Florida claims that CRT “teaches our kids to hate our country and to hate each other.”<sup>125</sup> That faux—and unconscious—account of history is currently being legislated as the only factual truth and results in the entrenchment of the biased perceptual playbooks of the conquerors, the founding fathers, and those who have been in socioeconomic, political, and legal power since. CRT, its opponents would tell you, is woke, thus HB7. In reality, HB7 is asleep, and seeks to perpetuate the status quo and the condition of subordination and exclusion of non-White persons' knowledge and experiences from

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122. In the context of public schools, the law provides that “[a] person should not be instructed that he or she must feel guilt, anguish, or other forms of psychological distress for actions, in which he or she played no part, committed in the past by other members of the same race or sex.” *Id.* (codified at FLA. STAT. § 1003.42(3)(f) (2023)). The law prohibits “as a condition of employment . . . any . . . required activity that espouses” that “[a]n individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, sex, or national origin.” *Id.* (codified at FLA. STAT. § 760.10(8)(a)(7) (2023)); see also Zoe Christen Jones, *Florida Legislature Passes “Stop WOKE Act,” Second Controversial Education Bill This Week*, CBS NEWS (Mar. 10, 2022), <https://www.cbsnews.com/news/florida-critical-race-theory-education-stop-woke-act/>; Jennifer W. Corinis & Katie Molloy, *Florida Passes “Stop W.O.K.E. Act”—Prohibits Employers from Requiring Employees to Attend CRT-Inspired Training*, GREENBERG TRAURIG (May 6, 2022), <https://www.gtlaw.com/en/insights/2022/5/florida-passes-stop-woke-act-prohibits-employers-requiring-employees-crt-inspired-training>.

123. Stop WOKE Act (HB7), 2022 Fla. Sess. Law Serv. ch. 72 (West). HB7 is a Florida law that provides that the teaching of certain concepts, such as CRT, constitute discrimination, revises the teaching of Black History, and prohibits the recommendation of instructional materials that include certain principles (such as CRT), <https://www.flsenate.gov/Session/Bill/2022/7>.

124. Justin Gamble, *Race Left Out of Rosa Parks Story in Revised Weekly Lesson Text for Florida Schools Highlights Confusion with Florida Law*, Mar. 22, 2023, <https://www.cnn.com/2023/03/22/us/florida-textbook-race-rosa-parks-reaj/index.html>.

125. *Id.*



the education sphere.

Interestingly, just as the positive deployment of “stay woke” expanded beyond awareness about racial injustice to other justice issues such as gender inequality, the anti-woke movement’s attacks go beyond race and CRT. For example, in Florida, the “Don’t Say Gay” bill has been signed into law, effectively seeking to erase any discussion of LGBTQ+ identities and issues through the prohibition of sexual orientation or gender identity education,<sup>126</sup> much like the Stop WOKE Law seeks to erase teaching about race-based injustice.<sup>127</sup>

Significantly, the “Don’t Say Gay” law’s moniker is a misnomer. The law is a modern-day dog whistle seeking to eliminate any mention of LGBTQ+ identities, persons, and families from existence.<sup>128</sup> On its face, however, the law proscribes education not about gayness or trans identity specifically, but rather about sexual orientation and gender identity in general.<sup>129</sup> As everyone has a sexual orientation (be it heterosexual, gay, lesbian, bisexual, queer, pansexual, or asexual) and a gender identity (be it transgender, cisgender, or non-binary), the law, in reality if not in practice, prohibits conversations about and learning opportunities around everything and everyone.<sup>130</sup> In practice, however, as intended although not expressly articulated, the law has a chilling effect predominately on gender and sexual minorities as perceptual playbooks result in the equating of sexual orientation with gay, lesbian, or bisexual persons and gender identity with trans persons. The promoters of the law rely on the perceptual playbooks that normalize the status quo and ingrain such

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126. Jaclyn Diaz, *Florida’s Governor Signs Controversial Law Opponents Dubbed ‘Don’t Say Gay,’* NPR (Mar. 28, 2022), <https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis>. To be sure, Florida is not alone. Around the country, state anti-LGBTQ rights laws are proliferating. See, e.g., ACLU, Mapping Attacks on LGBTQ Rights in U.S. State Legislatures, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights> (noting that “The ACLU is tracking 494 anti-LGBTQ bills in the United States”); Equality Federation, Up-to-The-Minute Tracking of Legislation Affecting LGBTQ+ People, State Legislation Tracker, <https://www.equalityfederation.org/state-legislation>; Human Rights Campaign, Our Fight for LGBTQ+ Rights in the States, <https://www.hrc.org/campaigns/the-state-legislative-attack-on-lgbtq-people> (noting that in 2023, as of August, HRC has “seen more than 400 anti-LGBTQ+ bills introduced in states”); Trans Legislation Tracker, <https://translegislation.com/> (noting that as of August 566 bills were introduced in 49 states of which 80 passed, 358 remained active and 128 failed).

127. See *supra* text accompanying notes 123-25.

128. See Alexander Panetta, *Florida’s ‘Don’t Say Gay’ Bill Part of Republican Drive to Limit Talk of Sex and Race in U.S. Classrooms,* CBC NEWS (Mar. 20, 2022), <https://www.cbc.ca/news/world/florida-bill-controversy-1.6389308>.

129. Diaz, *supra* note 1266.

130. See Matt Lavietes, *Here’s What Florida’s ‘Don’t Say Gay’ Bill Would Do and What It Wouldn’t Do,* NBC NEWS (Mar. 16, 2022, 6:34 AM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/floridas-dont-say-gay-bill-actually-says-rcna19929>; see also Laurel Wamsley, *A Guide to Gender Identity Terms,* (June 2, 2021, 6:01 AM), <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>.

heteronormativity as the only acceptable way of being and loving. This mirrors the idea behind the Stop WOKE Act that Whiteness is not a racial identity. These unawakened laws aim to reinforce the status quo—the idea ingrained in perceptual playbooks that Whiteness, heterosexuality, and cisgender identity are the norm; everything else is a deviation—an undesirable, marginalized, and demonized otherness. The “Don’t Say Gay” law and the Stop WOKE Act reveal how the anti-wokeness movement engenders unawakened laws that perpetuate the status quo and maintain hierarchies of power.

### WOKENESS AND THE IMPORTANCE OF CRITICAL ANALYSIS

Proponents of anti-wokeness claim simply to be a movement of social conservatives who perceive matters such as CRT, DEI projects, and LGBTQ+ protections as unfair partiality towards persons of color and an inappropriate imposition of dogmatic viewpoints by educational institutions.<sup>131</sup> One of the anti-woke movement’s intentional goal is to entrench originalism: the preservation of the will of the founders. In the 21<sup>st</sup> century perpetuating the status quo translates to entrenching the values that existed at the founding which notably included the abhorrent institution of slavery and the status of all women as property.

Anti-wokeness misinformation is precisely the location in which CRT analysis, utilizing the 4-step awakening inquiry, serves to unearth the biased sentiments behind the movement:

1. Recognition: CRT raises awareness of the exclusionary and pejorative intentions of the anti-woke movement;
2. Exposure: CRT names the problem—misappropriation of a culturally relevant and meaningful term to turn it against the culture;
3. Deliberation: CRT encourages and insists upon reflection on the problem from a perspective of inclusion of all voices affected by the misappropriation and consequent disinformation; and

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131. See, e.g., SCOTT YENOR, FLORIDA UNIVERSITIES: FROM WOKE TO PROFESSIONALISM (The Claremont Institute Center for the American Way of Life), <https://dc.claremont.org/wp-content/uploads/2023/02/Florida-Universities-From-Woke-to-Professionalism-Final-Text.pdf> (claiming that DEI sets both “radical political and social views that are turning our universities against America’s most cherished values” and that “DEI ideology encourages racial preferences in hiring and admissions.”). It is worth noting that values of equality are embedded in the Fifth and Fourteenth Amendments to the Constitution. *But see* Jenn Selva & Amy Simonson, *Protests held a Boise State After Professor Says at Conference that Men, not Women, Should be Recruited into Fields like Medicine and Law*, CNN, Dec. 8, 2021, <https://www.cnn.com/2021/12/08/us/boise-state-professor-men-women-studies/index.html>.

4. Solution: CRT facilitates taking action as, by unearthing the negative intentions of the anti-woke movement, it allows the deconstruction of the intent behind and the reversing of inappropriate actions such as book bans, attacks on academic subjects, disciplines, and programs, and the assault on equality and justice for all.

By unearthing, interrogating, and challenging the foundational values and institutions, CRT shows the infirmities and biases embedded in the status quo.

So, what is the “woke” that the anti-wokeness movement is seeking to eliminate? Matters on the chopping block go beyond “intersectionality [and] critical race theory, [they include] Black feminism, queer theory and other frameworks that address structural inequality.”<sup>132</sup> On the ground, elimination of such topics means, for instance, that books, including textbooks, are banned. According to PEN America “[o]verwhelmingly, book banners continue to target stories by and about people of color and LGBTQ+ individuals.”<sup>133</sup> Yet, as a writer observed, “[p]ulling books from school libraries that talk about gender or the struggle of black and brown people in the history of the United States is the polar opposite of woke.”<sup>134</sup>

Significantly, the anti-woke-book banning movement is not majority-driven. A 2022 poll conducted by the American Library Association found that over 71% of parents across political party affiliation—Democrats (75%), independents (58%), and Republicans (70%)—oppose book banning.<sup>135</sup> Moreover, most parents of children in public schools

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132. Open Letter on Fighting “Anti-Woke” Censorship of Intersectionality and Black Feminism, Action Network, Feb. 28, 2023, <https://actionnetwork.org/petitions/open-letter-on-fighting-anti-woke-censorship-of-intersectionality-and-black-feminism>.

133. Kasey Meehan & Jonathan Friedman, Pen America, Banned in the USA: State Laws Supercharge Book Suppression in Schools—Update on Book Bans in the 2022-2023 School Year Shows Expanded Censorship of Themes Centered on Race, History, Sexual Orientation and Gender, Apr. 20, 2023, <https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/>.

PEN America recorded more book bans during the fall 2022 semester than in each of the prior two semesters. This school year also saw the effects of new state laws that censor ideas and materials in public schools, an extension of the book banning movement initiated in 2021 by local citizens and advocacy groups.

*Id.*

134. Kiernan, *supra* note 14.

135. Press Release, American Library Association (ALA) News, Large Majorities of Voters Oppose Book Bans and Have Confidence in Libraries (Mar. 24, 2022), <https://www.ala.org/news/press-releases/2022/03/large-majorities-voters-oppose-book-bans-and-have-confidence-libraries>.

embrace their children's age-appropriate exposure to a broad range of topics derided as "woke" and thus being banned, including the 1619 project, the teaching of which is expressly banned by Florida's Stop WOKE Law; *The Hate U Give*, a book examining society's deployment of stereotypes of Black persons to justify violence and racism; and *George*, a book about a transgender youth (both banned in Florida, among other states).<sup>136</sup>

An examination through a CRT lens of the misappropriation of "woke" not only to change its meaning but also to ban books and prohibit certain topics and fields from being covered in educational programs underscores the importance of critical theorizing in unveiling injustice. Indeed, anti-wokeness has been utilized as a strategy to take things that are culturally part of a community and pervert them into an erasure of community's history. In addressing the disparate targeting in book-bans, one author has poignantly observed that the anti-woke movement is "yelling about banning books to protect children from 'indoctrination' when they're the ones trying to brainwash a generation into believing racism doesn't exist and that history didn't happen."<sup>137</sup> This author observes that "'woke' is now loaded with bigotry and hatred. It's a slur now."<sup>138</sup>

Another author has noted that "[p]eople wanting the History of Black Americans taught or acknowledged in history classes or history books are not woke; it's a simple fact the Black community struggled to have a place in this country, and in doing so, they gave us so much. Asking for the truth of that to be taught is not woke . . . . Woke has been culturally appropriated and turned against its true meaning, slowly making it devoid of value or story. . . . [Some] are twisting it into a negative, using it for every situation they fear or don't understand . . . ."<sup>139</sup>

In banning the teaching of factually accurate history of African Americans, among others, the anti-woke movement seeks to obscure, if not erase, difficult realities about oppression, subordination, marginalization, and power. CRT, on the other hand, urges the pursuit of knowledge. To be sure, the voices historically suppressed or marginalized have long shared their own experiences, in their own voices. It is only recently, however, that these voices, such as Amanda Gorman's, have been recognized, published, and rewarded.

Critical analysis urges that these formerly silenced voices be heard, which, in turn, allows the analysis of and search for solutions to societal (society, family, religion, education) concerns that have been ignored or

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136. *Id.*

137. Newman-Bremang, *supra* note 74.

138. Newman-Bremang, *supra* note 74.

139. Kiernan, *supra* note 14.

overlooked. Anti-wokeness is erascist; in seeking to perpetuate the status quo it suppresses knowledge and knowing about the subordination of African American persons, Native American persons, women of all races, LGBTQ+ persons, the differently abled, the marginable classes.

A CRT analytical lens enables seeing that “woke” has taken a ride on the “euphemism treadmill” to change from being a word that “was the hot new badge of enlightenment” referring to awareness of “the condition of Black America and the role of systemic racism within it” to a term of “ridicule or . . . [with] grimy associations.”<sup>140</sup> Patently, one goal of anti-wokeness is a rejection of Blackness.<sup>141</sup> As the Rev. Reimer has suggested, the attack on the word “Woke” translates to an assault on African American language. “To be woke is to be Black.”<sup>142</sup> But it is more than that as anti-wokeness extends to anti-feminism and to anti-LGBTQ. Moreover, the anti-wokeness rejection of DEI takes the movement to eschew matters beyond race, sex, and sexuality. It extends to erasing class, ability, and ethnicity as meaningful vectors of analysis and intervention as well—all being identifiers of persons included in DEI initiatives.

Notwithstanding the distortion of woke’s meaning, much like the distortions surrounding the book-bans, people around the country embrace the true meaning of “woke.” When asked, people do not define woke as some nefarious impulse to discriminate, exclude, or indoctrinate. Rather people define woke as “a new form of being enlightened” and those who consider themselves to be “woke” “see themselves as having

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140. McWhorter, *supra* note 58.

141. *Id.* McWhorter posits another possibility: that the evolution of “woke” “is a demonstration of negative associations gunking up well-intentioned labels[;]” that woke has undergone the same linguistic process as “politically correct” and, like that phrase, has become the “PC” slur. *Id.* He explains that when a politically charged word is utilized, then the opposition ridicules its use and the word eventually becomes replaced with another word. He suggests that politically correct became woke and that eventually another word will come to replace it. He notes:

A well-used word or expression is subject to ridicule or has grimy associations. A new term is born to replace it and help push thought ahead. But after that term spends some time getting knocked around in the real world, the associations the old term had settle back down, like gnats, on the new one. Yet another term is needed. Repeat.

*Id.*

142. Watson, *supra* note 56. Watson recounts an interview with Georgia Anne Muldrow in which she said “Woke is definitely a black experience— . . . That’s woke—understanding what your ancestors went through. Just being in touch with the struggle that our people have gone through here and understanding we’ve been fighting since the very day we touched down here.”

*Id.*

been awakened to a new set of ideas, value systems, and knowledge.”<sup>143</sup> Consequently, they attain a deeper understanding on how to attain justice.

A March 2023 poll suggests that the attempt to reframe woke as a negative has been unsuccessful. Contrary to the use of “woke” as a pejorative, “a majority of Americans . . . see the word as a positive attribute . . .”<sup>144</sup> Indeed, the majority of the poll participants explain that the term “means ‘to be informed, educated on, and aware of social injustices.’”<sup>145</sup> Less than 40% of the persons surveyed believe that the term signifies “to be overly politically correct and police others’ words.”<sup>146</sup> Thus, the move to coopt the term and utilize it to stall calls for racial justice has largely failed. The attempt to subvert “woke,” a word that has been part of African Americans’ call for justice by for more than a century, is unveiled by a critical race theory analysis to be a racialized move. Survey data informs us that the attempt to redefine it as a negative has flopped. In light of that data, it is difficult, if not impossible, to comprehend the success of the antiwokeness movement’s legislative agenda.

Critical analysis leads to the conclusion that the anti-woke movement deplors wokeness simply because it is inclusive of all members of society and values their varied experiences. Woke exposes the very real structural biases against “others”—racial others, ethnic others, sexuality/gendered others—that the anti-woke movement is denying and the evidence of which they want to bury. In other words, wokeness—awakening—exposes the biases of the status quo; it “indicts the status quo.”<sup>147</sup> Challenging the status quo is at the heart of critical thinking.

## CONCLUSION

Race has played a major part in U.S. history. CRT has unveiled how race and racial subordination is not only personal, it is embedded in the systems and structures of society, law, and government. Racial othering started in 1492 with conquest and the ensuing violence against Native Americans and continued to touch all who looked different from the settlers, colonists, and the founders.

Racial hierarchy is part of the country’s fabric as a matter of law.

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143. Romano, *supra* note 52.

144. Susan Page, *A GOP War on ‘Woke’? Most Americans View the Term as a Positive*, USA TODAY/Ipsos Poll Finds, USA TODAY, Mar. 8, 2023, <https://www.usatoday.com/story/news/politics/2023/03/08/gop-war-woke-most-americans-see-term-positive-ipsos-poll/11417394002/>.

145. *Id.*

146. *Id.*

147. Blow, *supra* note 73.

After the Natives' experience, violence continued with the abominable institution of enslavement of Black Africans, that did not end in the United States until 1865 with the ratification of the 13th amendment.<sup>148</sup> The Chinese Exclusion Act of 1882<sup>149</sup> and its subsequent extensions proscribing immigration from Asia ended only in 1965,<sup>150</sup> but contentious conversations concerning immigration policies persist at the national level, mostly triggered by the fear of influxes of Latines and ethnic and racial others. *Korematsu*<sup>151</sup> confirmed the legality of Japanese-American internment during WWII—a case not repealed until 2018.<sup>152</sup> Not until 1967 with the Supreme Court's decision in *Loving v. Virginia* did miscegenation mandates end.<sup>153</sup> And although in 2020 various states passed the Create a Respectful and Open World for Natural Hair, known as the CROWN Act, which proscribes race-based hair discrimination in the workplace and public schools and thus promotes equality, it is yet to become national law.<sup>154</sup>

Most recently, as this Essay has chronicled, the country is experiencing the anti-wokeness movement. The movement's goal is to erase differences—racial, sexual, gendered—from the Western ideal (the face of the “founding fathers”). Any difference is demonized as “otherness;” as different from the norm. To this end, the anti-wokeness agenda also includes silencing any perspective or analysis of history and society that is not provided through a Western, heteronormative lens. The agenda's tactics include banning books, restricting educational materials, banning artistic performance, and demonizing CRT. Indeed, in Florida the government's anti-woke movement has misappropriated not only woke but the acronym DEI—originally standing for diversity, equity, and

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148. CONST. amend. XIII.

149. Chinese Exclusion Act (1882).

150. In 1943, Congress passed a measure to repeal the discriminatory exclusion laws against Chinese immigrants and to establish an immigration quota for China of around 105 visas per year. Repeal of the Chinese Exclusion Act (1943). Congress did away with the National Origins quota system altogether in the Immigration Act of 1965. *Id.*

151. *Korematsu v. United States*, 323 U.S. 214 (1944).

152. *Trump v. Hawaii*, 585 U.S. \_\_\_\_ (2018).

153. *Loving v. Virginia*, 388 U.S. 1 (1967).

154. Matt Gonzales, CROWN Act: Does Your State Prohibit Hair Discrimination?, SHRM, Feb. 7, 2023, <https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/crown-act-does-your-state-prohibit-hair-discrimination.aspx#:~:text=As%20of%20June%202023%2C%202022,formally%20examine%20the%20CROWN%20Act> (noting that “As of June 2023, 22 states have enacted the CROWN Act into law and more than half of all states have filed or prefiled legislation for consideration. About 1 in 10 states have yet to formally examine the CROWN Act.”). It remains a proposed bill in Congress as, although it passed the House, Senate Republicans blocked the passage of the Act in December of 2022. *See* Press Release, Bonnie Watson Coleman, Senate Republicans Block Passage of CROWN Act (Dec. 14, 2022), <https://watsoncoleman.house.gov/newsroom/press-releases/senate-republicans-block-passage-of-crown-act>.

inclusion intended to be embracing of all swaths of society—and remarked the acronym as discrimination (against White persons), exclusion (of White persons), and indoctrination (in viewpoints other than Western thought or values).<sup>155</sup>

These attacks intend to extend and perpetuate the status quo—historic violence against and exclusion of others. This Essay has discussed the Stop Woke Act in Florida and its effects on education and knowledge. Another, HB 999/SB 266, builds on Stop Woke and expressly prohibits funding of DEI programs,<sup>156</sup> as well as—some would say patently unconstitutionally as interfering with First Amendment rights, including academic freedom—eliminates or restricts certain courses of study as having “unproven, theoretical, or exploratory” content. Regarding general education courses SB266 expressly prohibits such courses from “distort[ing] historical events,” “includ[ing] a curriculum that teaches identity politics, . . . or is based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities.”<sup>157</sup> Doubling up on race-based prohibitions, it prohibits courses that violate HB7<sup>158</sup> as well as funding for any such courses.<sup>159</sup>

Indeed, while proscribing indoctrination (read—CRT and gender studies), it *mandates* indoctrination by requiring the study of neoclassical education with an emphasis on prioritizing Western European civilization. To that end, the law statutorily establishes the Hamilton Center for Classical and Civic Education at the University of Florida that is explicitly intended to “support teaching and research concerning the ideas, traditions and texts that form the foundations of Western and American civilization.”<sup>160</sup> A CRT analysis serves to unveil the bias inherent in laws; it shows how mandates legally entrench and perpetuate

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155. Jaclyn Diaz, *Florida Gov. Ron DeSantis Signs a Bill Banning DEI Initiatives in Public Colleges*, NPR (May 15, 2023, 5:46 PM), <https://www.npr.org/2023/05/15/1176210007/florida-ron-desantis-dei-ban-diversity#:~:text=Florida%20Gov.,Ron%20DeSantis%2C%20pictured%20here%20on%20April%2021%2C%202023%2C%20signed,initiatives%20in%20his%20state's%20universities.&text=Alex%20Brandon%2FAP-,Florida%20Gov.,diversity%2C%20equity%20and%20inclusion%20programs>.

156. SB 266, § 4, 1004.6(2)(b) (prohibiting expenditure of funds on organizations that “Advocate for diversity, equity, and inclusion, or promote or engage in political or social activism . . .”), <https://www.flsenate.gov/Session/Bill/2023/266/BillText/er/PDF>.

157. SB 266, § 9, 1007.25 (3)(c).

158. SB 266, § 9, 1007.25 (3)(c).

159. SB 266, § 4, 1004.06 (2)(a).

160. SB 266, § 6, 1004.6496 (1). Similar centers were created by the law. The Florida Institute for Governance and Civics at Florida State University (SB 266, § 6, 1004.6499) and the Adam Smith Center for the Study of Economic Freedom at Florida International University (SB 266, § 6, 1004.64991) (stating the goal to “[p]rovide students” with information “on the origins of the American system of government, its foundational documents, its subsequent political traditions and evolutions . . .”).



the racial hierarchy embedded in the status quo. Such analysis reveals that the mandate to focus on Western civilization maintains—and does not even allow the questioning of—the superiority of Western values over other values deriving from writers, thinkers, and artists in Africa or Asia or Latin America, or communitarian values. What the law prohibits as “distortion” of history is a telling of history through a different lens. Proscribing the analysis of hierarchy, power, and subordination, effectively constitutes the erasure of the experiences of many “others.”

Yet, notwithstanding the attacks and the attempt at erasure of many individuals’ and groups’ lived experiences, there continues to be pushback against the assault of otherness that is representative of anti-woke. For one, the 11<sup>th</sup> Circuit Court of Appeals has left in place an injunction against HB7 being enforced in institutions of higher education.<sup>161</sup>

Most important, the people are pushing back, clearly preferring to focus on the fight for inclusiveness. History provides support for this hopeful version of journeys to equality in positive—awakened—changes. For example, *Brown v. Board*<sup>162</sup> ended segregation of Black and White children in public schools. The Civil Rights Act of 1964<sup>163</sup> ended discrimination on the basis of race, color religion, sex, and national origin in many spaces, including in employment and accommodations. In 2015 marriage equality became a reality.<sup>164</sup> In the 2020 case of *Bostock v. Clayton County*<sup>165</sup> the Supreme Court interpreted the prohibition of sex discrimination in employment to include LGBT individuals. Such pushbacks represent being awake, i.e., woke—being conscious—that the law and legal system (as well as other social structures, including educational institutions) as intentionally created and as currently being redesigned are not neutral.

We should all be woke—aware of injustices around us—and seek ways to find solutions that promote justice. As the legal realists unearthed in the early 20<sup>th</sup> century, laws and legal structures, just like the social structures, reflect the policy and legal interests of those who created them. These institutions are not neutral; they are not awakened.

Crits, Femcrits, Race crits, Latcrits, Class crits, and Discrits expanded the realists’ revelation of legal somnambulism to include a focus on the myriad axes on which society as well as the law and its structures can be complicit in perpetuating the status quo’s embedded biases—the

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161. Pernel v. Fla. Bd. Governors, U.S.C.A. 11 Case: 22-13992 Document: 43, Date Filed: 03/16/2023.

162. *Brown v. Bd. Educ.*, 347 U.S. 483 (1954).

163. Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241, enacted July 2, 1964.

164. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

165. *Bostock v. Clayton Cnty.*, 590 U.S. \_\_\_\_ (2020).

perceptual and structural playbooks. Significant in these critical interventions is the notion of multidimensionality—that no person is an island; that every person has a race, a gender, a sex, a sexuality, a gender identity, an ethnicity, a socioeconomic location, a different range of abilities.<sup>166</sup> Critical analysis reveals issues of injustice; it insists upon consideration and inclusion of all affected voices, their viewpoints, and their experiences. This is the importance of critical thinking.

As this Essay has shown, intentionality is not always synonymous with consciousness.<sup>167</sup> Indeed the social and legal systems in the United States were intentionally designed to exclude, marginalize, and render (or maintain) powerless individuals or groups considered inferior or less important than the dominant class that created law, defined society, and located itself at the top of the hierarchy of power.

In current times, the deployment of “woke” is erascist; it aims to erase even conversations about historically based systemic inequalities. The “AWAKE NOT WOKE” message conveyed by the CPAC poster is both intrinsically contradictory and misrepresentative of the meaning of the terms it uses. The use of “awake” in juxtaposition to “woke” is warped; the pejoration of wokeness is a misappropriation of its meaning.

The desire to coopt “woke,” however, has not worked to stall calls for racial justice. Learning enables awakening. A CRT analysis shows that anti-wokeness is a thinly veiled attack on the quests for racial awareness in order to achieve still elusive racial (and gender and sexual) equality.

Racial justice is the overarching goal of critical race theoretical analysis. Anti-woke seeks to entrench the status quo. Woke awakens individuals and society to the historical exclusions based on race, sex, gender, sexuality, and other marginabilizing characteristics. Law and society need to be woke for equality and justice to prevail, deploying the meaning African American communities have been utilizing for over 100 years.

To be sure, CRT is woke! CRT’s awakedness uncovers where and how perceptual playbooks perpetuate axes of entitlement and subordination. CRT’s emphasis on multidimensionality—specifically noting not only how race affects justice but how race cannot be divorced from other characteristics such as sex<sup>168</sup>—transforms exploration of the

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166. Hernández-Truyol, *Awakening the Law*, *supra* note 12; Berta Esperanza Hernández-Truyol, *Borders (En)Gendered: Normativities, Latina, and a LatCrit Paradigm*, 72 N.Y. U.L. REV. 882 (1997).

167. Hernández-Truyol, *Awakened Woman*, *supra* note 12.

168. See, e.g., Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in CRENSHAW ET AL., *supra* note 6; Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy*, in CRENSHAW ET AL., *supra* note 6; Regina Austin, *Sapphire Bound!*, in CRENSHAW ET AL., *supra* note 6.

human condition. CRT insists upon an inquiry that is more than superficial. It requires a thoughtful consideration of racial fault lines. A profound, in-depth scrutiny enables a full and fair evaluation of any conflict; it unveils hidden biases in the perceptual playbooks that weigh against a just outcome.<sup>169</sup> The process of unearthing bias enables the search for finding an awakened—a just—solution to any conflict. All we need is woke!

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169. This concept is not foreign to legal analysis. *See, e.g.*, *Dist. Colum. v. Heller*, 554 U.S. 570, 689–90 (2008) (Breyer, J., dissenting) (stating that he would have adopted an interest-balancing inquiry and noting that “‘where a law significantly implicates competing constitutionally protected interests in complex ways,’ the Court generally asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects upon other important governmental interests” (quoting *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 402 (2000) (Breyer, J., concurring))).