

WHO TURNED OUT THE LIGHTS?: HOW CRITICAL RACE THEORY BANS KEEP PEOPLE IN THE DARK

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I. INTRODUCTION: THE NATURE OF IGNORANCE

“Agnotology is the study of ignorance making, the lost and forgotten. . . . [K]nowledge that could have been but wasn’t, or should be but isn’t.”¹ In other words, in part, agnotology is the study of manufactured ignorance.² It is an examination of ignorance, confusion, and deceit intentionally created to fulfill a purpose such as selling a product or currying favor.³ Throughout history, these instances of manufactured ignorance have taken various forms, such as the artificial genesis of controversy surrounding well-known fact, and prohibitions on the dissemination of knowledge.⁴ While instances of agnotology and its study may take different shapes, at its core, agnotology is founded on the belief that it is of the utmost importance “to think about the conscious, unconscious, and structural production of ignorance. . . . The point is to question the *naturalness* of ignorance, its causes, and its distribution.”⁵

1. Robert N. Proctor & Londa Schiebinger, *Preface* of AGNOTOLOGY THE MAKING AND UNMAKING OF IGNORANCE, at vii (Robert N. Proctor & Londa Schiebinger eds., Stanford Univ. Press 2008).

2. It is common for the phraseology “agnotology to be used both to describe the study of manufactured ignorance, and instances of manufactured ignorance itself.” *Id.*

3. Georgina Kenyon, *The man who studies the spread of ignorance*, BBC (Jan. 6, 2016), <https://www.bbc.com/future/article/20160105-the-man-who-studies-the-spread-of-ignorance> [<https://perma.cc/9E3V-MWM6>].

4. See discussion *infra* Sections II.A, II.B. See generally Robert N. Proctor, *Agnotology A Missing Term to Describe the Cultural Production of Ignorance (and Its Study)*, in AGNOTOLOGY THE MAKING AND UNMAKING OF IGNORANCE 1 (Robert N. Proctor & Londa Schiebinger eds., Stanford Univ. Press) (2008); Abigail Thorn (Philosophy Tube), *Ignorance & Censorship / Philosophy Tube*, YOUTUBE (May 20, 2021), <https://www.youtube.com/watch?v=ATITdJg7bWI>; Peter Galison, *Removing Knowledge The Logic of Modern Censorship*, in AGNOTOLOGY THE MAKING AND UNMAKING OF IGNORANCE 37 (Robert N. Proctor & Londa Schiebinger eds., Stanford Univ. Press 2008).

5. Proctor, *supra* note 4, at 3.

From its plain meaning, ignorance is typically thought of as the simple “lack of knowledge” surrounding a subject.⁶ However, by its very nature, ignorance is integrally linked with knowledge.⁷ If knowledge is a spotlight shining on a person, and ignorance is the surrounding shadows, it is easy to see that the boundaries of what we know (what we can see) are demarcated by the contours of what we do not know (the shadows). Cast a hand over the spotlight, and the shadows of your fingers will puncture the circle of light, obscuring what can be seen and materially altering the scope of the illumination. What would happen if the hand had an ulterior motive influencing what it cast into shadow? Ignorance carves out the shape of knowledge, and therefore sets the boundaries of our conversations, ideals, politics, and beliefs. And, due to its ability to shape the boundaries of what we know and what we can discuss or critique, ignorance is an effective tool of control when wielded in a calculated manner.

Ignorance is generated through a myriad of ways and takes many forms, such as “secrecy, stupidity, apathy, censorship, disinformation, faith,” or even something as simple as “forgetfulness.”⁸ In his seminal work, *Agnology The Making and Unmaking of Ignorance*, Robert Proctor simplified the nearly infinite formations of ignorance by generating three distinct categories: “Ignorance as *native state* (or resource), ignorance as *lost realm* (or selective choice), and ignorance as a deliberately engineered and *strategic ploy* (or active construct).”⁹ Though not the focus of this paper, Proctor’s first category of ignorance as a “native state” will be termed “natural ignorance” throughout this paper to highlight its unintentional and often unconscious existence. Proctor’s third category of ignorance, ignorance as a deliberately engineered active construct, will be the focus of this paper and is termed “contrived ignorance” to highlight the artificiality of its conception and its deliberate imposition. Such terminology also highlights its calculated purpose of deliberately imposing ignorance on a person or population.

Through an interrogation of contrived ignorance, conceptions of “what ignorance is” must be challenged. In this context, “ignorance—or doubt or uncertainty—” must be seen “as something that is made, maintained, and

6. *Ignorance*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ignorance> [<https://perma.cc/968U-DQRC>] (last visited Sept. 30, 2022).

7. *See generally* Proctor, *supra* note 4.

8. *Id.* at 2 (emphasis omitted).

9. *Id.* at 3.

manipulated by means of certain arts and sciences.”¹⁰ While this “idea is one that easily lends itself to paranoia” as it necessitates assuming “that certain people don’t want you to know certain things,”¹¹ in this paranoia there is an aspect of truth that is worth examining.

This paper examines how institutions and legislatures, utilizing contrived ignorance, weaponize ignorance as a control tactic through education restrictions. To begin, a background on agnotology as contrived ignorance will be detailed by overviewing contrived ignorance’s use in the tobacco industry and classified military secrets. Next, by analyzing the principles of these exemplary formations of contrived ignorance, an archetype of contrived ignorance will be distilled. From this archetype, a test to identify instances of contrived ignorance in novel contexts will be formulated.

This test will then be used to examine recent legislative action taken against calls to expand education topics in United States public schools. Specifically, the test will be used to assess the question of whether state legislatures banning critical race theory from curricula is an example of contrived ignorance being utilized for nefarious purposes. Through the application of the test, I hope to show that much like the tobacco industry and classified military secrets (two exemplars which characterize the nature and purpose of agnotology) legislatures banning critical race theory from scholarly discussion in public schools is a modern-day imposition of contrived ignorance. Any legislation that operates primarily on the imposition of contrived ignorance deserves to be critically interrogated, if not opposed wholesale. This holds true both in this instance of critical race theory bans, and more generally to other forms of legislative action driven by contrived ignorance.¹²

Distinguishing Unintentional Ignorance

As a preliminary matter, it is important to distinguish natural ignorance¹³ from contrived ignorance.¹⁴ Natural ignorance should be thought of as “a kind of deficit, caused by the naivete of youth or the faults of

10. *Id.* at 8.

11. *Id.*

12. *See infra* note 96 (discussing the potential scope of critical race theory bans); *see also* discussion *infra* Section V.

13. *See supra* text accompanying note 9.

14. *See supra* text accompanying note 9.

improper education—or the simple fact that here is a place where knowledge has not yet penetrated.”¹⁵ Natural ignorance is perhaps one of the most—if not the most—common conceptions of ignorance.¹⁶ In this form, ignorance is nothing more than the simple lack of knowledge.¹⁷ Natural ignorance is not typically viewed as a positive trait. And, seeing as it manifests as a lack of knowledge, it can thus be remedied through the acquisition of information on the relevant subject.

Instead of taking the prevailing negative view of natural ignorance, Proctor posits that “[i]gnorance here [should be] seen as resource, or at least a spur or challenge or prompt: ignorance is needed to keep the wheels of science turning.”¹⁸ As opposed to painting natural ignorance as an individual flaw, Proctor repositions the lens so that natural ignorance is the gasoline that fuels discovery and learning. Where there is ignorance, there is always the potential for knowledge, and it is exactly that ignorance which catalyzes scientific research and development.¹⁹

Due to its generally remediable nature, it is easy to assume that natural ignorance is nothing but a benign inconvenience that is easily rectified. And, if Proctor’s standpoint on natural ignorance is accepted, natural ignorance is not only benign, but beneficial due to its ability to fuel scientific development. To believe that natural ignorance is benign at its worst and beneficial at its best is a mistake. Though natural ignorance lacks the pointed direction and insidious nature of contrived ignorance, that does not mean it exists without doing harm. A classic example of this is white ignorance. In fact, the very idea that natural ignorance is a harmless occurrence demonstrates the pervasiveness of white ignorance. The theory of white ignorance is built upon the fact that many western societies were constructed around white people as the normative peak of social dominance hierarchies.²⁰ Because this construction centralizes whiteness, daily life, social interactions, and institutions also operate on a predominantly white norm.²¹

15. Proctor, *supra* note 4, at 4 (emphasis omitted).

16. *Id.*

17. *Id.* at 3.

18. *Id.* at 5.

19. “[I]gnorance is needed to keep the wheels of science turning. New ignorance must forever be rustled up to feed the insatiable appetite of science.” Proctor, *supra* note 4, at 5.

20. See generally Charles W. Mills, *White Ignorance*, in RACE AND EPISTEMOLOGIES OF IGNORANCE (Shannon Sullivan & Nancy Tuana eds., 2007); see also Trip Glazer & Nabina Liebow, *Confronting White Ignorance: White Psychology and Rational Self-Regulation*, 52 J. SOC. PHIL. 50 (2021).

21. Mills, *supra* note 20; Glazer & Liebow, *supra* note 20.

This results in a society that does not accommodate for the lived realities of people of color in such a way that actively perpetuates harm.²² The prevalence of the “white norm” allows white people to generally remain ignorant on issues of race without facing any significant consequences, because the level of ignorance on which they operate is the same level of ignorance on which society itself operates.²³

Additionally, natural ignorance is harmful because wherever natural ignorance is present, there exists the possibility that it could evolve and transform into its sordid sibling: contrived ignorance. The propensity for natural ignorance to blossom into contrived ignorance is showcased most effectively in the reactionary responses that often arise after social movements gain popularity.²⁴ At their heart, reactionary movements are characterized as a pointed backlash from the dominant majority against social movements or in response to social change.²⁵ In the U.S., this “dominant majority” is often those who are privileged and white, the same group most susceptible to white ignorance.²⁶ Such backlash from this dominant social group showcases a shift from natural ignorance—perhaps white ignorance obscuring the plight of some marginalized group—to deliberate, contrived ignorance—the reactionary movement actively attempting to stifle the marginalized group. Some recent reactionary movements which fit this pattern can be found in the anti-BLM movement,²⁷ as well as anti-trans sentiments which have flared with the recent increased

22. Mills, *supra* note 20; Glazer & Liebow, *supra* note 20.

23. Mills, *supra* note 20; Thorn, *supra* note 4. The concept of white ignorance is demonstrated well by Peggy McIntosh’s discussion of white privilege and schooling. See Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE AND FREEDOM MAGAZINE, July/Aug. 1989, at 10, 10 (“My schooling gave me no training in seeing myself as an oppressor, as an unfairly advantaged person, or as a participant in a damaged culture. I was taught to see myself as an individual whose moral state depended on her individual moral will. My schooling followed the pattern my colleague Elizabeth Minnich has pointed out: whites are taught to think of their lives as morally neutral, normative, and average, and also ideal.”).

24. See generally Christopher Parker, *The Radical Right in the United States of America*, in THE OXFORD HANDBOOK OF THE RADICAL RIGHT (Jens Rydgren ed. 2018).

25. *Id.*

26. Parker, *supra* note 24; McIntosh, *supra* note 23.

27. See Bill Hutchinson, *Turning Point: Black Lives Matter organizers say right-wing backlash was expected as movement grew*, ABC NEWS (Oct. 25, 2020, 9:00 AM), <https://abcnews.go.com/US/turning-point-black-lives-matter-organizers-wing-backlash/story?id=72863444> [https://perma.cc/S85T-KPMV] (“As support across the country has skyrocketed for the Black Lives Matter movement in the wake of George Floyd’s death at the hands of Minneapolis police officers, so too, has a backlash against the group.”).

visibility of trans people.²⁸ What was first ignorance rooted in incomplete or incorrect knowledge of a marginalized group has warped into a refusal to understand said group in favor of maintaining ignorance.

II. ORIGINS OF AGNOTOLOGY: EXEMPLARS OF AGNOTOLOGY IN THE FORM OF CONTRIVED IGNORANCE

A. *The Tobacco Industry*

When it comes to manufacturing ignorance and doubt, Robert Proctor in his examination of agnotology states that “[n]o one has done [so] more effectively than the tobacco mongers, the masters of fomenting ignorance to combat knowledge.”²⁹ The tobacco industry exemplifies successful utilization of contrived ignorance as it was able to spark controversy surrounding the health concerns of cigarettes for decades on end.³⁰ The detrimental health effects of cigarettes have been evident to the public since the 1950s.³¹ In response to the increased public awareness of the malignant nature of tobacco products, tobacco tycoons made it their business to confound the scientific knowledge surrounding the link between tobacco and poor health.³² The tobacco industry’s prime objective became creating “doubt about the health charge [against tobacco products] without actually denying it.”³³ In the words of Brown & Wilson officials themselves, “doubt [was the tobacco industry’s] product.”³⁴

Big Tobacco launched a campaign that went to great lengths to “reassure consumers that the hazard had not yet been ‘proven.’”³⁵ By framing common knowledge and known scientific fact as controversy up for debate, the tobacco industry was able to achieve its goal of manufacturing doubt. “The

28. See Dan Levin, *The Daily: A Wave of Anti-Transgender Legislation*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/04/20/podcasts/the-daily/transgender-girls-sports-republicans.html> [<https://perma.cc/R6SU-YMZU>] (“Just four months into 2021, there have already been more than 80 bills, introduced in mostly Republican-controlled legislatures, that aim to restrict transgender youth.”).

29. Proctor, *supra* note 4, at 11.

30. *Id.*

31. *Id.*

32. *Id.* at 17.

33. *Id.* (quoting Fred Panzer to Horace R. Kornegay, May 1, 1972, Bates 87657703-7706, documents with “Bates” numbers (litigation codes) are searchable online at <http://legacy.library.ucsf.edu/>) (internal quotation marks omitted).

34. *Id.*

35. *Id.* at 11.

point was to keep the question of [tobacco's] health harms open, for decades if possible. Cancer after all was a complex disease with multiple causes, all of which would have to be explored without rushing to any kind of judgement."³⁶ Using this approach, there was no need for Big Tobacco to definitively take the stance that tobacco products were *not* detrimental to one's health. Instead, the tobacco industry simply told the public what they wanted to hear; cancer is complex and there is no way to definitively pinpoint a cause—in fact, carcinogens are present in a host of everyday items from paraffin candles to bacon!³⁷ It's truly unavoidable, so what's the harm in lighting a cigarette?

[E]pidemiology was denounced as “mere statistics,” animal experiments were said not to reflect the human condition, and lung pathologies revealed at autopsy were derided as anecdotes without “sound science” as backing. Cigarette manufacturers often invoked the laboratory as the site where the “controversy” would be resolved, knowing that it was difficult to mimic human smoking harms using animal models.³⁸

The tobacco industry's “goal . . . was to *generate* ignorance,”³⁹ on a “controversy” that had already been thoroughly decided. The tobacco industry was essentially playing devil's advocate to every valid scientific study professing the effects of tobacco. “‘More research’ [was] always needed, a ‘benefit of the doubt’ [was] always granted, as if cigarettes were on trial and innocent until proven guilty.”⁴⁰

Big tobacco made sure that studies claiming a link between cigarettes and cancer were questioned and critiqued in bad faith.⁴¹ Meanwhile, the tobacco industry funded research studies designed to find that the true cause

36. *Id.* at 12.

37. *See Are Your Candles Toxic?* GREEN AMERICA, <https://www.greenamerica.org/toxic-candles> [<https://perma.cc/B8RN-P8LZ>]; Rachael Link, *Does Bacon Cause Cancer? All You Need to Know*, HEALTHLINE (July 27, 2021), <https://www.healthline.com/nutrition/bacon-cancer#cooking-tips> [<https://perma.cc/HPB6-LJED>].

38. Proctor, *supra* note 4, at 11–12. *See also id.* at 12 (“Cigarette apologists worked in a conveniently tight logical circle: no evidence was ever good enough, no experiment close enough to the human condition. True proof was hard to have short of experimenting on humans.”); *id.* at 15 (“The goal of the industry was to comfort by virtue of allying itself with science.”).

39. *Id.* at 13.

40. *Id.* at 18.

41. *Id.*

of lung cancer, and most other kinds of cancer, was unknown.⁴² This contrived research further distracted and debased any studies claiming to have found a causal link between tobacco and cancer. These misleading research studies funded by Big Tobacco were published in *Tobacco and Health Report*, a magazine which spouted headlines ranging from “Rare Fungus Infection Mimics Lung Cancer,” to “Lung Cancer Rare in Bald Men.”⁴³ All this was done for the sake of denigrating the validity of a question with a known answer. With the distribution of this magazine and the publicization of the research findings, uncertainty quite literally became one of the tobacco industry’s primary products. Contrived ignorance was generated and sold to the public purely for the purpose of allowing the tobacco industry to continue selling cigarettes and prosper economically.

The tobacco industry’s proclivity towards manufacturing uncertainty was driven in large part by the motivation to sell their product: “[P]eople would continue to smoke so long as they could be reassured that ‘no one really knows’ the true cause of cancer.”⁴⁴ In doing so, they created a method for manufacturing and maintaining uncertainty and ignorance that persisted for decades.⁴⁵ Their control was hinged on both knowing the anxieties and hopes of their consumer base and exploiting those weaknesses through elaborate misdirection and manufactured doubt—and it was successful.⁴⁶ One 1966 poll of adults indicates that less than half “regarded smoking as a ‘major’ cause of lung cancer.”⁴⁷

The Tobacco industry’s brand of contrived ignorance was so successful that similar tactics have been used by asbestos, lead, and other like industries to combat detriments to their profits when the hazards of their products came to light.⁴⁸ Recently, it has been revealed that many research studies professing skepticism and controversy on the topic of climate change have received large amounts of funding from the oil industry.⁴⁹ The tobacco

42. *Id.* at 14–15. The industry was distracting from tobacco hazards by identifying “every possible cause of cancer except for tobacco.” *Id.* at 15.

43. *Id.* at 15.

44. *Id.* at 12.

45. Until 1999, the United States Department of Justice did not sue major tobacco companies “for fraudulent and unlawful conduct and reimbursement of tobacco related medical expenses.” *United States v. Philip Morris*, 566 F.3d 1095 (D.C. Cir. 2009).

46. Proctor, *supra* note 4, at 15.

47. *Id.*

48. *Id.* at 18; David Michaels & Celeste Monforton, *Manufacturing Uncertainty Contested Science and the Protection of the Public’s Health and Environment*, 95 AM. J. PUB. HEALTH S39, S41 (2011).

49. Phoebe Keane, *How the oil industry made us doubt climate change*, BBC NEWS (Sept. 20, 2020), [bbc.com/news/stories-53640382 \[https://perma.cc/654T-GRQZ\]](https://perma.cc/654T-GRQZ).

industry laid the blueprint and similar uses of contrived ignorance through manufacturing artificial uncertainty persist to this day.

B. Classified Military Information

Another exemplar of contrived ignorance comes in the form of classified military information. The United States military dedicates significant time and resources towards researching cutting-edge technologies.⁵⁰ Just as much effort is expended keeping such information a secret from the public at large.⁵¹

As opposed to the duplicitous distractions, skepticism, and misinformation peddled by the tobacco industry, the military's brand of contrived ignorance is more direct. Ironically, despite its classified nature, contrived ignorance by military classification is more readily ascertainable to the public than the uncertainties created by Big Tobacco's brand of contrived ignorance. After all, most United States citizens know that the government keeps some information classified and inaccessible to the public. Though the contents of this classified information remain a mystery, the public knows there is information being withheld from them. Nevertheless, the simple knowledge that the military is keeping information sequestered away from the public eye does nothing to combat its effectiveness. Through classification, the public—and more importantly other countries—are kept in the dark about the military's technological and scientific advancements. “The whole point of secrecy in this realm is to hide, to feint, to distract, to deny access, and to monopolize information.”⁵²

When discussing the large number of classified documents held by the Department of Energy in his essay on modern censorship, Peter Galison

50. See *Budget Basics: National Defense*, PETER G. PETERSON FOUND. (June 1, 2021), <https://www.pgpf.org/budget-basics/budget-explainer-national-defense> [https://perma.cc/7M7M-WY2W] (reporting that “nearly \$106 billion was spent on research and development of weapons and equipment” for the US military).

51. “[T]he Information Security Oversight Office (ISOO), reports a total expenditure in 2001 of \$5.5 billion to keep classified documents secure.” Galison, *supra* note 4, at 38.

52. Proctor, *supra* note 4, at 19.

posits that “[w]ith such a vast reservoir of learning under wraps, [governmental institutions] must have—if not explicitly than at least implicitly—some sense of what can and cannot be released.”⁵³ By examining the methods and processes of the classification of information, Galison attempts to determine the theory of interdicting knowledge.⁵⁴ In other words, he attempts to formulate a theory that clarifies what kinds of information militaries keep secret, and why exactly the information specifically chosen is being kept a secret.

Galison begins by identifying two categories of knowledge that are typically prohibited from dissemination through military classification: subjective secrets and objective secrets.⁵⁵ According to Galison, “[s]ubjective secrets . . . display four key characteristics,” they are “compact, transparent, changeable, and perishable.”⁵⁶ Essentially, subjective secrets are concrete, easily understandable, undeterminable, and changeable pieces of information that can expire. Galison uses the example of “the 101st Airborne will conduct its first drop at first light” to demonstrate a subjective secret.⁵⁷ Anyone can understand this information, and at first light it will expire and become irrelevant. Furthermore, it is subject to change with changes in plan for the 101st Airborne. Additionally, this information cannot be determined by any means apart from a direct investigation of the 101st Airborne.

Objective secrets, on the other hand, “contrast with each of these qualities separately—they are supposed to be diffuse, technical, determinable, eternal, and long-lasting.”⁵⁸ Objective secrets are more akin to theories and fields of study. Galison uses the example of “a theory of neutron diffusion” to demonstrate objective secrets.⁵⁹ Theories of neutron diffusion and other academic or scientific theories are complex and cannot typically be understood through a simple sentence like “the 101st will conduct its first drop at first light.”⁶⁰ Instead, such theories are discovered and understood as overarching concepts in scientific fields founded on background knowledge and the fundamentals of the field. However, despite the complex and technical nature of objective secrets, they are unchanging and can thus be discovered by anyone with enough research and effort. After all, two people

53. Galison, *supra* note 4, at 41.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

who have never encountered one another could generate the same theory of neutron diffusion if they both are knowledgeable in quantum mechanics. The science behind the theory cannot change, and therefore, the theory itself can be determined by anyone who has the means.⁶¹

Due to the determinable nature of objective secrets, the effort that must be expended prohibiting the diffusion of objective secrets is far more extensive than subjective secrets. For example, during World War II (“WWII”), American nuclear scientists initiated a widescale ban on all materials showcasing advancements in nuclear fission.⁶² In order to properly prevent other countries from discovering the process to make atomic bombs, vast amounts of knowledge needed to be hidden.⁶³ Nearly every aspect of study leading to the development of the nuclear fission theory was curtailed from public knowledge to stagnate advancement.⁶⁴ The Atomic Energy Act of 1946 went so far as to classify basic aspects of physics, restrict research on electromagnetic separation, and even hide the cost of highly enriched uranium.⁶⁵ When there are such blanket classifications on “whole domains of learning . . . the accumulated mass of guarded data piles up at a smothering rate: it impedes industry, it interferes with work . . . and it degrades the very concept of secrecy by applying it indiscriminately.”⁶⁶ However, as previously stated, due to the nature of objective secrets, the classification of objective secrets can only “produce[] ignorance in the form of delayed knowledge.”⁶⁷

Because objective secrets are nothing but aspects of scientific advancements or academic thought, it is always possible that eventually, someone will independently determine the knowledge that has been kept under wraps. However, the fact that objective secrets are determinable does nothing to reduce their effectiveness as a method of contrived ignorance. For instance, while “[m]ilitary-sponsored research in the 1940s led to early predictions of global warming and the melting of the polar ice caps; the

61. *Id.* (stating that objective secrets “are supposed to be determinable insofar as they can be deduced if the right question is posed”)

62. *Id.* at 42.

63. *Id.*

64. *Id.*

65. *Id.* at 42–43. These methods of classifying all information known about nuclear physics and all related subjects were successful. While America and other countries were finding success in nuclear fission as a ground for creating weapons of mass destruction, the classification of such information meant that “Nazi scientists spent the war struggling to moderate neutrons . . . using heavy water rather than the vastly more useful graphite.” *Id.*; Proctor, *supra* note 4, at 18.

66. Galison, *supra* note 4, at 49.

67. Proctor, *supra* note 4, at 19.

guardians of military secre[ts] kept this quiet . . . and the topic was not widely and openly discussed.”⁶⁸ Because of its classified nature, climate change did not become common knowledge until many years after its initial discovery.⁶⁹ It was not hidden indefinitely, but the general public was left in the dark for a significant amount of time. Thus, scientific advancements made under the auspices of military secrecy have the potential to catalyze widespread acceptance of theories decades before outside scientists reach the same conclusions.⁷⁰ Such catalyzation is prevented by government classification of the information.⁷¹

The distinctions between subjective and objective secrets are further demonstrated by the following scenario: Jamal is making chocolate chip cookies. The recipe for chocolate chip cookies is an objective secret as it is technical, long-lasting, and can be determined independently by others. The process of making the cookies is complicated and laid out by the recipe. In order to make the cookies, a person must not only have the recipe, but must also understand the fundamentals of baking and have all the requisite ingredients. The recipe is one formulated by Jamal himself, he prides himself on its deliciousness and does not share it lightly. However, a skilled baker familiar with chocolate chip cookies would be able to make comparably delicious if not identical chocolate chip cookies even if Jamal did not give them the recipe. As a skilled baker, they would be able to formulate a recipe simply by utilizing their baking prowess and chocolate chip cookie knowledge. On the other hand, the fact that Jamal is making the chocolate chip cookies at 4 p.m. this Friday is a subjective secret. This information is simple to understand as no background baking knowledge is necessary to comprehend its meaning. The information is subject to change with Jamal’s schedule. And lastly, it is perishable; anyone planning to join Jamal in making cookies will be out of luck after 4 p.m. on Friday.

68. *Id.*

69. *Id.*

70. *See* Proctor, *supra* note 4, at 19 (“The impact of military secrecy on science has been profound, affecting nearly every branch of knowledge. An interesting case concerns the seafloor stripes discovered during World War II. These large, linear, magnetic anomalies are caused by a combination of seafloor spreading and periodic reversals in the Earth’s magnetic field. They were also useful in locating enemy German (and later Russian) submarines, assisting in the scanning for underwater metallic objects. Seafloor stripes were important in the acceptance of continental drift, but their locations and even their existence were classified until the 1950s. Had these been openly available to the scientific community, the theory on continental drift could have been accepted years before it was.”).

71. *Id.*

Galison states that the military and governmental institutions censor information through classification because “classification will add to the ‘net national advantage.’”⁷² In other words, when information is classified, the government receives a benefit since prohibiting the dissemination of the information boosts national security. To determine what should be classified, any net national advantages associated with a piece of information are determined, and then aspects of the information which could lead to its discovery—its vulnerabilities—are identified and hidden.⁷³ In other words, any piece of information that would generate a substantial net national advantage is deemed worthy of classification.⁷⁴ To prolong the amount of time the information is kept secret, the vulnerabilities of the information are classified, and the information is suppressed.⁷⁵ As a result, when information is classified the United States, government is given an edge, typically in the form of increased national security through scientific advancement or secrecy of sensitive operations.⁷⁶

Galison uses wartime scientific weapon advancements as an example, likely because of the explicit nature of classified information in such circumstances. However, this process of utilizing contrived ignorance through censorship to control the public’s knowledge is not limited to the military sphere. The dissemination of information on a specific topic will be prevented in any instance where a controlling institution derives a net advantage from doing so, whether that information is subjective or objective. For example, restrictions on what information can be taught in public schools could also fit into this model of contrived ignorance.

III. AGNOTOLOGY EVOLVED: A TEST TO IDENTIFY CONTRIVED IGNORANCE IN NOVEL CONTEXTS

The tobacco industry and military classifications are exemplars of contrived ignorance both in methodology and utilization. Therefore, the similarities shared by these formations of contrived ignorance could reveal the identifying hallmarks of contrived ignorance as a whole. These identifying hallmarks can then be used to diagnose instances of contrived ignorance in novel circumstances.

72. Galison, *supra* note 4, at 44.

73. *Id.* at 45.

74. *Id.*

75. *Id.*

76. *Id.* at 44.

The tobacco industry notoriously utilized agnotology in the form of contrived ignorance by manufacturing uncertainty.⁷⁷ In order to boost tobacco sales, the tobacco industry opposed the simple fact that cigarettes are health detriments and linked to lung cancer. This campaign against common knowledge was characterized by funding deliberately misleading studies on cancer and cigarettes which were intended to detract from legitimate studies that found a link between the two.⁷⁸ In addition to funding misleading studies, Big Tobacco would stir up controversy around the (already settled) question of whether cigarettes were detrimental to health by critiquing legitimate studies on the topic in bad faith, ironically framing them as unsound science.⁷⁹ An analysis of the formation of contrived ignorance utilized by the Tobacco Industry reveals the following traits and factors of contrived ignorance through the manufacture of uncertainty:

TABLE 1.1 – CONTRIVED IGNORANCE TRAITS DERIVED FROM THE TOBACCO INDUSTRY

- Implemented to cast doubt on a verifiable fact or finding.
- Bad faith critiques of dissenting information or misleading studies which go against or confound dissenting information.
- Motivated by the desire for personal or economic gain, typically of an institution or individual.

Agnotology in the form of contrived ignorance is also used by government and military institutions by classifying information with the intent to delay or prevent the dissemination of knowledge.⁸⁰ This process is like censorship. Governmental or military classifications are evidenced by wholesale bars on the dissemination of information on certain subjects.⁸¹ Classified information is perhaps most interesting when used to obscure objective secrets from the public eye. Objective secrets span the scope of entire fields of study, are unchanging, and could theoretically be determined independent of the classified information.⁸² This means that classification of

77. See discussion *supra* Section II.A.

78. See discussion *supra* Section II.A.

79. See discussion *supra* Section II.A.

80. See discussion *supra* Section II.B.

81. See discussion *supra* Section II.B.

82. See *supra* notes 57–69 and accompanying text.

such information requires prohibitions on large swaths of knowledge, and at its best, can only delay the discovery of knowledge.⁸³ An analysis of the formation of contrived ignorance utilized in military classifications reveals the following as traits of contrived ignorance through preventing the dissemination of knowledge:

TABLE 1.2 – CONTRIVED IGNORANCE TRAITS DERIVED FROM MILITARY CLASSIFICATIONS

- The intention is either to completely prevent the information from being generally known, or to substantially delay the development of knowledge.
- Bans on disseminating information relating to a certain topic.
 - Subjective secrets: finite, concrete information (e.g., “the 101st Airborne will drop at first light”; Jamal will be making chocolate chip cookies at 4 p.m. on Friday).⁸⁴
 - Objective secrets: determinable, complex, expansive (e.g., physics theories surrounding the process of nuclear fission; the recipe for Jamal’s chocolate chip cookies).⁸⁵
- Motivated by the government’s interest in furthering “net national advantages” via national security or technological advancement.

A comparison of the principal traits of the contrived ignorance formations utilized by the tobacco industry and the military allows for a more generalized test to be derived. This generalized test can then be used to identify when contrived ignorance is being used in novel contexts. Additionally, an analysis of the tobacco industry brand contrived ignorance and military brand contrived ignorance reveals factors that could indicate novel instances when contrived ignorance is weaponized.

83. *See supra* notes 57–69 and accompanying text.

84. *See supra* notes 52–57 and accompanying text.

85. *See supra* notes 52–57 and accompanying text.

TABLE 1.3 – GENERALIZED TEST FOR IDENTIFYING CONTRIVED IGNORANCE

	Tobacco Industry	Classified Information	Generalized Characteristics
METHODS	Obfuscation of a known truth through misleading and distracting information.	Wholesale bans on both the key information in question and any information which could lead to the discovery of the key information.	Access to or the veracity of a form of knowledge, be it a finite fact or field of study, has been challenged.
ACTOR(S)	Big Tobacco companies and their representatives	The US government or the government of the relevant populace	The challenges or bars to the knowledge in question generated almost entirely from either a single source or a related group of entities
UNDERLYING INTEREST	The maximization of monetary profits from the sale of a hazardous substance.	A “net national advantage,” i.e. a benefit that the U.S. government would derive from keeping the information hidden. ⁸⁶	There is an intrinsic link between the knowledge in question which is being challenged and the actor(s). The actor(s) are able to fulfill their underlying interest by challenging the knowledge in question.
FACTORS	<ul style="list-style-type: none"> - Exploitation of the public’s anxieties and hopes - Attempt at credibility through proximity to an objective field⁸⁷ - Generating “controversy” surrounding a settled topic, playing devil’s advocate 		

86. In the case of military classified information this “net national advantage” is generally national security. Galison, *supra* note 4, at 44.

87. Michaels & Monforton, *supra* note 48 (discussing the tobacco, lead, and asbestos industries’ use of “junk science” as a tactic to manufacture doubt).

A potential three-part test that can be utilized to identify when contrived ignorance is being utilized in novel instances is as follows.

First, knowledge must be threatened in some manner. This will either manifest as a challenge to what is already known by the public, or a limitation on the dissemination of information surrounding a topic. In the context of the tobacco industry, this was accomplished by misleading studies which stirred up controversy surrounding the general knowledge that smoking cigarettes is linked to cancer and other negative health outcomes. In the context of military classifications, it was done by banning the dissemination of—or conducting extra-military studies of—certain topics within a field of study.

Second, if most of the challenges to the knowledge in question have been generated by a single source or a group of similar institutions, contrived ignorance may be at play. In other words, contrived ignorance is implicated when the challenges to the knowledge in question trace back to a single source or a related group of actors. In the tobacco industry context, this is showcased by the fact that all the misleading research studies used to question the fact that cigarettes are detrimental to personal health were funded by tobacco manufacturers.⁸⁸ This funding gave tobacco industries a significant amount of control over the findings of the misleading studies, which thus allowed the tobacco manufacturers themselves to be framed as the actors challenging the information.⁸⁹ In the context of military classifications, the identification of the actors is simple. The orders to bar certain information from being disseminated all came from the U.S. government and military.

The third and final step is perhaps the most crucial to determine whether information is being challenged or withheld in good faith or in the name of contrived ignorance. It is the identification of a link between the actors' challenges to the knowledge in question and a direct, self-serving interest of the actors that is fulfilled by challenging said information. For the tobacco industry, challenging the detrimental health effects of tobacco products meant that more people would be likely to continue buying cigarettes. The direct interest in maximizing profit from tobacco product sales is fulfilled by challenging the knowledge in question. In the military classification context, classifying certain pieces of information fulfills the direct interest of

88. Another similar example can be seen in the context of the oil industry. Many studies challenging the veracity of climate change are funded by oil companies. *See supra* note 48 and accompanying text.

89. Proctor, *supra* note 4, at 14.

advancing “net national advantages.” In other words, national security can be maintained through hiding information, and as a result, cutting-edge technology can be developed without arousing the suspicions of other nations.

IV. AGNOTOLOGY AS STRUCTURAL: LEGISLATIVE UTILIZATION OF CONTRIVED IGNORANCE

A. Bans on Critical Race Theory are an Instance of Contrived Ignorance

Critical race theory is an academic and legal movement. In more broad terms, it can be characterized as an epistemology that “challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole.”⁹⁰ Critical race theory is not founded on a canonical set of doctrines; instead, it is “unified by two common interests.”⁹¹

The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure and professed ideals such as “the rule of law” and “equal protection.” The second is a desire not merely to understand the vexed bond between law and racial power but to *change* it.⁹²

Critical race theory has evolved and expanded outside the legal field since its conception over twenty years ago. However, the core tenants remain the same. White supremacy’s impact on academia, governmental institutions, the law, and our society at large should be identified, interrogated, and combatted.

Recently, critical race theory has been subject to legislative attack in several states.⁹³ These states have taken to enacting legislation which bans the teaching of critical race theory in public schools. It is possible that these bans are a novel instance of contrived ignorance being utilized by the

90. *Introduction* to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, at xiii (Kimberly Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas eds., New Press 1995).

91. *Id.*

92. *Id.*

93. *See infra* TABLE 2.1 – SUCCESSFUL BANS ON CRITICAL RACE THEORY.

legislatures of these states to limit the public's knowledge on this theory of thought.

The test to identify whether a restriction on knowledge is in actuality a contrived ignorance requires the satisfaction of three elements:

- (1) There is a limitation on or challenge to a form of knowledge.
- (2) The challenge or limitation can be traced to a single (or limited and related) group of actors.
- (3) Challenging the knowledge or preventing its dissemination fulfills a direct, self-serving interest of the actors challenging said knowledge.

Through an application of this test, it becomes apparent that the recent legislative bans on teaching critical race theory in public schools are in fact an instance of state legislatures utilizing contrived ignorance.

The first element is satisfied whenever there is a limitation placed on a certain type of knowledge or information. As of November 2021, nine state legislatures have successfully passed laws that functionally ban the teaching of critical race theory in public schools.⁹⁴ While this number may seem relatively low, it consists of almost twenty percent of legislative jurisdictions in the United States. Furthermore, this percentage only accounts for states which have successfully passed bans on critical race theory. As of November 2021, the number of state legislatures considering bans on critical race theory number is nineteen, with federal level action also being considered in Washington D.C. school districts.⁹⁵

The total number of legislative jurisdictions which have successfully banned the teaching of critical race theory taken together with those which have proposed bans awaiting passage amounts to twenty-eight. Many of these laws do not explicitly state they are a ban on critical race theory though

94. Rashawn Ray & Alexandra Gibbons, *Why are states banning critical race theory*, BROOKINGS (Nov. 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/> [<https://perma.cc/LZK5-PDLK>]. The Arizona law banning critical race theory was invalidated by the Arizona Supreme Court “for including multiple subjects in a single bill.” *Id.*; ARIZ. REV. STAT. § 15-717.02 (2021); IDAHO CODE § 33-138 (2021); IOWA CODE § 261H.8 (2021); N.H. REV. STAT. § 193:40 (2021); N.D. CENT. CODE § 15.1-21-05.1 (2021); OKLA. STAT. tit. 70, § 24-157 (2021); H. 4100, 124th Gen. Assemb. (S.C. 2021); TENN. CODE § 49-6-1019 (2021); TEX. EDUC. CODE § 28.0022 (2021)

95. Ray & Gibbons, *supra* note 94. States considering bans on critical race theory include: Alabama, Alaska, Arkansas, Florida, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, West Virginia, Wisconsin, and Wyoming. *Id.* “[N]early 20 additional states have introduced or plan to introduce similar legislation” to the states which have already banned critical race theory. *Id.*

they function as such. Instead, the laws are framed as bans on teaching certain concepts relating to race.

TABLE 2.1 – SUCCESSFUL BANS ON CRITICAL RACE THEORY⁹⁶

State	Date	Bill and Scope
Arizona	6/30/21	<i>Arizona Revised Statutes § 15-717.02</i> ⁹⁷

96. As is evidenced by the text of the laws themselves (as seen in Table 2.1) most of these laws do not just ban teaching critical race theory surrounding race and racism. Many forbid similar styles of teachings related to sex and sexism. Some also include sexual orientation and gender identity. *See* N.H. REV. STAT. § 193:40. From this we can see that the impact of these bans is not limited to concepts of race. Critical race theory bans also operate to stagnate the education of a wide range of systemic inequalities.

97. ARIZ. REV. STAT. § 15-717.02 (2021). Furthermore, the law states that teachers are banned from teaching concepts which include but are not limited to: “(7) Academic achievement, meritocracy or traits such as hard work ethic are racist or sexist or were created by members of a particular race, ethnic group or sex to oppress members of another race, ethnic group or sex.” *Id.* Point (4) (quoted in Table 2.1) seems

		Any “teacher, administrator, or other employee of a school district . . . may not use public monies for instruction that presents any form of blame or judgement on the basis of race, ethnicity or sex.” As such, teachers are banned from teaching concepts which include but are not limited to “(2) An individual, by virtue of the individual’s race, ethnicity, or sex, is inherently racist, sexist, or oppressive whether consciously or unconsciously . . . (4) An individual’s moral character is determined by the individual’s race, ethnicity or sex . . . (5) An individual, by virtue of the individual’s race, ethnicity, or sex, bears responsibility for actions committed by other members of the same race, ethnic group or sex.”
Idaho	4/28/21	Idaho Code § 33-138 ⁹⁸ Public schools may not direct or compel student to adopt the belief “(iii) [t]hat individuals, by virtue of sex, race, ethnicity, religion, color, or national origin, are inherently responsible for actions committed in the past by other members of the same sex, race, ethnicity, religion, color, or national origin.” ⁹⁹
Iowa	6/8/21	Iowa Code 261H.8 ¹⁰⁰ Institutions are prohibited from instructing people regarding “specific defined concepts” which include but are not limited to: “(2) That the United States of America and the state of Iowa are fundamentally or systemically racist or sexist. (3) That an individual, solely because of the individual’s race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously . . . (7) That an individual, by virtue of the individual’s race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.”

to be a mischaracterization of the concept that white people, or any dominant racial group in a society, are more likely to be unconsciously or consciously racist due to the fact that they receive benefit from systemic oppression and injustice whether or not they are overtly racist.

98. Idaho Code § 33-138 (2021).

99. The Idaho law includes a justification for this ban which states the following: “[T]enets . . . often found in ‘critical race theory’ . . . exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, or other criteria in ways contrary to the unity of the nation and the well-being of the state of Idaho and its citizens.” *Id.*

100. IOWA CODE § 261H.8 (2021).

New Hampshire	6/25/21	<i>New Hampshire Revised Statutes § 193:40</i> ¹⁰¹ Teachers are prohibited from teaching or compelling students to express support for listed concepts which include but are not limited to: “(b) That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race . . . or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.”
North Dakota	11/12/21	<i>North Dakota Century Code § 15.1-21-05.1</i> ¹⁰² Public schools are explicitly prohibited from teaching critical race theory to students aged kindergarten to twelfth grade. For the purpose of this bill, “‘critical race theory’ means the theory that racism is not merely the product of learned individual bias or prejudice, but that racism is systemically embedded in American society and the American legal system to facilitate racial inequality.”
Oklahoma	5/7/21	<i>Oklahoma Statutes Title 70 § 24-157</i> ¹⁰³ No student of higher education institutions “within The Oklahoma State System shall be required to engage in mandatory gender or sexual diversity training or counseling.” Additionally, teachers, administrators, and employees of public schools are prohibited from teaching concepts which include but are not limited to: “(b) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously . . . (e) an individual’s moral character is necessarily determined by his or her race or sex, (f) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.”

101. N.H. REV. STAT. § 193:40 (2021). The New Hampshire law includes in a subsequent provision that “(II) Nothing in this section shall be construed to prohibit discussing, as part of a larger course of academic instruction, the *historical existence* of ideas and subjects identified in this section.” *Id.* (emphasis added). This is interesting. It serves to frame racism, sexism, homophobia, and transphobia (both systemically and individual) as creatures of the past that are no longer present in today’s institutions.

102. N.D. CENT. CODE § 15.1-21-05.1 (2021).

103. OKLA. STAT. tit. 70, § 24-157 (2021). Section 3 of the act states that it must take effect in full force as it is “immediately necessary for the preservation of the public peace.” *Id.*

South Carolina	6/30/21	<p>H. 4100¹⁰⁴ A South Carolina budget bill mandated that funds given to school districts by the Department of Education cannot be used to provide instruction on or to teach concepts which include but are not limited to the following: “(2) an individual, by virtue of his race or sex, is inherently racist or sexist or oppressive, whether consciously or unconsciously . . . (4) an individual’s moral standing or worth is necessarily determined by his race or sex; (5) an individual, by virtue of his race or sex, bears responsibility for the actions committed in the past by other members of the same race or sex . . . (8) fault, blame, or bias should be assigned to a race or sex, or to members of a race or sex, because of their race or sex.”</p>
Tennessee	5/25/21	<p>Tennessee Code § 49-6-1019¹⁰⁵ Public schools shall not include or promote concepts including but not limited to the following: “(2) An individual, by virtue of the individual’s race or sex, is inherently privileged,¹⁰⁶ racist, sexist, or oppressive, whether consciously or subconsciously . . . (4) An individual’s moral character is determined by the individual’s race or sex; (5) An individual, by virtue of the individual’s race or sex, bears responsibility for actions committed in the past by other members of the same race or sex . . . (8)</p>

104. H. 4100, 124th Gen. Assemb. (S.C. 2021). This provision of the bill subsequently states that “[n]othing contained herein shall be construed as prohibiting any professional development *training for teachers* related to issues of addressing unconscious bias within the context of teaching certain literary or historical concepts or issues related to the impacts of historical or past discriminatory policies.” *Id.* (emphasis added). This is interesting because it seems to express contradictory sentiment to the prohibition outlined in point (2). This subsequent provision evidences an awareness of unconscious bias and the impact of historical oppression on the present. It goes so far as to carve out an exception which allows these concepts to be taught to teachers. However, it is prohibited to impart this essential knowledge, worthy of exculpation, to students.

105. Tenn. Code § 49-6-1019 (2021). The law also prohibits teaching the following concepts: “(12) The rule of law does not exist, but instead is a series of power relationships and struggles among racial and other groups; (13) All Americans are not created equal and are not endowed by their Creator with certain unalienable rights, including life, liberty, and the pursuit of happiness.” *Id.*

106. The addition of “privileged” is a unique inclusion on the part of the Tennessee legislature that is not shared by other laws which have otherwise utilized the same language. Including “privileged” as opposed to only stating “racist, sexist, or oppressive” takes the ban one step further than bans instituted in other states.

		This state or the United States is fundamentally or irredeemable racist or sexist.”
Texas	9/17/21	<i>Texas Educational Code § 28.0022</i> ¹⁰⁷ Teachers, administrators, and other employees of school districts are prohibited from teaching concepts which include but are not limited to the following: “(ii) an individual, by virtue of the individual’s race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously . . . (iv) an individual’s moral character, standing, or worth is necessarily determined by the individual’s race or sex; (v) an individual, by virtue of the individual’s race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.”

Many of the laws use the same or similar language when describing the concepts relating to race which public schools are prohibited from including in their curriculums. These concepts are the legislatures’ characterizations of critical race theory distilled to a list of core tenets. Some of the most common prohibitions include variations of three concepts which the legislatures believe to be representative of critical race theory. The first commonly prohibited concept is the idea that an individual, by virtue of their race or sex can be inherently racist, sexist, or oppressive, whether unconsciously or consciously. The second commonly prohibited concept is the idea that an individual’s morality is necessarily determined by their race or sex. And the third common prohibition is the idea that an individual, because they are of a certain race or sex, may bear responsibility for the actions committed in the past by members of the same race or sex. Several the laws also explicitly prohibit teaching the concept that the United States and its legal system are fundamentally racist institutions.

When viewed in the larger context of America’s history of slavery, systemic racism, and discrimination, such prohibitions will have a chilling

107. TEX. EDUC. CODE § 28.0022 (2021). The law even goes so far as to specifically prohibit teaching aspects of “The 1619 Project,” a journalism project by New York Times authors which examined the legacy of slavery on the development of the United States and “aims to reframe the country’s history by placing the consequences of slavery and the contributions of Black Americans at the very center of the United States’ national narrative.” Nikole Hannah-Jones, *The 1619 Project*, N.Y. TIMES (2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html?mtrref=en.wikipedia.org&gwh=21F88AD067C05091060672FB0FBCBA0C&gwt=pay&asstType=PAYWALL>.

effect on the dialogues teachers can conduct with their students. Some concepts of critical race theory are divisive to the public at large. But altogether, banning teachers from discussing concepts of critical race theory with students in an academic setting does nothing but quell people's ability to gain knowledge on the subject in a controlled, educational environment. Because of these laws, large swaths of youths will be left completely without this knowledge during their formative years. Any acquisition of this theory of thought will be delayed until they receive higher education, or stumble across the knowledge themselves. Functionally, the bans serve only to stifle theories of thought that disrupt the status quo and instead call for change. Bans prohibiting critical race theory from being taught in public schools are nothing more than hindrances to the dissemination of a certain type of knowledge to the public. Such a limitation on the dissemination of knowledge is akin to the form of contrived ignorance utilized in the classification of military secrets. Therefore, the first element required to identify novel instances of contrived ignorance has been satisfied because the knowledge of critical race theory has been limited due to the recent legislative bans.

The second element which indicates the presence of contrived ignorance is satisfied when the limitation on the knowledge in question derives from a single source or a related group of actors. Perhaps unsurprisingly, the successful bans on critical race theory were passed almost entirely along party lines, with most of the dissenting votes coming from Democrats while the proponents were Republican.¹⁰⁸ Additionally, the sponsors for these laws in many states were unanimously Republican.¹⁰⁹ Expanding outside party lines to the ideological leanings of the United States more generally, it can be said that those in support of the critical race theory bans tend to be more conservative than those who oppose the bans.¹¹⁰

108. H.R. JOURNAL, 66th Leg., 1st Reg. Sess. at 347 (Idaho 2021); H.R. JOURNAL, 89th Gen. Assemb. at 734-37 (Iowa, 2021); Votes, H.R. 2, 2021 Leg., Reg. Sess. (N.H. 2021); H.R. JOURNAL, 67th Leg., Spec. Sess. at 2280-81 (N.D. 2021); H.R. JOURNAL, 2021 Leg., Reg. Sess. at 1352 (Okla. 2021); Votes, S. 623, 112th Gen. Assemb. (Tenn. 2021); S. JOURNAL, 87th Leg. 2nd Sess. at 51 (Tex. 2021) (amending H.R. 3979, 87th Leg. Sess. (Tex. 2021)); H.R. JOURNAL, 124th Gen. Assemb., 124th Sess. at 11 (S.C. 2021).

109. H.R. 1508, 67th Leg., Spec. Sess. (N.D. 2021); H.R. 1775, 2021 Leg., Reg. Sess. (Okla. 2021); S. 623, 112th Gen. Assemb. (Tenn. 2021); S. 3 87th Leg. 2nd Sess. (Tex. 2021) (amending H.R. 3979, 87th Leg. Sess. (Tex. 2021)).

110. Jeffrey Sachs, *The New War on Woke*, Arc Digital (Feb. 26, 2021), <https://medium.com/arc-digital/the-new-war-on-woke-ced9fd3699b> [<https://perma.cc/4VWV-A97P>]; Ray & Gibbons, *supra* note 94.

In general, those in favor of banning critical race theory from public schools are more conservative than those who do not oppose its presence in public schooling. Furthermore, in a legislative setting, proponents of these bans are overwhelmingly Republican. The limitations on and challenges to teaching critical race theory therefore derive almost entirely from the single source of right-wing politicians and conservatives. This suffices to fulfill the second element required to identify contrived ignorance.

The final and most crucial element which strongly indicates the presence of contrived ignorance is satisfied if the limitations or challenges to the knowledge in question fulfill a direct interest of the actors. In order to uncover the actors' underlying interests that are fulfilled by banning critical race theory from school curriculums, the veracity of the legislatures' prevailing concerns with critical race theory must first be investigated.

In a 2021 Brookings article, Rashawn Ray and Alexandra Gibbons state that "critical race theory [] has become a new bogeyman for people unwilling to acknowledge our country's racist history and how it impacts the present."¹¹¹ Supposedly, "[o]pponents [of critical race theory] fear that [it] admonishes all white people for being oppressors while classifying all Black people as hopelessly oppressed victims."¹¹² This is evidenced by both the language of the laws, and the proffered justifications for the bans put forth by a small number of legislatures. The successful bans on critical race theory overwhelmingly prohibit teaching the concept that an individual can, by virtue of their race, be inherently racist—even unconsciously. Furthermore, many of the successful bans have language prohibiting the concept that an individual person by virtue of their race should bear responsibility for the actions of people in the past of the same race. Though nonspecifically worded, it is obvious what these prohibitions refer to. The first is meant to stop the spread of the idea that white people are more likely to hold inherent biases or prejudices against marginalized people of color simply by virtue of living as a white person in a society that disenfranchises people of color. The second is targeted against the idea that (1) white people of today should hold some awareness of both the history of slavery and current systems of racism in the United States, and (2) should recognize the violence that was inflicted

111. Ray & Gibbons, *supra* note 94.

112. *Id.* The reader should note that this is likely a (necessarily) reductive summation of the prevailing concerns surrounding critical race theory. Since it is impossible to take every individualized concern into account, this article will, for the most part, be 'painting in broad strokes' with some individualization.

on people of color at history by the hands of the white founders of the United States.¹¹³

It should be apparent that there are marked differences between the concepts prohibited by the bans and the central tenants of critical race theory. This is because the concepts outlined in the laws, meaning the legislatures' attempt to describe critical race theory, are just that—attempts. In actuality, the concepts stated in these bans are fundamentally mischaracterizations of the epistemology of critical race theory.¹¹⁴ Contrary to what the bans would have one believe, critical race theory does not demand that white people be branded the amoral aggressors responsible for all racism in American society. The reality is far less sensational. Critical race theory “does not attribute racism to white people as individuals or even to entire groups of people. Simply put, critical race theory states that U.S. social institutions . . . are laced with racism embedded in laws, regulations, rules, and procedures that lead to differential outcomes by race.”¹¹⁵

This fundamental mischaracterization on the part of the legislatures regarding what critical race theory entails is further evidenced by the last common prohibition present in critical race theory bans. The bans on critical race theory also overwhelmingly include language which prohibits teaching the idea that an individual's morality is necessarily determined by their race or sex. There is no reasonable way this concept can be connected to the scholarship of critical race theory. In fact, the banning of this concept in a law meant to prohibit the teaching of critical race theory could only make sense if there was no real understanding of critical race theory in the first place.

The arguments against critical race theory are rooted in fundamental mischaracterizations, dramatizations, and pure misunderstandings of critical race theory as an academic field. The fact that the nature of critical race theory had to first be deeply mischaracterized to justify its banning shows that oppositions to critical race theory have largely been made in bad faith.¹¹⁶

113. Ray and Gibbons' framing of this critical race theory concept is a bit distinct from my own: “They are saying that while people living now have a *moral* responsibility to do something about how racism still impacts all of our lives today.” *Id.* (emphasis added).

114. See generally CRITICAL RACE THEORY, *supra* note 90; see also Ray & Gibbons, *supra* note 94 (“[T]hese narratives about [critical race theory] are gross exaggerations of the theoretical framework.”).

115. Ray & Gibbons, *supra* note 94.

116. North Dakota's ban on critical race theory (see Table 2.1) is especially interesting because it *does not* rely on gross mischaracterization of critical race theory to justify its banning. In fact, out of the successful bans, it is one of the most accurate statements of the ideology of critical race theory. The law

Since the proffered concerns regarding critical race theory are unfounded and in bad faith, the next step is to examine the possibilities of an underlying interest right-wing politicians and conservative legislatures may have for enacting the bans on critical race theory.

It is ironic that state legislatures are passing laws which ban public schools from teaching an epistemology that claims the American legal system is founded on white supremacy and systemic racism. This is because the very act of prohibiting students from engaging with critical views on how racism is integrated into our legal system is itself a reflection of white supremacy and systemic racism in the American legal system. In their attempt to quell the impact of critical race theory and challenge its validity, many state legislatures have proved its efficacy and legitimacy.

The irony of these bans could indicate an underlying motive. It is impossible not to see the hypocrisy in state legislatures banning a school of thought which teaches how legal institutions can operate to perpetuate inequality and racism. In doing so, the legislatures themselves create a black box around what is meant to be an open and democratic process. In banning critical race theory, state legislatures are limiting the ability of people to question and critique the actions, intentions, and motivations of their government. As a result, our legal processes are less likely to be challenged and critiqued. Our institutions remain as they are, and as they have been. The status quo is maintained, and those currently in power remain in power.

Thus, the underlying interest of right-wing politicians in limiting the spread of knowledge surrounding critical race theory is their desire to maintain current structures of power, effectively shielding United States institutions from the threat of change. This makes sense, as an inherent tenet of conservatism is opposition to development and change in favor of traditionally established institutions.¹¹⁷ Banning critical race theory not only furthers their political ideology but maintains the structures of power that seated them in positions of influence.

B. Structural Ignorance: Contrived Ignorance as it is Utilized by

simply states that critical race theory is “the theory that racism is not merely the product of learned individual bias or prejudice, but that racism is systemically embedded in American society and the American legal system to facilitate racial inequality.” H.R. 150108, 67th Leg., Spec. Sess. (N.D. 2021). The irony of this law nevertheless passing is palpable.

117. *Conservatism*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/conservatism> [<https://perma.cc/3XPD-6EAV>] (last visited Sept. 25, 2022).

Institutions of Power

Through the recent bans on critical race theory, we can see that agnotology in the form of contrived ignorance has been utilized by many state legislatures. This construction of contrived ignorance can be termed structural ignorance. More generally stated, structural ignorance is contrived ignorance when it is utilized in the context of legislation and lawmaking.

Using the bans on critical race theory as an example, it can be argued that the general driving force behind structural ignorance is highly dependent on the ideology of the institution by which it is being utilized. In the case of right-wing politicians, contrived ignorance is likely utilized to maintain the status quo, and shield institutions from change that could unseat them from positions of power. Perhaps, less dramatically put, structural ignorance is simply a more insidious and underhanded means to fortify institutions and advance ideological viewpoints to the public.

V. WHAT IS HIDING IN THE SHADOWS: A CONCLUSION

Bans on critical race theory are undeniably both a product of racism *and* an instance of contrived ignorance being weaponized by state legislatures. At their core, these bans are nothing more than a reactionary pushback against advancements in the dialogue surrounding race and racism in America. State legislatures that have enacted bans on critical race theory are utilizing contrived ignorance as a method of packaging and selling this reactionary conservative sentiment to the public at large in a palatable manner. In other words, it is a means of convincing the public to support current formations of government and oppose calls for change.¹¹⁸

While it can be tempting to conceptualize these bans solely as an issue of race, to do so would be a faulty assumption. By their very nature, the scope and implications of these laws extend far beyond the confines of race. Many of these laws also include language surrounding sexism, with some even mentioning sexual orientation, and gender identity explicitly.¹¹⁹ Therefore, the critical race theory bans effectively serve as a blueprint for legislation

118. There's nothing wrong with supporting current formations of government so long as the information being used to argue against the proposed change is accurate and factual. As seen by the mischaracterizations of critical race theory used to justify its banning, this is not the case here.

119. See, for example, N.H. REV. STAT. § 193:40(b), which prohibits teaching that “an individual, by virtue of his or her age, sex, *gender identity*, *sexual orientation*, race . . . or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.” (emphasis added).

wanting to stifle education surrounding sexuality, queer theory, gender identity, feminist theory, or any other politicized subject. While these subjects may be divisive, it is essential to discuss in them in academic settings if we want to mold the U.S. into a society which does not perpetuate oppression. These bans and like “[p]olicies attempting to suffocate this much-needed national conversation are an obstacle to the pursuit of an equitable democracy.”¹²⁰ If legislatures continue to weaponize contrived ignorance to pass these censorship-like bans, the only result will be the stagnation of our government’s development, and the stifling of marginalized groups.

120. Ray & Gibbons, *supra* note 94.