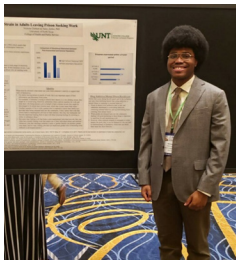

Policing the Black Experience and Critical Race Theory

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Course Design: Critical Analyses

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Nicholas Durham is a senior majoring in Criminal Justice at the University of North Texas. Initially joining the Criminal Justice program with an interest in practicing Criminal Law, their research as a McNair Scholar—where they used General Strain Theory to examine the experiences of returning citizens in their search for work—shifted their focus to

include radical criminology and conflict theory to understand socioeconomic inequality and disparate outcomes produced by the Criminal Justice system. Nicholas has presented this research at the annual meeting for the Southwestern Association of Criminal Justice as well as at the annual meeting for the Academy of Criminal Justice Sciences in 2023. Completing 1000+ hours of research with the McNair Scholars program, Nicholas is now exploring ways to teach radical criminology using Counterstory and Critical Fabulation. In their most recently completed semester, they boast a GPA of 3.76 in their major concentration and has made the President's List 4 times. Nicholas will be applying to PhD programs this Fall.

In January 2023, the Florida state government banned the AP African American history course administered by the College Board, doing so because material within the course allegedly violated state laws ratified in the Stop W.O.K.E Act. The Stop W.O.K.E Act is a piece of legislation crafted to protect workers and students from instructional material that implicitly or explicitly implicates those with white ancestry in racial atrocities, injustices, and missteps in this country's past (Mazzei and Hartocollis 2023). The bill states that it prohibits instruction that supports several ideas: that races have moral superiority to other races, that privilege is racial, that white people are solely or more weightily responsible for racial injustice, or rather, that white people are more responsible for correcting it, if and when it exists. This bill protects against any educational program that supports or suggests the idea that racism is systemic (Vile 2022). These ideas, the bill asserts, are not only harmful to classroom and work environments but cause psychological damage to children and workers exposed to them.

A pamphlet from Florida Governor Ron DeSantis's office claims that curriculum including these ideas is indoctrinating students with

principles from Critical Race Theory— colloquially called CRT— inserting this bill into a growing list of attacks against the framework and its entry into educational institutions and work environments (Vile 2022). Despite claims made by DeSantis and leaders of other state governments that Critical Race Theory is being taught at the primary and secondary school level, there is no evidence of this being found in such educational settings throughout the country. Consequently, there are no studies cited to support the claim that students who interact with CRT material are experiencing psychological harm. What is more, the AP African American History course does not teach CRT. The course offers supplemental instruction on aspects of Black scholarship like Black queer studies, intersectional theory (a tenet of CRT but not CRT in its entirety), the prison abolition movement, and the reparations movement, with primary and secondary source documents for literature explaining these concepts, but not CRT.

DeSantis thinks that CRT is a volatile dogma— that it obviously supports racial moral superiority and privileges Black students at the expense of white students, that by learning about or acknowledging the existence of systemic racial injustice it makes white people responsible for ending it and guilty for perpetuating it. He takes issue with intersectionality and the idea of racial privilege, saying that these concepts inherently rank the value of people based on the color of their skin and thereby diminishes the importance of values like personal responsibility. But CRT does not teach those things; we have no research to indicate that CRT *does* those things, and the AP African American History course does not teach CRT, so what is going on? CRT is heavily *influenced* by radical thinkers like bell hooks, Angela Davis, and Alice Walker (several authors named in the banning of the course). Sure, one could make the argument that Critical Race Theorists might be happy to see these authors being taught at the grade school level, or that these authors, while definitely not Critical Race Theorists, might agree with certain tenets of CRT, but at the end of the day, there is a difference between making these observations and lying, declaring Black authors and their materials CRT in an effort to make them seem scarier. But perhaps fear is the point, to prime the general population to be terrified of material that they were not being taught in the first place and creating hysteria about the

burgeoning recognition of racial history and literature connected to CRT and broader black authorship at the root. Framing it this way, the Florida state government draws more immediate parallels to past, more openly and comfortably racist governments that passed laws banning Black literature and authorship for the exact same reasons expressed today. How can we use the patterns of policing Black authorship to examine the development of Critical Race Theory and its rejection in academic institutions?

This country has a highly visible legal history of quashing dissent emanating from the shared experiences of the marginalized, especially in literature. For Black people, this history begins with the anti-literacy laws passed after the Stono Rebellion in 1739 and through to the 1840s (Maddox 2022). As the name suggests, anti-literacy laws were laws that prohibited enslaved persons from being taught how to read or write. They were passed primarily in Southern states like Georgia, Louisiana, Alabama, Virginia, and Missouri in response to slave rebellions both domestic and abroad. Originally aimed at preventing slaves from forging their freedom documents, these codes eventually took shape with the subsequent purpose of denying enslaved persons the ability to convey and theorize their experiences in writing, a key factor in the organization and catalyzation of movements and uprisings (Calahan 2020). There is no doubt that these laws prevented innumerable rebellions, while further disenfranchising and dehumanizing vast swaths of the enslaved population.

When enslaved persons would escape to the free states, despite often not knowing how to read or write, they were still able to share their experiences orally, something that slaveowners and lawmakers could not reasonably expect to sanction. The experiences of fugitive slaves were used to make abolitionist literature in the form of slave narratives, revealing the horrors and injustices of slavery to sympathetic whites and freedmen in the free states (Johnson 1972). This led to several conflicts and riots across the country in the name of ending slavery, which, in turn, led to a bipartisan gag rule being passed in Congress in 1836 banning anti-slavery rhetoric, not even a year before Missouri passed laws that outlawed abolitionist expression in any form, a model several southern states would follow soon after (Hart 2009). In some parts of Louisiana, it was prohibited to even have a conversation with a slave (Hart 2009). In 1857, on the cusp of the Civil War, freedman Minister Samuel Greene was arrested in Maryland for owning “abolition papers of an inflammatory character,” and “a certain abolition pamphlet called ‘Uncle Tom’s Cabin ... calculated to create discontent amongst the colored population” (Armenti 2011). In hideous irony, Minister Samuel Greene was, indeed, an abolitionist operating the leg of the Underground Railroad that ran through Maryland, regularly collaborating with Harriet Tubman. Under suspicion of this, a local sheriff searched his home where the copy of the book was found. The District Attorney believed that there was insufficient evidence to convict Minister Samuel Greene of his alleged involvement with the Underground Railroad, but his ownership of the book alone was a crime akin to harboring

fugitives. Uncle Tom’s Cabin was written by abolitionist author Harriet Beecher Stowe and was thus hostile towards slavery; it was composed largely from the anecdotes of the enslaved persons that Stowe interviewed. Chapter 272 of the Act of 1841 of Maryland states that “if any free Negroes or mulatto knowingly have in his or her possession any abolition handbill, pamphlet, newspaper, pictorial representation or other paper of an inflammatory character, having a tendency to create discontent amongst or stir up to insurrection the people of color in this state, he or she shall be deemed guilty of felony” (Armenti 2011). Minister Samuel Greene was sentenced to 10 years in the Maryland State Penitentiary, meaning his imprisonment would outlast slavery. The purpose of these laws was to protect the institution of slavery, but the arguments supporting them were often framed as an effort to protect enslaved persons from their own determinations. This logic is further exemplified in the words of Frederick Douglass’s former master Hugh Auld explaining to his wife upon discovering her teaching Douglass how to read: “He should know nothing but the will of his master and learn to obey it. As to himself, learning will do him no good, but a great deal of harm, making him disconsolate and unhappy. If you teach him how to read, he’ll want to know how to write, and this accomplished, he’ll be running away with himself” (Maddox 2022).

These sentiments shockingly resonate with the paternalistic attitudes used to deride the material in the AP African American History course, with the DeSantis administration declaring the course “lacks educational value,” saying that the material the course teaches is inflammatory and only teaches Black students to hold resentment for their classmates and their country (Atterbury 2023).

After slavery, these laws and attitudes evolved. While the 13th and 14th amendments essentially nixed laws that prohibited former slaves and their descendants from being taught to read or write, states made a conscious (and unconstitutional) effort to undermine the education of their Black populations, by segregating and severely underfunding their schools, and passing laws that made it legal to discriminate against them in educational institutions. Myths of Black people being emotional and unintelligent prevailed in social settings and there were debates among Black authors about how to best combat these myths, some objecting to the use of Ebonics or talking about racism in a way that made white people feel threatened (Carpenter 2008). Writers like Zora Neale Hurston and Langston Hughes understood that curating the Black experience for a white audience was not only an erasure of reality and history, which would make for less interesting writing, but it produced writing situations with far less freedom to define themselves. However, this practice of curation was also done at the level of publishing, where publishers (overwhelmingly white) would reject books and articles that depicted racism and the experience of blackness in ways that challenged dominant narratives (Brier 2022). It is no surprise that this policing of what is valuable literature to Black people persisted and remained recognizable into

the present day. We see this policing at its most extreme in our prisons where most book banning in this country takes place. It is no surprise that prisons are places where unpaid labor is legal and common, regular people are typically barred from speaking to and interviewing inmates, and the overwhelming majority of the incarcerated are marginalized people— disproportionately Black people. Most of these bans on books are due to supposed “security threats” (Birch 2022).

Critical Race Theory, a frame of legal analysis that asserts that race shapes the way we perceive and interpret law, has been no stranger to tone-policing. Derrick A. Bell, the godfather of Critical Race Theory, was often told that his approach to teaching law, which centered the experience of Black people and placed special emphasis on race was inappropriate, inadequate, and threatening. In one instance, while guest teaching at Stanford Law School in the 1980s, white law students started to hold supplemental classes to override his Constitutional law course; this happened, of course, without his knowledge. Allegedly, there were widespread complaints about his teaching style and his framing of the Constitution, but no specific complaints were identified (Gilliam 1986). According to Richard Delgado in “Liberal McCarthyism and The Origins of Critical Race Theory,” (2009), several high ranking universities during the 1960s and 1970s engaged in concerted effort by deans and administrators to expunge radical professors from their campuses in anticipation of an invasion of minority students due to the liquidation of segregation laws. The common mode of thought was that the universities could not risk the commingling of minorities and white Communists (who might corrupt them with ideas of revolution and praxis against the status quo) or else the universities might not survive. These same white professors were nuisances as students, challenging the legitimacy of their universities through protests and other acts of civil disobedience. While the white radical students were merely seen as an annoyance, possessing a nagging overzealousness that would eventually fade with age and tenure, they worried that minorities exposed to radical thought who had more prescient grievances could be fatal to their institutions. They had seen as much from the Black Panthers and other radical groups of minorities who called themselves Maoist, Marxist-Leninists, and Anarchists and were strikingly effective at subverting and disrupting educational institutions. While the universities would have to accept the influx of minorities, they could admit certain *kinds* of minorities who could more readily mold themselves to moderate beliefs that reinforced dominant liberal ideologies. They were interested in exalting these chosen students to the upper echelons of their race and placing them in leadership positions. These students would serve as controlled opposition to their more radical counterparts, while also being used as evidence of universities’ acceptance of minorities and thus the enduring success of liberal capitalism. But for this to happen, radical professors like David Trubek could not remain during this process; they were denied tenure and faced difficulty with politics in academia for the rest of their careers. Ironically, many of these professors would inadvertently contribute to the

creation of Critical Race Theory in the 1980s through their involvement with Critical Legal Studies. A founder of Critical Race Theory Kimberlé Crenshaw was briefly a member of the CLS movement, even at one point being a student of Trubek. Crenshaw documented that despite CLS being markedly more progressive than traditional liberal legal studies, it was still in opposition to the implications of the convergence of radical thought with the racially marginalized experience (Crenshaw). During a CLS conference in 1985, nearly a decade after CLS was first established, Crenshaw and other feminist women of color in attendance decided to host a workshop asking what attracted and repelled people of color from membership in CLS. This workshop wasn’t well received by the white members of CLS, who accused the hosts of the workshop of “mau-mauing” the movement in such a way that might destroy it (Crenshaw pp.1355). According to Crenshaw, the defensiveness of the white CLS members regarding race was a consistent feature of CLS conferences. As a result, the recognition of a need for a legal theory and movement that explicitly centered race was born. Crenshaw and others fulfilled this need by developing Critical Race Theory.

When Critical Race Theory became an officially recognized school of thought, it was immediately met with criticisms from CLS scholars, traditional legal jurists, politicians, pundits, and journalists saying that it was either racist, paranoid, Marxist, or redundant. Writers like James Lindsay, an incredibly influential opponent of CRT, allege that Derrick Bell’s Interest-Convergence thesis, a staple of CRT, was born out of a rejection of desegregation, rather than an analysis of material circumstances and outcomes surrounding the Brown decision— the framing here suggesting that Bell was a reverse racist (Lindsay page number?). Adhering to the logic of anti-literacy laws and soft book banning practices, Lindsay misreads Bell and CRT. The corresponding logic suggests that when a Black person uses their unique perspective to tell their stories and reexamine histories, and in the case that those actions inadvertently or directly challenge dominant narratives, those storytellers are, at best, paranoid and, at worst, engaging in mindlessly destructive, self-harming, rabble rousing; it then becomes the job of the dominant power groups to rein those black writers and storytellers in.

Up until recently, CRT and its tenets may have been discouraged and treated with dismissiveness in many post-secondary institutions, but today CRT is banned in 10 states, with more states announcing plans to restrict its teaching in higher education. States like Iowa and Florida which have banned CRT at the post-secondary level take aim at CRT’s tenets that say the roots of this country are racist, and assert that this belief means that Black people are inherently superior to white people in terms of morality, or that white people are inherently superior to Black people in terms of class and privilege (Miller et al. pp.16-19), but any elementary reading of a document using or explaining CRT would immediately reveal these revelations to be incongruent with the framework. It is not Critical Race Theory that these states are attacking— CRT is

only an unfortunate victim of the attack; these states are focused on diminishing and disappearing Black people's conscious experience of racism and their reaction to that experience. That is why bell hooks and Richard Delgado share space on a list of banned authors in Florida. Just like the banning of abolitionist expression following the Stono Rebellion, the banning of CRT takes place after protests following George Floyd's lynching in 2020; and just like slaves were made unable to write their own history, the attacks on CRT and its familial pedagogy in educational institutions rob us of the tools needed to understand it.

Earlier in this essay, I wrote about Minister Samuel Greene, how his ownership of *Uncle Tom's Cabin*, a book written using the experiences of Black people in bondage, was akin to harboring fugitive slaves. On its face, we might be inclined to look at the authors of his incarceration with a shocked expression, dumbfounded, in awe of their paranoia. But it is important that we recognize there is little actual difference between freeing the enslaved and allowing them to freely share their experiences. Black people can't be free until they can freely share their experiences of captivity.

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