

Anti-“CRT,” A Century Old Tradition

Aziz Rana*

ABSTRACT

In the aftermath of racial justice protests, the country has witnessed a wave of conservative anti-“critical race theory” (CRT) legislation. This essay argues that such legislation is best understood as the latest iteration of a long-standing reactionary political practice. This practice goes back a century to World War I and the 1920s. Then, as now, it was marked by two critical elements: an argument about national identity and a focus on public schools. In the early twentieth century, conservatives began systematically fusing ethno-racial claims about Anglo-European cultural distinctiveness with a self-consciously universal language of the United States as a uniquely free and equal society. They further contended that public schools were failing to adequately teach children in the nation’s true values and called for a series of school measures with uncanny resemblances to the present.

In exploring this pre-history of today’s attacks on public schools, the essay teases out why arguments akin to anti-“CRT” claims initially emerged and recur whenever there have been major flashpoints around cultural and national identity. It also highlights a seemingly paradoxical phenomenon: In the United States, the most prominent defenses of racial hierarchy and attacks on racial reform often speak in a “civic” and ostensibly universal register rather than in an “ethnic” nationalist one. This fact requires Americans to confront the embedded drawbacks of longstanding and taken-for-granted narratives of national purpose, narratives commonly invoked across the political spectrum.

INTRODUCTION: UNIVERSALISM IN THE POLITICS OF RACIAL REACTION	552
I. RECONSTRUCTING WHITE SUPREMACY THROUGH THE LANGUAGE OF THE CREED	555
A. <i>Frederick Douglass and the Radical Side of Creedal Nationalism</i>	555
B. <i>The Domestication of an Anti-Slavery Politics in the Turn to World War I</i>	557
II. 1920s SOCIAL CONFLICT AND PUBLIC SCHOOLS	561
A. <i>Fears of Demographic and Cultural Transformation</i>	561
B. <i>Public Schools as a New Battleground</i>	565
III. ANTI-“CRT” BILLS IN THE 1920s	567
A. <i>Book Bans and Parental Enforcement</i>	567

* Aziz Rana is the Provost’s Distinguished Fellow at Boston College for 2023-2024 and will be the J. Donald Monan, SJ, Chair in Law and Government at Boston College beginning in 2024. Many thanks to the editors of the *Harvard Civil Liberties-Civil Rights Law Review* for their excellent editorial assistance. This essay can be thought of as a development of an earlier article, AZIZ RANA, CONSTITUTIONALISM AND THE FOUNDATIONS OF THE SECURITY STATE, 103 CALIF. L. REV. 335, 335–86 (2015). It incorporates language from that article and extends ideas and examples discussed there, including some 1920s school legislations efforts, applying them now to the emergent debates over anti-“CRT.”

B. <i>Teaching the Constitution</i>	570
C. <i>English-Only Instruction</i>	573
CONCLUSION: RECURRENT POLITICAL STRATEGIES.....	575

UNIVERSALISM IN THE POLITICS OF RACIAL REACTION

The terms of right-wing political reaction today against racial or other social and cultural reforms can be deeply puzzling. This is because a key rhetorical feature of such a reaction is that it very aggressively embraces the idea of the United States as exceptional precisely because of its inclusive and egalitarian values. Certainly, some “white nationalists” in the age of Donald Trump have explicit racially supremacist views. But, more commonly, aligned politicians and commentators will attack “multiculturalism”¹ and anti-racist teaching in schools, or defend harsh crackdowns on immigrant rights by claiming to stand for the universalistic principles of “1776.”²

Take the language of Texas’s 2021 anti-“critical race theory” (CRT) bill, which bans teachers from presenting “slavery and racism [as] anything other than deviations from, betrayals of, or failures to live up to, the authentic founding principles of the United States, which include liberty and equality.”³ The bill is part of a sustained attack on Black movement politics around racial justice, framing public engagement with the history and ongoing practice of racism—rather than the resurgence of white supremacy itself—as the *actual* threat to universal values. This pushback mobilizes ideas of American inclusion precisely as a way of forestalling a sustained examination of what genuine equality may entail.

All of this seems to be a bundle of contradictions. For starters, this is because such language mirrors the dominant discourse of twentieth-century civil rights efforts. Those efforts often embraced a brand of civic nationalism that I will refer to as “creedal” after the Swedish sociologist Gunnar Myrdal. In 1944, Myrdal famously asserted that the United States had been committed, from the time of its founding, to the principle emblazoned in the Declaration of Independence: that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”⁴ He termed this historical narrative the “American Creed,” and he argued that the unfolding national experience concretely manifested the narrative, concluding that “the main

¹ See Lara Jakes, *Pompeo’s Parting Message as Secretary of State: Multiculturalism Is “Not Who America Is”* N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/us/politics/pompeo-multiculturalism.html> [https://perma.cc/RJJ2-TPUU].

² See Jennifer Schuessler, *The Ideas Behind Trump’s 1776 Commission Report*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/arts/1776-commission-claims-trump.html> [https://perma.cc/5FSX-CEKC].

³ An Act Relating to the Social Studies Curriculum in Public Schools, H.B. 3979, 87th Leg., Reg. Sess. (Tex. 2021).

⁴ THE DECLARATION OF INDEPENDENCE para. 3 (U.S. 1776).

trend in [American] history is the gradual realization of the American Creed” and thus the fulfillment of the nation’s founding promise.⁵

Myrdal’s phrase captured a way of thinking about the country—simultaneously an historical interpretation and a political ideology.⁶ Indeed, it provided the normative underpinning of key civil rights movement victories, like the Civil Rights Act (1964) and the Voting Rights Act (1965), and thus the mainstream reform language for overcoming segregation and legalized discrimination.

Those on the center-left accept that the United States has competing traditions of civic and ethnic nationalisms— notions of collective identity grounded in liberal pluralism as well as those grounded in “illiberal” and inherited racial, cultural, and religious ties.⁷ But the conventional presentation of racial reaction is in terms of the segregationist South, emphasizing an explicitly white supremacist rejection of creedal values or a civic approach. That conventional presentation also tends to assume that the civic and the ethnic registers are distinct and isolated from each other. It is far harder to make sense of, through the familiar understandings, why American ethnic nationalism today overwhelmingly speaks in the “civic” and presumptively inclusive language of the creed. How did a creedal nationalism become the discursive framework not only for civil rights promotion, but also for racially restrictive accounts of national identity and membership? Is it merely a cynical smokescreen?

I argue that turning to World War I and its 1920s aftermath—with that era’s public culture around the creed and Constitution—points to at least a partial answer. It suggests that recent anti-“CRT” politics is a contemporary manifestation of a longstanding conservative argumentative strain. Indeed, for the better part of a century, arguments about American universalism have also been perhaps the dominant way of articulating white resistance to racial reform, along with a variety of perceived threats to traditionalist values.

The early twentieth century global backdrop, especially World War I, spread broadly an idea of the United States as exceptional because it was where Enlightenment ideas truly took root. For this reason, the country was seen by growing numbers of white Americans as home to institutions that

⁵ 2 GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 1021 (1944).

⁶ For a recent scholarly and critical analysis of the idea of the “American Creed,” see JOSEPH MARGULIES, *WHAT CHANGED WHEN EVERYTHING CHANGED: 9/11 AND THE MAKING OF NATIONAL IDENTITY* especially 17–61 (2013).

⁷ See MICHAEL IGNATIEFF, *BLOOD AND BELONGING: JOURNEYS IN THE NEW NATIONALISM* 7–8 (1993) (“Ethnic nationalism claims . . . that an individual’s deepest attachments are inherited, not chosen. It is the national community that defines the individual, not the individuals who define the national community.”). With respect to the United States, JARED GOLDSTEIN, *REAL AMERICANS: NATIONAL IDENTITY, VIOLENCE, AND THE CONSTITUTION* (2021) offers a powerful recent account of how American ethno-nationalist politics has historically invested deeply in constitutional veneration.

were committed to universal equality.⁸ However, the reason the Enlightenment arrived in the United States as opposed to elsewhere, was presented as a product of the culturally exceptional nature of the individuals that settled North America: Anglo-Europeans. The Declaration of Independence and the American Constitution did not, on this view, arise out of nowhere. They were, instead, the end result of 150 years of development that began with the Puritans signing the Mayflower Compact in 1620.

Thus, rather than repudiating ideas of racial hierarchy, this vision of the country's universal promise became an alternative defense of those commitments. In particular, this defense—distinctively attuned to developing global and domestic transformations—spoke in a “civic” rather than “ethnic” nationalist register. Over time, especially in the North and West, the ever-more central way that white voices defended the existing racial order deemphasized classic arguments about biological superiority and essentialism. Rather, such voices presented an American creed as imperiled by radical and foreign reformists of various stripes.⁹ Emblematic of this cultural context, the 1920s and 1930s saw the proliferation of numerous education bills—from bans on teaching disloyal texts to state-mandated constitutional instruction to English-only classrooms. These bills serve as the historical lineage for today's more recent public school interventions. They emphasize the deep malleability of creedal narratives as well as the longstanding paradoxical quality of their entanglement with American ethno-nationalism.

The rest of this essay pursues these claims in greater detail. Part I focuses on how creedal ideas, so destabilizing for white society as an anti-slavery politics, became transformed over time into a driving American language of ethno-nationalism. This discussion centers especially on the role of World War I in popularizing a political fusing of creedalism and racial exclusion. Part II then turns to the first era of anti-“CRT” school bills. It explores the social conflicts that defined the wartime and postwar climate. It emphasizes how those conflicts consolidated an aggressive and belligerent American nationalism and moved conservative supporters of that vision to intercede in debates over an expanding public education system. Next, Part III details a variety of state legislative initiatives in the interwar period regarding schools, teasing out how these efforts helped to mobilize conservative constituencies as well as to integrate potentially competing rightwing orientations into a more coherent political project. The discussion also highlights some striking parallels between state laws then and now. Finally, by way of a conclusion, I suggest that the 1920s developments set in motion a

⁸ See generally AZIZ RANA, *THE CONSTITUTIONAL BIND: HOW AMERICANS CAME TO IDOLIZE A DOCUMENT THAT FAILS THEM* (forthcoming 2024) (unpublished manuscript on file with author) for a discussion of the role of the war in creating a mass political spread within white society of universalist ideas of American identity, after their decline post-Reconstruction.

⁹ For more on the exclusionary politics of “Americanism,” especially in the North and West in the 1920s, see generally THOMAS PEGRAM, *ONE HUNDRED PERCENT AMERICAN: THE REBIRTH AND DECLINE OF THE KU KLUX KLAN IN THE 1920s* (2011).

persistent pattern of conservative politics vis-à-vis public schools, with effects down to the present.

I. RECONSTRUCTING WHITE SUPREMACY THROUGH THE LANGUAGE OF THE CREED

At the dawn of the twentieth century, mainstream white society took for granted the racially exclusionary nature of American membership. And indeed, creedal ideas, which had initially emerged out of anti-slavery politics, were most connected to the Black American counter-public. But particularly with World War I, white officials both reclaimed and defused the radical implications of creedal politics—allowing it to spread across society without fundamentally uprooting existing hierarchies.

A. *Frederick Douglass and the Radical Side of Creedal Nationalism*

In the nineteenth century, the great Black abolitionist, writer, and activist Frederick Douglass was perhaps the American figure that most expansively elaborated creedal ideals. In the process, he articulated a set of claims that would become deeply connected to twentieth century racial reform politics and national narratives. Before the Civil War, Douglass had been central to the development, within both white and Black anti-slavery circles, of a racially egalitarian and redemptive reading of the Constitution. In an 1860 speech before the Scottish Anti-Slavery Society in Glasgow, he declared the Constitution to be an anti-slavery document, filled with universal rights provisions entailing among other things that “no person shall be deprived of life, liberty, or property without due process of law.” In his view, “[a]nyone of these provisions in the hands of the abolition statesman, and backed up by a right moral sentiment, would put an end to slavery in America.”¹⁰

During and even after Reconstruction—with white politics embracing new forms of racial domination—Douglass extended these arguments into a broad-ranging account of the nation’s universally inclusive meaning. Douglass emphasized the idea that the United States should be thought of as a “composite” nation, subverting notions of the country as a white republic. He did so by, once again, arguing for the radical promise embedded at the founding in the nation’s constitutive documents, the Declaration of Independence and the Constitution. As he declared in 1869, “our greatness and grandeur will be found in the faithful application of the principle of perfect civil equality to the people of all races and of all creeds. We are not only bound to this position by our organic structure and by our revolutionary antecedents,

¹⁰ Frederick Douglass, *The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?* (1860), BLACKPAST.ORG, (Mar. 15, 2012), <https://www.blackpast.org/global-african-history/1860-frederick-douglass-constitution-united-states-it-pro-slavery-or-anti-slavery/> [<https://perma.cc/YP48-M6BU>].

but by the genius of our people.”¹¹ For Douglass, different racial communities had “[g]athered” in the United States “from all quarters of the globe by a common aspiration for national liberty.”¹² Their actions, motivated in part by the country’s founding tenets—its “organic structure”—created the promise of nothing less than the first truly universal polity, a “home . . . not only for the negro, the mulatto and the Latin race,” but all groups everywhere.¹³

Douglass was certainly well aware of the centrality of racism to American society. Indeed, in keeping with Black pre-Civil War practices, he had famously delivered his stinging 1852 address, “What to the Slave Is the Fourth of July?” on July 5th to underscore the very absurdity of an enslaved people honoring a national founding that only further entrenched their collective oppression.¹⁴ As political theorist George Shulman has explored, Douglass fully appreciated that, whenever he invoked credal ideals and his own radicalized version of the United States as a “composite” nation, he in essence sought to call into being a national ethos that did not in reality exist.¹⁵

Douglass’s civic rhetoric aimed to redeploy the key texts of the larger society to compel white Americans to reconceive the meaning of their own project. And especially during the Civil War and the high tide of Reconstruction, as embodied by Abraham Lincoln’s famed 1863 Gettysburg Address, this rhetoric gained mainstream relevance in white society.¹⁶ But for many white Americans, credal nationalism’s association with Douglass and Black politics stoked white racial fears about threatening and revolutionary change. Indeed, during and after Reconstruction, white supremacists in the South violently rejected these ideas—and eventually did so with Northern complicity and often straightforward backing.

¹¹ Frederick Douglass, *Our Composite Nationality (1869)*, in *THE SPEECHES OF FREDERICK DOUGLASS 278, 295* (John McKivigan, Julie Husband, & Heather Kaufman eds., 2018).

¹² *Id.* at 295.

¹³ *Id.* at 294.

¹⁴ Historian Mason Lowance writes that Douglass chose the date for the speech because, as with other African Americans, he “did not wish to participate in the celebration of hypocrisy and could not join the festivities recalling the Declaration of Independence.” Mason Lowance, *Frederick Douglass (1818-1895)*, in *AGAINST SLAVERY: AN ABOLITIONIST READER 38* (Mason Lowance ed., 2000).

¹⁵ For more on Douglass’s rhetoric of egalitarian redemption, see generally GEORGE SHULMAN, *AMERICAN PROPHECY: RACE AND REDEMPTION IN AMERICAN POLITICAL CULTURE 1–88* (2008).

¹⁶ See especially historian Garry Wills’s book on the Gettysburg Address’s vision of the Declaration of Independence as organized around the principle of equal liberty. There he writes, “[t]he Gettysburg Address has become an authoritative expression of the American spirit—as authoritative as the Declaration itself, and perhaps even more influential, since it determines how we read the Declaration.” Garry Wills, *LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA 146–47* (1992).

B. *The Domestication of an Anti-Slavery Politics in the Turn to World War I*

Given its outsider position, how did such an anti-slavery and racially reconstructive language gain more and more adherents in an exclusionary early-twentieth century society? Perhaps surprisingly, it was aggressively reclaimed as the justification for American participation during World War I and more generally for greater American power on the global stage. In many ways, David Jayne Hill, Republican Party stalwart, Ambassador to Germany, president of Rochester University, and highly influential author of *Americanism: What It Is*, offered the most systematic account of how a revived white creedal politics legitimated American military interventionism and power.

For Hill, the United States would not be safe unless it played a more aggressive global role, because of the constitutive weaknesses of Europe and the specialness of American character. Whereas European communities were the product of feudalism as well as political and religious absolutism—and thus disposed to treat foreign populations instrumentally—the American experiment had, from its genesis, been an attempt to make the universal Enlightenment right of self-determination real. Hill claimed that documents like the Declaration of Independence and the Constitution “developed here in America a new estimate of human values, and this has led to a new understanding of life.”¹⁷ Contrasting European monarchical despotism with the American commitment to self-government, Hill declared that the “original and distinctive contribution of the American mind to political theory” was the focus on eliminating “forever the recurrence of absolutism in every form, whether official or popular, whether of dominant individuals or of popular majorities.”¹⁸

Furthermore, Hill argues that the reason why the country’s founders had been led to write these texts was because they had been raised in a political community culturally attuned to practices of self-rule and to principles of liberty. The distinctive cultural attributes of the North American colonies were what allowed both creedal and constitutional values to flourish in the first place. According to Hill, the earliest settlers left monarchical England because of a “protest against mere power” and indeed the first truly American charter of liberty was not the Constitution but the Mayflower Compact of November 11, 1620.¹⁹ Long before England’s 1647 “Agreement of the People” or the later writings of John Locke and Jean-Jacques Rousseau, initial settlers—“a company of plain men, sailing over wintry seas to an unknown land with the purpose of escaping the too heavy hand of an absolute

¹⁷ DAVID JAYNE HILL, *AMERICANISM: WHAT IT IS* viii (1916).

¹⁸ *Id.* at 27.

¹⁹ *Id.* at 13–14.

government”—forged “the beginning of real self-government.”²⁰ Thus, the Constitution, a century and a half later, was just the culmination of a specifically American cultural commitment to the “voluntary renunciation of arbitrary power.”²¹

But equally as important for Hill, if constitutional order and republican self-rule were the product of a settler political-cultural heritage, their enjoyment both at home and abroad could not be reduced purely to racial criteria. In fact, Hill argued that since the Constitution gave institutional meaning to the universal aspirations of the Declaration, this indicated that “Americanism” was ultimately a matter of one’s political values rather than of ethnicity:

It cannot be maintained that Americanism . . . is a matter of race. Our country from the beginning has been populated by people of widely different ethnic origins. Some of their qualities are perpetuated with practically little effacement, others are obscured by the syncretism of races; but there is no definable ethnic type that is exclusively entitled to be called American.²²

Instead of merely an Anglo-European settler polity no different than white Australia or South Africa, the Constitution was living proof that Americans had produced a phenomenon unique in global history: they had erected out of divergent racial communities a single, unified, and powerful nation. In effect, Hill was mapping out nothing less than an early twentieth century variant of what scholars like Nikhil Pal Singh have called “American universalism”—the idea, with anti-slavery roots, that what establishes the United States as exceptional is its status as the first nation truly grounded on equal liberty for all.²³

In a World War I context of emerging non-white global resistance to European empires and calls for nation-state sovereignty, it was this idea that explained why an expanded American role abroad served the basic interests of foreign populations. According to Hill, European powers sought to divide the world based on the principle of “imperialism” and thus treated other communities as little more than material spoils. Precisely because American ideals, embodied in the Declaration and the Constitution, were “antithetical to Imperialism, whose watchword is unlimited power,” only the United States could offer the world, including non-white people, a counterbalance to European hegemony. In opposition to empire, American authority was

²⁰ *Id.* at 14–15.

²¹ *Id.* at 29.

²² *Id.* at vii.

²³ See NIKHIL PAL SINGH, *BLACK IS A COUNTRY: RACE AND THE UNFINISHED STRUGGLE FOR DEMOCRACY* 17–18 (2004) (“‘American universalism,’ historian John Higham summarizes, is ‘our egalitarian ideology . . . molded by the Enlightenment and forged in the revolution . . . simultaneously a civic credo, a social vision and a definition of nationhood.’”) (ellipses in original).

centrally about creating the conditions in foreign societies for peaceful self-government.

During the war, these ideas became closely associated with President Woodrow Wilson. On first glance, this is surprising given that Wilson, a Virginian whose father was an enslaver, virulently attacked Reconstruction and strongly backed segregation and Black subordination. He would hardly seem a natural figure for an American universalism that recovered anti-slavery Civil War narratives, Republican Party ones no less. But what made ideas like those espoused by Hill so attractive to Wilson was in large part precisely how they fit into his own Southern inflected account of both self-government and racial hierarchy.

Wilson experienced Reconstruction as the denial by a tyrannical North of political liberties to Southern whites, in a way that inverted the appropriate racial hierarchy among distinct “peoples” at different levels of cultural development. Euro-Americans, especially of Anglo-Saxon descent, supposedly stood at the forefront of this development, due to their longstanding acculturation in the practices of republican freedom. Black Americans, by contrast, supposedly remained in their political infancy. Wilson opposed Reconstruction because, according to him, it prematurely provided political rights to an ethno-racial people ill-equipped for them while at the same time removing those rights from those long habituated to self-rule. According to Wilson, the region’s “real citizens”²⁴ were its white inhabitants. Thus, rather than a heroic national achievement, he saw “the sudden and absolute emancipation” of enslaved persons and the efforts especially to impose equal citizenship, regardless of race, as “a dark chapter of history.”²⁵

As Wilson turned to international debates, in many ways he projected these racist views onto the meaning of American power. Especially given the Southern white experience, if the United States stood for anything, it had to stand for the value of self-government—a value that was basic and universal. But this did not mean that all foreign, especially non-European, peoples could live according to the principle in the here and now, since to do so required a process of political maturation. As Wilson declared in a 1907 lecture at Columbia University,

Self-government is not a mere form of institutions, to be had when desired It is a form of character. It follows upon the long

²⁴ Woodrow Wilson, *Reconstruction of the Southern States*, THE ATLANTIC MONTHLY, Jan. 1901, at 11; see also Michael Dennis, *Looking Backward: Woodrow Wilson, the New South, and the Question of Race*, 3 AM. NINETEENTH CENTURY HIST. 77, 82 (2002).

²⁵ Wilson, *supra* note 24, at 6, 11. Wilson decried Reconstruction in racist terms for producing “a vast ‘laboring, landless, homeless class,’ once slaves, now free; unpracticed in liberty, unschooled in self-control; never sobered by the discipline of self-support, never established in any habit of prudence; excited by a freedom they did not understand, exalted by false hopes; bewildered and without leaders, and yet insolent and aggressive, sick of work, covetous of pleasure, a host of dusky children untimely put out of school.” *Id.* at 6. See also Aziz Rana, *Colonialism and Constitutional Memory*, 5 UC IRVINE L. REV. 263, 272 (2015).

discipline which gives a people self-possession, self-mastery, the habit of order and peace and common counsel, and a reverence for law which will not fail when they themselves become the makers of law: the steadiness and self-control of political maturity.²⁶

In fact, “only a long apprenticeship of obedience can secure” less developed peoples “the precious possession” of real self-government, “a thing” as Wilson stated, “no more to be bought than given.”²⁷ This suggested that, just as with Hill, the United States had a particular role to play on the global stage: its primary purpose was to create a world of self-governing republics by shepherding less developed peoples on the path to freedom.

All of this spoke to how the spreading version of creedal nationalism—as articulated by those like Hill and Wilson—did not contest racist ideas of the country being at its root a white republic. Creedal rhetoric about American exceptionalism—even from the likes of Woodrow Wilson—may have rested on universalistic Enlightenment claims. But this construction of American identity was also fundamentally embedded within ethno-culturally particularist arguments. Such accounts explained why native-born Euro-Americans enjoyed the moral right to assert international police power and to reconstruct in their own image both outsider communities at home and foreign societies abroad. This exceptionality justified the United States’ special and redemptive global project, embodied by the war effort. And it also emphasized an idea of native-born Euro-American citizens as cultural protectors of a distinctive American heritage.

The result was a wartime brand of nationalism with tendencies both toward greater and less inclusion. But at the core, this brand married universalism *and* racial hierarchy. And it was this combination that became incredibly appealing after the war as a way for Euro-Americans to understand both their shared project and special cultural virtues. It promoted a powerful version of ethno-nationalism whose essential terms all coded in a civic register. Thus, Wilson could speak of the universal right of all peoples to self-determination, while at the same time defend Jim Crow and worry on the eve of the war that European internal fighting imperiled the future of “white supremacy on this planet.”²⁸ Today, we tend to think of racist arguments as rejecting ideas of universalism and inclusion. But central voices, like Wilson, of twentieth century white supremacy very much understood themselves as developing their arguments from within “creedal” ideas of the American project.

²⁶ Woodrow Wilson, *The Place of the United States in Constitutional Development*, in 2 W. CAMERON FORBES, *THE PHILIPPINE ISLANDS* 511–12 (1928).

²⁷ *Id.* at 512.

²⁸ ADAM TOOZE, *THE DELUGE: THE GREAT WAR, AMERICA AND THE REMAKING OF THE GLOBAL ORDER, 1916-1931* 60 (2014).

II. 1920S SOCIAL CONFLICT AND PUBLIC SCHOOLS

The war may have promoted a consolidating language of ethno-nationalism grounded in American creedal rhetoric. But it also intensified profound social conflicts within society. In response, conservative actors defended the need for direct repression of various dissenting groups, including anti-war, immigrant, and labor activists. At the same time, they also turned their attention to fears about anti-American educational practices supposedly proliferating in the new public schools that increasingly dotted the country. These schools became a battleground over race, immigration, and the meaning of American identity.

A. *Fears of Demographic and Cultural Transformation*

World War I highlighted for many Euro-Americans, especially Protestants, the sense that the country they knew was coming apart at the seams, and that foreign danger required rallying around existing symbols of social order. In the half century leading up to World War I, virtually all the basic elements that had long defined American identity faced extreme pressure. In particular, the United States had begun as a specifically Anglo settler project, combining explicit racial hierarchies and territorial conquest with republican commitments to internal equality and producerist ethics.²⁹ By the early twentieth century, however, the closing of the American frontier raised basic questions concerning land access and the republican promise of broad individual proprietorship. At the same time, industrialization left growing numbers of white Protestants, long considered privileged insiders, subject to the vagaries of a wage economy. Even worse, they found themselves competing over menial jobs with an influx of new and ethnically distinct immigrants from Southern and Eastern Europe, many of whom were Catholic. Furthermore, while the end of Reconstruction ensured the preservation of white supremacy, it nonetheless left a history of Black emancipation and formal legal equality that challenged the racial basis of the republic.³⁰

Moreover, the war's context had also generated real mobilization around wide-ranging reformist projects affecting everything from class and race to gender relations. For starters, anti-war sentiment, and related efforts to avoid conscription, were widespread. Some of the most popular political

²⁹ For a general account of American constitutional life as an experiment in “settler empire,” see AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 8–14 (2010). I argue that early colonists, along with their nineteenth-century descendants, viewed society as grounded in an ideal of republican freedom that emphasized continuous popular mobilization and direct economic decision making, especially through land ownership, artisanal production, and home-steading. However, like other settler societies in Asia and Africa, many white Americans believed that this ideal required Native dispossession and the coercive use of dependent groups, most prominently enslaved persons, in order to ensure that they themselves had access to property and did not have to engage in menial but essential forms of work.

³⁰ *Id.* at 172–75, 186–89, 194–205, 236–39.

figures of the era, like Socialist presidential candidate Eugene Debs, explicitly decried the conflict as serving only the interests of business. And in the Black community, labor leader and activist A. Philip Randolph noted that “the Negro community basically was friendly to our antiwar position.”³¹ As Roi Ottley, the seminal African American journalist and correspondent for the *Amsterdam News*, concluded in the 1950s, “[t]he truth is, Negroes exhibited little enthusiasm for” World War I. “[T]hey held British imperialism, ruling millions of their African brothers, was no less savage than German conquest of the Cameroons. Nor did they feel the United States was altogether virtuous.”³²

Moreover, such wartime opposition took place against the backdrop of revolutionary developments in both Mexico and Russia. The domestic labor movement, infused with immigrant union members and leaders, saw these changes abroad as underscoring that existing and oppressive relations in the United States need not be permanent. American institutions could be fundamentally remade in ways that drew from their own experiences in their home countries as well as emerging possibilities elsewhere. The results included a massive strike wave in the war’s immediate aftermath, complete with city-wide shutdowns aimed at transforming root and branch both state and economy.³³

For all the ways that this sense of ferment created reform possibilities, it also fostered within significant pockets of white society deep xenophobia, the further entrenchment of white supremacy, and a pervasive and fearful worry that the world many knew was on the verge of collapse. With the country facing perceived threats abroad, more and more Americans reassessed their relationship to the discordant old order, and many decided that foreign danger—including rising immigrant politics—required rallying around so-called “100 percent Americanism.”³⁴ This meant a total fealty to the Declaration and the Constitution as framed through Wilson’s intertwining of civic and ethno-nationalist politics.

That vision of the country tapped a real nerve and became a prominent political commitment during the age. Legal scholar Mark Shulman writes that groups like the National Security League (NSL), “[b]y mid-1916 . . . had had some 50,000 members nationally, organized into 155 branches in 42 states. By the end of the year, membership had doubled, with 250 chapters and 100,000 members.”³⁵ In large numbers, returning soldiers joined veter-

³¹ THEODORE KORNWEIBEL, JR., *NO CRYSTAL STAIR: BLACK LIFE AND THE MESSENGER, 1917-1928* 22 (1975).

³² *Id.* at 23.

³³ MELVYN DUBOFSKY, *WE SHALL BE ALL: A HISTORY OF THE INDUSTRIAL WORKERS OF THE WORLD* 255–66 (2000).

³⁴ As historian Thomas Pegram explores, this term became common during the 1910s and 1920s to refer to the project of creating a culturally homogenous national identity built around Anglo-Protestant religious and political values. *See generally* PEGRAM, *supra* note 9.

³⁵ Mark R. Shulman, *The Progressive Era Origins of the National Security Act*, 104 *DICK. L. REV.* 289, 305 (2000).

ans groups like the American Legion, which took patriotic devotion as a guiding principle along with the need to protect the constitutional state and business arrangements absolutely from all perceived threats—whether overseas foes or domestic socialists.³⁶

Indeed, one can even view the rise of the second Ku Klux Klan, born in 1915 and a creature not just of the South but the North and West as well (with strongholds in Indiana and Oregon and over 4 million members by the mid-1920s), as speaking to the power of new hyper-aggressive nationalism. The Klan rallied intensely around a quasi-religious worship of the Constitution. The group may have maintained a more traditional white supremacist outlook. It was skeptical of even Wilson’s brand of creedal universalism, and declared the Constitution to be an Anglo-Saxon and exclusive inheritance.³⁷ Nonetheless, its ideas fit with the time, as Klan members—unlike 1870s ex-Confederates—placed extreme commitment to national patriotic devotion alongside white Protestant supremacy as cornerstones of their ideology.³⁸ In addition, the group specifically saw backing the Constitution, absolutely and without alteration, as bound to protecting an American capitalist system from unfolding socialist and labor radical opposition.³⁹ Dramatizing the Klan belief in the tie between the country and its sacred texts, during its initiation or “naturalization” ceremonies, new members were questioned about the seven sacred symbols of Klankraft and what they represented; one of these symbols was the flag, and it was meant to denote the Constitution.⁴⁰

The most obvious political expression of this conservative reaction against labor, immigrant, and Black political dissent was state repression and private violence. Wilson’s wartime administration implemented a series of laws: the Espionage Act (1917),⁴¹ the Trading with the Enemy Act (1917),⁴² the Sedition Act (1918),⁴³ and two 1917 proclamations regulating the conduct of “alien enemies.”⁴⁴ These laws provided the legal infrastructure for a massive and historically unparalleled federal assault on speech, dissent, and the rights of immigrants. Among other things, they led to the first government censorship boards;⁴⁵ the outlawing, according to historian Robert Gold-

³⁶ See PEGRAM, *supra* note 9, at 95–96.

³⁷ See generally, Jared A. Goldstein, *The Klan’s Constitution*, 9 ALA. C.R. & C.L. L. REV. 285, 285–377 (2018).

³⁸ See *id.* at 320–32.

³⁹ See PEGRAM, *supra* note 9, at 21–45, on Klan views of labor politics and Goldstein, *supra* note 37, at 342, on views of constitutionalism and socialism.

⁴⁰ See KATHLEEN M. BLEE, *WOMEN OF THE KLAN: RACISM AND GENDER IN THE 1920s* 38 (1991).

⁴¹ Espionage Act of 1917, Pub. L. No. 65-24, 40 Stat. 217 (1917).

⁴² Trading with the Enemy Act of 1917, Pub. L. No. 65-91, 40 Stat. 411 (1917).

⁴³ Sedition Act of 1918, Pub. L. No. 65-150, 40 Stat. 553 (1918).

⁴⁴ U.S., President, Proclamation, “Alien Enemy Regulation” Statutes at Large, vol. XL, Part 2, pp. 1651–52; U.S., President, Proclamation, “Additional and Supplemental Regulations Concerning Alien Enemies” Statutes at Large, vol. XL, Part 2, pp. 1716–18.

⁴⁵ See SALLY M. MILLER, *VICTOR BERGER AND THE PROMISE OF CONSTRUCTIVE SOCIALISM, 1910-1920* 193 (1973).

stein, of “virtually all criticism of the war or the government”;⁴⁶ and the summary arrest of “alien enemies”;⁴⁷ alongside other measures to control enemy nationals, such as their mass registration, as well as a complete ban on their entering Washington, D.C.⁴⁸ Some 2,000 people were prosecuted under the Espionage and Sedition Acts, mostly for speech crimes⁴⁹ (including some of the most well-known Socialist Party figures of the time like Debs and Wisconsin Congressperson Victor Berger). Over 6,000 “alien enemies” were detained under presidential warrants issued by the Attorney General, the vast majority interned in army detention camps.⁵⁰

Alongside such state violence, government claims about anti-war treason stirred various groups to respond. The most notorious was the American Protective League, which during the war enjoyed a quasi-official status, engaging in raids and surveillance of suspected German sympathizers with the backing of state and federal authorities.⁵¹ And following the war, the American Legion—again with government complicity⁵²—similarly initiated attacks on those it deemed un-American and thus security threats, with a focus on radical unions and organizations like the Industrial Workers of the World (IWW) and the Socialist Party. As journalist Norman Hapgood reported at the time, by the end of 1920 the American Civil Liberties Union had verified over fifty coordinated acts of violence nationwide by Legionnaires.⁵³

All of this occurred alongside mass white violence against African Americans. *The Messenger*, A. Philip Randolph’s newspaper, noted the degree to which in 1918 robust talk of Americanism seemed to devolve into racist attacks on those viewed as outsiders. For all the invocations of the Constitution, the paper declared “[l]awlessness in America proceed[ed] apace” with countless Black people during the war “lynched—many of them burned at the stake” and “real labor leaders, I.W.W.s” also victimized.⁵⁴

⁴⁶ ROBERT GOLDSTEIN, *POLITICAL REPRESSION IN MODERN AMERICA FROM 1870 TO THE PRESENT* 108 (1978).

⁴⁷ *See id.*; *see also* Charles Warren, *Arrest and Internment of Alien Enemies* 535, 544 (undated) (unpublished “War Notes”) (on file with the Library of Congress, Manuscripts Division, Charles Warren Papers).

⁴⁸ *See* Warren, *supra* note 47, at 544.

⁴⁹ GEOFFREY R. STONE, CASS R. SUNSTEIN, MARK V. TUSHNET, & PAMELA S. KARLAN, *THE FIRST AMENDMENT* 20 (2d ed. 2003).

⁵⁰ *See* Warren, *supra* note 47, at 544.

⁵¹ *See* Michael Inman, *Spies Among Us: World War I and the American Protective League*, NEW YORK PUBLIC LIBRARY, <https://www.nypl.org/blog/2014/10/07/spies-among-us-wwi-apl> [<https://perma.cc/J8K8-RR66>].

⁵² As one F.B.I. Special Agent explained government support for the organization, “The Legion as a body are watching during the day and night so that nothing may start and no trouble may occur.” REGIN SCHMIDT, *RED SCARE: THE FBI AND THE ORIGINS OF ANTICOMMUNISM IN THE UNITED STATES, 1919–1943* 109 (2000) (quoting Report, M.J. Fraser, Special Agent (Mar. 4, 1920)).

⁵³ *See* NORMAN HAPGOOD, *PROFESSIONAL PATRIOTS* 57 (2018).

⁵⁴ *American Lawlessness*, 2 *The Messenger* 1, 9 (1918).

B. Public Schools as a New Battleground

In the immediate wake of the war, a striking conservative political innovation was a turn to the public schools as a site for containing reformist developments and perceived threats to traditional Americanism. As Progressive government administration intensified across the country in the early twentieth century, in many ways its greatest practical achievement was what historian William Reese calls “the extensive reach of the public school system.”⁵⁵ According to Reese, between 1900 and 1950, “combined enrollments of elementary and high schools expanded from 15.5 million to 25.7 million students.”⁵⁶ Indeed, “schools were typically the largest budget item in most communities.”⁵⁷

In fact, “[b]y the 1930s . . . compulsory education laws,” alongside the regulation of child labor, moved high school in particular into “the lengthening ladder of mass education.”⁵⁸ As Reese continues, “Educators boasted that some large American *cities* had more secondary students than some European *nations*. An estimated 519,000 pupils were in high school in 1900 Incredibly, 5.7 *million* youngsters enrolled a half-century later.”⁵⁹

The centrality of public schools to a growing state infrastructure inevitably focused attention on what was happening within the classroom. Some Progressive-era reformers and activists, like the philosopher John Dewey, saw the school as a microcosm for American democracy and hoped to instill within it a culture of critical evaluation, pluralistic respect, and democratic suspicions of hierarchy.⁶⁰ These more radical ideas were only one strand of percolating developments, but they nonetheless grabbed conservative attention. Defenders of traditional America increasingly contended that indoctrination in schools embodied a local manifestation of broader and destabilizing social trends: whether labor’s tilt toward socialism or Black and immigrant challenges to the ethno-racial identity of the country. Thus, a variety of opposed political forces—including nativist groups, the business right, the American Legion, and even the Klan—asserted the importance of controlling what was taught in the classroom.

Why is it that school instruction became such a galvanizing site of this reactionary politics? To a profound extent, society was riven with deep cleavages. These cleavages underscored that state and private violence alone could not successfully defuse internal conflicts. School curricula therefore became a way of thinking about how to inculcate traditionalist values with-

⁵⁵ WILLIAM REESE, *AMERICA’S PUBLIC SCHOOLS: FROM COMMON SCHOOL TO “NO CHILD LEFT BEHIND”* 118 (2011).

⁵⁶ *Id.* at 119.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See id.* at 118–48.

out resorting to direct coercion. Curricula embodied a clear site for restitching the social fabric along hyper-nationalist lines.

Moreover, for each of the conservative groups mentioned above, there was an immediate power to talking about indoctrination specifically in schools. Business elites, for example, held positions that were often deeply unpopular in a largely working class and laboring society.⁶¹ Compared to conversations over collective bargaining, working hours, and wages, the focus on schools shifted the terrain of political contest. It allowed the business right to point to socialist tendencies among teachers and administrators in a manner that directly affected the capacity of families to shape how their children were being instructed. It deemphasized the material struggles between rich and poor at stake in labor conflict and reoriented attention to worries about the preservation of familial authority and American values. Similarly, for nativist groups, schools provided a way of tapping into a mass constituency for their aims. What Progressive reformers taught in the classroom was identified as a specific threat to a longstanding Anglo-European cultural identity—a threat that, through schooling, was turning children against parents, and in doing so, breaking the basic terms of traditionalist American society.

At the same time, public school battles served to consolidate and integrate disparate conservative positions. On their face, there was nothing philosophically necessary about linking racial reaction and aggressive market capitalism. Indeed, these two could well be at odds. But along with cultivating broader mass support, political campaigns directed at the schools fused in a visceral way for parents and local constituencies the idea that Americanism went hand in hand both with an intense pro-capitalism and ethno-cultural exceptionalism.

Finally, conservative classroom measures were often notable for the extent to which they invoked universalist American values, rather than grounding curriculum in an explicit politics of race.⁶² In part by connecting to wartime nationalist language, this meant that they could reach audiences well beyond established Anglo-Protestant bases. Even if a white and European ethnic parent may oppose the virulent xenophobia of a group like the Klan, they may nonetheless agree with the drive for more patriotic education in schools. Indeed, this was part of how the era's nativist policies took root outside spaces explicitly supportive of racial reaction.

⁶¹ See generally PAUL KENS, *LOCHNER V. NEW YORK: ECONOMIC REGULATION ON TRIAL* (1998) for an exploration of the landmark case as well as of the broader divergence during the period between widely-back pro-labor legislative reforms and competing business arguments about “freedom of contract.”

⁶² See *infra* Part III.

III. ANTI-“CRT” BILLS IN THE 1920S

Conservative state-level legislative agendas around public schooling often centered on three types of policy interventions: policing which texts were taught in the classroom, mandating the study of the Constitution, and requiring English-only instruction. These efforts are striking for the extent to which they mirror the politics around today’s anti-“CRT” push. They also underscore the organizing and integrative power for the right of the public school battles.

A. *Book Bans and Parental Enforcement*

The first type of conservative-backed state legislation involved the push to ensure that critical interpretations of the American past were not in public school textbooks. In the context of a rising labor movement, a new historiography emerged that read the American experience in terms of class conflict. Perhaps the most famous illustration of such scholarship was the historian Charles Beard’s seminal 1913 book, *An Economic Interpretation of the Constitution of the United States*, where he presented the 1787 Constitution as an effort by propertied interests to turn back a democratic tide unleashed by the American Revolution.⁶³ Indeed, by the 1920s, these critical interpretations had become a major and widely-disseminated academic school. As the Progressive historian Vernon Parrington summarized in 1930, Beard’s book was only the most well-known of an expansive literature that depicted the federal Constitution as nothing less than “a deliberate and well considered protective measure designed by able men who represented the aristocracy and wealth of America; a class instrument directed against the democracy.”⁶⁴

Conservative groups saw such arguments as deeply anti-American, suggesting the need for the United States to follow foreign experiments and embrace socialist policies. They thus championed measures to ban teaching materials, including history books, that maligned the country’s founders or taught ideas in any way critical of the nation’s revolutionary heritage.⁶⁵ Wisconsin’s 1923 state law offers a telling illustration of these efforts. The bill declared that “no history or other textbook shall be adopted for use or be used in any district school, city school, vocational school or high school, which falsifies the facts regarding the war of independence, or the war of 1812 or which defames our nation’s founders or misrepresents the ideals and

⁶³ See CHARLES BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* (1913).

⁶⁴ VERNON PARRINGTON & J. ALLEN SMITH, *THE GROWTH AND DECADENCE OF CONSTITUTIONAL GOVERNMENT* xiv (1930).

⁶⁵ See JONATHAN ZIMMERMAN, *WHOSE AMERICA?: CULTURE WARS IN THE PUBLIC SCHOOLS*, 13–31– (2002). On specifically Irish-American participation in textbook bans, see Albert Kerr Heckel, *Pure History and Patriotism*, 16 *HIST. OUTLOOK* 106, 106–10 (1925).

causes for which they struggled and sacrificed.”⁶⁶ The law also privatized a system of complaint in which, if any five citizens lodged an objection to a textbook with the superintendent, a hearing had to take place within a month in the relevant county seat.⁶⁷

This measure, which became a template in the 1920s, is striking for its clear parallels with present-day anti-“CRT” legislation. Both the Wisconsin law and current bills castigate critical re-readings of the eighteenth and nineteenth centuries in which collective institutions are framed as undermining, rather than promoting, creedal values. Furthermore, alongside this aggressive defense of the founders, the laws have other things in common. On their face, they are anodyne; the 1923 Wisconsin bill says one cannot teach false information about the past.⁶⁸ Recent anti-“CRT” bills contend one cannot teach that one race is “superior” to another.⁶⁹ Crucially, neither in 1923 nor in 2023 are condemned practices actually occurring in classrooms.

Indeed, University of Missouri dean Albert Kerr Heckel’s comments in 1923 on the Wisconsin bill could have been written today. He noted that the Wisconsin “law, in spite of its intent, is harmless if literally construed.”⁷⁰ This is because “as a matter of fact, our good textbooks of American history are not guilty of the distortion and misrepresentation which the Wisconsin legislature forbids.”⁷¹ The problem, he continued, was that the purpose of the bill was to sow fear in educators and so undermine their willingness to engage in thoughtful examination either of the past, or of existing social relations. As Heckel further wrote, despite the seemingly anodyne language, “we all know what the legislators had in mind.”⁷²

As another commonality with the present, the use of private enforcement was key to the 1923 measure’s repressive intent. Such enforcement aimed to allow, as Heckel noted, a small coterie of conservative activists, “Daughters of the American Revolution, . . . or ‘100 per cent Americans’” to use the “Wisconsin Inquisition” for more than merely book-banning.⁷³ Private complaints would also create continual uncertainty in the minds of educators. Teachers may believe that their curriculum was consistent with the law, but they could never know for sure and thus could still find themselves at the center of a political storm, with all the attendant professional costs.

⁶⁶ Quoted in BESSIE LOUISE PIERCE, PUBLIC OPINION AND THE TEACHING OF HISTORY 101 (1926).

⁶⁷ *Id.*

⁶⁸ See PIERCE, *supra* note 66, at 101.

⁶⁹ See e.g. Adrian Florido, *Teachers Say Laws Banning Critical Race Theory are Putting a Chill On Their Lessons*, NPR (May 28, 2021), <https://www.npr.org/2021/05/28/1000537206/teachers-laws-banning-critical-race-theory-are-leading-to-self-censorship> [<https://perma.cc/JKZ9-KET7>].

⁷⁰ Heckel, *supra* note 65, at 106.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

Today’s comparable provisions serve a similar function. For example, Florida’s 2022 “Stop Woke Act” “give[s] parents the power to sue local school districts that teach lessons rooted in critical race theory.”⁷⁴ In privatizing enforcement, such measures unleash organized conservative groups and intensify the chilling effects of curricular intervention. Both then and now, these provisions cloak the nature of political conflicts. They deemphasize the centrality of outside business or nativist groups in the proliferation of such measures from state to state. Instead they reframe them as bottom-up fights between concerned parents (who initiate complaints or lawsuits) and state administrators. In this framing, families are depicted as fighting back against the propagandizing of one’s children.

Finally, even beyond the striking parallels in language and enforcement between these bills—a century apart—they also share clear conservative organizing ends. In particular, it was notable that the 1923 law was passed in Wisconsin. The state remained at the time a bastion of Progressive reformism. Indeed, it had been a pre-World War I base, especially among German-Americans, for Socialist Party politics—home to the likes of Victor Berger. The legislation appeared aimed at containing labor and socialist activism as well as questioning the patriotic credentials in the wake of World War I of the state’s German-American left in particular.⁷⁵

Significantly, the bill’s anodyne wording created an environment in which some ethnic European groups “eagerly”⁷⁶ backed the bill, despite one’s assumptions that they would instead be deeply suspicious of the Protestant nativists who promoted these efforts. Specifically, the measure gained surprising support from Irish-Americans within the state.⁷⁷ They saw a Beardian critical historiography as perhaps sullying the achievements of revolutionary actors, of which Irish Americans were one. As Heckel notes, these groups wanted textbooks “to make clear that” national victories or achievements like “the Battle of Bunker Hill [were] won by Irish volunteers.”⁷⁸

In a sense, the wartime and postwar climate of hyper-nationalist devotion meant that European immigrant groups too sought to show their patriotic commitment. The Knights of Columbus, the “country’s largest Catholic organization,” offers another telling example. Edward McSweeney, who chaired the group’s historical commission, viewed the Knights as embodying true “100 percent Americanism” in ways distinct from both anti-immigrant conservatives as well as Progressive and Socialist reformers.⁷⁹ In creedal

⁷⁴ Andrew Atterbury, *DeSantis Pushes Bill that Allows Parent to Sue Schools Over Critical Race Theory*, POLITICO (Dec. 15, 2021), <https://www.politico.com/states/florida/story/2021/12/15/desantis-targets-critical-race-theory-with-bill-that-evokes-texas-abortion-bounties-1400102> [https://perma.cc/3AC8-KTCN].

⁷⁵ Heckel’s account of the law, and its connections to the right’s politics of “100 percent Americanism,” suggests such conclusions. See Heckel, *supra* note 65, at 106.

⁷⁶ ZIMMERMAN, *supra* note 65, at 26.

⁷⁷ See Heckel, *supra* note 65, at 106.

⁷⁸ Heckel, *supra* note 65, at 106.

⁷⁹ See ZIMMERMAN, *supra* note 65, at 20–21.

terms, he held that genuine patriotism entailed teaching children that “each racial group [had] made a substantial contribution” to pushing forward the national project.⁸⁰ Yet he also contended that treasonous texts by Progressive historians, which questioned the genius of the founders, had to be eliminated from the classroom.⁸¹

Thus, 1920s textbook bills tapped not only into parental fears of radical indoctrination, but also into a nationalist wave that swept beyond smaller nativist circles. By employing seemingly un-objectionable patriotic language, conservative curricular efforts could even reach into ethnic European pockets seemingly well outside their typical social base. Indeed, at the very same time, these ethnic European pockets may have been facing explicit conservative and nativist targeting in other settings.

In a similar manner, today’s comparable anti-“CRT” arguments about Americanism and school instruction can be compelling even for some non-white political constituencies. Just as a century ago, these constituencies may oppose the white nationalist edge of public school fights or disagree on various other social matters with the most vocal backers of such bills. But more centrist parents, including those that are non-white, may too believe deeply in a creedal story of American exceptionalism. And they may also strongly identify with the idea that valorizing the collective history of the United States entails valorizing their own specific racial and ethnic communities’ participation in the national project. They may thus prefer accounts of group uplift and achievement for their children—like 1920s Irish-American organizations’ interest in revolutionary war victories—rather than those that focus on structural injustice or experiences of violence and subjugation.⁸² Therefore, not unlike some ethnic Europeans in an earlier era, constituencies outside the right’s traditional base may see a degree of value in controls on classroom teaching, regardless of who is pushing these attacks.

B. *Teaching the Constitution*

All of this highlights why a second persistent conservative agenda item in the 1920s was the establishment of constitutional instruction in schools. At the time, socialist, progressive, labor, and Black activists were all raising

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² A complex present-day example that speaks to some of these concerns involves radical painter Victor Arnautoff’s New Deal-era mural cycle, “Life of Washington.” The mural cycle was long on display at San Francisco’s George Washington High School. It explicitly depicts the horrors of slavery and Native American expropriation and ethnic cleansing, as well as Washington’s complicity in these evils. But for decades it has also been criticized by some non-white students and parents as gratuitously highlighting Black and Indigenous suffering and thus creating a hostile learning environment for minority children. *See generally* Taylor Dafoe, *After Years of Debate, San Francisco Votes to Cover Up Controversial 1930s Mural Depicting George Washington as a Slaveowner*, ARTNET (Jul. 1, 2019), <https://news.artnet.com/art-world/san-francisco-votes-cover-controversial-1930s-mural-depicting-george-washington-colonizer-slave-owner-1589887> [perma.cc/9JDU-93XY].

doubts about the legitimacy of the constitutional system. In an environment of turmoil, the existing legal-political order’s veto points appeared to leave the whole framework subject to the control of corporate elites. In response, business and legal notables pressed for compelling all schools, from grade school to university, to impose constitutional study instruction as a requirement for graduation. Samuel Weaver of the Washington State Bar Association described the basic elements of one such proposal:

1) Below the eighth grade the teaching of patriotism and citizenship; 2) beginning with the eighth grade, regular but elementary instruction in the principles of government; 3) no student to be admitted to a high school or a normal school without having met these requirements; 4) in all high schools, colleges, and universities regular courses of study of not less than three full periods per week throughout the school year; 5) no person to be granted a certificate to teach until he shall have passed a satisfactory examination upon the provisions and principles of our constitutional system. This law would require not only that the Constitution be taught in the school, but that the students should be required to study it and to pass a satisfactory examination upon its principles.⁸³

These calls to action paid immediate dividends. Historian Jill Lepore tells us that over the course of the 1920s, the number of states mandating constitutional instruction rose from twenty-three in 1923 to forty-three by 1931.⁸⁴ In fact, they were a strikingly popular initiative for the now-familiar conservative entities that organized behind them, ranging from professional bodies and veterans groups like the American Legion and the Grand Army of the Republic to the Klan. With respect to the Klan, historian Thomas Pegram notes that of the Indiana Klan’s state legislative agenda—what it called the “Americanization and Education” program—the only element that was actually enacted into law was a requirement for Indiana students to study the Constitution.⁸⁵

Not unlike the textbook bills, the power of calling for constitutional instruction revolved around how it disarmed opposition—as indicated by the successful spread of these mandates across the country. Who could possibly oppose civic training in the Constitution? Yet, business conservatives and nativists did not want just *any* mode of constitutional education, but what Samuel Weaver also called a “uniformity of instruction.”⁸⁶ According to those like Weaver, no law would be successful unless the teaching material

⁸³ Samuel Weaver, *The Constitution in Our Public Schools*, 11 CONST. REV. 105, 107 (1927).

⁸⁴ Jill Lepore, *We the Parchment*, in *THE STORY OF AMERICA* 72, 81 (2012).

⁸⁵ See PEGRAM, *supra* note 9, at 96, 202.

⁸⁶ Weaver, *supra* note 83, at 107.

stressed “universal loyalty.”⁸⁷ The purpose behind such bills was to solidify the boundaries of acceptable disagreement and thus tame the profound economic and political dissent circulating in society. Hence, under the guise of civics, the underlying goal was a project of ideological agreement on behalf of traditionalist assumptions.

Conservative backers would likely have chafed at the suggestion that they sought to impose an unthinking conformity, which they associated with authoritarian Germany or the new Soviet Union. They would have contended that the goal was a cohesive but horizontal community, in which the divisive group identities of the recent past—especially those grounded in class or immigrant ethnic background—receded, before a principal and individualized attachment to the nation as democratic citizens.⁸⁸ And, moreover, such attachment to the nation and its institutions would lead Americans to be willing, consciously and spontaneously, to defend the republic from perceived threats.⁸⁹

But the problem, of course, was that—given elites’ deep anxieties about the danger posed by untamed criticism—the mechanisms for forging such attachment emphasized precisely a culture of political obedience. One can see this, for instance, in the actual classroom manuals and booklets generated by patriotic associations to teach the Constitution. In opposition to the educational ideals of someone like Dewey, much of this material framed the right type of instruction as an exercise in ritual and memorization.⁹⁰ One commonly used text, *Our Constitution in My Town and My Life*, written for twelve- to eighteen-year-olds by Etta Leighton (the Civic Secretary of the National Security League), consisted of over a hundred mechanical questions and answers:

84. What has our Supreme Court . . . been called? “The balance wheel of the Constitution. The high guardian of the Constitution itself. . . . 91. What distinguishes our Government and makes it a safer guardian of the people’s rights than the governments of Great Britain or France? The Supreme Court, because it protects the people even from tyranny of the Government itself.⁹¹

At their core, these groups sought to place an unquestioned identification with the existing state and economy far above substantive engagement, let alone open inquiry, into the nature of the system itself. And the style of

⁸⁷ Weaver, *supra* note 83, at 107.

⁸⁸ ALEXANDER LIVINGSTON, DAMN GREAT EMPIRES! WILLIAM JAMES AND THE POLITICS OF PRAGMATISM 44 (2016), on era’s common contrast, including among conservatives, between the “universalism, limited government, toleration, and humility of American liberalism” and the collectivist authoritarianism of the U.S.’s European rivals.

⁸⁹ See Rana, *Constitutionalism and the Foundations of the Security State*, *supra* note *, at 366.

⁹⁰ See, e.g., ETTA V. LEIGHTON, OUR CONSTITUTION IN MY TOWN AND MY LIFE: WITH 115 QUESTIONS AND ANSWERS (1924).

⁹¹ *Id.* at 21–22.

the bills—their investment in a spreading creedal nationalist language—meant that these efforts could take root much more successfully than if they rested on more explicitly partisan frames.

C. *English-Only Instruction*

Key public school interventions that dramatized the ethno-racial meaning of these conservative projects—despite their race-neutral framing—were state bills requiring instruction in English. Calls for English-only measures had gained prominence during the war as security concerns focused especially on the German language, associated with everything from old-world monarchism to collectivist authoritarianism to anarchist and revolutionary socialism. The American Defense Society, of which David Jayne Hill was the honorary vice president, demanded that state and local governments eliminate the use of German in schools and fight to make “the German language . . . a dead language.”⁹² At the same time, the National Security League began a countrywide campaign “with the object of destroying the German-language press,”⁹³ through mass popular rallies and pressure on advertisers and news dealers.⁹⁴

Critically, when the war ended, English-only proposals did not recede. They actually gained greater intensity and grew beyond the wartime focus on German identity. By 1923, the number of states that required English-only instruction stood at thirty-five, up from just nine at the end of the nineteenth century.⁹⁵ Capturing the Americanization sentiment in 1919, famed Harvard academic Albert Bushnell Hart—a president of both the American Historical Association and the American Political Science Association, and NSL Education Director of the Committee on Patriotism through Education—remarked that, “[a]ny adult immigrant who comes to this country and is found three years thereafter unable to use English for the ordinary communications of life should be repatriated.”⁹⁶ In his view, “No public or private schools ought to be allowed to educate in any racial language except English” and suffrage should be limited solely to “those who can read and write English, not merely a few stock phrases and sign their name, but can actually communicate with people in the ordinary daily life.”⁹⁷

Hart’s words underscore just how easily Americans moved between creedal universalism and exclusionary politics. As Mark Shulman notes, Hart often linked American “exceptionalism” to inclusive ideas of “human

⁹² *Calls for Strict Ban on German Language*, N.Y. TIMES, Feb. 25, 1918, at 4.

⁹³ *League Starts War on German Press*, N.Y. TIMES, Jun. 3, 1918, at 5.

⁹⁴ *Id.* According to its Committee on Foreign Language and Foreign Press: “The animosity, clannishness, and the propaganda of undemocratic ideas are sources of injury to the community, and the substitution of other languages for our own clearly fosters them.” *Aim to Make America a Land of One Tongue*, N.Y. TIMES, Jul. 22, 1918, at 7.

⁹⁵ PEGRAM, *supra* note 9, at 96.

⁹⁶ Shulman, *supra* note 35, at 319.

⁹⁷ *Id.*

dignity;”⁹⁸ indeed, he had been one of W.E.B. Du Bois’s professors at Harvard and served as a trustee of Howard University.⁹⁹ But all groups were only *theoretically* fit to enjoy a universal American freedom. Transforming this theoretical fitness into a reality required imposing a standard “American” identity on those viewed as unprepared politically and culturally. It essentially required maintaining the same brand of “tutelage” over all outsider communities—from new immigrants to African Americans, Chinese, Mexicans, and Indigenous peoples—that the U.S. engaged in abroad.¹⁰⁰

All of this is why more establishment conservatives—like David Jayne Hill—became closely associated with the era’s racist and restrictionist immigration policies, in addition to more extremist groups like the Klan. In the 1920s, nativist politicians finally succeeded in ending the open door for European arrivals, with the passage in 1917 of a literacy test for immigrants and the implementation in 1921 and 1924 of the first numerical quotas, limiting annual immigration from abroad entirely—not simply for those of Chinese descent.¹⁰¹ The second of the quota laws, 1924’s National Origins Act, targeted Southern and Eastern Europeans specifically, dramatically reducing the admitted numbers from those regions.¹⁰² It also excluded Asian and African immigrants almost completely, further emphasizing how the law’s central purpose was to racially purify the population.¹⁰³ Indeed, the result was that, in the following years, the share of entrants from Northern and Western Europe rose to 84 percent, and official immigration from many non-white communities essentially disappeared.¹⁰⁴ These practices no doubt perpetuated classic settler exclusivities, reinforcing the idea of whiteness as crucial to American belonging. But they did so on terms that also highlighted the extent to which the centuries-long project of territorial expansion and settlement had now become a thing of the past. If the open door for European migrants had been a product of settler demographic needs, by the 1920s that project was complete, and even many Europeans newcomers—once viewed as co-ethnic settler participants—faced nativist barriers to entry.¹⁰⁵

Threatened communities—including organizations that may have backed some patriotic education bills—contested all of these policies. Strikingly, conservative advocates often responded by simply embracing race-based arguments in explaining away internal resistance or articulating why security requirements justified the exclusion in practice of particular groups.

⁹⁸ See *id.* at 306-07.

⁹⁹ *Id.* at 306.

¹⁰⁰ See ROBERT VITALIS, *WHITE WORLD ORDER, BLACK POWER POLITICS: THE BIRTH OF AMERICAN INTERNATIONAL RELATIONS* 29–45 (2016) (discussing the era’s academic embrace of tutelage). White scholars, including Hart, routinely contended that “[s]elf-government proved to be an art that few races had mastered, one that required training.” *Id.* at 40.

¹⁰¹ See RANA, *supra* note 29, at 236–41.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Iowa Governor Leslie Shaw reminded Americans that the social environment that produced the Declaration and the Constitution was above all an English and Euro-Protestant one.¹⁰⁶ He reiterated the view that the reason why Americanization projects faced such opposition was because by the early twentieth century that identity was disintegrating under the pressures of racial and religious heterogeneity.¹⁰⁷ While the United States found itself attempting to integrate increasingly diverse populations, from African Americans to Catholics, Shaw argued that “many of them [were] biologically unable to think in terms of Anglican liberty.”¹⁰⁸

In this way, in practice, the line distinguishing more conservative creedal nationalist advocacy and the Klan’s explicit white supremacist arguments often became difficult to delineate. Along the lines of Woodrow Wilson, many conservative promoters of proper civics in the classroom may have been disseminating, more or less, the new creedal politics.¹⁰⁹ But this was not a vision of creed and Constitution that displaced racial hierarchy. Instead, this variation projected it into the future.

All of this underscored how fights in the public schools allowed conservative groups to defend universalistic and inclusive commitments in theory, while in fact also arguing that the basic order required defending classic racial exclusions and imposing coercive policies premised on the need to eliminate difference. If anything, the connections between universalistic principles and culturally-grounded historical arguments both encouraged the state’s coercive apparatus and reinforced that apparatus’s focus on those groups deemed outsiders—often on ethno-racial terms—as the preeminent dangers to a Euro-American way of life.

CONCLUSION: RECURRENT POLITICAL STRATEGIES

For politics today, reflection on the 1920s origins of contemporary conservative efforts suggest more than mere similarities with past policies. The most noteworthy aspect of the history is the way that comparable pushes have reappeared whenever there has been a major flashpoint around cultural and national identity in the United States. Conservatives have frequently returned to the question of “indoctrination” in schools and the need to reassert a combination of cultural distinctiveness and American universalism. One can see this in the politics around public schools during the 1950s Red Scare, during the fights over Spanish instruction in the 1980s and 1990s, not to mention countless other conflicts about “traditional values.” Indeed, 1980s fights over sex education and today’s “Don’t Say Gay” bill out of

¹⁰⁶ Leslie M. Shaw, *A Republic, Not a Democracy*, 9 CONST. REV. 140, 141 (1925).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See *infra* Part III, Sect. A and B.

Florida are clear expressions of a common playbook.¹¹⁰ And this political tendency is so profoundly embedded in right-wing politics in the United States that many proponents today are largely unaware that they are doing the same thing as a hundred years ago; it has become a naturalized part of the conservative policy-making toolkit.

Perhaps one major difference between now and a century ago was that in the early twentieth century many of the hyper-patriotic and nativist activists attacking Progressive reformers still tended to accept the era's assumptions about the need for the public education system.¹¹¹ The goal was to use this system to create the right brand of Americanism, and in the process mobilize parents behind a traditionalist and ethno-nationalist version of political identity. Today, however, these efforts take an old business-conservative critique of public schools as socialist propaganda to their logical conclusion. Unlike the early twentieth century, the proliferation and extensive funding of private educational spaces mean that large swathes of a mass conservative base can potentially exit public schooling.

And so, the current attack on public schools entails a rejection of the very idea of "government-run" education outside the market. It now fuses even more intensively pro-market and white ethno-nationalist politics, since the solution to unwelcome pedagogy combines both conservative projects. That solution rejects the role of the public school system as a centerpiece of shared community-building. In effect, it would shift predominantly white families (along, it should be added, with public funds through voucher programs)¹¹² into private settings fully insulated from alternative perspectives and cultural worldviews. All of this poses a profound threat to the very idea of Americans as sharing a multiracial and inclusive democratic commons.

Ultimately, given the nature of this threat, it is essential for those today opposed to these developments to recognize the long history of such efforts. And as part of this recognition, it is critical to reflect on just why creedal nationalism and racial exclusion have had such a durable bond. One could well contend that a key reason is that even inclusive readings of the civic narrative tend to erase the country's foundations as a settler society, in which the freedom, equality, and access to land for in-group members—largely Anglo-European men of a certain background—depended on the exclusion and subjugation of Black Americans, Indigenous peoples, and women, among others.¹¹³ For all the positives associated with the white national embrace of a vision of the country as free and equal from the founding, a clear problem largely persisted across the twentieth century: Although oppressed

¹¹⁰ See generally ZIMMERMAN, *supra* note 65.

¹¹¹ See REESE, *supra* note 55, at 118–48.

¹¹² Monica Potts, "Conservatives Are Bringing an Old Policy to a New Fight over Public Schools," 538 (Jan. 19, 2023), <https://fivethirtyeight.com/features/universal-school-vouches-education-culture-wars/> [https://perma.cc/PZ2Z-WA3E].

¹¹³ See generally RANA, *supra* note 29 (describing the settler foundations of American political institutions and identity).

groups eventually accessed greater legal protections, these changes overwhelmingly occurred on ideological terms shaped principally by a white majority. Unlike colonized peoples abroad, Black people and Native Americans, among others, were never able to insist on a conscious moment of colonial accounting or, with it, a sustained national engagement with the persistent structural hierarchies bound to the country's settler roots.

This failure to confront such settler foundations meant that, perhaps counterintuitively, even inclusive varieties of creedal nationalism provided cultural space for the development of a modern American ethno-nationalist politics. Indeed, as the twentieth century progressed, part of the appeal of an ideologically flexible creedal discourse, for some, lay in its openness to racially exclusionary commitments. Not unlike Woodrow Wilson, critics of a multiracial political identity could locate the founding's liberal essence and exceptionalism in the distinctive cultural attributes of a Euro-American experience.

Thus, creedal nationalist politics has certainly been a powerful reform register. But it also has been one in which historically excluded communities are often expected to accept an unconditional attachment to the nation and its central domestic symbols. In addition, and perhaps more troubling, it often promotes a narrative of national innocence in which ethno-nationalist assertions about Euro-American exceptionalism persist even as explicit defenses of white supremacy are rendered politically unpalatable.

Appreciating these typically hidden dimensions of creedal nationalism is critical to making sense of why such arguments have been so galvanizing as a mode of political consciousness raising and movement organizing for the right. In particular, such conservative projects operate through the familiar and broadly-embraced terms of American political identity in a way that makes them especially powerful culturally. Anti-“CRT” may be a new buzzword, but it embodies a way of thinking about the American project and a policymaking agenda with deep roots. It is only the latest iteration of a sustained political attempt—with children often as its pawns—to mobilize civic nationalist registers for preservationist ends.

