

Defense against the Dark Arts: Academic Freedom Meets the Antiwoke Crusade

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Abstract

An “antiwoke crusade” (AWC) is being waged in Republican-led states across the United States. The AWC’s attack on critical race theory (CRT) fits Stanley Cohen’s definition of a moral panic, as I demonstrate by focusing on the role of “socially accredited experts” in promulgating “horror stories” about CRT. I defend CRT’s core claim of systemic racism—at least on an outcomes reading. I conclude on a somewhat pessimistic note for education, since a college classroom is not a “marketplace of ideas,” and educators should not use their academic freedom to resort to the same manipulative tactics as their ideological opponents.

The Moral Panic Attack

According to a June 2023 tally, “44 states have introduced bills or taken other steps that would restrict teaching critical race theory or limit how teachers can discuss racism and sexism. . . . Eighteen states have imposed these bans and restrictions either through legislation or other avenues” (Schwartz 2023). And that month, the American Civil Liberties Union (ACLU) was tracking 491 actual and proposed “anti-LGBTQ” bills in state legislatures, measures that often involve what can be taught in public schools (ACLU 2023). *EducationWeek* reporter Sarah Schwartz (2021) and the ACLU describe a movement I call the antiwoke crusade (AWC). My focus is the AWC attack, carried out in the name of academic freedom, on critical race theory (CRT) in education.

In a *moral panic*, “a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions” (Cohen 2011, 1). In the AWC narrative, a drag show story hour is a grooming exercise on the part of LGBTQ adults. Allowing transwomen into women’s bathrooms invites sexual violence by men pretending to be women. Permissiveness about gender identity culminates in schools allowing children “who identify as cats” to use litter boxes instead of regular bathrooms (Kingkade et al. 2022).

Horror stories are told about CRT as well. In 2021 Representative James White asked Texas attorney general Ken Paxton for an opinion on (among other things) whether the teaching of CRT in Texas public schools and universities violates the US Constitution, the Texas Constitution, or federal or state law, writing, “CRT and radical antiracist ideology are entering American schools, businesses and government institutions. . . . The University of Oklahoma reportedly forced some of its employees to apologize for being white.”

Montana attorney general Austin Knudsen (2021) replied to a similar request: “HELD: In many instances, the use of ‘Critical Race Theory’ and ‘antiracism’ programming discriminates on the basis of race, color, or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, Article II, Section 4 of the Montana Constitution, and the Montana Human Rights Act.” Knudsen writes that “some universities have even allegedly forced employees to apologize for being white,” citing the same source as White: “[Gregory] Kamer said some universities have already faced lawsuits for diversity programs where ‘they make people get down on the floor and apologize for being white. This is more like the cultural revolution in China. It’s not America’” (Brake 2021).

A horrifying prospect indeed, worth connecting to two of Cohen’s observations about a moral panic: the role of socially accredited experts, and the possibility of long-lasting repercussions. White invites Attorney General Paxton to defer to the Oklahoma Council of Public Affairs (Brake 2021), which defers to Kamer. White even mischaracterizes what was reported: Kamer did not allege that OU was among the “some universities” he was referencing. Paxton never formally replied to White, but the Texas Legislature has enacted S.B. 3 and S.B. 16, which Lieutenant Governor Dan Patrick (2023) characterized as banning CRT in K–12 and college, respectively. Montana attorney general Knudsen (2021) uses Kamer’s allegation as part of the evidence for an opinion that has the force of law.

When far-reaching legal and social policy options are on the table, those in power have an extra responsibility to investigate the facts. I can find no independent corroboration of Kamer’s implausible-sounding claim. The Oklahoma Council of Public Affairs, White, and Knudsen should have tried to corroborate this horror story before acting on it.

Far from being exceptional, such reliance on dubious expertise to buttress far-reaching law and social policy is entirely representative of the AWC in general. For instance, the evidence presented by the author of Texas S.B. 16, which explicitly purports to protect academic freedom, relies heavily on testimony by former Princeton and Vanderbilt professor Carol Swain (Texas Senate 2023). Swain’s “expert” testimony is bizarre, as in these *prepared* remarks:

Colleges and universities are no longer marketplaces of ideas. . . . They have become indoctrination centers.

The new educational approach of today demands that students not follow the settled science, but rather go against it. . . . We are told that there are many races, when in fact

human beings constitute one race—the human race; science has declared that we all descend from a common ancestor. And if the above is not enough, there is blame placed on white Americans for slavery, when we know that slavery has been part of the human experience since time immemorial. All of the above are neatly packaged and presented as CRT/DEI, and it is filled with lies.

Students today are asked questions about their beliefs in order to out them. Once outed they can experience lower grades from professors or harassment from fellow students.

CRT violates the 1964 Civil Rights Act. . . . [CRT] often violates the Equal Protection clause of the Constitution.

Moreover, Swain’s views about race appear incoherent. Under later questioning she asserted that systemic racism existed before it was eliminated in 1964 by the Civil Rights Act. But if there is only one race, then racism is impossible.

Swain provides not a scintilla of evidence beyond her word for her more coherent horror stories. When asked to identify the main tenets of CRT, Swain’s *entire* answer was that CRT is based upon Marxism, and part of a scheme to overthrow America. She warned—as Cohen foresaw—that even the purveyors of CRT often don’t know that they are spreading Marxism; we need experts to—in Cohen’s terms—“decode” CRT’s true meaning; experts like Swain herself, and the preeminent source of anti-CRT horror stories, one Christopher F. Rufo.

CRT Gets Rufo-ed

Attorney General Knudsen’s opinion includes nine separate citations of Rufo’s work. Rufo rose from obscurity almost overnight thanks to his efforts to generate a moral panic about CRT and “anti-racism” (Wallace-Wells 2021). Tucker Carlson and Ben Shapiro describe Rufo as a journalist (Rufo n.d.), and Rufo (2021b) calls himself an “investigative journalist.” *Russia Today* calls Rufo a “researcher” (*RT International* 2021). Rufo got a further status bump from debating Princeton University professor Keith Whittington at Stanford University on “Protecting Academic Freedom at U.S. Universities: Do Proposed Policies in Florida Make Sense?” The Jefferson Council’s cosponsoring blurb describes Rufo and Whittington as “two leading U.S. thinkers.”

At issue here is not just Rufo’s reputation but also his influence. He became a regular guest on Fox News, and on Tucker Carlson’s program on September 2, 2020, he declared, “The President and the White House—it’s within their authority to immediately issue an executive order to abolish critical race theory training from the federal government. And I call on the President to immediately issue this executive order—to stamp out this destructive, divisive, pseudoscientific ideology.” Then-president Donald Trump was watching, and Rufo was flown to Washington, DC, to help draft Executive Order 13950, issued on September 22 (Wallace-Wells

2021). On January 20, 2021, President Joe Biden revoked EO 13950, but its content lives on in numerous state anti-CRT bills (Schwartz 2021).

Rufo's reputation is richly undeserved, for he is not a serious researcher, journalist, or thinker. His work has two main flaws. First, Rufo does not report fairly, often misrepresenting what his opponents actually write or say by trafficking in omission, exaggeration, or outright falsehood. Second, even when he does not misrepresent, Rufo editorializes in blatantly partisan fashion.

Rufo's website enables paid subscribers to view "over 1000" stories of CRT horrors. I confine myself to a few representative examples. His "Racism in the Cradle" is subheaded "Arizona Department of Education Claims That Babies Develop the First Signs of Racism at Three Months Old" (Rufo 2021a). But the attached "whistleblower" materials support no such reading. They are not official departmental materials, and they don't say that three-month-old babies are racist. They say that research shows that by three months babies notice racial differences and often choose playmates on that basis, claims supported by links to relevant professional articles.

Rufo's false claim was quickly spread by conservative media: in the *Washington Examiner* headline "Arizona Education Department Encourages Talking to Babies about Racism, Says 3-Month-Olds Can Be Racist: Report" (Lee 2021); in the Christian Broadcasting Network headline "Arizona Dept. of Education Reviewing 'Equity' Toolkit Claiming Babies Are Racist" (CBN 2021); and in the *Russia Today* headline "Racist BABIES? Researcher Reveals Arizona 'Equity' Toolkit That Teaches 'White Fragility' and Other Woke Propaganda" (*RT International* 2021).

A second story, "Seattle Teaching Hate," is subheaded "Seattle School District Claims Education System Is Guilty of 'Spirit Murder' against Black Children" (Rufo 2020). The offending materials are PowerPoint slides from a one-day presentation. Rufo unfairly attacks the presenters over a simple Indigenous peoples' land acknowledgment, then continues, "Then, next to an image of the Black Power fist, they claim that 'the United States was built off the stolen labor of kidnapped and enslaved Black people's work, which created the profits that created our nation.'" The image is a "Black Lives Matter in Schools" logo, though it does have a raised Black fist in the center. The claim itself—one promoted in the 1619 Project—is somewhat controversial among serious academics, but Rufo does not pursue it. He continues, "The central message of the training session is that white teachers must recognize that they 'are assigned considerable power and privilege in our society' because of their 'possession of white skin.' Consequently, to atone for their collective guilt, white teachers must be willing to 'bankrupt [their] privilege in acknowledgement of [their] thieved inheritance.' They must self-consciously reject their 'whiteness' and become dedicated 'anti-racist educator[s].'"

During the session, the trainers acknowledge that this language might be met with resistance from white teachers. They explain that any negative emotional reaction to being denounced for "whiteness" is an automatic response from the white teachers' "lizard-brain," which is "afraid that [they] will have to talk about sensitive issues such as race, racism, classism, sexism, or any kind of 'ism.'"

The first two quotes are not in the materials, and even if they are from the training Rufo's inference to "collective guilt" is a non sequitur. "Bankrupt your privilege" comes from a Saeed Jones poem that participants were invited to discuss, and one should be cautious about citing poetry as evidence. The lizard-brain quote is in the materials but comes from Zaretta Hammond's (2015) advice to all teachers, not just whites; and it is not made in a context of denouncing anyone. If Rufo has corroboration of his reading, here as elsewhere he does not provide it.

But Rufo's main target is something else again: "In the most disturbing portion of the training, the teachers held a discussion about 'spirit murder,' which, according to Dr. Bettina Love, is the concept that Americans schools 'murder the souls of Black children every day through systemic, institutionalized, anti-Black, state-sanctioned violence.' In the words of Dr. Love, who originated the concept, the education system is 'built on White supremacy' and 'invested in murdering the souls of Black children,' even in the most ostensibly progressive institutions." Rufo's subhead reports that the "discussed" idea is endorsed by the school district, but this is not explicit in the materials. Although the quotes from Love (2016) are genuine, it is unclear whether the participants heard these quotes at all. Finally, Rufo makes no charitable effort to understand Love's claim: the literal murder of Black children is one thing, but the far more pervasive problem is systemic racism in education, which routinely destroys young Black lives in a different way—"murder" of the spirit.

Here and elsewhere, most of what Rufo reports is horrifying only on the premise that America is not systemically racist. Reading through the many "whistleblower" documents on Rufo's website, almost all the material—like the assertion that whiteness is associated with "considerable power and privilege in our society"—is plausible, as I will now argue.

Systematic Racism

In the context of Black Lives Matter protests against police killings of unarmed Black citizens, National Security Advisor Robert O'Brien expressed a common conservative view: "I don't think there is systemic racism. I think 99.9 percent of our law enforcement officers are great Americans. . . . We do have to get rid of those like the dirty cop that killed George Floyd." The "dirty cop" is Derek Chauvin, whose name evokes the *chauvinist*: someone who blindly and enthusiastically believes in the superiority of his cause or people. But racism need not be chauvinistic. The term "racist" can apply to *attitudes* (such as chauvinism, which is a belief), or to *intentions*, or to *outcomes*. Perhaps Derek Chauvin had racist attitudes that gave rise to a racist intention to produce a racist outcome, but these things can come apart. One can have racist attitudes and not form the intention to act on them. Racist intentions can backfire, so it is possible to act with a racist intention, and yet not produce a racist outcome. And—crucially—there can be racist outcomes in the absence of racist attitudes and intentions.

"Systemic racism" in policing might mean that racist attitudes are widespread among police. There are two ways this might be true. First, O'Brien might be underestimating the number of

officers who are like Chauvin. Or it might be that many instead manifest “implicit” racism. If so, then there is systemic racism at the level of attitude but arguably not at the level of intention.

But suppose there is no systemic racism at the levels of attitude or intention. In this case, there can still be systemic racism in outcomes. The main evidence for this in criminal justice outcomes is well-documented systemic *maldistribution* (Balko 2020). Relative poverty rates are part of the explanation. In 2021, the poverty rate for white Americans was 8.2 percent; for Blacks it was 19.5 percent (Talk Poverty n.d.). In 2016, “At \$171,000, the net worth of a typical white family [was] nearly ten times greater than that of a Black family (\$17,150)” (McIntosh et al. 2020). In 2022, 74.6 percent of white households owned their homes, compared with 45.3 percent of Black households—a gap of more than 29 points (Henderson 2022). Other areas of life such as health care access exhibit similar inequalities (TCF 2019).

“Systemic racism” is a morally loaded term, entailing injustice. The three main competing explanations for systemic maldistribution are nature, self-determination, and injustice. A nature explanation is that differences in outcome reflect differences in ability or other natural tendencies. A self-determination explanation is that different groups take different advantage of their opportunities. They self-select for certain lifestyles, education, or employment, and some do not put in the effort that they should. Fans of such explanations will claim that Black Americans either are not as smart or enterprising as whites, or that they make choices which reflect a lack of motivation to succeed—that they don't really want to have to work for what whites have; or that many Black Americans are naturally disposed to crime; or that they choose crime as the easier path because they are not willing to work hard and honestly.

But these claims are implausible in a nation where your mere zip code is an excellent predictor of your health and wealth outcomes. Even if we grant differences in nature—an empirical matter, not to be decided from the armchair—they will in any case be far too small to explain massive disparities in outcome. And to the extent that self-determination plays a role, it is a mistake to think we all have the same set of choices before us—instead, the choices made by Black Americans largely are *explained* by rather than explain systemic maldistribution.

The best explanation of systemic maldistribution for Black outcomes in the United States is injustice, more precisely a succession of injustices, including slavery, Reconstruction, Jim Crow, “separate but equal,” mass incarceration, urban blight, “stop-and-frisk” policies, the War on Drugs, the War on Crime, and environmental racism. In practically every aspect of life, Black Americans suffer much worse outcomes than whites, and this is a grave injustice. *This* is systemic racism.

Unfortunately there is a tendency on both sides to think that systemic racism in outcomes *must* be explained by systemic racism in attitudes. In the US Senate in 2020, Senator John Cornyn was dumbfounded by witness Anita Gupta’s claim that all Americans are implicitly racist. Their exchange shows how counterproductive discussion about systemic racism can be. Even if Cornyn is wrong and everyone is implicitly racist, not everyone is equally racist. And even if Gupta is

wrong, this would not undermine the claim that there is extensive systemic racism in outcomes. It would affect only the explanations of those outcomes.

The distinction between attitude and outcomes applies to anti-CRT legislation—modeled on Executive Order 13950—intended to ban teaching that “the United States is fundamentally racist or sexist; an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.” AWC proponents (such as Rufo) should explain how they understand these propositions. The United States *is* fundamentally racist in the outcomes sense, though perhaps not in the chauvinist sense. And proponents of CRT should recognize that it likely is counterproductive to tie chauvinist racism and outcomes racism too closely together.

The AWC denial of systemic racism is fundamental to claims that CRT violates antiracist laws. Anti-CRT laws are intended to prohibit any possibility that (in the language of EO 13950) “an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex.”

Ironically, if there is systemic racism, then the absence of affirmative action or other “antiracism” programming can be in violation of the various antidiscrimination laws and the Fourteenth Amendment, since Black Americans are in general not competing on anything like a level playing field with whites. They will suffer worse outcomes, *because* of the color of their skin. AWC embraces the myth of racial equality, where white privilege need not be acknowledged, because it does not exist in the first place. Indeed, AWC rhetoric at times suggests that whites are *underprivileged*.

Problems with CRT

I do not endorse everything one finds in CRT and associated ideas; here I focus on a few philosophical issues. One common claim is that “racial prejudice can indeed be directed at white people (e.g., ‘White people can’t dance’) but is not considered racism because of the systemic relationship to power” (ACLRC n.d.). One can adopt technical meanings of ordinary terms for specific purposes, but one should not insist that everyone use the word that way. “Racism” in the ordinary sense means unjustified discrimination on the basis of racial membership, so it is understandable that conservatives bristle at being told there’s no such thing as antiwhite racism.

Concerning racial categories like “Black” and “white” there are three views: first, that they are biologically real; second, that they are social constructions and therefore not real; third, that they are social constructions and real. The first view is clearly false. But Kimberlé Crenshaw says that CRT “is a practice—a way of seeing how the fiction of race has been transformed into concrete racial inequities” (Lang 2020). If this is supposed to endorse the second view, then it is false. I *really* am white, and Crenshaw *really* is Black. Moreover, as with Swain’s one-race view, if there are zero races there can be no racism. Race is real, even though it is socially constructed, just as I really am a professor, even though “professor” is a socially constructed category. CRT proponents should make this clear if they want to be understood and believed.

The charge that CRT is a Marxist theory fits Cohen's observation that in a moral panic the horrors often are not new. Even if many Black CRT advocates are Marxists, that at most shows that they do not feel properly treated under current arrangements. Rather than blame them for that, AWC proponents could make the benefits of capitalism more salient by working to mitigate systemic racism.

Academic Freedom

In response to Representative White's letter, the AAUP (2021) filed a generally excellent brief warning against AWC-inspired legislation aimed at public education. But the brief endorses Justice Brennan's claim that the university classroom is "peculiarly the marketplace of ideas" (*Keyishian v. Board of Regents*, 385 U.S. 589 1967). As Jill Gordon (1997) points out, "In a marketplace of ideas, the ideas that would prevail would be popular ones, which are not necessarily the true ones."

A university classroom should be more like a carefully tended garden (Sparrow and Goodin 2001), or a curated museum exhibit, or even a restaurant. It should supply and in some sense favor our best estimate of the truth; even in the humanities, where we often ponder what John Stuart Mill called the "great questions." Not even Mill advocated for an unregulated marketplace. His concern in *On Liberty* was that we should not rule out unpopular answers to "great questions" in advance, lest they turn out to be the truth. In the humanities, we humbly place our best estimate of the truth in a context that includes its rivals; at times our best estimate is that we don't know what the truth is. Sincere AWC proponents can agree with this. If CRT is radically false, then it will have no place in some classrooms but still might properly be taught in "big questions" classes. And at any rate CRT seems substantially true—for instance concerning systemic racism.

But I have my doubts about the sincerity of AWC crusaders, who mostly do not engage in appropriate academic debate. It is Rufo who behaves as a proponent of the "marketplace" vision, choosing his prose mainly for its rhetorical effect. Perhaps that is why Rufo reportedly identifies as "a fan of post-modernist thinkers" (Gabriel 2022). In Harry Frankfurt's (2005) terms, Rufo, like some other contemporary conservatives, is a "bullshitter," an opponent far harder to combat than a liar. Rufo seeks power rather than truth: newly seated on the board of trustees for the New College of Florida, he has the ear of Governor Ron DeSantis on education policy. To return to Cohen's analysis, a moral panic has resulted in major social change, and more change in power structures may be on the way: Rufo "sees LGBTQ issues as an even more potent line of attack" than racial issues (Gabriel 2022). His latest "article" is subheaded "A Physician Reveals the Nightmare of Transgender Ideology in a Major Children's Hospital" (Rufo 2023). The conundrum for academic truth-seekers is that we play by different rules: defense against such dark arts is limited by academic integrity.

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