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Junior Research Project: Social Justice
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April 20, 2022

Learning Critical Race Theory is a Constitutional Right

In the current state of extreme polarization between the two dominant political parties of the United States-Republicans and Democrats-it has become difficult to find common ground. In the past, the controversy stemmed over teaching topics such as yoga and evolution in schools. Now, it centers on the teaching of Critical Race Theory (CRT) in K-12 classrooms. While some have argued that CRT is a biased attempt to rewrite history, others claim it is a concept taught uniquely to college-level students. Predominantly conservative political parties have passed legislation within certain states attempting to forbid its teaching, such as banning books containing certain content and/or rewriting the curriculum of history classes. However, these bills are often too vague to offer clear instruction on what is and isn't permitted and have therefore compromised the livelihoods of countless educators while inhibiting the education of numerous students. Research has revealed that the unjust use of Critical Race Theory as a conservative political tool infringes on the constitutional rights of American citizens, especially students, by barring them from the honest teaching of America's racial history and identity politics.

In a flurry of political jargon, the concept of CRT has been repeatedly misdefined. In one case, it was described by Governor Ron De Santis of Florida as a "woke class [that] wants to teach kids to hate each other" and "state-sanctioned racism"(Fortin). In actuality, Critical Race Theory is a concept produced by Kimberlé Williams Crenshaw, a professor of law at the U.C.L.A School of Law and Columbia Law School, with contributions from Mari Matsuda, a law professor at the University of Hawaii, from their work with American legal scholar Richard

Delgado from the late 1970s and early 1980s. It was designed to explain that incidents of racism are not the product of a few morally decrepit people, but instead the result of racist institutions in American society that foster these sentiments. Professor Crenshaw relayed to the *New York Times* that critical race theory is “is a way of seeing, attending to, accounting for, tracing and analyzing the ways that race is produced, [and] the ways that racial inequality is facilitated, and the ways that our history has created these inequalities that now can be almost effortlessly reproduced unless we attend to the existence of these inequalities.”(Fortin) This theory forces Americans to acknowledge that despite the reforms that came from the Civil Rights movement, racial hierarchies continue to be enforced, intentionally or not. Under this idea of addressing underlying racism in American institutions, “critical race theorists reject the philosophy of ‘colorblindness’”(Sprunt) because of its ineffectiveness and instead encourage direct education on these systems and in what ways they must be changed. However, the stance taken by people most often identifying with the conservative Republican political party is that critical race theory would further divide America by inducing shame in white people for historically serving as oppressors, and deter children of color from reaching their fullest potential because they’re taught that they live in a society built against them. Conservative scholar Christopher F. Rufo even stated on Fox News that he believed critical race theory to be equivalent to “cult indoctrination”(Fortin). Other arguments from primarily right-wing individuals state that critical race theory would force educational institutions to favor personal narratives over academic rigor, and the inclusion of race into education would be “teaching kids to hate each other”. The misunderstanding that instead of analyzing inherently racist systems and institutions, critical race theory teaches a certain behavior has been the catalyst for its use as a political tool.

Despite having been developed decades prior, critical race theory gained traction in recent years due primarily to former President Donald Trump's condemnation of it. In September of 2020, Trump issued an executive order forbidding the funding of any racial sensitivity training regarding diversity, equity, and inclusion and declaring the training "divisive, un-American propaganda" to federal contractors(Cineas). He did this with the mistaken understanding that this training was a tactic of critical race theory designed to train individuals to behave in a certain manner. Trump emphasized his desire to end these "efforts to indoctrinate government employees with divisive and harmful sex- and race-based ideologies"(Cineas), which sparked controversy over the topic and led to the termination of countless Diversity, Equity, and Inclusion training sessions in workplaces and within many schools. In pursuit of a "patriotic education"(Staff), Trump tweeted that "Americans should be taught to take PRIDE in our Great Country, and if you don't there's nothing in it for you!"(Staff) This included any curriculum that educated students on the history and modern effects of systemic racism in America.

Another point of contention raised by Trump was the establishment of the *New York Times'* Pulitzer Prize-winning *1619 Project*, fronted by author and reporter Nikole Hannah-Jones. This work reframes history in a way that presents the true founding of the United States as 1619 when the first enslaved Africans were brought to the colonies, instead of in 1776 when the Declaration of Independence was signed. The *1619 Project* was also designed to place emphasis on the contributions of Black Americans to the American historical narrative, and to view America's founding documents from the perspective of those from whom the rights established within these works were denied historically. Despite arguments from individuals such as Jake Silverstein, editor of the *Times Magazine*, many fail to grasp the idea that the contents of the *1619 Project* are not "meant to replace all of U.S. history"(Serwer), but instead meant to be

used “as supplementary material for teaching American history.” During the White House Conference on American History on September 17, 2020, Trump denounced the validity of the *1619 Project* in an act of “defend[ing] the legacy of America’s founding, the virtue of America’s heroes, and the nobility of the American character”(Cineas). Professor Crenshaw states that the primary issue with opposition to critical race theory and everything that has been mistakenly placed under this category, such as the *1619 Project*, is that the issue stems from certain individuals’ inability to acknowledge “the lie that America has triumphantly overcome its racist history”(Cineas).

In response to criticisms of critical race theory, many government officials who subscribe to conservative Republican values have rushed to pass legislation to prohibit its teaching in schools. Spurred by the fervor of former President Trump’s determination to extinguish diversity, equity, and inclusion efforts related to critical race theory, legislation opposing the education of race and gender/sexuality in schools has been proposed in twenty-two states. As of the writing of this paper, legislation has already been passed in five states: Idaho, Iowa, Oklahoma, Texas, and Tennessee. This politicization of public education has been heavily backed by passionate conservative activists who feel that the teaching of critical race theory would only further divide the country by encouraging racist ideals and perpetuating the idea that America is inherently racist.

In a recent attempt to reduce the teaching of critical race theory and the topics associated with it, Texas State Representative Matt Krause, R-Fort Worth, chair of the state’s House Committee on General Investigating, infamously released a list of 850 books that were considered for removal from school libraries due to their content potentially causing students “guilt, anguish, or any other form of psychological distress because of their race or sex or convey

that a student, by virtue of their race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.”(Siemazsko) In line with this path of action, Republican Governor Greg Abbott even insisted that education officials should scour library shelves to ensure that there is no “criminal activity in [the] public schools involving the availability of pornography.”(Powell) Though official criteria regarding how books are deemed “appropriate” by Texas legislators has not been released, many of these books include content regarding the experiences of people of color, the LGBTQ+ community, and those struggling with mental illness or disabilities. As noted by Professor Crenshaw, many topics have been inaccurately assigned to the label of critical race theory. Blossoming out of opposition to “racist” teachings, many anti-critical race theory bills have also begun to prohibit the teachings of “inappropriate” content, most often the experiences of historically marginalized people.

Seemingly in correlation with Texas Lawmaker Matt Krause’s efforts to stifle the lessons of critical race theory, other states like Florida have discussed the possibility of passing a Republican bill called “Individual Freedom”. This would prohibit public K-12 education from including aspects of U.S. history that instill any form of guilt, discomfort, stress, etc. regarding any person’s race. In other words, these bills are intended to shield white students from the distress of learning the more difficult parts of their history, including their historical position as oppressors in American society, or the crimes against marginalized peoples often committed by people of their race throughout history.

Equating the voices of marginalized people to the hazard of pornography has given rise to an uproar on all sides of the political spectrum. While some parents are furious, many educators are resistant to the laws themselves. In most cases, these bills do not explicitly state opposition to the teaching of “critical race theory”. However, they challenge almost all aspects under the

overarching umbrella of CRT, such as t. Due to their vagueness, many educators are unsure of what can and can't be taught in classrooms while staying within these strict guidelines. This confusion applies strongly to the curriculum of history classrooms. In order to follow these parameters, many history teachers are unsure whether they'd even be permitted to educate students on historical instances of state-sanctioned racism such as the Jim Crow laws while not spreading the "self-demoralizing version" of white history in America. English teacher Mike Stein explained to Chalkbeat Tennessee that restrictions on classroom curriculums prevent history teachers from being able to "adequately teach about the Trail of Tears, the Civil War, and the Civil Rights movement. English teachers will have to avoid teaching almost any text by an African American author because many of them mention racism to various extents." (Sawchuck)

It is also argued that modern topics regarding race such as the disproportionate disciplining of Black students, the stark underfunding of primarily Black and Latinx communities, and other societal barriers that stem from the basis of race, are prohibited from being taught in schools to avoid "reinforcing" racist ideals.

Despite their varying methods of achieving their goals, individuals on all sides of the political spectrum are aiming toward creating a more "perfect union", whether that be through strict regulation or the teaching of America's raw, uncensored history. These pieces of heavily conservative Republican legislation designed to defend American pride and "patriotism" are infringements on the Constitutional rights of many American citizens who identify with minority and historically marginalized groups. In fact, these bills against the teaching of critical race theory conflict with one of America's more contended beliefs: the right to freedom of speech.

As American citizens, students and educators also maintain the right to academic freedom under the [First](#) Amendment. This right has been challenged a number of times in the

past through cases such as *Keyishian v. Board of Regents* in 1967 where the Supreme Court invalidated New York's Feinberg Law, which was designed to prohibit the teaching of "subversive" or rebellious topics within the state's colleges and schools. In this case, Justice William Brennan Jr. stated that America "is deeply committed to safeguarding academic freedom... a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over a classroom."(Krotoszynski) In 1985, in the case of *University of Michigan v. Ewing*, the court states that "academic freedom thrives not only on the independence and uninhibited exchange of ideas among teachers and students, but also... on autonomous decisionmaking by the academy itself."(Krotoszynski) Even more recently, in 2000, Justice David Souter stated that the court had "long recognized the constitutional importance of academic freedom"(Krotoszynski) when coming to a conclusion on the *University of Wisconsin System v. Southworth* case.

Recently, [the](#) American Civil Liberties Union and the [Lawyers'](#) Committee for Civil Rights Under Law filed a lawsuit in the U.S. District Court for the Western District of Oklahoma against a number of government officials claiming that an Oklahoma law against critical race theory is unconstitutional. The law went into effect in July 2021, but similarly to other attempts to curb the teaching of critical race theory, the phrasing of the bill is extremely vague and offers educators no guidance on what can be taught. The driving statement of this law is that educators must "avoid topics related to race or sex in class materials and discussion or risk losing their teaching licenses for violating the law."(Pietsch) The law also prohibits teaching any content that could lead to an individual feeling "discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex."(Pietsch) All parts of the country have forms of tragic history, but the teaching of critical race theory feels especially important in the case of

Oklahoma, home of the Tulsa Race Massacre and the use of boarding schools to strip Native Americans of their Indigenous culture. In response to teaching these more violent parts of America's history, Republican Gavin Stitt stated that even during discussions about events such as the Tulsa Race Massacre, when a White mob killed about three hundred Wealthy Black Oklahomans in 1921, students should be taught history without "labeling a young child as an oppressor."(Pietsch). Regardless of being a misinterpretation of the concept of critical race theory itself(an examination of how institutions purposely or accidentally perpetuate racism in American society), the lawsuit argues that this Oklahoma law "violates students' and teacher's free speech rights and denies people of color, LGBTQ students and girls the chance to learn their history."(Kingkade) High school senior, 17-year-old Donovan Chaney, a Black American, feels that this law is a "way to censor [the] next generation, so they don't know all the horrible things that went on before they were born."(Kingkade)

Despite varying types of action taken either for or against critical race theory, the consensus between political parties appears to be teaching America's history in a way that maintains American pride. However, some of these methods have more deleterious effects on American society than intended. For instance, while the concept of censoring books available to children has been familiar since the 1820s instead of attacking "inappropriate" content under the criteria of crass oversexualization, today's practice aims to protect children from the "dangers" of controversy over religion, race, gender identity, mental illness, sexual orientation, and disability. As publishers struggle to determine whether to cater to parents or children, many books have fallen into a "safe" zone, catering to primarily white, wealthy, Christian consumers. As adults attempt to filter the literature available to children and narrow it down to what is "appropriate", the experiences of many students who don't fall into the target category are diminished. In this

way, regardless of helpful intentions, these practices of banning critical race theory are not only unconstitutional but are not an effective way to combat the issues of unfair discrimination that we continue to see in American society today.

While the moral goal of attaining equality by either opposing or supporting critical race theory appears to have gotten lost in this passionate political war ground, as Catholics, it is crucial that we are able to sort through this misuse of the topic by using the guiding principles of Catholic Social Teaching. To start, realizing that the teaching of critical race theory honors the life and dignity of the human person by allowing their whole history and experiences to be heard. This also contributes to maintaining the dignity of that person because it honors the life, work, and trials of that person in a difficult environment. In addition, the controversy regarding the teaching of critical race theory relates to the call to family, community, and participation because as children of Christ, it encourages us to stand beside those whose experiences are being diminished. Furthermore, the controversy over critical race theory is subject to the Catholic tenet of rights and responsibilities because as Americans who fight for freedom and the defense of our rights, it is our responsibility to protect the rights of those who have been targeted by anti-critical race theory legislation. Not only as Catholics or Americans, but as human beings, it is our duty to defend the rights of individuals to tell their stories and allow others to find solidarity in all of these shared experiences. In taking part in this call to action, we allow not only those who share their stories to be seen, but also those who resonate deeply with these experiences to realize that they are not alone.

Adams, Char. “How Trump Ignited the Fight over Critical Race Theory in Schools.”

NBCNews.com, NBCUniversal News Group, 10 May 2021,
<https://www.nbcnews.com/news/amp/ncna1266701>

Adams, Char. Smith, Allan. Tambe, Aadit. “Map: See Which States Have Passed Critical Race

Theory Bills.” *NBCNews.com*, NBCUniversal News Group, 17 June 2021,

<https://www.nbcnews.com/news/nbcblk/map-see-which-states-have-passed-critical-race-theory-bills-n1271215>

Carrington, A. (2021, September 8). *Unlike critical race theory, a genuine education is liberal, thoughtful, and patriotic - the american spectator: USA News and Politics* *The American Spectator: USA News and politics*. The American Spectator | USA News and Politics.

Retrieved March 10, 2022, from

<https://spectator.org/unlike-critical-race-theory-a-genuine-education-is-liberal-thoughtful-and-patriotic/>

Cineas, Fabiola. “Critical Race Theory, and Trump's War on It, Explained.” *Vox*, Vox, 24 Sept. 2020,

<https://www.vox.com/platform/amp/2020/9/24/21451220/critical-race-theory-diversity-t-raining-trump>

Fortin, Jacey. “Critical Race Theory: A Brief History.” *The New York Times*, The New York

Times, 27 July 2021, <https://www.nytimes.com/article/what-is-critical-race-theory.html>

George, Janel. “A Lesson on Critical Race Theory.” *Americanbar.org*, American Bar Association,

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/

Greene, Peter. “The Conversation about Critical Race Theory in Schools Is over.” *Forbes*, Forbes Magazine, 10 Dec. 2021,

<https://www.forbes.com/sites/petergreene/2021/11/05/the-conversation-about-critical-race-theory-in-schools-is-over/?sh=6a1ef1be6f04>

- Goodyear, Sheena. "Florida Bill Would Ban Making White People Feel 'Discomfort' about Racist History | CBC Radio." *CBCnews*, CBC/Radio Canada, 19 Jan. 2022, <https://www.cbc.ca/radio/asithappens/as-it-happens-the-wednesday-edition-1.6320690/florida-bill-would-ban-making-white-people-feel-discomfort-about-racist-history-1.632061>
- Kingkade, Tyler, and Antonia Hylton. "Oklahoma's Anti-Critical Race Theory Law Violates Free Speech Rights, ACLU Suit Says." *NBCNews.com*, NBCUniversal News Group, 20 Oct. 2021, <https://www.nbcnews.com/news/us-news/oklahoma-critical-race-theory-lawsuit-aclu-rcn-a3276>
- Krotoszynski, Ronald J. "Opinion | Laws against Teaching Critical Race Theory in College Are Unconstitutional." *The Washington Post*, WP Company, 1 June 2021, <https://www.washingtonpost.com/opinions/2021/05/26/laws-against-teaching-critical-race-theory-college-are-unconstitutional/>
- Pietsch, Bryan. "ACLU Sues Oklahoma, Saying Law Restricting Teaching of Gender and Race Theories Is Unconstitutional." *The Washington Post*, WP Company, 20 Oct. 2021, <https://www.washingtonpost.com/politics/2021/10/20/oklahoma-critical-race-theory-ban-aclu/>
- Powell, Michael. "In Texas, a Battle over What Can Be Taught, and What Books Can Be Read." *The New York Times*, The New York Times, 10 Dec. 2021, <https://www.nytimes.com/2021/12/10/us/texas-critical-race-theory-ban-books.html>
- Ray, Rashawn, and Alexandra Gibbons. "Why Are States Banning Critical Race Theory?" *Brookings*, Brookings, 26 Jan. 2022, <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/>
- Ringel, Paul. "How Banning Books Marginalizes Children." *The Atlantic*, Atlantic Media Company, 3 Oct. 2016,

<https://www.theatlantic.com/entertainment/archive/2016/10/how-banned-books-marginalize-children/502424/>

Sawchuk, Stephen. "What Is Critical Race Theory, and Why Is It under Attack?" *Education Week*, Education Week, 19 Jan. 2022,

<https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05>

Serwer, Adam. "The Fight over the 1619 Project Is Not about the Facts." *The Atlantic*, Atlantic Media Company, 14 Feb. 2022,

<https://www.theatlantic.com/ideas/archive/2019/12/historians-clash-1619-project/604093/>

Siemaszko, Corky. "Texas Lawmaker Says 850 Books Ranging from Race to Sexuality Could Cause 'Discomfort'." *NBCNews.com*, NBCUniversal News Group, 27 Oct. 2021,

<https://www.nbcnews.com/news/us-news/texas-lawmaker-says-850-books-ranging-race-sexuality-cause-discomfort-rcna3953>

Sprunt, Barbara. "The Brewing Political Battle over Critical Race Theory." *NPR*, NPR, 29 June 2021,

www.npr.org/2021/06/02/1001055828/the-brewing-political-battle-over-critical-race-theory

Siemaszko, Corky. "Texas Lawmaker Says 850 Books Ranging from Race to Sexuality Could Cause 'Discomfort'." *NBCNews.com*, NBCUniversal News Group, 27 Oct. 2021,

<https://www.nbcnews.com/news/us-news/texas-lawmaker-says-850-books-ranging-race-sexuality-cause-discomfort-rcna3953>

Swift, J. (2021, June 16). *The War on Critical Race Theory: A quagmire*. The Bulwark.

Retrieved March 10, 2022, from

<https://www.thebulwark.com/the-war-on-critical-race-theory-a-quagmire/>