

Whitlash in American Schooling: A Critical Content Analysis of Anti- Critical Race Theory Laws

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ABSTRACT

Despite a racialized awakening in the country, laws that silenced dialogue about race and racism have been introduced in more than half the states, mainly targeting American schooling. This research examined the language and context of anti-critical race theory (CRT) laws and explored how defunct executive orders served as a blueprint for state education policy. What is the language and context of anti-CRT laws? In what ways have the anti-CRT laws targeted American schooling? This study used critical content analysis as a methodology to engage with the text of the anti-CRT laws. The express purpose was to detect systematic patterns and identify themes across various documents to locate the ways in which the set of texts challenged racial justice. Using CRT as a theoretical framework unveiled myriad ways in which race was operationalized relationally, politically, legally, and systematically in the making of anti-CRT laws. As a result of this study, the author makes the following recommendations: Define terminology accurately in law, consult experts in the CRT and education fields, enact laws that protect vulnerable and marginalized populations, end the punitive measures that have been put into place, and repeal anti-CRT laws. This study aimed to demonstrate the impact anti-CRT laws have had on American schooling, and it provides insight into how to counteract laws that desire to suppress the acknowledgment and examination of the role of race and racism in the United States and American schooling specifically.

POLICY RECOMMENDATIONS

- Define the terminology in laws accurately. Much of the language in state anti-CRT laws are based on annulled federal executive orders that misconstrue definitions related to race, racism, and discrimination.
- Consult with experts in the field. Critical race theory is often miscategorized in definition and context within anti-CRT laws, and consulting with critical race theorists and educators would have prevented this fundamental flaw.
- Enact laws that center the vulnerable and marginalized. To counter restrictions intended to silence discussions on race and racism, enact laws that ensure the inclusion of multiple perspectives representing all of America.
- End punitive measures and opt-outs. The punishment for violating anti-CRT laws is often subjective yet enforceable, creating stressful and confusing conditions. On the other hand, abdicating participation in training and instruction is unduly protected. Until anti-CRT laws are refined or repealed, both practices should cease.
- Demand repeal. Because much of the text and language of anti-CRT laws are based on false syllogisms, their implementation must be immediately suspended.

Keywords: African American/Black women, intersectionality, politics, equity



INTRODUCTION

The summer of 2020 was a remarkable time in racial justice history. Following a succession of young Black Americans being murdered, most notably George Floyd, Ahmaud Arbery, and Breonna Taylor, protests occurred around the world in the name of police brutality and racial inequality in America. National conversations pivoted toward racial disparities across various sectors of society, the racialized implications of policies and practices, corporate commitments toward dismantling systemic racism, and community awareness and dialogue.

Although it seemed like the long arc of the moral universe was finally bending toward justice, whitelash—defined as a strong negative reaction to a change or recent events by white people against the success and achievements of Black people (Cambridge Dictionary, n.d.)—occurred from the highest office of the land. In September 2020, then-President Trump issued the Executive Order on Combating Race and Sex Stereotyping (2020), banning “radical ideologies.” Practices that were interpreted as “divisive concepts,” “race or sex stereotyping,” and “race or sex scapegoating” were prohibited. The mandate included a limit to

and a review of “any training, workshop, or similar programming having to do with diversity and inclusion, as well as information about the duration, frequency, and expense of such activities.” Soon after, another executive order was issued to establish the President’s Advisory 1776 Commission (2020). This mandate focused on history education, and its purpose was to combat a “radicalized view of American history” that was categorized as the vilification of the Founding Fathers and instillation of anti-patriotism. Neither enactment abided, as President Biden rescinded both on his first day in office. Nevertheless, the damage had been done. The two executive orders, often entangled, soon became the gold standard for anti-critical race theory (CRT) state laws and introduced CRT into the everyday lexicon of the American people.

In the afterlife of these executive orders, well over half of the states have introduced some version of anti-CRT legislation. It is important to note that the first executive order does not target schools, and neither executive order mentions CRT by name. It is also essential to acknowledge that CRT rhetoric surrounding the executive orders or subsequent state mandates is often incorrect. Nevertheless, the

federal hyperbolic messaging solidified a nefarious relationship between CRT and education and spurred state campaigns that replicated the executive orders. What is the language and context of anti-CRT laws? In what ways have the anti-CRT laws targeted American schooling? This research aims to examine the language and context of anti-CRT laws and explore how the national mandates served as a blueprint for state education policy. This paper aims to provide insight into how to counteract laws that aim to suppress the acknowledgment and examination of the role of race and racism in the United States and American schooling specifically.

CRITICAL RACE THEORY AS A THEORETICAL FRAMEWORK

Paradoxically, the most appropriate theoretical framework for examining the function of race and racism in anti-CRT laws is CRT. CRT straddles both the legal field and the field of education in that it was born in the legal field in the late 1970s (Delgado & Stefancic, 2001) and has been applied to the field of education since the mid-1990s (Ladson-Billings & Tate, 1995). Over the years, CRT has unveiled myriad ways in which race is operationalized relationally, politically, legally, and systematically in American schooling (Alemán, 2007; DeCuir & Dixson, 2004; Dixson & Rousseau, 2005; Duncan, 2019; Ladson-Billings, 1998; Stovall, 2013). CRT's overarching premise is that race matters in every possible way, and racism in society functions as an enduring presupposition. Hence, the goal of CRT is not the absence of racism but rather the progression toward a less-racist society, and it aims to continually challenge dominant ideologies that reify racialized hierarchies (Solórzano, 1998).

This research relies heavily on five tenets of CRT that are particularly relevant to interrogating anti-CRT laws.

- First, the permanence of racism asserts that race and racism have impacted every facet of life in America and will continue to do so into the foreseeable future (Bell, 1992; Delgado & Stefancic, 2005).
- Second, the principle of racial realism insists that race and racism be approached soberly,

both in justice and truth, and acknowledges that regressions plague racial progress (Bell, 1992). The tenet of racial realism is particularly germane to the present topic because it establishes and interrogates the ebbs and flows of justice in America, as demonstrated by whitelash.

- Third, interest convergence posits that policy changes that advance minoritized populations are implemented when there is a benefit to the race that wields power in society (Bell, 1980a; Morris, 2001).
- Fourth, whiteness as property (Harris, 1993) parallels whiteness as a valuable commodity in society and underscores that nonwhite individuals can never hold whiteness nor the benefits associated with it.
- Fifth, the critique of liberalism tenet argues that incremental improvements are often celebrated, even if the results are not far-reaching and are often only performative (DeCuir & Dixson, 2004).

Though anti-CRT laws misdefine CRT and erroneously link CRT to curriculum and instruction in K–12 schools, it is important to mention that one of the most prominent figures of the CRT movement, attorney Derrick Bell, based many of his seminal writings on the function of race in American education institutions (Bell, 1976a, 1976b, 1977, 1980a, 1980b, 2004). *Brown v. Board of Education* and the way in which it failed to bring about widespread racial equity in American schools and society was often the centerpiece of his arguments when developing many of the tenets that undergird CRT. Indeed, it was during his personal experience of supervising nearly 300 school desegregation cases that he concluded that the *Brown* decision was “more symbolic than real” (Bell, 2004, p. 19) and served no purpose but to “reinforce the fiction” (Bell, 2004, p. 7) that racial advancement occurred by its passage. Ultimately, he was bewildered how a legal rendering could have “promised so much, and, by its own terms, accomplished so little” (Bell, 2004, p. 2). Thus, it is particularly ironic that anti-CRT legislation that restricts acknowledging race and racism in American schooling abundantly proves the central arguments on which CRT was built.

METHODOLOGY

Content analysis views text as data. Content analysis engages in systematic pattern-seeking, theme-identifying, and coding to interpret the meaning of a text or a set of texts (Krippendorf, 2004; Stemler, 2000). Content analysis goes far beyond enumerating words and instead places significance “on the characteristics of language as communication with attention to the content or contextual meaning of the text” (Hsieh & Shannon, 2005, p. 1278). This study employs a particular form of content analysis, namely critical content analysis. Critical content analysis engages with text with the express purpose of “locating power in social practices in order to challenge conditions of inequity” (Short, 2017, p. 1). Though critical content analysis falls under the umbrella of content analysis, they differ in that critical content analysis approaches the text with a critical lens and a social justice agenda and works in tandem with a critical theory (Short, 2017). Critical content analysis surfaces that the research and the researcher, nor the texts and the authors of the texts being analyzed, are politically neutral.

At the time of this research, approximately 36 states had introduced an anti-CRT bill (Stout & Wilborn, 2022). To narrow the scope, this study examines the text of the 15 anti-CRT bills that were enacted into state laws, either by legislative vote, governor executive order, or attorney general binding opinion. The states included are Alabama, Arkansas, Florida, Georgia, Idaho, Iowa, Mississippi, Montana, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Virginia. The text of each law was read multiple times, and passages were coded based on emergent themes. Moreover, during a second coding exercise, the constructs of CRT were used as pre-determined categories to “validate or extend conceptually a theoretical framework or theory” (Hsieh & Hannon, 2005, p. 1281). Additionally, a comparison was made of each text to the federal executive orders, as well as to one another, in terms of both language use and context.

FINDINGS

After careful analysis of the anti-CRT laws, the findings are as follows:

Mimicking of Executive Orders

The language used across the anti-CRT laws closely mimicked the executive orders, and similar passages appeared several times across multiple documents. In fact, much of the terminology was a direct lift from the executive orders with little to no variance. This includes the definition of “divisive concepts,” which, in part, include concepts such as “one race or sex is inherently superior to another race or sex,” “an individual’s moral character is necessarily determined by his or her race or sex,” and “meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.” Wording that also appeared multiple times included defining “race or sex stereotyping” as “ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex” and defining “race or sex scapegoating” as “assigning fault, blame, or bias, to a race, or sex, or to members of a race or sex because of their race or sex.”

Incorporation of CRT in Totality

Although CRT was never mentioned directly in the executive orders, there were multiple anti-CRT laws that explicitly called for a ban on CRT. North Dakota’s anti-CRT law states that “a school district or public school may not include instruction relating to critical race theory in any portion of the district’s required curriculum.” Virginia’s anti-CRT law calls for “ending the use of inherently divisive concepts, including critical race theory, and restoring excellence in K–12 public education in the commonwealth.” Utah’s resolution identifies “risks of critical race theory in public education.” Moreover, some states attempted to define CRT, elucidating a gross miscategorization of the theory. For example, Montana’s anti-CRT ruling states that CRT “rejects the belief that what’s in the past is in the past,” rather than framing CRT as a theoretical framework that historically examines the legacy of white supremacy. Another example is that of South Dakota’s anti-CRT law, which defines CRT as a theory that “compels students to view the world through a purely racial lens and to judge others based on the color of their skin rather than the content of their character,” which falsely positions CRT in

opposition of Martin Luther King Jr., someone who is widely considered an influencer of the CRT movement.

Implementation and Application to K–12 Settings

The Executive Order on Combating Race and Sex Stereotyping (2020) pertained to the federal workplace. Yet much of the terminology from this executive order, including definitions and punitive actions, was applied to education institutions in most anti-CRT laws. Many of the anti-CRT laws intermingled the language of the two executive orders, including verbiage from the Combating Race and Sex Stereotyping Executive Order and the 1776 Commission Executive Order. This created a hodge-podge of locales in which the law would take effect. Though some states passed anti-CRT laws that centered on state workplaces and were inclusive of K–12 public schooling by virtue of public schools being state-funded, many other states focused specifically on K–12 public schooling. Still others focused on state-funded entities, such as K–12 public schooling and postsecondary education institutions. It is important to note that all 16 state anti-CRT laws apply to K–12 public schooling, and most legislation had K–12 public schooling as the centerpiece of their argument. In at least two states, additional addendums were introduced after the passage of the original anti-CRT law, and these addenda pertained to K–12 schooling. For example, in South Dakota, the original law restricted instruction in higher education and a subsequent governor executive order expanded the scope to K–12 schools. In Georgia, the “Parents’ Bill of Rights” was passed, giving K–12 parents the right to classroom materials and the ability to have their children opt out of certain instructional topics.

Punishment and Protection

In the executive orders, specific policies prohibited governmental agencies and contractors from practicing “divisive concepts” and the like. Yet there was a variance across state anti-CRT laws regarding consequences associated with violations. Though some laws did not mention a punishment, others were very specific, such as withholding state funds or terminating federal contracts with entities that did not conform to the law. Additionally, oversight of the law

varied from state to state; some laws did not include specificities of who would be responsible for ensuring compliance with the law, while others did name a state agency for reviewing and reporting but no other directives. However, there was one aspect that was consistent across the majority of state anti-CRT laws. If someone opted out of participating in training or instruction of materials that involved “divisive concepts,” “race or sex stereotyping,” or “race or sex scapegoating,” they were protected against retaliation from their employer or the school. For example, the anti-CRT law in Texas states, “A teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs.” Virginia’s anti-CRT law states that “executive employees shall be prohibited from directing or otherwise compelling students to personally affirm, adopt, or adhere to inherently divisive concepts.”

Underscoring the Need for Critical Race Theory Analysis

There were clear examples of how race and racism functioned in the construction of the anti-CRT laws. For instance, though the purpose of a particular anti-CRT law was to limit discussions about race, the law also explicitly stated that Martin Luther King Jr.’s “Letter from a Birmingham Jail” and “I Have a Dream” speeches should be taught. These two speeches are widely considered palatable racial justice passages, even by the most racially intolerant individuals. This illustrates the critique of liberalism tenet because it emphasizes certain texts that advance the argument of the dominant culture in power: that there have been great advancements in the social justice movement, and that race and racism exist only in the past. Yet substantive discussions about racial realism and the complexity of the ebbs and flows of racial progression are banned. Several instances in the texts were thinly veiled attacks on the principles of CRT. For example, many anti-CRT laws prohibited language that declared “inherent privilege” and banned instruction that stated that America was “fundamentally or irredeemably racist or sexist,” definitions that could be easily interpreted as being in alignment with the CRT tenets of whiteness as property and the permanence of racism, although the descriptions are thoroughly incomplete.

DISCUSSION

It cannot be underscored enough that CRT is misidentified and under-contextualized in anti-CRT laws. Even more, banning cherry-picked innuendos of CRT is deceptive and misleading. Further, the verbatim language lifted from the executive orders and used in state anti-CRT laws is problematic. Many of the definitions are cryptic, vague, and left up to the reader's interpretation. Thus, the definitions that are directly linked to CRT are defective and inaccurate, with CRT placed in opposition to words and phrases such as "patriotic," "true history," and "public peace" and associated with words and phrases such as "harm," "degrade," and "inflammation." This further convolutes a theoretical framework that is already grossly misunderstood in the public sphere.

The extent to which these anti-CRT laws are centered on K–12 public schooling is quite troubling, especially given that a great deal of the language is lifted from an executive order meant for federal workplace employees, not children. With little to no consistency regarding reporting, reinforcement, or repercussions, it has left educators, from administration to the classroom, confused. In Tennessee, a teacher has lost their teaching position because of their anti-CRT law (Natanson, 2021). In Oklahoma, the State Department of Education is threatening a district with a sanction, which can eventually result in losing its accreditation (Carter, 2022). New Hampshire launched a hotline for parents to report anti-CRT violations (Gibson, 2021). These examples highlight that enacting anti-CRT laws has real consequences. Yet states have little to no guidance on how to interpret the law or a great deal of elasticity to interpret the law in a partisan way.

CONCLUSION

If there was any doubt regarding the intentions surrounding the issued executive orders, Trump made them crystal-clear a few months after leaving office. In an op-ed (Trump, 2021), he penned specific directives that included a call to withhold tax dollars from districts or workplaces that allow CRT and that "each state should create its own 1776 Commission to examine the public-school curriculum and ensure that students are receiving a patriotic, pro-American

education—not being taught that the United States is an evil nation" (para. 13). Further, he encouraged local parents to unite about, rally against and opt out of 'leftist' civic lessons and demand to see every teacher's lesson plan. His language is bombastic and intended to stoke fear, exemplified by phrases such as, "the government has no right to brainwash students with controversial ideologies against their parents' will" (para. 16) and "for our children, we must act before it is too late" (para. 20).

Kahn (2021) reported that more than one-third of Americans support anti-CRT laws, although the same study found that most Americans could not define CRT. 33% of Americans believe that CRT claims that "white people are inherently bad" and that "discriminating against white people is the only way to achieve equality," neither of which is true. Twenty more states have anti-CRT legislation pending, and the attacks are only intensifying as the former commander-in-chief has called anti-racism training "anti-American propaganda" (Associated Press, 2020) and CRT "psychological abuse" (Brewster, 2021). Without a doubt, this is the time for research and policy to be a theoretically sound resource contributing to racially just education practices.

Beyond public discourse, anti-CRT laws are disrupting teaching and learning in American schooling. After the passage of anti-CRT legislation, many state departments of education were forced to interpret the law due to intense confusion or because they were named as the entity responsible for enforcing the law. Teachers unions have brought lawsuits against states because the laws are vague and fail "to make clear to teachers what exactly is prohibited...casting a chilling effect in the classroom" (Meckler, 2021). Further, because many of the states that passed anti-CRT laws have majority minoritized public school populations, it is critically essential that the language and intent of anti-CRT laws are closely examined so that teachers receive the necessary training to work with Black and Brown students and all students receive a thorough and accurate curriculum that's inclusive of all Americans.

AUTHOR INFORMATION

Dr. Larissa Malone is an associate professor of social and cultural foundations of education in the Watson College of Education at the University of North Carolina Wilmington (UNCW). Dr. Malone earned a doctorate in cultural foundations of education at Kent State University, an M.A. in education from Walsh University, and a B.A. in international studies from Case Western Reserve University. Dr. Malone also holds a primary teacher certification from the American Montessori Internationale, taught early childhood and early elementary grades, and served as an administrator in a bilingual community-based school before joining the ranks of higher education. Dr. Malone's research centers on the minoritized experience in schooling, including students, parents, and teachers, and she is particularly interested in the intersection of education, race, and tangential disciplines, such as religio-spirituality, geography, social reproduction, critical race followership, and critical race mothering.

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