AFTER DENIAL: IMAGINING WITH EDUCATION JUSTICE MOVEMENTS

BY ZOE MASTERS*

Abstract. In many U.S. states, Republican lawmakers are working to restrict how children can learn about racism. This article puts these efforts in context as part of a larger phenomenon of denial, which is integral to the social construction and maintenance of white supremacy. Denial has long been embedded in the constitutional framework that all but reversed Brown v. Board and that keeps schools racially segregated today. Using case studies of three education justice movements, I argue that non-reformist steps toward antiracist education law require challenging denial with interpersonal and societal change in service of radical structural transformation.

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INTRODUCTION

In January 2021, I attended a virtual town hall in support of antiracist education reforms at my high school. One speaker, a white woman, opposed the reforms. In her view, systemic racism was “a fictitious enemy,” police killings were “preventable” by “individual choices and responsibility,” and the “supposed free press” was peddling an overly emotional “race narrative.” Other speakers shared personal experiences of racism in the school district, but she viewed the town hall as “pushing an agenda into our schools based off of falsehoods.” She also said she wasn’t racist. “I completely and utterly condemn any and all forms of racism and any claims of superiority of one group over another,” she avowed. “We’re all created equal by our creator with unalienable rights, and that’s how I view everyone, and I love all of you.”

As I thought more about this woman’s comments in the days after the town hall, my initial anger shape-shifted into something heavier. Her insistence on non-racism reminded me of COVID-19 patients who died denying the disease was real. Like them, she was deluded, dissociated, nonsensical, and making a crisis worse by pretending it wasn’t happening. Ultimately, unwittingly, she was demonstrating exactly why antiracist education is so needed.

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1 West Lafayette Coalition for Antiracist Education, Diversity and Antiracism Town Hall (Jan. 26, 2021), https://www.wlcare.org/townhall [https://perma.cc/3HTL-F8XZ]. The proposed reforms included a more inclusive curriculum, an investigation of racial bias in school discipline, changes to hiring and professional development, and an end to the school’s contract with police. Letter from eight hundred two alumni to Rocky Killion, Superintendent, West Lafayette Community School Corporation (June 18, 2020), https://static1.squarespace.com/static/5ef4fb1d5d84d010a82692b5/t/60106d99be5d88a5643/1611719175177/WL+CARE+Letter.pdf [https://perma.cc/4JWJ-XZYZZ].
3 Id. at 6–7.
4 Id. at 7.
5 Id. at 7.
There is a “cruel irony”\(^7\) in professing non-racism while opposing antiracist progress and silencing testimonies of racialized harm. The rhetoric I heard at the town hall was a striking example, but it is far from unique. Denial is deeply embedded in education law. The constitutional framework that reinstated school segregation after \textit{Brown v. Board of Education}\(^8\) and that keeps schools racially segregated today both endorses and enforces denial. Moreover, denial is now being overtly mandated in many states as “anti-CRT” laws attempt to limit what children can learn about racism. This is a crisis of law and ideology; responses cannot come from within law alone. Education law scholars should draw on insights from critical race theorists and antiracism practitioners who have recognized and challenged denial as an ideological problem, and we should collaborate with education justice movements to enact radical change.

In Part I, I describe denial as an ideology that is both adopted and perpetuated by law, particularly education law, and I argue that non-reformist change is necessary. In Part IA, I synthesize literature from multiple disciplines to describe how denial operates and how it upholds the social construction of whiteness and racial hierarchy. In Part IB, I trace how denial became entrenched in the legal frameworks that keep schools segregated and that attempt to limit how children can understand racism. In Part IC, I argue that radical changes are needed. I introduce the abolitionist framework of non-reformist steps as contrasted with reformist reforms, and I propose applying this framework in the context of education justice. Specifically, I argue that non-reformist change in the education context requires rejecting entrenched denial and working ideological and social change in service of radical structural transformation.

In Part II, I illustrate more concretely what it could mean to address denial as an ideological problem, by giving examples of prescriptions that directly implement social, cultural change alongside or in service of structural, policy, and legal change. In Part IIA, I describe the kind of interpersonal antiracism interventions that “anti-CRT” laws attempt to ban. These interventions are sometimes viewed as ineffective or surface-level, but I argue that when implemented effectively they should be contributing to ongoing structural change. Moreover, in the school context, interventions like anti-bias training for teachers and ethnic studies courses for students are an important part of what education justice movements are demanding. In Part IIB, I analyze the work of three education justice movements. I argue that these movements are enacting non-reformist change by refusing to legitimate hegemonic denial and instead creating ideological, cultural, and structural transformation for an antiracist future.

In Part III, I discuss three implications for education law scholars of understanding education justice as a fight against denial. I argue that this framing pushes us to embrace a long view of education law as shaping the ideologies and political choices of future generations. It also encourages an expansive understanding of what “counts” as education law and a recognition that important choices are being made at very local levels of decision-making. Finally, it invites us to take seriously the possibility that challenging deeply held denialist ideologies directly through interpersonal, social change could be an important part of the messy, ongoing process of changing education law for future generations.

\(^7\) Parents Involved in Community Schools v. Seattle School District No. 1, 557 U.S. 701, 798 (2007) (Stevens, J., dissenting) (“There is a cruel irony in The Chief Justice’s reliance on our decision in \textit{Brown}.”)

\(^8\) 347 U.S. 483 (1954).
I. DEFINING THE PROBLEM: “THE HEARTBEAT OF RACISM IS DENIAL”

Ideologies of denial are deeply embedded in the legal frameworks that govern education. This Part describes the problem and argues that radical, non-reformist change is necessary. First, Part IA provides background on denial as an ideology that helps to construct and maintain white supremacy. Part IB details two related legal frameworks that take up and reproduce ideologies of denial: the federal constitutional framework that re-constitutionalized school segregation after Brown v. Board, and the “anti-CRT” laws that are currently being enacted in many states to silence and chill antiracist education. Finally, Part IC introduces the abolitionist framework of non-reformist steps as contrasted with reformist reforms, and argues that non-reformist steps are needed to reach a future beyond denial. Part II will then discuss how education justice movements are embracing non-reformist changes by confronting denial in ideology and law.

A. Denial is integral to the social construction of racial hierarchy

Writers and scholars in many disciplines have described denial as an ideological phenomenon that plays a central role in constructing and maintaining white supremacy. This section gives background on the social construction of whiteness and race in general, how ideologies of denial operate, their role in maintaining racist political and economic structures, and how they are both taken up and perpetuated by law. Part IB will then describe in more detail how denial is embedded in the federal and state legal frameworks that govern education.

To study the social construction of race is “to enter a world of paradox, irony and danger” where “arbitrarily chosen human attributes shape politics and policy, love and hate, life and death.” Construed to justify and maintain white economic domination, race is inherently about power; racial categories would not exist without racism. Moreover, whiteness specifically is a category that depends on the existence of hierarchy; there is no neutral, non-oppressive whiteness. Law reifies socially-
constructed categories; segregation and economic stratification lock in racial hierarchy. Yet racial formation is also ever-changing, contextual, relational, and intersectional; how race becomes real in people’s lives depends on context and a myriad of other aspects of identity and experience. For these reasons, “race is better described as a verb than a noun, as production rather than destiny.”

The system of white supremacy requires maintaining whiteness as a racial category. Ideologies of denial play an integral role in this process. Specifically, for people raced white to accept the racial order as given requires denying that it has been and continues to be actively constructed. White people often hold entire alternative belief systems about how inequality works, to imagine away their own participation in systemic exploitation. To maintain these beliefs, they may refuse to hear

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12 See generally Harris, supra note 11, at 1715–44 (documenting how the law abstracted and formalized the system of social subordination in which those who claimed whiteness gained liberty and citizenship through genocide and enslavement in the early Republic); Hancy López, supra note 11 (analyzing how law simultaneously draws from the social constructions of race and itself defines racial identities).

13 See generally Daria Roithmayr, Reproducing Racism (2014). Professor Monica Bell describes segregation as a multifaceted form of “racial hierarchy maintenance” encompassing “uneven geographic distribution of ethnic groups across a coherent geographic area (separation), and the movement of marginalized ethnic groups into identifiable and stigmatized enclaves (concentration), in order to establish and reproduce hegemonic racial hierarchy (subordination), to control and economically exploit disadvantaged groups, and hoard social and political opportunity for advantaged groups (domination).” Monica C. Bell, Anti-Segregation Policing, 95 N.Y.U. L. Rev. 650, 659–60 (2020). Historian John Cell has explained how segregation itself helps to obscure the construction of race, solidifying whiteness as a social category:

“[S]egregation produced a "state of ambiguity and contradiction [that] was skillfully and very deliberately created" . . . to obscure the conflicted and disjointed nature of the “white world” . . . . The principal function of the segregationist ideology was to soften class and ethnic antagonisms among whites, subordinating internal conflicts to the unifying conception of race.”


16 See Mills, supra note 10, at 18–19 (theorizing the “racial contract,” an “epistemology of ignorance” in which the white polity enforces for itself a “certain schedule of structured blindnesses and opacities,” namely “misunderstanding, misrepresentation, evasion, and self-deception on matters related to race”); Harris, supra note 11, at 1777 (theorizing a cycle in which socially constructed racial hierarchy was “naturalized and legitimated” through law, which “observed” the social construction and “rendered [it] nearly invisible”).

17 See Joyce E. King, Dysconscious Racism: Ideology, Identity, and the Miseducation of Teachers, 60 J. NEGRO EDUC. 133, 135 (1991) (defining “dysconscious racism” as an “uncritical habit of mind (including perceptions, attitudes, assumptions, and beliefs) that justifies inequality and exploitation by accepting the existing order of things as given”); Maureen Johnson, Separate but (Un)equal:
counternarratives, become alienated and unable to engage emotionally, and/or perceive any conversation about race and racism as an existential threat. The idea that “talking about race is racist,” for example, polices against any engagement with ideas that could destabilize a denilalist mindset. Ultimately, by believing that their status as white and the material benefits of whiteness are somehow natural or deserved rather than a vast and fragile construction maintained by the genocide, enslavement, and dispossession of those they deem “other,” white people are maintaining a state of denial about the nature of their own humanity and their worth as equal to other humans.

The denialist impulse is not only present in individual psychology and interpersonal interactions. It also motivates social, economic, and political behaviors, including entitlement, when white people demand continued material privilege and perceive moves toward racial equity as unjust; spite, when they invest in racist structures even at a cost to their own self-interest; and hypocrisy, when they profess antiracism while continuing racist behaviors. Law reflects and perpetuates these


See Kristie Dotson, Tracking Epistemic Violence, Tracking Practices of Silencing, 26 Hypatia 236 (2011) (analyzing “the failure, owing to pernicious ignorance, of hearers to meet the vulnerabilities of speakers” as a cause of “the different types of silencing people face when attempting to testify to oppressed positions in society”); Gaile Pohlhaus, Jr., Relational Knowing and Epistemic Injustice Toward a Theory of Wilful Henmenegual Ignorance, 27 Hypatia 715 (2011) (“[D]ominantly situated knowers refuse to acknowledge epistemic tools developed from the experienced world of those situated marginally. Such refusals allow dominantly situated knowers to misunderstand, misinterpret, and/or ignore whole parts of the world.”); Alison Bailey, Strategic Ignorance, in RACE AND EPISTEMOLOGIES OF IGNORANCE 77, 85 (Shannon Sullivan & Nancy Tuana eds., 2007) (“White ignorance is a form of not knowing (seeing wrongly), resulting from the habit of erasing, dismissing, distorting, and forgetting about the lives, cultures, and histories of peoples whites have colonized.”) (emphasis added).


ROBIN DIANGELO, WHITE FRAGILITY (2018); Becky Thompson & Veronica T. Watson, Theorizing White Racial Trauma and Its Remedies, in THE CONSTRUCTION OF WHITENESS 234 (Stephen Middleton, David R. Roediger & Donald M. Shaffer eds., 2016) (describing hypervigilance, along with diminished creativity and dissociation, as an aspect of “the trauma of perpetrators”).


See Khiara M. Bridges, White Privilege and White Disadvantage, 105 Va. L. Rev. 449 (2019); See JONATHAN M. METZL, DYING OF WHITENESS (2019); McGhee, supra note 19.

See Jamillah Bowman Williams & Jonathan Cox, The New Principle-Practice Gap: The Disconnect between Diversity Beliefs and Actions in the Workplace, Presentation at the American Sociological Association Annual Meeting (Aug. 2020), https://perma.cc/A9HW-CMF4 (discussing this problem in the corporate context); NOLIWE ROOKS, CUTTING SCHOOL 12–13 (2020) (“Up to 75 percent of whites support school-integration efforts. . . . The numbers, however, decrease when whites are asked about how to achieve racial integration. . . . [They] simply are not comfortable with what it might take to actually make it happen. . . .”); See Blake et al., ANTI-RACISM INC. (eds., 2019) (tracing and challenging “the complex ways people along the political spectrum appropriate, incorporate, misuse, and neutralize antiracist discourses to perpetuate injustice”).

https://scholarship.law.upenn.edu/jlasc/vol25/iss4/1
dominant, denialist beliefs and behaviors. Legal scholars and sociologists during the critical race theory revolution documented how constitutional law in the late 20th century came to reflect a particular denialist ideology crafted after the Civil Rights Movement, and then further perpetuated that ideology until it became widely entrenched. In the Trump and post-Trump era, colorblind, denialist rhetoric is weaponized as an explicit expression of white racial solidarity and a rallying cry for white supremacist violence.

B. Denialist federal and state laws shape education and ideology

This Part, IB, gives two related examples of how denial is embedded in education law. First, denial is built into the federal constitutional framework that all but reversed Brown v. Board and keeps schools racially segregated today. Second, many states are currently trying to enforce denial directly by banning any discussion of “critical race theory” in schools. These projects are deeply intertwined. By chilling antiracist education, anti-CRT laws are attempting to reinforce the same colorblind, denialist ideologies that were initially invented to reinstate school segregation after Brown. Structures of school segregation and ideological limits on curriculum work together to shape and reproduce racism. Erika Wilson’s recent article Monopolizing Whiteness argues that white racial isolation in highly resourced, “quasi-public” schools contributes to the development of racist beliefs and behaviors. As Wilson has

25 In 1991, Neil Gotanda presented a critique of “colorblind constitutionalism,” which he defined as “a collection of legal themes functioning as a racial ideology”—the themes including both deliberate “nonrecognition” of race and the lie of “unconnectedness” between race and lived reality. Neil Gotanda, A Critique of ‘Our Constitution is Color-Blind,’ 44 STANFORD L. REV. 1, 2–3, 6–7 (Nov. 1991). In 1996, Ian Haney López analyzed the legal construction of whiteness in the U.S., including both “transparency” (“the tendency of Whites to remain blind to the racialized aspects of that identity”) and “colorblind ideology” as a legal rule. HANEY LÓPEZ, supra note 11, at 16, 116, 148 (1996). Also in 1996, historian Peggy Pascoe traced how, as scientific racism became socially unacceptable, a new ideology took hold in law and culture: “modernist racial ideology,” the “belief that the eradication of racism depends on the deliberate nonrecognition of race;” she noted that critical race theorists were calling this “color blindness.” Peggy Pascoe, Miscegenation Law, Court Cases, and Ideologies of ‘Race’ in Twentieth-Century America, 83 J. Am. Hist. 44, 48 (Jun. 1996). On colorblindness as a legal framework, see generally Richard Delgado, White Interests and Civil Rights Realism: Rodrigo’s Bittersweet Epiphany, 101 MICH. L. REV. 1201, 1221; Dorothy E. Roberts, Foreword: Abolition Constitutionalism, 133 HARV. L. REV. 1, 77–81 (2019); see also infra Part IB.

26 The first major work of sociology to document the impact of colorblindness as a widespread ideology was EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS (2003); see also MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 220, 256–60 (3d ed. 2014) (documenting the rise of colorblindness as “the hegemonic ideology of racial reaction in the United States”); Erika Wilson, The Great American Dilemma: Law and the Intransigence of Racism, 20 CUNY L. REV. 513, 518 (2017) (“The rule of law is a powerful force in structuring behavior. To the extent that the law adopts a myopic definition of what constitutes an actionable form of racism, the broader cultural understanding of what constitutes racism is likely to suffer from similar myopia.”).


28 Erika K. Wilson, Monopolizing Whiteness, 134 HARV. L. REV. 2382, 2395 (2021). Wilson draws on social science from before Brown and more recent studies to show how white isolation reproduces racism. Id. at 2404-14.
shown, keeping schools segregated is a way to police the boundaries of whiteness and concentrate material advantage while shaping the racist ideologies that white children inherit. Maintaining racism has long been a project of federal constitutional law; these legal frameworks go hand in hand with their newer, more overt iteration in state-level anti-CRT legislation.

1. Denialist constitutional law keeps schools racially segregated

Legally segregated schools maintain whiteness as a social category and enforce its material benefits. This is true historically and it remains true today. In the Jim Crow South, school segregation went hand in hand with anti-miscegenation laws to enforce white racial purity, a harsh regime justified by reference to then-dominant “scientific” racist ideology. After the Civil Rights Movement destabilized both segregation and scientific racism, the justifications for using the law to make race and enforce racial hierarchy had to evolve in response. The denialist framework that keeps schools segregated today can be traced directly back to a legal strategy advanced by whitesupremacists in the wake of Brown v. Board. Immediately after Brown, opponents not only denounced the decision but also attempted to vitiate it by inventing the idea that a robust equal protection clause would prevent the government from busing white students to integrate schools. The resulting legal framework is a paradigmatic example of how federal constitutional law embraces and enforces white denial.

The rhetorical reframe from “protecting Jim Crow segregation” to “opposing busing” had immediate, lasting political and legal impact. President Nixon appointed Justices Powell and


30 Cheryl Harris cites “educational opportunity” as one of the core “expectations of race-based privilege” which constitute the “new form of whiteness as property” after Brown. Harris, supra note 11, at 1753.


32 Oh, supra note 29, at 1335–37 (discussing Rice v. Gong Lum, 104 So. 105 (Miss. 1925) as an example). See generally Pascoe, supra note 25; Bridges, supra note 23, at 462 et seq. (on the eugenics movement); Rutledge M. Dennis, Social Darwinism, Scientific Racism, and the Metaphysics of Race, 64 J. NEGRO EDUC. 243 (1995).

33 DRIVER, supra note 31, at 242–314.

34 See id. at 261–62 (“Ervin . . . posed the following loaded question [to Robert Kennedy]: ‘Do you not agree with me that denying a school child the right to attend his neighborhood school and transferring him by bus or otherwise to attend another community for the purpose of racially mixing the school in that other community is a violation of the Fourteenth Amendment as interpreted by the Supreme Court in Brown versus Board of Education?”). Justice Blackmun characterized this argument as “the argument . . . that [busing] is just reverse discrimination in the sense that some Blacks are kept out of their schools and sent to other schools because they’re Black and some whites are kept out of schools because they’re white.” Oral Argument at 45:10–45:47, Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1 (1971), https://www.oyez.org/cases/1970/281 [https://perma.cc/C3KC-CBPL].

35 The change of language did little to mask the underlying ferocity of white opposition to integration. DRIVER, supra note 31, at 264 (“The tenor of antibusing attitudes, even in the absence of explicitly racial appeals, often reached a frenzied pitch. At an antibusing rally held in a school auditorium, for example, a military veteran reported, ‘I served in Korea, I served in Vietnam, and I’ll serve in Charlotte if I need to.’”) (quoting BERNARD SCHWARTZ, SWANN’S WAY 21 (1986)). See generally J. ANTHONY LUKAS, COMMON GROUND (1985); MATTHEW D. LASSITER, THE SILENT MAJORITY (2006); ELIZABETH GILLESPIE McRAE, MOTHERS OF MASSIVE RESISTANCE (2018).

36 Powell had a strong and established track record of opposing school desegregation. “[H]is opinion [was] that ‘
Rehnquist\textsuperscript{37} on the condition that they would commit absolutely to opposing busing.\textsuperscript{38} Nixon also independently declared an anti-busing agenda.\textsuperscript{39} Fifty-nine constitutional amendments were proposed against busing,\textsuperscript{40} and a statute was passed to limit its use.\textsuperscript{41} In the early 1970s, the Supreme Court decided a rapid-fire series of cases that, largely by limiting busing, had the effect of reinstating school segregation without outright reversing \textit{Brown}.	extsuperscript{42} This strategy relied on strategic use of denial.

school decisions were wrongly decided.’ He thought them wrong not only as a matter of constitutional precedent, but also as a matter of social policy: ‘I am not in favor of, and will never favor compulsory integration.’”\textsuperscript{43} John C. Jeffries, Justice Lewis F. Powell 140 (2001). His law firm represented the respondent school board in one of the cases that was consolidated in \textit{Brown}. Afterwards, as chair of the Richmond School Board, he kept all but two Black children away from white schools until 1961. \textit{Id.} at 141; Myron Orfield, Miliken, Meredith, and Metropolitan Segregation, 62 UCLA L. REV. 364, 385 (2015). He was on the Virginia State Board of Education when another Virginia school board’s “freedom-of-choice” policy was found to be unconstitutionally keeping schools segregated in 1968, in \textit{Green v. County School Bd. of New Kent County, Va.}, 391 U.S. 430 (1968). He wrote an amicus brief opposing busing in \textit{Swann v. Charlotte-Mecklenburg Bd. of Ed.}, 402 U.S. 1 (1971). Brief for the Commonwealth of Virginia, as Amicus Curiae, \textit{Swann v. Charlotte-Mecklenburg Bd. of Ed.}, 402 U.S. 1 (1971).

\textsuperscript{37} As a law clerk to Justice Jackson in 1952, Rehnquist wrote: “I realize that this is an unpopular and unhumanitarian position for which I have been excoriated by ‘liberal’ colleagues, but I think \textit{Plessy v. Ferguson} was right and should be re-affirmed.” Rehnquist’s later assertion that this memo did not represent his own opinion was most likely a lie. Adam Liptak, \textit{New Look at an Old Memo Casts More Doubt on Rehnquist}, \textit{N.Y. Times} (Mar. 19, 2012), https://www.nytimes.com/2012/03/20/us/new-look-at-an-old-memo-casts-more-doubt-on-rehnquist.html [https://perma.cc/76KG-KM4P].


\textsuperscript{39} He first presented this agenda to the public in 1970, then to Congress in 1972. \textit{Text of the President’s Statement Explaining His Policy on School Desegregation}, N.Y. TIMES, Mar. 25, 1970, at 26; H.R. REP. No. 92-195, https://files.eric.ed.gov/fulltext/ED066536.pdf [https://perma.cc/PGR8-WHSD]; \textit{Transcript of Nixon’s Statement on School Busing}, N.Y. TIMES, Mar. 17, 1972, at 22. Compare James Ryan, \textit{Five Miles Away, A World Apart 5} (2010) (“Nixon’s compromise was clear: poor and minority students would remain in the city and would not have access to suburban schools, but efforts would be made to improve education in city schools. In other words, save the cities, but spare the suburbs.”) with Rooks, \textit{supra} note 24 (discussing how contemporary efforts to improve urban education are often exploitative).

\textsuperscript{40} Mark G. Yudof et. al., \textit{Educational Policy and the Law} 431 (5th ed. 2012) (“In 1972 ... at least 59 constitutional amendments addressed to school desegregation and busing were proposed in Congress.”). The debate felt to some like “a constitutional crisis.” Marjorie Hunter, \textit{Nixon’s Plan Splits Rivals; Erwin Leads Busing Attack}, N.Y. TIMES, Mar. 18, 1972, at 1 (quoting Roy Wilkins, the executive director of the NAACP). Many states also independently moved to ban busing. For an overview of state statutes as of fall 1972, see \textit{Chronicle of Race and Schools, Integrated Education: A Report on Race and Schools, EQUITY & EXCELLENCE IN EDUCATION}, Jan.-Feb.1973, at 16, 16–22.

\textsuperscript{41} “No funds appropriated ... may be used for the transportation of students or teachers (or for the purpose of such equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials.” Yudof et. al., \textit{supra} note 40, at 431 (quoting Pub. L. 92-318 (1972), https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg235.pdf [https://perma.cc/34E7-6FRM]).

\textsuperscript{42} \textit{Swann v. Charlotte-Mecklenburg Bd. of Ed.}, 402 U.S. 1 (1971) (limiting busing by holding that school districts need not
Specifically, reframing anti-integration sentiment as anti-busing denied the then-very-recent historical reality of segregation as an overt system of racial subordination incompatible with the mandate of the Equal Protection Clause, and it denied the fact that the real goal of limiting busing was to hoard educational resources in all-white suburbs. The idea that districts could be manifestly unequal, actively excluding Black students from higher-resourced schools, yet somehow the white families who had crafted that exclusion were “innocent” and could not possibly participate in a remedy, persists in today’s anti-integration vitriol.

The project of re-constitutionalizing school segregation continued into the 1990s and

achieve racial balance; racially identifiable schools could still exist; desegregation orders would not be adjusted year-by-year and could eventually be lifted); Winston-Salem/Forsyth Cty. Bd. of Ed. v. Sudd, 404 U.S. 1221 (1971) (denying a stay of a busing order, but emphasizing that Swann put limits on busing); Wright v. Council of the City of Emporia, 407 U.S. 451 (1972) (Burger, J., dissenting); Betsy Levin and Philip Moise, School Desegregation Litigation in the Seventies and the Use of Social Science Evidence: An Annotated Guide, 39 L. and Contemp. Probs. 55, 55 (1975); first non-unanimous desegregation opinion; dissent would allow school district secession and describes Swann as allowing some racially identifiable schools); Drummond v. Acre, 409 U.S. 1228 (1972) (denying a stay of a busing order, but reiterating that busing need not achieve racial balance); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) (holding that Texas’s system of funding schools through local property taxes did not violate the Equal Protection clause); Sch. Bd. of City of Richmond v. State Bd. of Educ. of Virginia, 412 U.S. 92 (1973) (Mern.) (affirming 4-4 that a busing order involving suburban schools was unconstitutional); Keyes v. Sch. Dist. No. 1, Denver, Colorado, 413 U.S. 189 (1973) (holding that a finding of intentional segregation in one part of a school system creates a rebuttable presumption of intent to segregate elsewhere—thus foreshadowing the general shift toward considering only intentional discrimination to be unconstitutional); Milliken v. Bradley, 418 U.S. 717 (1974) (disallowing busing from suburban school districts). See generally Orfield, supra note 37; Tatel, supra note 38; Kimberly Jenkins Robinson, Resurrecting the Promise of Brown: Understanding and Remedying How the Supreme Court Reconstitutionalized Segregated Schools, 88 N.C. L. REV. 787, 811 (2010).

In Milliken, for example, Justice Stewart’s controlling opinion willfully “ignor[ed] ten days of expert testimony and explicit findings of housing discrimination by the district court,” instead asserting untruthfully “that the causes of residential segregation are ‘unknown and unknowable.’” Orfield, supra note 37, at 412 (quoting Milliken v. Bradley, 418 U.S. 717 (1974) (Stewart, J., concurring)). The myth of segregation as mere separation devoid of state action or discrimination also denies that segregation is inherently subordinating. See Bell, supra note 13.

For an in-depth example of how suburban enclaves were built around the promise of all-white schools in one city, see ANSLEY T. ERICKSON, MAKING THE UNEQUAL METROPOLIS (2016) (about Nashville). Policing school district boundaries enables the maintenance of massive resource inequality. See generally LaToya Baldwin Clark, Education As Property, 105 VA. L. REV. 397 (2019); Erika K. Wilson, The New School Segregation, 102 CORNELL L. REV. 139 (2016); $23 BILLION, edbuild.org/content/23-billion [https://perma.cc/5F6C-UJGV] (last visited May 28, 2021).

The theme of white innocence and busing as unfair “punishment” ran deep in segregationist advocacy, including that of Justice Powell. When it showed up too explicitly in an early draft of Powell’s concurrence in Keyes, 413 U.S. 189, clerk Larry Hammond gave Powell a gentle reprimand: “[Y]ou might consider cutting out the paragraph (pp31-32) suggesting that busing is punishment meted out to innocent children. It is similar to the language in fn 24 in which you state that some commentators have regarded integrative bus rides as atonement for prior segregatory trips. Such language tends to belittle the benefits of integration.” Keyes v. School Dist. No. 1, Denver, Colo., Sup. Ct. Case Files Collection, Box 5, Powell Papers, Lewis F. Powell Jr. Archives, Washington & Lee Univ. Sch. of Law, at 117. Compare this with BALDWIN, supra note 19, at 17: “[I]t is not permissible that the authors of devastation should also be innocent. It is the innocence which constitutes the crime.”

See, e.g., Anne Branigin, Watch: Roomful of Rich, White NYC Parents Get Big Mad at Plan to Diversify Neighborhood’s Schools, THE ROOT (Apr. 27, 2018), https://www.theroot.com/watch-room-filled-with-rich-white-nye-parents-gets-bi-1825600194 [https://perma.cc/7BSC-HV7Y] (“The parents couldn’t fathom their children not getting into the middle school of their choice... ‘You’re talking about an 11-year-old... ’, said one big-mad woman. ‘You’re telling them that you’re going to go to a school that’s not going to educate you the same way you’ve been educated. Life sucks!’”).

While the main legal framework for ending busing was established in the early 1970’s, later cases continued the work

https://scholarship.law.upenn.edu/jlasc/vol25/iss4/1
culminated in 2007 with *Parents Involved in Community Schools v. Seattle School District No. 1*, which establishes the legal framework that keeps schools segregated today. *Parents Involved* concerned two school districts, one that had historically been under a desegregation order (Louisville) and one that had not (Seattle). Both had complex enrollment plans that assigned students to schools primarily based on student preference. If schools were oversubscribed (Seattle) or if students requested to transfer (Louisville), the district used a racial identifier (white or nonwhite in Seattle; black or “other” in Louisville) as a tiebreaker to ensure that schools did not become excessively segregated compared to the overall district demographics.

The plurality opinion in *Parents Involved* embraced a strict post-*Brown* denialist or colorblind philosophy that would have completely banned schools from considering race to integrate enrollment. However, the controlling rule is Justice Kennedy’s concurrence, which attempts to weave a middle ground. Kennedy applies strict scrutiny, holds that schools have a compelling interest in increasing diversity, and finds that the plans at issue are not narrowly tailored because they lack clarity (Louisville) and use excessively “crude” racial categories for classification (Seattle). Thus, he finds that they violate the Equal Protection clause.

Overall, *Parents Involved* means that schools may not use individual racial classifications to determine enrollment for integration; these plans will be reviewed with strict scrutiny and likely struck down. However, schools are encouraged to “pursue the goal of bringing together students of diverse backgrounds and races through other means, including . . . drawing attendance zones with general

recognition of the demographics of neighborhoods.”62 Some scholars in the immediate aftermath of Parents Involved believed it would not have a major negative impact on voluntary school integration policies because there was so little political will for integration anyway.63 But today, Parents Involved severely constrains what school districts can do to interrupt segregation, and, more invidiously, it shapes how they have to frame and justify their enrollment choices, creating a regime of constitutionally-mandated denial.

After Parents Involved, few large school districts have tried to toe the line of Kennedy’s confusing, controlling rule while still attempting to combat segregation.64 The main approach that large districts take is called “controlled choice” enrollment.65 Controlled choice attempts to break the link between residential segregation and educational opportunity. Instead of grouping students by neighborhood, each school’s enrollment is drawn from across the city in a way that intentionally prioritizes diversity within schools. However, because districts are no longer allowed to use racial classifications, controlled choice plans must now rely instead on a constellation of neighborhood

62 Id. at 789 (Kennedy, J., concurring). Although this summary of Justice Kennedy’s concurrence is traditionally understood as the rule from Parents Involved, troubling recent developments suggest that courts may be shifting toward a substantially harsher regime, under which even the generally race-conscious policies that Kennedy endorsed could be characterized as intentionally discriminating against white and/or Asian-American students and thus subjected to (fatal-in-fact) substantial scrutiny. See Ass’n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ., No. 8:20-02540-PX, 2021 WL 4197458, at *18–19 (D. Md. Sept. 15, 2021) (applying strict scrutiny to deny a school district’s motion to dismiss a challenge to their school integration plan, even though the plan did not use individual racial classifications); Coal. for TJ v. Fairfax Cnty. Sch. Bd., No. 1:21-CV-296, 2022 WL 579809, at *9-10 (E.D. Va. Feb. 25, 2022) (applying strict scrutiny to strike down a school integration plan on summary judgment, even though the plan did not use individual racial classifications). State legislatures could also start explicitly banning the kind of school integration plans that Kennedy endorsed; see, e.g., Va. H.B. 127 (Va. 2022), https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+HB127 [https://perma.cc/2ZWG-QKVE]. Until these two recent cases, courts interpreting Parents Involved consistently used rational basis review where school integration plans did not rely on individual racial classifications. For a thorough analysis of how Parents Involved was being applied by the circuit courts as of 2020, see Laura Perry, The Way Forward: Permissible and Effective Race-Conscious Strategies for Avoiding Racial Segregation in Diverse Districts, 47 FORDHAM URBAN L. J. 659, 682-89 (2020) (discussing Sparrokk v. Fisco, 716 F.3d 383 (6th Cir. 2013); Doe v. Lower Merion Sch. Dist., 665 F.3d 524 (3d Cir. 2011); and Lewis v. Ascension Par. Sch. Bd., 662 F.3d 343 (5th Cir. 2011)). See also Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio, 364 F. Supp. 3d 253, 278-280 (S.D.N.Y. 2019) (applying rational basis review to a school integration plan); Boston Parent Coal. for Acad. Excellence v. Sch. Comm. of the City of Boston, 996 F.3d 37, 45-50 (1st Cir. 2021) (endorsing trial court’s application of rational basis review to a school integration plan and denying parent group’s motion for preliminary injunction pending appeal, because “as compared to a random distribution of disparities, the Plan has no adverse disparate impact on White and Asian students”); Boston Parent Coal. for Acad. Excellence v. Sch. Comm. of the City of Boston, No. 21-10330-WGY, 2021 WL 4489840, at *10-12 (D. Mass. Oct. 1, 2021) (reaffirming use of rational basis review after original ruling was withdrawn and parent group moved for relief from previous judgment).

63 James E. Ryan, The Supreme Court and Voluntary Integration, 121 HARV. L. REV. 131, 132 (2007) (“[T]his decision does not change much on the ground. The truth is that racial integration is not on the agenda of most school districts and has not been for over twenty years.”); DRIVER, supra note 31, at 305 (“the primary obstacle to realizing meaningfully integrated schools nowadays comes in the form of not an unbending judiciary but an inert body politic.”).

64 Halley Potter, A Decade after PICS Setback, Schools Still Find Ways to Integrate, CENTURY FOUNDATION (June 28, 2017), https://tcf.org/content/commentary/decade-pics-setback-schools-still-find-ways-integrate/ [https://perma.cc/N8UZ-8M88].

The controlling rule of *Parents Involved* is rooted in denial about the practical consequences of the limitation it imposes. The rule claims the halo of caring about racial equality by pretending to allow some methods for school districts to create diversity, while in practice maintaining segregation by making it almost impossible for school districts to create and maintain racially integrated schools. Empirically, controlled choice plans that switch to using socioeconomic data have not been able to sustainably maintain racially integrated schools.

*Parents Involved* enforces denial because it requires school districts to lie about their goals when creating enrollment plans. If a school district’s true goal with a controlled choice plan is to remedy the harms of *racial* segregation, the district is forced to hide the ball to pass constitutional muster and avoid burdensome litigation. For example, if a district official sends an email emphasizing a race-neutral goal like equalizing attendance numbers, this could be seen as evidence in favor of upholding the assignment plan under *Parents Involved*.

Overall, by allowing only “race-neutral” integration methods like socioeconomic controlled

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68 In *Bue v. Lower Merion Sch. Dist.*, 665 F.3d 524, 529, 544 (3d Cir. 2011) (declining to apply strict scrutiny under *Parents Involved* because the school district “used pristine, non-discriminatory goals as the focal points of its redistricting plan” and a school board member’s “email . . . stated that the Board should emphasize that it is not trying to increase . . . diversity, but that it, instead, is trying to ensure numerically equal total student enrollments at both high schools”). See generally Stephen Himes, *Doublethinking Where Children Go to School: How to Reform the Intent Standard in School Assignment Policy Equal Protection Analysis*, Education Law Association’s 63rd Annual Conference (2017), https://educationlaw.org/images/annual-conference/2017/2017Papers/H4-2-Himes.pdf [https://perma.cc/4JAA-4QAY], at 18–20 (discussing the facts of *Doe*); 28-31 (summarizing how the *Parents Involved* regime incentivizes policymakers to avoid mentioning race).
choice, Parents Involved enforces denial about the unique harms of racism as distinct from socioeconomic inequality. As Khiara Bridges has compellingly argued in the higher education context, socioeconomic integration does not repair the harms of racial subordination.\(^69\) In fact, by erasing and obscuring racism, it further entrenches harmful denialist ideologies.\(^70\)

2. Denialist state laws are silencing antiracist curriculum and pedagogy

Both federal and state laws adopt denialist ideology in ways that prevent districts from progressing toward racially equitable and inclusive schools. If school districts try to integrate enrollment, they will be severely constrained by federal constitutional law under Parents Involved. In contrast, if school districts seek to adopt more antiracist curriculum, they may be impeded by recent state laws that ban “critical race theory.”\(^71\) These laws explicitly attempt to mandate denial by banning key ideas that illuminate how racism works. Whether anti-CRT laws are themselves constitutional is an open question.\(^72\) Federal constitutional law largely leaves curriculum decisions to states and localities, with limited exceptions based on freedom of speech and substantive due process.\(^73\) Anti-CRT laws are

\(^{69}\) Khiara M. Bridges, *Class-Based Affirmative Action, or the Lies that We Tell about the Insignificance of Race*, 96 B.U. L. REV. 55, 69 (2016) (“[C]lass-based affirmative action may be understood as a kind of ruse, an elision, and an elaborate distraction from the continuing fact of disadvantages experienced on account of race.”).

\(^{70}\) *Id.* at 107 (“[P]oliticalexpediency ought not to excuse the elision of the injustices that have been visited upon racial minorities because of their race. . . . Class-based affirmative action is immoral insofar as it obscures racial injustices.”).


\(^{73}\) See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923) (a blanket ban on the teaching of foreign languages violates parents’ and teachers’ substantive due process right to direct the content of children’s education); *Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 854 (1982) (politically motivated removal of books from a school library violates students’ First Amendment right to receive information and ideas); see also *Ace v. Douglas*, 793 F.3d 968, 982–84 (9th Cir. 2015) (collecting examples of how courts “groped with the breadth of a student’s First Amendment rights in the context of the...
an evolving threat to antiracist education; further attention will be warranted as principled educators, students, and communities resist these laws\(^74\) and civil liberties groups begin to challenge them in court.

Anti-CRT laws are a fresh iteration of a longstanding struggle over antiracist curriculum dating back to the civil rights movement. On college campuses in the 1960’s, young people fought to bring in courses and create departments that would “focus on the experiences and perspectives of people of color in the United States.”\(^75\) What they forged was a “critical and interdisciplinary”\(^76\) field called ethnic studies. The fact that ethnic studies courses encourage open discussion of race and racism often provokes reactionary anger from white people seeking to maintain hegemonic denial, and these reactions often get the upper hand in law. One particular legal battle—a 2017 case concerning a ban on ethnic studies in Arizona\(^77\) —is a direct precursor to contemporary conflicts about CRT and is likely influencing how anti-CRT laws are drafted.

In the early 2000’s, a Mexican American Studies (MAS) curriculum in Tucson, Arizona sparked the ire of two white male state officials: Tom Horne and John Huppenthal.\(^78\) They began a “crusade” to “destroy” ethnic studies which culminated in a statewide ban enacted in 2010.\(^80\) They then enforced the ban by shutting down Tucson’s MAS program in 2012.\(^81\) Teachers resisted the ban.

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\(^76\) Id.


\(^79\) González, 269 F. Supp. 3d at 957 (quoting a campaign speech by Horne) (internal quotation marks omitted). Huppenthal was incensed by the possibility that students would discuss the racism of the founding fathers, and he objected to the idea of an “oppressed/oppressor framework” because of how it would lead students to think about oppressors. Id. at 956. He also equated ethnic studies to Nazism and the KKK, id. at 962, 965.

\(^80\) Id. at 957.

\(^81\) The state would have withheld 10% of the school district’s budget as punishment for continuing the program, so in
and worked to challenge it in court. In 2017, a federal district court struck down Arizona’s ethnic studies ban as intentionally discriminatory in violation of the Equal Protection clause.\textsuperscript{82} The court also held that the ban violated students’ limited First Amendment right to receive information, as noted in Board of Island Trees v. Pico,\textsuperscript{83} because it was motivated by racial animus rather than being motivated by a legitimate pedagogical purpose.\textsuperscript{84}

It is tempting to view González as fully vindicating ethnic studies and showing that the federal constitution would never tolerate a state silencing antiracist education. However, in my view, the lessons to take from this case are much more constrained, for two reasons. First, despite González being a legal victory, the campaign to silence ethnic studies had a lasting impact, limiting how antiracist curriculum was named and presented in the long term. While Tucson was banned from offering MAS, it instead offered similar courses under the general name of ethnic studies and “culturally relevant curriculum.”\textsuperscript{85} In 2018, after the ban was struck down, two Tucson school board members put forward a proposal to formally encourage teachers to reinstate the name MAS.\textsuperscript{86} But the board, shaken by years of controversy, voted it down.\textsuperscript{87} This name change may seem insignificant, but similar to Khiara Bridges’s argument about the harm of class-based affirmative action,\textsuperscript{88} to the extent that the specificity of the name and content of Mexican American Studies carries reparative value, eliminating it carries expressive harm.\textsuperscript{89}

Second, as a matter of federal law, both the First Amendment and Fourteenth Amendment holdings of González turned on the state lawmakers’ blatant racial animus against Mexican Americans. The way the opinion deals with the pretextual purpose of the ethnic studies ban leaves the door open for state officials today to craft anti-CRT legislation that is more meticulously couched in “non-racist” goals and possibly have it be upheld. The ethnic studies ban’s stated purpose was to prevent students from being “taught to resent or hate other races.”\textsuperscript{90} A stronger opinion in González might have forcefully rejected this false premise by stating categorically that teaching ethnic studies does not constitute teaching resentment and celebrating Mexican identity does not mean hating white people. Instead, the González opinion said merely that the state officials who shut down the MAS program had “no legitimate basis

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\footnote{\textsuperscript{82} \textit{Id.} at 972.}
\footnote{\textsuperscript{83} \textit{Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico}, 457 U.S. 853 (1982).}
\footnote{\textsuperscript{84} \textit{González}, 269 F. Supp. 3d at 972–73.}
\footnote{\textsuperscript{85} Hank Stephenson, \textit{TUSD board majority sidesteps effort to resurrect aspects of Mexican American Studies}, TUCSON.COM (Mar. 27, 2018), https://tucson.com/news/local/tusd-board-majority-sidesteps-effort-to-resurrect-aspects-of-mexican/article_620f0e1b-6b09-57c3-ae4c-342130d3b612.html [https://perma.cc/23NN-7QLN] ("[A board member] said there are very few differences between MAS courses and the district’s current ethnic-studies classes, though he acknowledged that several books were prohibited from being used."}; Roberto Rodriguez, \textit{Tucson Skirts International Law in Refusing to Reinstatement Mexican American Studies}, TRUTHOUT (July 1, 2018) (arguing that the change from MAS to more general ethnic studies and culturally relevant curriculum violated international laws against cultural erasure).
\footnote{\textsuperscript{86} Stephenson, \textit{ supra note} 85.}
\footnote{\textsuperscript{87} \textit{Id.} ("We don’t call it Mexican American Studies, because the term is hugely contentious, it’s hugely divisive in Tucson. . . Let’s not turn this district, this board into a war zone. Let’s not turn Tucson into a war zone, the way it happened so many years ago.")(quoting a board member who opposed reinstating MAS).}
\footnote{\textsuperscript{88} See Bridges, \textit{ supra note} 69 and accompanying text.}
\footnote{\textsuperscript{89} See Rodriguez, \textit{ supra note} 85.}
\footnote{\textsuperscript{90} A. R. S. § 15-111 (current law).}
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for believing that the MAS program was promoting racism.”⁹¹ This leaves the door open for potential future lawmakers to beef up their false assertions that antiracist education is racist against white people. As today’s anti-CRT legislation is more painstakingly couched in the “non-racist” goals of preventing “reverse racism” (and sexism), it is unclear whether judges will be able to rely on González to strike it down. (Nor is it clear that Trump-appointed judges would even want to.)

The current wave of anti-CRT legislation is the brainchild of right-wing activist Christopher Rufo.⁹² In the late 2010’s, diversity, equity and inclusion, anti-bias and antiracism trainings increased in popularity—first somewhat gradually, then exponentially in the wake of the abolitionist uprisings of 2020. Feeling that these interpersonal antiracism interventions were an “existential threat to the United States” (as he knew it), Rufo invented a strategy to demonize them.⁹³ He described on Twitter a plan to “driv[e] up negative perceptions” by “recodify[ing]” the various ideas that antiracism trainings promote and consolidating them into a “toxic... brand category” that he labeled CRT.⁹⁴ Rufo’s September 2020 appearance on Tucker Carlson inspired then-President Trump to issue a hasty executive order banning antiracism trainings for federal employees.⁹⁵ One of President Biden’s first acts in office was to undo this order,⁹⁶ but, as with the MAS ban in Tucson, it still left lasting damage.⁹⁷ The

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⁹¹ González, 269 F. Supp. 3d at 974.


⁹³ Wallace-Wells, supra note 92 (quoting Christopher Rufo, Critical Race Theory Has Infiltrated the Federal Government | Christopher Rufo on Fox News, YOUTUBE, https://www.youtube.com/watch?v=rBXRdWFV7M) [https://perma.cc/HM8V-FTRJ].


American Legislative Exchange Council (ALEC) disseminated the executive order’s wording and strategy to right-wing state lawmakers, who began in spring 2021 to issue cookie-cutter anti-CRT laws with wording that hews closely to a standardized text.

Anti-CRT bills, like the Arizona ethnic studies ban, purport to prevent “reverse racism,” but in reality, they enforce denial of racism by silencing diversity trainings as well as history and civics instruction they deem controversial. They primarily ban a litany of straw men, including the idea that one race is “superior to another” and the idea that race “determines moral character.” By equating

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the actual, nuanced work of antiracism trainings to these militant “reverse racist” statements, anti-CRT laws take up a fundamental aspect of denialist psychology—the tendency to view any discussion of race as an existential threat—and literally make it into law.

Unfortunately, anti-CRT laws do not stop at banning spectres. They also ban discussion of some topics that are core contributions of the CRT movement—for example, the existence of unconscious bias and the enduring centrality of racism in the United States. These ideas are actually discussed in diversity trainings, and a shared understanding of them can motivate concrete antiracist progress in educational institutions. That anti-CRT laws largely ban monsters of their own making, then, offers little comfort against their real, harmful impact and broad chilling effect. In many states, anti-CRT laws are already silencing a wide range of vital diversity trainings, antiracist pedagogy, and even basic civics instruction, and are provoking the dismissal of antiracist educators, including many educators of color.

In Indiana, my home state, official guidance from the Attorney General denounces CRT and describes it as violating both state and federal law. The guidance is framed as a “Bill of Rights” for parents like the woman who opposed antiracist education at the town hall. It lays out ways that she could challenge the antiracist education reforms others have been working so hard for. This official guidance exemplifies how anti-CRT laws endorse, adopt, and enforce ideologies of denial. First, it...
prioritizes the emotional comfort of the white racism denier and bolsters her surreal ideological tirade with the power of the state. Second, the legal claim that CRT violates federal antidiscrimination laws endorses both the denialist demonization of CRT as “reverse racism” and the denialist post-\textit{Brown} legal framework that inverts the original purpose of federal antidiscrimination laws. Finally, the chilling effect of anti-CRT laws entrenches denial by limiting the ability of educators and young people to speak and learn openly about race.

Anti-busing and anti-CRT laws each represent a moment of denialist “whitelash”\footnote{See Josiah Ryan, ‘This Was a Whitelash’: Van Jones’ Take on the Election Results, CNN (Nov. 9, 2016), https://www.cnn.com/2016/11/09/politics/van-jones-results-disappointment-cnntv/index.html} in which an antiracist movement’s call for change was twisted until unrecognizable, then viciously opposed in a way that shifted the center of discourse and limited progress.\footnote{See Mark Keierleber, \textit{Critical Race Theory and the New ‘Massive Resistance,’} \textit{THE 74 MILLION} (Aug. 18, 2021) (using historicalexamplesandquotesfromadvocatescomparantip-CRTfervortomassiveresistance).} Segregationists in the wake of \textit{Brown} reduced the struggle for equitable educational resources, inclusion, and dignity into a vicious fight over “busing” that left the spotlight on student enrollment as the only measure of integration. The resulting legal framework not only leaves schools as segregated today as they were before the Civil Rights movement,\footnote{Erica Frankenberg, Jongyeon Ee, Jennifer B. Ayscue & Gary Orfield, \textit{HARMING OUR COMMON FUTURE: AMERICA’S SEGREGATED SCHOOLS 65 YEARS AFTER BROWN} (May 10, 2019), https://escholarship.org/content/qt23j1b9nv/qt23j1b9nv.pdf#page=405.} but also erases the importance of elements like school culture, curriculum, pedagogy, and teacher diversity, which are each of paramount importance for creating antiracist, inclusive schools. In the Black Lives Matter era, as antiracist educators increasingly began to address these cultural issues, for example by teaching ethnic studies, reactionary white lawmakers again contorted and rejected this progress—decrying it as militant left indoctrination. The vision of antiracist education that today’s movements are calling for is not limited to enrollment and resources alone, nor is it limited to curriculum and pedagogy alone; rather, it remains insistently comprehensive.\footnote{See Miriam Nunberg & Laura Petty, \textit{A New Federal Approach to School Integration, Inspired by Student Activists,} \textit{THE CENTURY FOUNDATION} (Aug. 16, 2021), https://tcf.org/content/report/new-federal-approach-school-integration-inspired-student-activists/ (comparing contemporary school integration movement demands to the set of five school integration factors that the Supreme Court endorsed in \textit{Green v. County School Bd. of New Kent County, Va.}, 391 U.S. 430 (1968) before it returned to allowing and enforcing school segregation).} But given denial’s stubborn hold on education law, reaching this future, and making it sustainable, will require radical change.

\textbf{C. Non-reformist steps are necessary for a future beyond denial}

As Part IB has shown, denial is embedded in the laws that keep schools segregated and that attempt to mandate what children can understand about racism. This legal system is enacting relentless anti-Black cruelty while simultaneously concentrating white advantage and further curating white racism. Educational segregation encompasses both the process of “monopolizing whiteness” by concentrating resources in advantaged schools, \textit{and} the vast landscape of privatization, capitalist exploitation, and divestment that leads to “the soft coercive migration of youth of color, especially poor youth of color, out of sites of public education and into militarized and carceral corners of the public...
sphere.” Noliwe Rooks describes this as “slow murder”—a less-visible counterpart to the racist state violence enacted by police and prisons. Change is needed now and the stakes are high; this system is causing incalculable harm. But precisely because denial is so entrenched, incremental legal changes are not a possible solution.

Recent education law scholarship has increasingly recognized that post-\textit{Brown} colorblind rhetoric and resegregation have shaped the racist ideologies that white people hold. But education law scholars rarely offer prescriptions that take direct aim at \textit{ideology as such}. If legal prescriptions do not account for the endemic nature of denial or contemplate ways to counteract it, their power will be severely limited. As an example, consider Erika Wilson’s \textit{Monopolizing Whiteness}, discussed above in Part IB. After identifying how school segregation perpetuates white racism, Wilson proposes a novel legal solution: using antitrust law to challenge the agglomeration of resources in predominately white, advantaged schools. There is an inherent tension in describing the ideological aspect of the problem as incisively as Wilson does and then proposing a solution to be implemented by a court. Would today’s federal judges be able to understand the problem as Wilson does? Would they be willing to adopt her prescription? What lasting change would this achieve? How would it be protected after a judgment was reached?

\textbf{AFTER DENIAL.}


\textbf{114} Wilson, supra note 28, at 2404-14; Bell, supra note 13, at 685; see generally Kevin Brown, \textit{The Road Not Taken in Brown: Recognizing the Dual Harm of Segregation}, 90 VA. L. REV. 1579 (2004) (explaining how recognition of the dual harm of segregation could have altered subsequent Supreme Court decisions that narrowed the scope of desegregation remedies); Angela Orouwachi-Willig, \textit{Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy}, 105 VA. L. REV. 343 (2019); see also Osamudia R. James, \textit{White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation}, 89 N.Y.U. L. REV. 425 (2014) (describing how the rhetoric of affirmative action jurisprudence has affected the psychology of white students in higher education); Johnson, supra note 17, at 335 (noting that “[n]o child is born a racist” and racism is learned from society); Terry Smith, \textit{White Backlash in a Brown Country}, 50 VALPARAISO U. L. REV. 89, 98 (2015) (“Rarely, if ever, does jurisprudence inform us of what racism does to its host. Yet white backlash—the adverse reaction of whites to the progress of members of a non-dominant group—is symptomatic of a condition created by the gestalt of white privilege.”).

\textbf{115} Wilson, supra note 28, at 2414–47.

\textbf{116} Wilson suggests that her proposed antitrust framework could influence state courts deciding state constitutional education equity or adequacy cases, federal courts interpreting the Equal Protection Clause, and/or state legislatures designing school district boundary lines. \textit{Id.} at 2445–46. She argues that antitrust provides a stronger framework for remedying racial inequality than does equal protection as it is currently interpreted. \textit{Id.} at 2440–43. However, she does not address the real impact of \textit{Parents Involved} on the possibility that equal protection can be used to threaten, encumber, and even dismantle favorable school integration rulings regardless of their original source of legal authority, on the basis that they use impermissible racial classifications. For example, schools in Hartford, Conn., which had been racially integrated pursuant to the settlement of a state
Denial is now entrenched in half a century of school desegregation jurisprudence, and it is increasingly being adopted into state laws. Tinkering at the edges of doctrine is not a viable path for change. Many of the needed changes—to speak and teach openly about racism; to build race-conscious enrollment policies that address locked-in patterns of white segregation and resource hoarding in suburban schools—are now either illegal or at least severely encumbered by the threat of litigation. Moreover, even if change could come from a court order, denialist ideologies are so deeply entrenched that any attempts to mandate resource redistribution will inevitably once again be twisted and subverted in some way. To meet this reality head-on, any functional theory of change must recognize the necessity of lasting societal, ideological transformation and the power of social movements.117 In “imagining with”118 education justice movements in the next Part II, I follow the lead of movement law and draw on the abolitionist framework that contrasts reformist reforms with non-reformist steps.119

In the context of prison and police abolition, advocates distinguish between “reformist reforms”—technocratic fixes that normalize and prolong the existing system, for example by giving police more money or legitimacy—and “non-reformist steps,” which generate continued, transformative participation toward radical change. A recent article by Amna Akbar lays out three distinguishing features of non-reformist steps:120 they undermine the system rather than legitimate it,121 are imagined by social movements rather than by technocratic elites,122 and continually expand democratic participation.123 For example, Akbar characterizes the call to defund police as non-

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118 Amna A. Akbar, Toward a Radical Imagination of Law, 93 N.Y.U. L. REV. 405, 479 (2018) (“It is time to turn to something new, time for a radical reimagining of the state and of law—time to imagine with social movements.”).


120 Akbar, supra note 119, at 103–06.

121 While “reformist reforms aim to improve, ameliorate, legitimate, and even advance the underlying system,” non-reformist steps “advance a radical critique and radical imagination” and “undermine the prevailing political, economic, social system from reproducing itself.” Id. at 103–04.

122 While reformist reforms come from elites, non-reformist steps come from “social movements, labor, and organized collectives of poor, working-class, and directly impacted people making demands for power over the conditions of their lives and the shape of their institutions,” and the demands are generated through collective “processes of enfranchisement and exercises in self-determination.” Id. at 105–06.

123 While reformist reforms are “about finding an answer to a policy problem,” non-reformist steps are about “transformation: deepening consciousness, building independent power and membership, and expanding demands,” ultimately creating “a vast extension of democratic participation” through “political education, mutual aid, organizing, and the building of alternative institutions” that challenges the very “character of the state and of existing bourgeois democratic forms.” Id. at 106.
reformist, in “contrast to conventional approaches . . . that typically focus on relegitimating police in response to crisis and reinvesting in police through trainings, technologies, and policies.”

Ultimately, Akbar notes that there is not always a clear-cut difference between reformist reforms and non-reformist steps; rather, the distinction is a living framework that enables ongoing critique and realignment. Transposing the reformist/non-reformist distinction into the education law context, I view a change as “reformist” if it maintains the current system of denying and thus entrenching systemic racism in education. This framework makes clear that, like police “reforms” that give more money to the police, “reforms” in the name of education justice can also be counterproductive, specifically by endorsing denialist ideology and thus prolonging the life of the existing segregated and unequal system. Socioeconomic controlled choice, discussed in Part IB1, is a reformist reform. It takes the limits of the existing system as given, fails to address the specific harms of racial segregation, and embraces the required denialist rhetoric rather than pushing toward a more radical transformation that would challenge existing legal frameworks and continually expand democratic participation toward genuinely inclusive, antiracist schools.

The framework of non-reformist steps is not merely applied by analogy from abolition to education justice. Rather, using this framework is a way to underline the inherent, deep connections between abolition and education justice. Building a world where prisons are unimaginable requires radically transforming schools, and certainly it requires uprooting denial. Despite the rapidly spreading laws that are trying to silence them, many antiracist educators and education justice movements are and have long been engaged in this kind of liberatory, transformative work. In Part II, I explore three case studies of movements that could be described as advancing “non-reformist” steps to education justice, meaning that they directly challenge denial and set their sights on a more radical, participatory vision of antiracist change.

II. CASE STUDIES OF CHANGE: “TEACHING AND LEARNING FREEDOM”

Non-reformist steps toward antiracist education confront and challenge the ideologies of denial that are built into federal and state education law. They embody the principles identified in Akbar’s three-part framework: they refuse to support or further the existing system of denial; they are generated by social movements rather than being imagined within the limited boundaries of existing legal doctrine; and they expand participation in a way that leads to ongoing transformative change. This Part turns to three education justice movements to understand how they challenge denial with non-reformist steps. By way of background, in Part IIA, I first describe a shift that took place in the early 2000s: recognizing the impact of post-\textit{Brown} denial, school resegregation and the growing hegemony of colorblind ideology, critical race theorists and antiracism practitioners embraced the idea that challenging racism through interpersonal dialogue and political education might be necessary to support lasting, radical, structural change. Then, in Part IIB, I discuss three contemporary education justice movements whose work is non-reformist in that it refuses to accept denial and instead incorporates interpersonal, participatory, and structural steps toward an antiracist future.

\begin{footnotesize}
\begin{enumerate}
\item Id. at 107.
\item Id. at 102–03 (“\textbf{W}hether something is non-reformist or reformist is about more than the nature of the demand and its particulars: it is also a question of how the campaign is waged. . . . \textbf{T}he line is undoubtedly murky in practice.”)
\end{enumerate}
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A. Interpersonal interventions can challenge denial and change behavior

I argue that non-reformist steps to antiracist education must refuse to normalize denial. One way of challenging denial is through structured, interpersonal interventions that attempt to directly change the ideologies that individual people hold. Critical race scholars and practitioners in the early 2000s conceived of this kind of interpersonal, ideological change as going hand in hand with and motivating structural change. These ideas and practices held growing influence throughout the 2010s—until they came to the attention of reactionary thinkers like Christopher Rufo who saw them as an existential threat. This section first describes how legal scholars proposed ideological change working in support of structural change, then details one particular antiracism intervention called Courageous Conversation which is used in schools, and finally describes general criteria for making these interventions effective. In articulating more precisely what interpersonal “antiracism work” is, how it works, and what it should actually look like at its best, this section also serves to illustrate in more depth why “anti-CRT” laws’ panicked assumptions about these programs being “reverse racist” are so misguided.

1. Legal scholars recognized the necessity of ideological change

Early 2000s critical race theorists and education law scholars recognized the interlocking relationship between denialist ideologies and the escalating legal crisis of school resegregation; some even predicted that denial would be taken up in constitutional law with a rule like that of Parents Involved.126 Two scholars in particular contemplated that massive cultural shifts would be necessary to uproot racism and sustain lasting structural change. In 2004, Lani Guinier suggested that racial justice advocates should reject post-Brown “racial liberalism” in favor of a more comprehensive, complex “racial literacy.”127 Guinier proposed that people “rethink race as an instrument of social, geographic, and economic control” and become attuned to its nuanced “psychological, interpersonal, and structural dimensions.”128 In 2005, John Powell criticized how desegregation had been distorted to focus only on enrollment, erasing “true integration.”129 He proposed that schoolteachers foster transformative positive interracial contact along with a “massive” public re-education campaign to “combat the colorblind position” and “expose the institutional, structural and systemic nature of racism.”130 These theories of change were based in post-CRT realism about the doctrinal vitiation and co-optation of Brown. They recognized that racial liberalism and court-ordered enrollment desegregation are not enough to support sustainable, structural transformation toward racial justice. Given denial’s chokehold, changing law in a sustainable, real way, they argued, would require directly changing

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126 See, e.g., Richard D. Kahlenberg, Socioeconomic School Integration, 10 POVERTY & RACE 1, 3 (2001) (“[E]fforts to promote school diversity by considering a student’s race may itself be unconstitutional. The Supreme Court has not definitively ruled on this issue, but the election of George W. Bush certainly makes it more likely that a future Court majority will continue down the path of requiring race-neutrality . . . “).  
128 Id. at 114–15.  
130 Id. at 297–99, 300, 288.
ideology itself.

In some ways, the optimism of these proposals may seem dated. Today, interpersonal interventions like “anti-bias training” and “diversity training” that were novel in the early 2000s are somewhat widespread, watered down, and can even be taken for granted. Cynicism about “diversity training” is not unreasonable: it can sometimes be superficial, is easily co-opted, and in some contexts, can itself be a reformist reform. But where it is actually tied with concrete shifts in power and policy, political education that counters denial can be an important and easily overlooked part of larger scale change. And in many places, the societal shift toward embracing antiracism, anti-bias and diversity training is only just beginning to register. Perhaps the problem is not that diversity training doesn’t work, but rather that it needs to be done better, in more places, and more intentionally to shift power and support sustained structural change.

2. Courageous Conversation and ethnic studies combat racism in schools

As the denialist legal frameworks invented after Brown became the newly dominant form of racist ideology in the 1990s, antiracist education practitioners began to directly counter these ideologies through structured, interpersonal dialogue. Today, interventions that try to address racism and challenge denial interpersonally through political education can take myriad forms and exist in many contexts. This broad category includes, for example, antiracism workshops facilitated by consultants for corporations and nonprofits, courses and programs in the higher education context, professional development programs for K-12 educators and school administrators, and even grassroots organizing and social movements that embrace similar methods and theories of change.

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135 See generally David Scharfenberg, Opinion, Here Come the White People – A New Antiracist Movement Takes Flight, BOSTON GLOBE (June 12, 2020), https://www.bostonglobe.com/2020/06/12/opinion/white-anti-racist-movement-has-arrived/ (discussing Showing Up for Racial Justice [SURJ], other white antiracist organizing,
One of the most popular examples of a “diversity training” that is used in schools is Courageous Conversation, which has its roots in the same era as Guinier and Powell’s proposals discussed above. Today’s education justice movements often call for antiracism or anti-bias training for teachers along with a host of other changes, and Courageous Conversation is a specific example of an anti-bias training that could be adopted by a school in response to movement pressure. Because this is an intervention that (until anti-CRT laws) exists largely in the world of education rather than law, readers may be unfamiliar, so in this subsection I describe Courageous Conversation in more detail and show how each step of its process is designed to counter denial. I also compare Courageous Conversation to ethnic studies by contending that both create ideological change in support of larger-scale structural change.

Courageous Conversation tries to reduce the harm caused by teachers’ racism. It also aspires to lay the groundwork for school communities to push towards implementing more racially equitable and actively antiracist policies. Developed in the early 1990s, it is now used in school districts across the country. Courageous Conversation works to “engage, sustain, and deepen interracial dialogue about race” so that they can progress to “the point where authentic understandings and meaningful actions occur.” The process is guided by a compass, pictured below, which encourages participants to be more self-aware. Four agreements set the terms for participation. Finally, six conditions, explored sequentially, move the conversation deeper until participants develop a shared understanding of how race and whiteness operate, so they can work together to build an antiracist school culture.


136 SINGLETONE, supra note 19, at 259–73 (examples of conversations leading to system-wide policy change).
137 Id. at xix.
138 Id. at 26.
139 Id. at 29 (“I developed the Compass as a personal navigational tool to guide participants through these conversations. It helps us to know where we are personally as well as to recognize the direction from which other participants come.”).
140 The four agreements are: “1. [S]tay engaged. 2. [S]peak your truth. 3. [E]xperience discomfort. 4. [E]xpect and accept non-closure.” Id. at 27. See also id. at 70–78 (discussing the agreements in more depth).
141 The six conditions are: “1. Establish a racial context that is personal, local, and immediate. 2. Isolate race while acknowledging the broader scope of diversity and the variety of factors and conditions that contribute to a racialized problem. 3. Develop understanding of race as a social/political construction of knowledge, and engage multiple racial perspectives to surface critical understanding. 4. Monitor the parameters of the conversation by being explicit and intentional about the number of participants, prompts for discussion, and time allotted for listening, speaking, and reflecting. Use the Courageous Conversation Compass . . . to determine how each participant is displaying emotion—mind, body, and soul—to access a given racial topic. 5. Establish agreement around a contemporary working definition of race, one that is clearly differentiated from ethnicity and nationality. 6. Examine the presence and role of Whiteness and its impact on the conversation and the problem being addressed.” Id. at 28.
The compass, agreements, and conditions are designed to interrupt patterns of denial. The compass asserts the necessity of deep emotional, moral, intellectual, and action-based engagement as contrasted with surface-level equivocation and apologetics. The agreements draw participants in through the initial stages of fragility and discomfort toward a deeper conversation. The first and second conditions push people to locate themselves and their own agency within larger systems, and to break the white taboo against talking about race.143 The third and fourth conditions require participants to meaningfully listen to counternarratives.144 Finally, the fifth and sixth conditions push the group to collectively change their perception of how race operates, to internalize a new framework and work together to dismantle white supremacy.145

Another intervention that directly challenges denial in schools is ethnic studies, introduced in Part I.B.2, which is “the critical and interdisciplinary study of race, ethnicity and indigeneity with a focus on the experiences and perspectives of people of color in the United States.”146 Ethnic studies courses resist the typical whitewashed curriculum and teach a more inclusive and accurate history.147 Ethnic studies is more than just a curriculum for students, however.148 The push for schools to teach ethnic studies courses often overlaps with advocacy for teachers to engage in antiracist professional
development to transform their pedagogy itself. Advocates for ethnic studies have argued that educators need to “engage in a process of self-study and go through their own ethnic studies journey,” including “interrogating and deconstructing the white Eurocentric norm of the classroom and expectations of education.”

While Courageous Conversation or similar antiracism training is generally used among educators and ethnic studies courses are offered to students, both are often implemented together. In fact, teaching ethnic studies well requires educators to engage in antiracist personal and professional development. These programs exemplify a theory of change about racism that is both realistic and hopeful. They recognize that dominant, denialist racist ideologies are extremely sticky and hard to unsettle. Sustained, purposeful, interpersonal work is necessary to change beliefs and behavior. But this change is not impossible; rather, when done on a large scale it can be part of building movement in support of sustainable structural changes.

3. Risks, critiques, and criteria for making these interventions effective

In this subsection, I discuss concerns and risks related to interpersonal diversity work. Most of the critiques I address are from the left, i.e., they concern whether these programs do enough to challenge white supremacy, but describing best practices for this work in more detail also serves to illustrate why the arguments animating “anti-CRT” laws are so deeply misguided.

First, “diversity” and even “antiracism” are slippery concepts that risk becoming commodified or used in a superficial way to maintain the status quo. Shallow diversity efforts can be a way to burnish a corporation’s image and increase profits while doing little to change racist employment practices. Second, poorly facilitated diversity work can be unproductive and even harmful for...

150 Vasquez, supra note 75.
152 Daniel HoSang, A Wider Type of Freedom, in ANTIRACISM, supra note 24, at 57, 74 (“Like race itself, antiracism ‘floats’ as a signifier; it has no inherent political valence or meaning. . . . To some commentators, antiracism has become so thoroughly depoliticized that it no longer holds any possibility of transforming social, economic, and political relations writ large.”).
153 Id. at 68–72 (examples showing how “[m]ulticultural logics, incorporations, and representations are central to the[] core business strategy” of large corporations); Frank Dobbin & Alexandra Kalev, The Origins and Effects of Corporate Diversity Programs, THE OXFORD HANDBOOK OF DIVERSITY AND WORK; see also Loriann Roberson, Carol T. Kulik & Rae Yunzi Tan, supra note 132 (comparing “initiatives designed to quash managerial bias” unfavorably with “innovations designed to engage managers in promoting workforce integration” in terms of their effects on workforce composition); Williams & Cox, supra note 24 (finding that people’s likelihood of taking action to remedy workplace inequality depends on the underlying beliefs behind why they say they care about workplace diversity).
participants of color. Third, attempts to challenge white racism risk re-centering white people. Any theory of change that focuses too much on white “race traitors” specifically as change agents is “incomplete at best and reinforces the invisibility of people of color at worst.” Dismantling white supremacy is a project that can and should include white people, but without re-centering whiteness. Antiracism work should not become empty and self-congratulatory. Raising consciousness among white people is not an end in itself where the privileges of whiteness continue to obtain through the harm, dispossession, and oppression of others. The goal must be to change actions and accelerate structural change.

Instead of abandoning the early-2000s promise of interpersonal antiracism interventions or surrendering to the chilling effect of anti-CRT laws that seek to silence this work, it is more important than ever to talk about race in ways that challenge denial, raise consciousness and build capacity for structural change. Taking the criticisms of this work seriously means that it must be done with extreme intentionality and thoroughness to make it effective rather than counterproductive. Throughout the different settings where interpersonal interventions have been used to change ideology, there are some specific aspects that distinguish particularly effective antiracist political education from weak or counterproductive attempts.

First, at its best, work that counters racism through interpersonal dialogue must be a multi-dimensional praxis, marrying action with political education, self-reflection, and emotional engagement. In other words, it must result in deep ideological transformation that leads to actual changes in behavior, policy, and school or workplace structures; “diversity work” that stops at presenting information is not the goal.

Second, this work done well is intersectional and contextual rather than one-size-fits-all, and ongoing rather than a one-time fix. Diversity trainings should be customized to address the specific,

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155 Olson, supra note 10, at 112 (“The desire to create a positive white identity quickly turns a well-meaning antiracism into white narcissism.”); ZEUS LEONARDO, RACE FRAMEWORKS 89 (James A. Banks 2013) (critiquing whiteness studies); Delgado, supra note 135 (critiquing white antiracist movement organizing).

156 Leonardo, supra note 155, at 110.

157 Perry & Shotwell, supra note 19 (arguing that propositional, tacit, and affective knowledge are all important for antiracist praxis); Guinier, supra note 127, at 114–15 (defining racial literacy as “an interactive process” that “emphasizes the relationship between race and power,” “reads race in its psychological, interpersonal, and structural dimensions” and “depends upon the engagement between action and thought”); Vasquez, supra note 75 (“This work must be done in community because it is more than just readings and tests and papers and presentations. Ethnic studies is rooted in civic engagement, service learning and community collaboration. This has always been about being out in the community as much as it was about being in the books.”) (quoting Dale Allender). Some anti-CRT bills, recognizing this, also ban service learning. See, e.g., H.R. 3979, 87th Leg. (Tex. 2021), at 2, https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB039791.pdf [https://perma.cc/3Q7K-58EV] (banning teachers from making part of a course “service learning in association with any organization engaged in lobbying for legislation at the local, state or federal level, or in social or public policy advocacy”).

158 Roberson, Kulik & Tan, supra note 132, at 342–45 (discussing the importance of conducting a detailed analysis of
intersectional patterns of racialized harm that are happening within a given school or workplace. They should not use cookie-cutter language or stop after reciting textbook points. They should continually evolve and push the community collectively to change any concrete policies they have control over, to iteratively question what equity requires and hold one another accountable for progress, and to advocate together for larger-scale structural change.

Third, dialogue must be carefully and intentionally facilitated so that it is productive for all participants and does not cause harm. Participants of color should not be assumed to have a particular experience or asked to recount trauma for the edification of white peers, white people should not be casually recounting racist things they did and seeking absolution, and learning experiences should engage the audience emotionally to a level of productive discomfort while facilitating the processing of those emotions such that they lead to actual changes in behavior.

Finally, while centering accountability and change, there is an ethos of deep love and respect for the humanity of all participants. This should be modeled by facilitators; it does not mean forcing individual participants of color to respect colleagues who are causing them harm. It also does not mean eliminating conflict or negative emotions. For white participants, moving through denial can understandably raise many emotions including shame, guilt, anger, and grief.

Anti-CRT laws characterize “CRT” as pushing some individuals to feel “discomfort, guilt, anguish” on account of their race or sex. But a good diversity training would not be overly simplistic by saying that someone should feel guilty merely “because of” being white. Rather, the reason white people often feel these emotions in diversity trainings is because they are human emotions—a completely appropriate emotional reaction when, as a human, you learn that you are causing harm, have caused harm in the past, and/or harm has been caused for your benefit. So even if discomfort and other challenging emotions come up in diversity trainings, ultimately, anti-CRT laws are still largely mischaracterizing how and why these emotions are involved. The point of diversity training is not to teach hate or resentment towards any one group, but rather to openly learn about and collectively work to repair the harms of systemic racism. This process, in turn, tends to bring out a lot of challenging emotions for the many white people who are coming to it from a culturally imposed ideology of denial—and it also requires a lot of behavioral change from the many white people whose racist actions are causing harm.

the organization’s needs, operations, and personnel before beginning diversity training); SINGLETON, supra note 19, at 75–76 (“[P]articipants must commit to an ongoing dialogue. . . . [There are] no neat and tidy tasks, processes, or timelines with guaranteed solutions. . . .”); see also SINGLETON, at 28 (“Isolate race while acknowledging the broader scope of diversity and the variety of factors and conditions that contribute to a racialized problem.”).

159. Roberson, Kulik & Tan, supra note 132, at 7–9; Hässler et al., infra note 160, at 221–29 (identifying criteria that make intergroup contact likely to increase both disadvantaged and advantaged group members’ support for social change); SINGLETON, supra note 158, at 28 (“Monitor the parameters of the conversation by being explicit about the number of participants, prompts for discussion, and time allotted for listening, speaking, and reflecting. . . .”); see supra note 154 and accompanying text.

160. Roberson, Kulik & Tan, supra note 132, at 348–50 (discussing the use of confrontation, negative emotions, and constructive follow-up such as positive reinforcement to raise consciousness and decrease backlash for white participants in diversity training); Tabea Hässler et al., Intergroup Contact and Social Change: An Integrated Contact-Collective Action Model, 77 J. SOC. ISSUES 217, 225, 228 (2020) (suggesting that, for both disadvantaged and advantaged group members, intergroup contact is more likely to increase support for social change when awareness is raised both of individuals’ distinct group identities and of a shared, positive, superordinate identity).

161. See, e.g., H.R. 1775, Reg. Sess. (Okla. 2021) at 3 (banned list includes the idea that “any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex”).
Overall, in my view, to dismiss or overlook the possibilities for antiracist political education based on its worst instances would be a mistake. These practices can be a way of reducing harm, for example by starting a conversation that interrupts a longstanding culture of denial and silence in a school or workplace and increases people’s ability to engage in continued organizing for structural change. Moreover, this work is important because in its absence—i.e. in a world without any efforts to directly change ideology, discourse, and social consciousness—the denialist regimes that have already been adopted will continue to shape public consciousness, and even if any progressive changes do somehow become imposed by law, those legal solutions will continue to be co-opted, undermined, and violently resisted by a racist white public.

B. Education justice movements embrace non-reformist steps against denial

In this section, I offer three case studies of education justice movements advancing non-reformist steps toward antiracist education. These organizations—Education for Liberation Network, IntegrateNYC, and Integrated Schools—collectively represent just a small sample of the rich landscape of education justice advocacy groups and networks across the country. In advancing non-reformist steps toward antiracist education, each of these organizations is refusing to legitimate ideologies of denial; and each embraces a theory of change that blends interpersonal, cultural change with attempts to influence policy and law, thereby introducing ideas from outside the reigning legal frameworks and continually transforming democratic participation. My intention in describing these organizations’ work in this way is not to limit or define them, but rather to draw out common themes in hopes that doing so will illuminate broader implications.

1. IntegrateNYC advocates for real integration

IntegrateNYC is a youth movement in New York City that embraces a comprehensive...
model of school integration for racial justice. IntegrateNYC’s platform is called the 5 R’s of Real Integration—Race and Enrollment, Resources, Relationships, Restorative Justice, and Representation. This model excavates and refreshes the comprehensive Civil Rights era demands that subsequently became narrowed to focus only on enrollment rather than truly equitable, inclusive schools. It differs from previous “efforts in the name of integration that maintain[ed] the dehumanization of students and communities of color inherent in segregation.” In contrast, it is a “multifaceted and intersectional” path to “rebuilding, or rather reimagining, a truly democratic and liberatory educational system.” IntegrateNYC’s goal is to “transform our schools into spaces that affirm, empower, and educate young people.”

By remaining clear about the comprehensive racial justice goals of integration, IntegrateNYC refuses to accept the existing system of denial that keeps schools segregated and silent about race. IntegrateNYC’s platform could have focused on integrating enrollment only. However, this would have bought into a denialist, assimilationist model of integration that claims to care about diversity while still maintaining systemic racism in schools. Alternatively, IntegrateNYC’s platform could have excluded integration and instead focused only on all the other aspects of racial justice inside schools. But this also would have been denialist in a way, because it would have ignored the larger structures of segregation; it would have stopped short of disrupting white people’s ability to exclude and to hoard resources.

IntegrateNYC’s demands are also non-reformist because rather than being invented within

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164 IntegrateNYC, THE 5 Rs OF REAL INTEGRATION (2022), https://integratenyc.org/platform [https://perma.cc/GF7R-WYS7].

165 “Race and Enrollment” means transforming New York City’s “complex, inefficient and hyper-competitive high school admissions process” into a system “reflecting the diversity of the city.” “Resources” means equitable access to sports, music, arts, healthy school lunch, and AP courses. “Relationships” includes culturally responsive teaching and ethnic studies. “Restorative Justice” involves removing police and metal detectors from schools, funding counselors, and protecting “the integrity and humanity of each student.” “Representation” means hiring faculty who “is inclusive and elevates the voices of communities of color, immigrant communities, and the LGBTQIA+ community so that student identities and experiences are reflected in the leadership” and creating a pipeline for students to become educators. Id.; see also IntegrateNYC, Spring 2018: Still Not Equal, CAMPAIGNS (2021), https://integratenyc.org/campaign [https://perma.cc/NBX6-RVBC] (“Relationships. The city release money for schools to design curriculum for an ethnic studies electives in all high schools and pay teachers to do that work.”); IntegrateNYC, THE NEWS 4 (2019), https://issuu.com/integratenyc/docs/the_news_vf_v2 [https://perma.cc/GR4T-YZ9W] (“Recommendation. Secure funding to train and support educators in culturally responsive instruction.”); id. at 23 (“We demand the city council approve a budget that invests in restorative justice and counselors an divests from policing and metal detectors.”); id. at 19.


168 A Framework for Integration Rooted in Racial Justice, supra note 167.

the limited epistemic world of technocratic elites, they are written by young people directly affected by segregated schooling. The demands include some aspects that fall within the realm of traditional education law (equitable funding and integrated enrollment), but they also include things that policymakers might not normally consider (school lunch, sports) and changes that are more cultural, interpersonal, and directly relevant to the experience of going to school (antiracist teaching, ethnic studies courses, restorative justice). The fact that all of these are included also shows how combating denial requires ideological, cultural, and structural change.

Finally, IntegrateNYC embraces the third non-reformist principle from Akbar’s framework: enfranchisement, self-determination, and continuously expanding democratic participation. Their mission is “to develop youth leaders who repair the harms of segregation and build authentic integration and equity.” To “develop youth leaders” is embodied in the group’s organizational structure: young people make up most of the board and paid staff, while adults participate in the work as allies. Their platform is created by young people and the structure of their organization is designed to consistently empower and uplift young people.

IntegrateNYC’s theory of change includes social transformation, policymaking, and legal action. A large amount of their work is movement building among young people and supporting young people in speaking up about the systems that affect them. In 2017, some representatives of IntegrateNYC participated in the mayor’s School Diversity Advisory Group (SDAG). This work resulted in the city adopting the 5 R’s into their official education policy goals. However, the city has made little concrete progress on achieving these goals. In 2020, IntegrateNYC filed a comprehensive, youth-led lawsuit challenging systemic racism in New York City schools. Recently, a group of white parents, represented by the same lawyer who represented Trump, intervened in the ongoing case, claiming that IntegrateNYC’s demands threaten their view of how education should operate. As with the ongoing resistance and litigation over anti-CRT bills, more attention will be warranted in the coming...
months as this conflict against reactionary denialist ideology progresses on the legal battlefield.\(^{179}\)

2. Integrated Schools changes white/privileged parents’ behavior

Founded in 2015, Integrated Schools is a national “grassroots movement of, by and for parents who are intentionally, joyfully and humbly enrolling their children in integrating schools.”\(^{180}\) The members of Integrated Schools initially described themselves as “white and/or privileged”\(^{181}\) but have since shifted to become a “multiracial coalition.”\(^{182}\) Their goal is to change their own ideologies and behavior so that they stop hoarding educational resources in ways that harm and exclude others.\(^{183}\) Their vision of “meaningful integration” is an ongoing process where families have equitable power and educational opportunities, schools respect “the needs and dreams of all students and families,” and schools truly become shared communities with “true partnership” and “mutual investment.”\(^{184}\)

Integrated Schools refuses to normalize post-\textit{Brown} ideologies of denial about school segregation. Where denialist ideology shifts the blame for today’s educational inequalities away from white racism, Integrated Schools recognizes that “White parents have been the key barrier to the advancement of school integration and educational equity.”\(^{185}\) Where denialist ideology venerates \textit{Brown} as having ended racism and inequality, Integrated Schools recognizes that “the burden of these failed [desegregation] efforts has fallen on marginalized communities.”\(^{186}\) In their description of how they chose their name, the organization explains that reckoning honestly with history is a core part of their work:

If our goal is to grab people, to gently welcome parents into the fold, choosing a less off-putting name makes perfect sense (“Opt IN” or “Let’s All Go to School Together!” or “Parents for Justice for All Students”?). As a few marketing folks have warned, the PR challenge of ‘Integrated Schools’ is colossal . . .

But we have come to the limits of what [choosing a less “off-putting” name] can accomplish and our children still attend separate and unequal schools. It is time now

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\(^{179}\) To read updates as the case progresses, see Public Counsel, \textit{Case Developments, INTEGRATE NYC V. NEW YORK} (2022), https://publiccounsel.org/litigation/integratednyc-v-new-york/case-developments/ [https://perma.cc/A228-YTKZ].

\(^{180}\) \textit{INTEGRATED SCHOOLS} (2021), integratedschools.org/ [https://perma.cc/DT8Y-9H2F].

\(^{181}\) \textit{Id.}


\(^{183}\) They describe how “the smog we breathe” in white and/or privileged, segregated circles consists of racist narratives that motivate and justify racist behaviors; their mission is to confront these untruths and change behavior. Integrated Schools, \textit{How White &/or Privileged Families Interact with School Integration, YOUTUBE}, at 0:28 (Nov. 14, 2018), https://www.youtube.com/watch?v=VGNXhwqoZ1U [https://perma.cc/XH7E-G2EQ].

\(^{184}\) \textit{About Integrated Schools, INTEGRATED SCHOOLS} (2021), integratedschools.org/about/ [https://perma.cc/D2B5-8MQB].

\(^{185}\) \textit{Id.} (“Many White and/or privileged families use their privilege to access more heavily-resourced schools, concentrating privilege and isolating their children from learning and growing with classmates who have different life experiences. The result for students of color is often high concentrations of vulnerability in under-resourced schools.”).

\(^{186}\) \textit{Id.}
to engage explicitly with integration, without fuzzy feel-goods, without whimsical euphemisms, without flinching. Integration for the sake of integration. Integration for the sake of equity and democracy.

We cannot shy away from the violence of integration’s historical roots: the busing and protests and federal troop deployments, the redlining of neighborhoods and secession of districts. This is part of our national story, and its lessons must anchor us. To build trust between communities that have for too long lived separately, we must be unequivocal in acknowledging our past. 187

In addition to refusing to legitimate denial, Integrated Schools also reject technocratic, elite-created, one-time solutions, instead embracing the non-reformist principle of continuously transforming and expanding democratic participation. Their goal is not to shortcut to a defined outcome like having a certain number of white parents enroll their children in a predominately Black school. In fact, they recognize that this kind of overzealous action when based in racist assumptions can cause harm. 188 Instead, to build a sustainable movement for real integration, they believe that white and/or privileged parents must not only desegregate (enroll their child in an integrating school), but meaningfully integrate (continue to work against white supremacy culture including in their own actions and behavior). 189 Only then—”with ‘skin in the game’” 190 and ongoing commitment to antiracist action—can they be helpful co-conspirators 191 in antiracist advocacy in their local context, such as advocating for policies like those in the 5 R’s platform.

Overall, the model that Integrated Schools embraces to transform how education operates sits outside of traditional legal theories of change. They primarily focus on changing the consciousness and behavior of the people—white and/or privileged parents—who currently hold an outsized amount of power in local policymaking and decision-making. Along with this interpersonal, ideological change, they seek to support and join in coalitions advocating for antiracist policy changes at the local and hyperlocal level. Ultimately, they imagine vast structural changes—equitable educational opportunity for everyone; an end to the “caste system of public education [that] magnifies our polarization, harming our children . . . [and] presenting grave threats to justice and our democracy as a whole.” 192 But they recognize that these structural changes cannot happen via a single change in law or policy from within the power structures that currently exist. Instead, there must be a wholesale shift to embodying the values

187 On Choosing the Name ‘Integrated Schools’, INTEGRATED SCHOOLS (2021), integratedschools.org/about/on-choosing-the-name-integrated-schools/ [https://perma.cc/KJU9-YN4T].
188 About Integrated Schools, supra note 184 (“To the extent we have enrolled our children in these schools, we have treated diversity primarily as a commodity for the benefit of our own children; and/or entered these schools with the assumption that they are broken and need White parents to fix them.”).
189 They encourage “listening to families of color about the needs of our schools and the children who already attend them, and by working to build community and relationships” and “understanding that when we arrive, our impact matters more than our intent.” Id.
190 How White &/or Privileged Families Interact with School Integration, supra note 183, at 347.
192 About Integrated Schools, supra note 184.
of shared power and democratic decision-making starting from the hyperlocal (school and classroom) level.

3. Education for Liberation Network advances ethnic studies

The Education for Liberation Network was founded in 1999 as a coalition between local teacher groups in multiple cities.\footnote{The Education for Liberation Network Mission and Vision, EDUCATION FOR LIBERATION NETWORK, https://www.edliberation.org/about-us/our-vision/ [https://perma.cc/U7N7-BE3Y] (last visited Apr. 14, 2022).} It has over 1300 members nationwide including teacher activist groups, youth organizations, public schools, and university professors.\footnote{Id.} “[F]ound and primarily facilitated by folks of color,” it “focuses on liberatory education . . . and helps [people] learn and grow in ways that support a more just society.”\footnote{Id.} The members of the Education for Liberation Network work to create and advocate for schools that, by speaking openly about past injustices, give young people the power, choice, and freedom to build a more just world. Their mission statement defines “education for liberation” as “[t]eaching young people the causes of inequalities and injustices in society and how communities have fought against them” and “[h]aving the young people develop . . . the belief in themselves that they can challenge those injustices,” and then teaching skills to “support[] young people in taking action that leads to disenfranchised communities having more power.”\footnote{Id.} The Education for Liberation Network’s focus on liberatory self-determination by young people and the educators who work with them stands in contrast to policy-first theories of education reform. Instead, it embodies the non-reformist principles of expanding political participation and moving away from elite-driven, technocratic solutions toward ideas created by the people most affected.


requirement,\(^{199}\) or pushing back when a state tries to ban ethnic studies, as in Arizona.\(^{200}\) By doing this work, the Education for Liberation Network is directly rejecting and challenging hegemonic ideologies of denial.

While IntegrateNYC focuses on empowering youth leaders and Integrated Schools focuses on changing privileged parents’ behavior, Education for Liberation Network has the teacher-student-community relationship at the heart of its theory of change. Its vision is a world where economically and racially marginalized young people have the knowledge and skills to challenge injustice, and it recognizes teachers’ outsize power to shape the information, opportunities, and values that young people receive. While educators can sometimes play a liberatory role, they also all too often can be part of the problem—maintaining punitive schools that not only push students of color into the criminal legal system but themselves function as extended carceral space.\(^{201}\) Recognizing this, another of Education for Liberation Network’s major projects is a partnership with Critical Resistance focusing on abolitionist education.\(^{202}\) Like the campaign for ethnic studies, the vision for abolitionist education melds interpersonal, social, and structural change for an antiracist future.\(^{203}\)

III. IMPLICATIONS: SOCIETAL AND LEGAL CHANGE MUST PROGRESS HAND IN HAND

Denial is entrenched in education law. Non-reformist, antiracist change must refuse to legitimate this system. It must be imagined outside existing doctrine, and it must wreak ongoing transformation to democratic participation itself. In the face of bitter opposition and the escalating, dystopian threat of “anti-CRT” laws, education justice movements are persistently doing this vital work. Viewing education justice as a fight against denial should push education law scholars to reassert why antiracist education is important, to refocus on local decision-making, and to reconsider the power of ideological change in support of structural change.

A. Embrace a long view: education law shapes the next generation’s ideology

“Anti-CRT” advocates get one thing right: they recognize the centrality of schools as a battleground for directly shaping what children believe and what policies they will fight for in future

\(^{199}\) Anderson, supra note 147. In California, Governor Gavin Newsom recently vetoed a bill to make ethnic studies a graduation requirement, but local districts are still working on implementing ethnic studies curricula. Thomas D. Elias, Opinion, California's Ongoing Ethnic Studies Debate Moves to Local School Districts, L.A. DAILY NEWS (Apr. 9, 2021, 7:00 A.M.), https://www.dailynews.com/2021/04/09/californias-ongoing-ethnic-studies-debate-moves-to-local-districts/[https://perma.cc/B3Y7-F9LJ]; Vasquez, supra note 75; Pawel, supra note 149.

\(^{200}\) See supra Part IB2.

\(^{201}\) See generally Fine & Ruglis, supra note 112; Johnson, supra note 17, at 380; David Stovall, Schools Suck, But They’re Supposed To: Schooling, Incarceration and the Future of Education, 13 J. CURRICULUM & PEDAGOGY 20 (2016); David Stovall, Are We Ready for School Abolition? Thoughts and Practices of Radical Imaginary in Education, 17 TABOO 51 (2018) (articulating a change in label from “school to prison pipeline” to “school-prison nexus” and arguing for the abolition of carceral forms of schooling).


\(^{203}\) Id. (arguing that teachers should engage in political education “reading-into-action,” critical self-reflection and conversations, critical analysis and advocacy to change school and district policies, and organized political action).
generations. Silencing antiracist education is a last-ditch attempt to keep children in denial and prevent them from joining in the multiracial, intersectional, coalitional abolitionist movements that are radically transforming our society. In contrast to the heated character of “anti-CRT” discourse, traditional education reform debates tend to sound in drier, more technical-sounding questions: how should the state allocate funding? How should it hold schools accountable for raising student achievement? But these questions, too, have far-reaching impacts. They shape who has power and voice in the next generation. And they shape the ideologies that children inherit, which determine what they will do with the political power they have. Resisting the “anti-CRT” fervor adequately, then, requires confronting it on its own terms by reasserting a long view of the critical importance of antiracist education policymaking in everything from larger structural choices like equitable funding and integrated enrollment down to more local, hot-button issues like curriculum, pedagogy, and school culture.

B. Define education law broadly to include local and hyperlocal choices

Education law includes not only constitutional law but state, local, and hyperlocal policies like textbooks and classroom assignments. The vitiation of Brown and the absence of federally protected education rights creates a vacuum designed to leave privileged parents with immense freedom to exclude, segregate, and shape ideology at the local level. Choices made by school boards and even school administrators are the product of flawed processes in which some people impose structures that shape other people’s lives—in other words, they are law. Yet they receive relatively little attention compared to education law at larger scales. Recent innovative efforts to articulate federal education rights are admirable. Yet, as discussed in Part IC, a court battle, win or lose, will never be a shortcut for the continuing work of changing how schools operate and what they feel like for young people every day. Education law scholars, following movement law, should devote more attention to collaborating in solidarity with the local and hyperlocal efforts of education justice movements, using law as one tool but not the only method for change. As I have shown, these movements’ efforts include a mix of social and ideological change and base building, local policy change, and litigation. My brief introduction to two national networks and one local group is, I hope, only the start of a more in-depth conversation.

C. Changing the people who are making policy is part of changing policy

Critical race theory offers sobering lessons about the enduring centrality of racism and the deep entrenchment of denial in the law. Education law scholarship can take these lessons seriously while also drawing inspiration from the practical optimism of antiracist educators who unsettle denialist ideologies every day in their work. It is tempting, especially today, to conceive of contested legal decision-making as a numbers game or vote count rather than a truly deliberative process. But laws are not made by disembodied decisionmakers with unchanging, predetermined preferences. Laws are made

204 See, e.g., Gary B. v. Whitmer, 957 F.3d 616 (6th Cir. 2020) (litigants asserted that access to literacy is a fundamental right under substantive due process and equal protection); A.C. by Waithe v. McKee, 23 F.4th 37 (1st Cir. 2022) (litigants asserted that civics education is a fundamental right under substantive due process and equal protection, and denial of civics education violates the Sixth and Seventh Amendments and the Privileges and Immunities Clause); Brence D. Pernell, The Thirteenth Amendment and Equal Educational Opportunity, 39 YALE L. & POLY REV. 420 (2021) (proposing that contemporary educational inequality could be characterized as a badge or incident of slavery in violation of the Thirteenth Amendment).
by humans with irrational beliefs and behaviors, shaped by culture and by past legal regimes. At the hyperlocal level, changing education law can be an organic process that not only shifts power by the force of organized social movements but also advances those movements by transforming the ideologies of the people who currently hold too much power. The examples I have given—young people taking a role in city policymaking and conveying the importance of a comprehensive vision for reform; privileged parents speaking to one another, stepping back, and trying to participate in meaningfully integrated school communities; educators trying to uproot racist teaching and create more inclusive, empowering classrooms for students—show this interplay as an ongoing, imperfect work in progress.

CONCLUSION

I have argued that denialist ideologies are both reflected in and perpetuated by education law at both the federal and state level. These laws are causing massive amounts of harm by maintaining a caste system that shapes not only children’s lives and opportunities but also the ideologies they inherit, both overtly through curriculum, and more subtly through their experiences of segregation. Radical change is necessary. Transposing the abolitionist framework of non-reformist steps and the methods of movement law to the education context, I have described how three education justice movements are actively confronting and challenging entrenched denial. These movements incorporate ideological, social change alongside policymaking and legal battles to wreak radical structural transformation for an antiracist future.