

Civil Rights Law, Corporate America,
and the Triumph of Identity Politics

The
ORIGINS
of
WOKE

RICHARD HANANIA



BROADSIDE
BOOKS

THE ORIGINS OF WOKE. Copyright © 2023 by Richard Hanania. All rights reserved. Printed in the United States of America. No part of this book may be used or reproduced in any manner whatsoever without written permission except in the case of brief quotations embodied in critical articles and reviews. For information, address HarperCollins Publishers, 195 Broadway, New York, NY 10007.

HarperCollins books may be purchased for educational, business, or sales promotional use. For information, please email the Special Markets Department at SPsales@harpercollins.com.

Broadside Books™ and the Broadside logo are trademarks of HarperCollins Publishers.

FIRST EDITION

Library of Congress Cataloging-in-Publication Data

Names: Hanania, Richard, author.

Title: The origins of Woke : civil rights law, corporate America, and the triumph of identity politics / Richard Hanania.

Description: New York : HarperCollins Publishers, 2023. | Includes index.

Identifiers: LCCN 2023013172 (print) | LCCN 2023013173 (ebook) | ISBN 9780063237216 (hardcover) | ISBN 9780063237230 (ebook)

Subjects: LCSH: Civil rights—United States. | Corporate governance—Law and legislation—United States. | Corporations—Political aspects—United States. | Social engineering—United States. | Identity politics—United States. | Business and politics. | Republican Party (U.S. : 1854-)

Classification: LCC KF4749 .H345 2023 (print) | LCC KF4749 (ebook) | DDC 342.7308/5—dc23/eng/20230608

LC record available at <https://lccn.loc.gov/2023013172>

LC ebook record available at <https://lccn.loc.gov/2023013173>

ISBN 978-0-06-323721-6

ScoutAutomatedPrintCode

How to Understand Wokeness

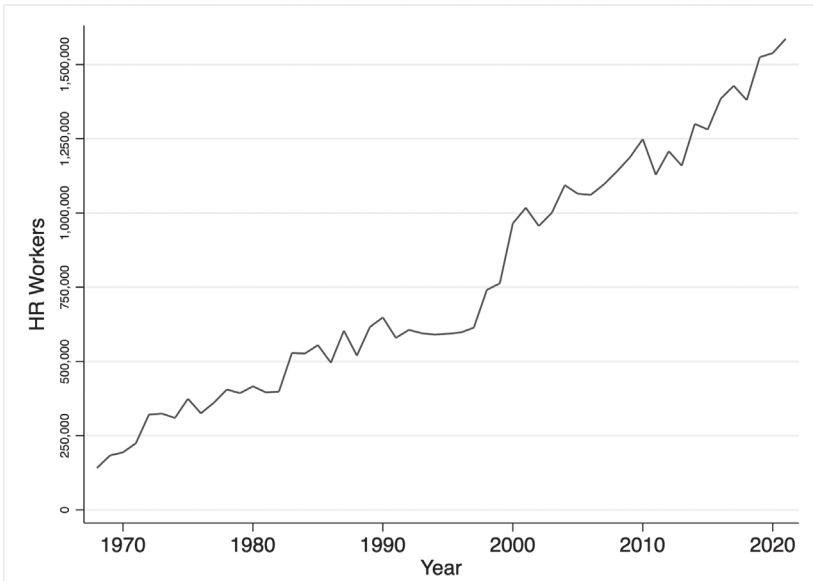
Table 1. Characteristics of the main doctrines of wokeness as law (nonexhaustive list) and legal mechanisms for reform

Doctrine	Legal Basis	Description	Enforcement	Effects	How to Undo
Affirmative action in government contracting and government employment	Executive orders, particularly EO 11246 (contracting) and EO 11478 (federal government)	Forces federal agencies and contractors and subcontractors of a certain size to adopt affirmative action programs, other forms of race- and sex-consciousness	Office of Federal Contract Compliance Programs (OFCCP) in Department of Labor, other agencies	Applies to almost a third of US workforce, mandatory race- and sex-consciousness, "soft quotas" with vague standards and arbitrary government power, rise of HR	Amend EO 11246 and EO 11478 to ban affirmative action instead of requiring it, similar action with state contracting, courts declaring current interpretations unconstitutional
Disparate impact (private sector)	Title VII of Civil Rights Act of 1964 (CRA), <i>Griggs v. Duke Power Company</i> (1971), CRA of 1991	For all employers of a certain size, any practice that has a "disparate impact" on a certain group is presumptively illegal	Equal Employment Opportunity Commission (EEOC), private lawsuits	Similar to affirmative action requirements, but even more arbitrary enforcement since everything has a disparate impact	Court decision that disparate impact doctrine violates Equal Protection Clause by requiring discrimination
Disparate impact (government funding)	Title VI of CRA, Title IX (1972), of questionable legality (<i>Alexander v. Sandoval</i> , 2001), but continues nonetheless	Institutions receiving federal funding cannot discriminate, interpreted to mean disparate impact as with Title VII	Throughout the executive branch, particularly Civil Rights Division of the Department of Justice (CRD) and Office for Civil Rights in the Department of Education (OCR)	Similar to disparate impact in private sector, anti-merit and bureaucratization in education and state and local government; makes fighting crime and school discipline more difficult	Court decision that Title VI of CRA requires intentional discrimination; executive branch reinterpreting law to be consistent with original intent
Anti-harassment law (private sector)	Title VII of CRA	Bans conduct "severe or pervasive" enough based on a protected category	EEOC, private lawsuits	Corporate HR policies that have "zero tolerance" for anything potentially offensive, sanitization of the workplace	Declare aspects unconstitutional as infringements of First Amendment by in effect outlawing private speech
Anti-harassment law, parity in women's sports (education)	Title VI of CRA, Title IX (1972)	Institutions receiving federal funding cannot discriminate, used for social engineering in education	Throughout the executive branch, but particularly OCR	University bureaucratization, regulation of speech and social life	Reining in OCR, court decisions against its interpretation of Title IX

The Standardization of the American Workplace and University

Figure 3.1 shows the number of individuals working in human resources in the United States by year, excluding military employment:

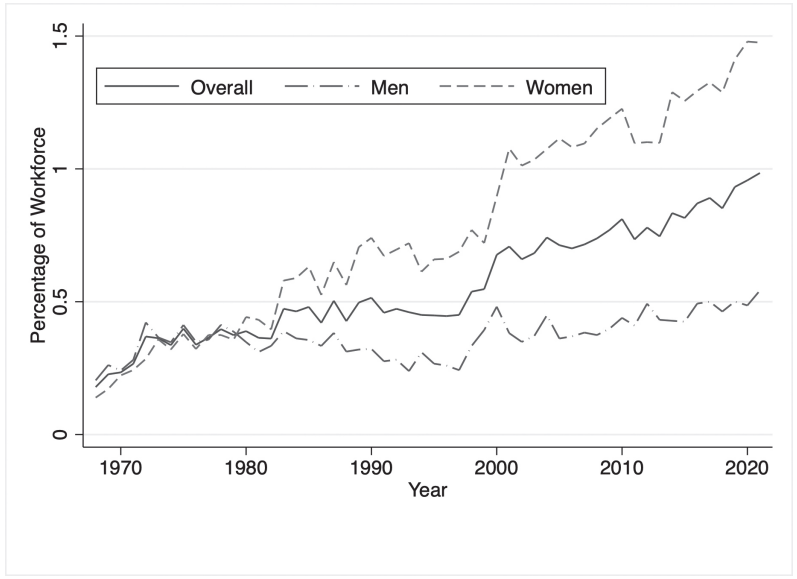
Figure 3.1.



Number of Americans working in human resources, 1968–2021 (non-military).
(Sources: Current Population Survey from IPUMS-CPS, University of Minnesota, www.ipums.org; FRED, <https://fred.stlouisfed.org/series/LNU01000000>.)

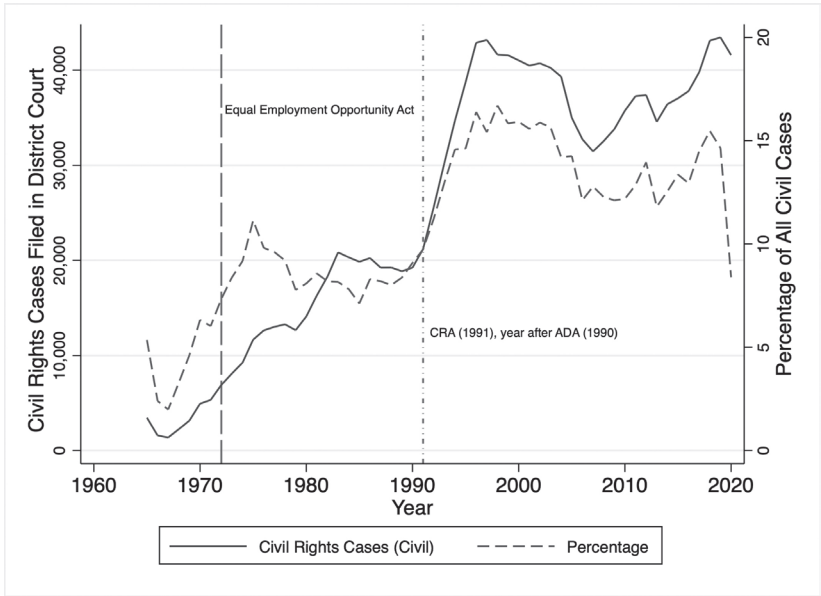
In the 1950s, human resources as a job category barely existed; fewer than 100,000 people were employed in any particular year.⁵ By 1968, the number had risen to 140,000. It reached over 1.5 million in 2021. Because overall numbers may give a misleading picture due to population growth, Figure 3.2 shows the percentage of the workforce employed in human resources by year, from 1968 to 2021, overall and broken down by sex.

Figure 3.2



Human resources as a percentage of the entire workforce, 1968–2021. (Source: Current Population Survey from IPUMS-CPS, University of Minnesota, www.ipums.org.)

Figure 3.3



Civil rights civil cases filed in district court, and percentage of all civil cases that are civil rights cases, 1967–2020.

Figure 3.3 shows the number of civil rights civil cases filed in federal court, both in total and as a percentage of all civil lawsuits, from 1967 to 2020.²⁴ This includes those that require filing a charge with the EEOC first and those that do not.

We see a massive increase, going from a few thousand a year before 1970 to a high of over 43,000 in 2019. From the early 1990s up to 2019, civil rights cases represented between 10 and 16 percent of all civil cases filed in federal court.

Figure 3.4

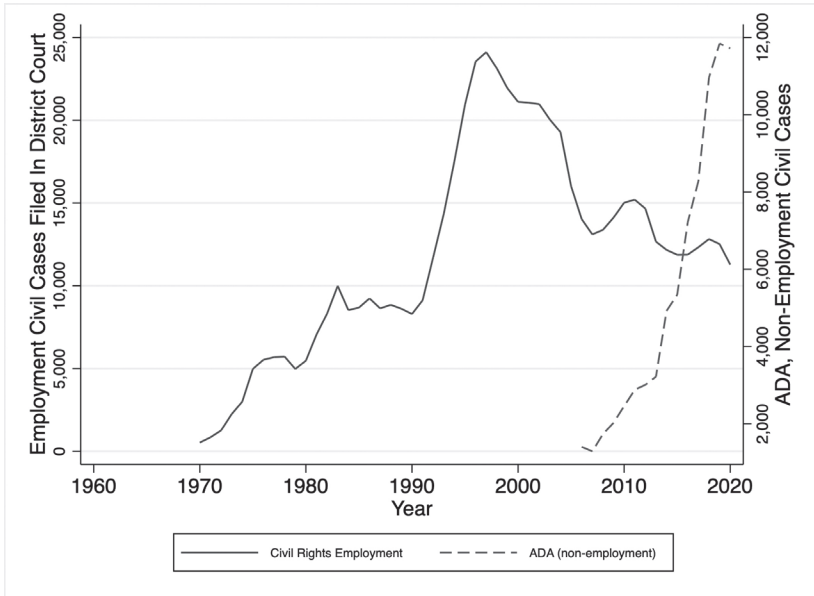
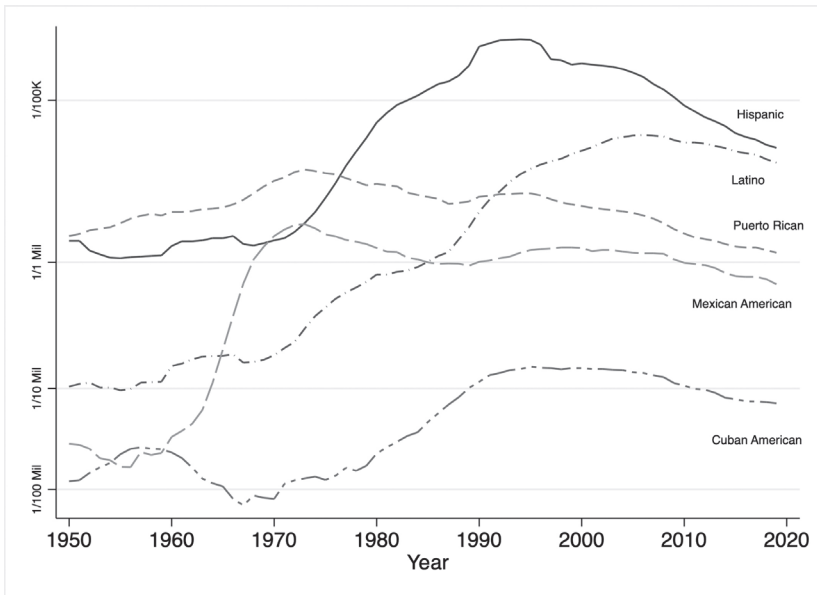


Figure 3.4 shows employment lawsuits filed from 1970 to 2020, and ADA cases beginning in 2006, when the federal government began to count them, up until 2020.

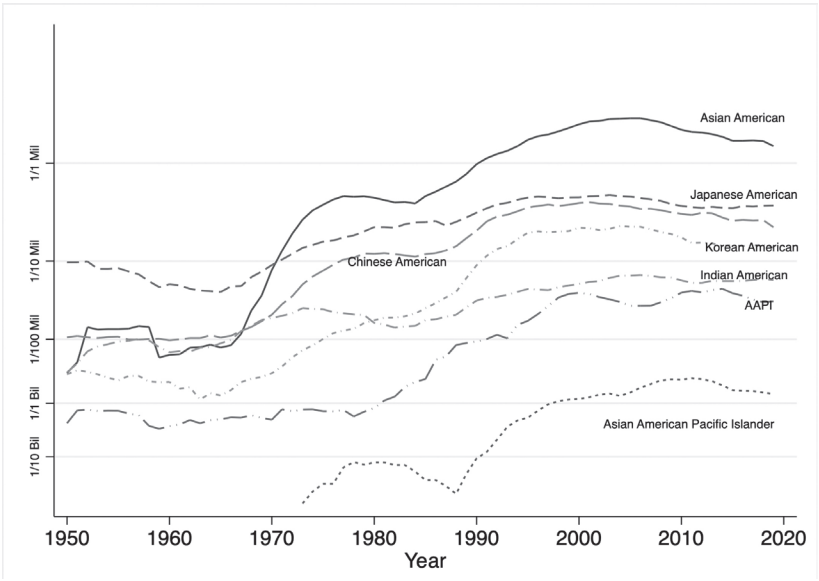
Government as the Creator of New Races and Genders

Figure 4.1



Frequency of phrases in Google n-grams (1950–2019), for “Hispanic” and related terms.

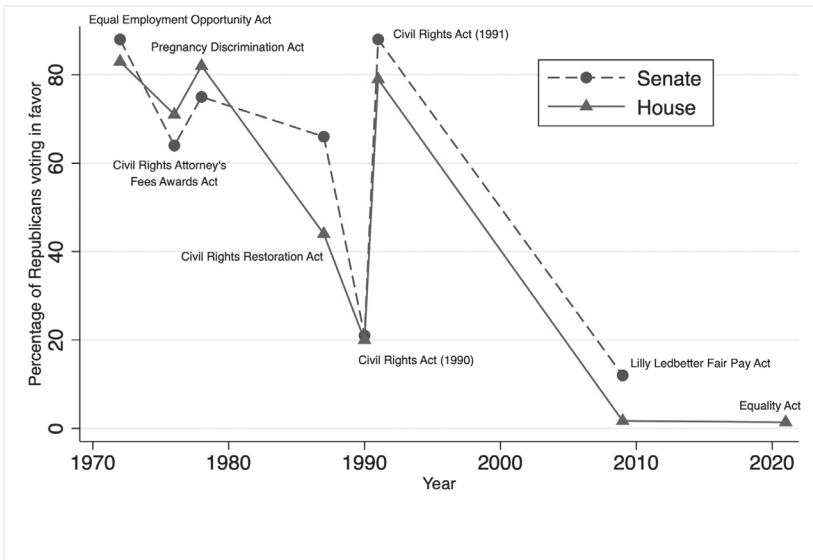
Figure 4.2



Frequency of phrases in Google n-grams (1950–2019), for “Asian American Pacific Islander” and related terms. There were zero uses of “Asian American Pacific Islander” before 1972.

Republicans and Civil Rights Law

Figure 6.1



Percentage of Republicans in each house of Congress voting for eight civil rights bills considered since 1972. Excludes those who did not vote in calculating percentages. The Civil Rights Restoration Act votes refer to the votes to override Reagan's veto, not those taken on the original bill. All bills in the chart passed, except for the Civil Rights Act of 1990, which was vetoed by President George H. W. Bush, and the Equality Act, which was never brought to a vote in the Senate. Each proposed bill included provisions making civil rights laws stronger or more expansive. In general, major civil rights bills have become less ambitious and less common as Republicans have turned against them.

What Is to Be Done?

Table 2. Political change as a product of salience and polarization

	Polarization Low	Polarization High
Salience Low	Nothing happens, maintenance of status quo (2)	Nothing happens, maintenance of status quo (currently wokeness as law) (1)
Salience High	Legislation, executive branch actions, and judicial decisions all possible (3)	Executive branch actions and judicial decisions possible, legislation very difficult, great deal of public rancor about an issue (currently wokeness as culture) (4)

Table 3. An anti-wokeness agenda

Low-Hanging Fruit		
(Little liberal buy-in required)	Executive Branch	Amend EO 11246 and 11478, ban affirmative action instead of requiring it in government hiring and contracting; change regulations requiring goals, timetables, and race- and sex-consciousness and preferences
		Define discrimination as intentional discrimination, not disparate impact, whenever possible
		Change rules for OCR: permanently establish intentional standard of discrimination; remove all statistical standards under Title IX; make discrimination a matter of treatment of individuals, not of systemic issues that require institutional solutions
	Judiciary	Overrule <i>Griggs v. Duke Power Company</i> (1971), on statutory or constitutional grounds
		Restrict reach of harassment law based on the First Amendment
		Declare affirmative action and set-asides illegal under Title VI and Equal Protection Clause (<i>Students for Fair Admissions v. Harvard</i> likely to be decided by the time this book is released)
		Declare OCR social engineering in schools and universities contrary to Title IX
		Revisit <i>Christiansburg Garment Co. v. EEOC</i> (1978), to allow defendants, not just plaintiffs, to more easily collect attorney's fees in civil rights suits
	Red states	Use power of contracting and control over pensions to ban affirmative action and race- and sex-consciousness in firms
		Call for an inventory of race- and sex-conscious programs with an eye to elimination
		Defund diversity bureaucracy within state employment, schools, and the university system; create legal causes of action to deter undesirable behavior
More difficult projects		
(Require liberal buy-in or defeat, or rely on more difficult legal arguments or executive actions)	Congressional action	Defund or take away power from OCR, OFCCP, and EEOC
		Repeal Civil Rights Act of 1991, Civil Rights Restoration Act of 1987
		Federal ban on programs that are race- and sex-conscious
		Remove punitive damages for civil rights lawsuits

	Aggressive executive action	Use OCR to go after schools that engage in reverse discrimination or suppress speech
		Use OCR, EEOC, and OFCCP to attack corporations and local governments that engage in reverse discrimination
		Find ways to go after accreditation bodies pushing identity politics

Acknowledgments

Given that this book is the culmination of over a decade of study and thought on these topics, there are too many people who have influenced my thinking and helped me on this journey to list here. I will mostly focus on thanking those who helped most in the years immediately before publication, as the chain of causation becomes less certain the further one goes back. The idea for the book originally came from a reading group on woke institutions that included Patrick Brown, Connor Harris, Zach Goldberg, Charles Fain Lehman, Megan McArdle, Gabriel Rossman, and Aaron Sibarium. The readings we discussed originally motivated me to write the article “Woke Institutions Is Just Civil Rights Law,” which contained incipient versions of many of the arguments made here. Seeing the reaction to it convinced me that there was widespread interest in hearing more about how we got here and how opponents of wokeness can do more than just complain about what they find distasteful.

I’ve also had important discussions on the topics covered in this work with Bryan Caplan, Gail Heriot, Eric Kaufmann, Michael Lachanski, Dan Morenoff, Steven Pinker, Philippe Lemoine, Vivek Ramaswamy, Sarah Rogers, Alex Nowrasteh, and Chris Rufo. Jonah Davids has done all that I can ask from a research assistant. Tyler Cowen has been perhaps the most influential public supporter of my work, and I will always be grateful for that. The Alan Rupe Foundation provided a grant to help write this book. Michael Howard helped track down data on the rise of human resources. Finally, social media and comments on my Substack have, for better or worse, greatly influenced my thinking on political issues. I

thank all the anons and real names out there who have been part of the never-ending discussion that this book represents a continuation of. My sincerest hope is that it will help move us beyond that discussion and ultimately reshape laws and institutions, away from adherence to ideas and practices that are ultimately poisonous for humanity.

Notes

Introduction

1. Hayek, Friedrich von. 1944. *The Road to Serfdom*. George Routledge & Sons: p. v.

Chapter 1. How to Understand Wokeness

1. “Transcript: Ezra Klein Interviews Ramesh Ponnuru.” Mar 2, 2021. *The New York Times*. <https://www.nytimes.com/2021/03/02/podcasts/ezra-klein-podcast-ramesh-ponnuru-transcript.html>.
2. Caldwell, Christopher. 2020. *The Age of Entitlement: America Since the Sixties*. Simon & Schuster: ch. 8.
3. Rufo, Christopher F. Oct 14, 2021. “Walmart vs. Whiteness.” *City Journal*. <https://www.city-journal.org/walmart-critical-race-theory-training-program>; Xiu, Meimei. Jun 29, 2022. “Harvard Prof. John Comaroff Faces New Allegations of Misconduct in Amended Suit.” *The Harvard Crimson*. <https://www.thecrimson.com/article/2022/6/29/comaroff-amended-complaint/>. Notably, a premise of this lawsuit and related coverage was revealed to be false and fabricated, as detailed in Sibarium, Aaron. Aug 19, 2022. “This Harvard Professor Was Found Guilty in the Press. Court Records Tell a Different Story.” *The Washington Free Beacon*. <https://freebeacon.com/campus/this-harvard-professor-was-found-guilty-in-the-press-court-records-tell-a-different-story/>.
4. D’Agostino, Tom. May 5, 2022. “Linkedin Is on the Hook for \$1.8 Million for Alleged Gender Bias.” *HR Morning*. <https://www.hrmorning.com/news/linkedin-is-on-the-hook-for-1-8-million-for-alleged-gender-bias/>; “B&H Foto Resolves Allegations of Discrimination, Bias, and Harassment with OFCCP.” Oct 13, 2017. Carla Irwin & Associates. <https://carlairwininc.com/blog/bh-foto-resolves-allegations-of-discrimination-bias-and-harassment-with-ofccp/>.
5. Eilperin, Juliet. Dec 30, 2014. “Harvard Settles Title IX Case with Administration, Agrees to Revise Sexual Assault Policies.” *The Washington Post*. <https://www.washingtonpost.com/news/post-politics/wp/2014/12/30/harvard-settles-title-ix-case-with-administration-agrees-to-revise-sexual-assault-policies/>.
6. Pluckrose, Helen, and James Lindsay. 2020. *Cynical Theories: How Activist Scholarship Made Everything About Race, Gender, and Identity—and Why This Harms Everybody*. Pitchstone Publishing: Introduction and ch. 2.
7. Gottfried, Paul. 2022. *Multiculturalism and the Politics of Guilt: Toward a Secular Theocracy*. University of Missouri Press: Introduction.
8. Thernstrom, Abigail M. 1987. *Whose Votes Count?: Affirmative Action and Minority Voting Rights*. Harvard University Press.
9. Seabury, Paul. Feb 1, 1972. “HEW & the Universities.” *Commentary Magazine*: pp. 38–44.
10. Skrentny, John David. 1996. *The Ironies of Affirmative Action: Politics, Culture, and Justice in America*. University of Chicago Press: ch. 5.

11. Graham, Hugh David. 1990. *The Civil Rights Era: Origins and Development of National Policy, 1960–1972*. Oxford University Press: p. 340.
12. Wood, Peter. 2003. *Diversity: The Invention of a Concept*. Encounter Books: pp. 143–56.
13. Graham, *Civil Rights Era*, pp. 34–35.
14. Ibid., ch. 10, conclusion.
15. Skrentny, *Ironies of Affirmative Action*, ch. 4.
16. Wood, *Diversity*, pp. 169–90.
17. Pinker, Steven. 2003. *The Blank Slate: The Modern Denial of Human Nature*. Penguin Books: ch. 18.
18. Pfeiffer, Alex. Sep 8, 2016. “Black Democratic Lawmakers Don’t See Sexism in the Justice System.” *The Daily Caller*. <https://dailycaller.com/2016/09/08/black-democrat-lawmakers-dont-see-sexism-in-the-justice-system/>.
19. Havel, Vaclav. 1978. “The Power of the Powerless,” in Keane, John. 1985. *The Power of the Powerless: Citizens Against the State in Central-Eastern Europe*. M. E. Sharp.
20. Reilly, Wilfred. Sep 15, 2020. “A Fragile Argument.” *Commentary Magazine*. <https://www.commentary.org/articles/wilfred-reilly/white-fragility-fragile-racism-argument/>.
21. As David Azerrad notes in his review of Kendi’s *Stamped from the Beginning*, “Nowhere in his 500-page tome does he ever see racial disparities between Asians and whites. If he did, he would have to conclude that America is in fact an Asian supremacist nation which, based on income and educational attainment, discriminates against whites—unless they are Ashkenazi Jews—and blacks—unless they are Nigerians.” Azerrad, David. Spring 2020. “The Social Justice Endgame.” *Claremont Review of Books*. <https://claremontreviewiewofbooks.com/the-social-justice-endgame/>.
22. Goldberg, Zach. Aug 4, 2020. “How the Media Led the Great Racial Awakening.” *Tablet Magazine*. <https://www.tabletmag.com/sections/news/articles/media-great-racial-awakening>.
23. Paul, James D., and Robert Maranto. Nov 8, 2021. “Other Than Merit: The Prevalence of Diversity, Equity, and Inclusion Statements in University Hiring.” American Enterprise Institute. <https://www.aei.org/research-products/report/other-than-merit-the-prevalence-of-diversity-equity-and-inclusion-statements-in-university-hiring/>.
24. Parloff, Roger. Dec 9, 2015. “Big Business Asks Supreme Court to Save Affirmative Action.” *Fortune*. <https://fortune.com/2015/12/09/supreme-court-affirmative-action/>.
25. Strauss, Valerie. Feb 4, 2020. “University of California Should Keep Requiring SAT or ACT Scores for Admissions, Task Force Says.” *The Washington Post*. <https://www.washingtonpost.com/education/2020/02/04/university-california-should-keep-requiring-sat-or-act-scores-admissions-task-force-says/>.
26. Rasmussen, Leif. Nov 16, 2021. “Increasing Politicization and Homogeneity in Scientific Funding: An Analysis of NSF Grants, 1990–2020.” *Center for the Study of Partisanship and Ideology*. <https://www.cspicenter.com/p/increasing-politicization-and-homogeneity-in-scientific-funding-an-analysis-of-nsf-grants-1990-2020>.
27. Myers, Steven Lee. Oct 24, 2021. “She Is Breaking Glass Ceilings in Space, but Facing Sexism on Earth.” *The New York Times*. <https://www.nytimes.com/2021/10/23/world/asia/china-space-women-wang-yaping.html>.
28. Holder, Josh, and Amy Schoenfeld Walker. Aug 24, 2021. “Many Older Americans Still Aren’t Vaccinated, Making the Delta Wave Deadlier.” *The New York Times*. <https://www.nytimes.com/interactive/2021/08/24/world/vaccines-seniors.html>.
29. Gramlich, Josh. Oct 27, 2021. “What We Know About the Increase in US Murders in 2020.” Pew Research Center. <https://www.pewresearch.org/fact-tank/2021/10/27/what-we-know-about-the-increase-in-u-s-murders-in-2020/>.
30. Bohman, John H., and Thomas J. Mowan. 2021. “Global Crime Trends During COVID-19.” *Nature Human Behaviour* 5: 821–22; Lehman, Charles Fain. Sep 27, 2021. “Denying the Crime Spike.” *City Journal*. <https://www.city-journal.org/third-ways-misdirection-on-violent-crime>.
31. Sowell, Thomas. 2009. *Black Rednecks and White Liberals*. Encounter Books; Sowell, Thomas. 2019. *Discrimination and Disparities*. Hachette UK.

32. Skrentny, John David. 2001. "Republican Efforts to End Affirmative Action: Walking a Fine Line," in Levin, Martin A., Marc Landy, and Martin Shapiro. *Seeking the Center: Politics and Policymaking at the New Century*. Georgetown University Press: 132–71, p. 140.
33. Kiley, Kevin, and Stephen Vaisey. 2020. "Measuring Stability and Change in Personal Culture Using Panel Data." *American Sociological Review* 85(3): 477–506.
34. Perry, Mark J. Dec 13, 2016. "Fortune 500 Firms 1955 v. 2016: Only 12% Remain, Thanks to the Creative Destruction That Fuels Economic Prosperity." American Enterprise Institute. <https://www.aei.org/carpe-diem/fortune-500-firms-1955-v-2016-only-12-remain-thanks-to-the-creative-destruction-that-fuels-economic-prosperity/>.
35. Greer, Tanner. Jul 3, 2021. "Culture Wars Are Long Wars." The Scholar's Stage. <https://scholars-stage.org/culture-wars-are-long-wars/>.

Chapter 2. Lies, Damned Lies, and Civil Rights Law

1. Gold, Michael Evan. 1980. "A Tale of Two Amendments: The Reasons Congress Added Sex to Title VII and Their Implication for the Issue of Comparable Worth." *Duquesne Law Review* 19(3): 453–77, pp. 457–60.
2. Freeman, Jo. 2000. *The Politics of Women's Liberation: A Case Study of an Emerging Social Movement and Its Relation to the Policy Process*. iUniverse: p. 54.
3. Skrentny, John David. 2004. *The Minority Rights Revolution*. Harvard University Press: pp. 112–13.
4. Burstein, Paul. 1998. *Discrimination, Jobs, and Politics: The Struggle for Equal Employment Opportunity in the United States Since the New Deal*. University of Chicago Press: pp. 73–74.
5. Skrentny, *Minority Rights Revolution*, p. 93.
6. *Ibid.*, p. 101.
7. Napolitano, Steven. 1987. "Interpreting the Legislative History of Section 706(g) of Title VII." *Boston College Third World Law Journal* 7(2): 263–76, p. 271.
8. Bovard, James. Mar 1994. "Job-Breakers: The EEOC's Assault on the Workplace." *The American Spectator* 27(3): 32–37, p. 32.
9. Belz, Herman. 1991. *Equality Transformed*. Transaction Publishers: p. 31.
10. Ekins, Emily. Oct 31, 2017. "The State of Free Speech and Tolerance in America." Cato Institute. <https://www.cato.org/survey-reports/state-free-speech-tolerance-america>.
11. "Number of TV Households in America: 1950–1978." 2014. *The American Century*. <https://americancentury.omeka.wlu.edu/items/show/136>.
12. Perlstein, Rick. 2009. *Nixonland: The Rise of a President and the Fracturing of America*. Scribner: p. 334.
13. Glazer, Nathan. 1987. *Affirmative Discrimination: Ethnic Inequality and Public Policy*. Harvard University Press: p. 4.
14. Graham, *Civil Rights Era*, pp. 412–13.
15. *Ibid.*, pp. 333–34.
16. *Chrysler Corp. v. Brown*, 441 US 281, 99 S. Ct. 1705 (1979): pp. 303–07.
17. Lorenzetti, Laura. Feb 10, 2016. "Fortune 500 Companies Are Getting Billions from Federal Small Business Contracts." *Fortune*. <https://fortune.com/2016/02/10/small-business-contract-problems/>.
18. "US Department of Labor Announces Best Year for Compliance Assistance by Office of Federal Contract Compliance Programs." Oct 19, 2020. US Department of Labor. <https://www.dol.gov/newsroom/releases/ofccp/ofccp20201019-0>.
19. This discussion is based on regulations found in 41 CFR § 60–1 and 41 CFR § 60–2.
20. "General Affirmative Action Programs Frequently Asked Questions." Last accessed Aug 29, 2022. Office of Federal Contract Compliance Programs. <https://www.dol.gov/agencies/ofccp/faqs/general-aaps#Q1>.
21. Anderson, Terry H. 2005. *The Pursuit of Fairness: A History of Affirmative Action*. Oxford University Press: p. 103.

22. Kotlowski, Dean J. 2001. *Nixon's Civil Rights: Politics, Principle, and Policy*. Harvard University Press: p. 123.
23. Havel, Vaclav. 1978. "The Power of the Powerless," in Keane, John, ed. 1985. *The Power of the Powerless: Citizens Against the State in Central-Eastern Europe*. M. E. Sharp.
24. Text of the CRA of 1964 can be found at <https://www.ourdocuments.gov/doc.php?flash=false&doc=97&page=transcript>.
25. Belz, *Equality Transformed*, pp. 46–48.
26. This discussion is taken from Graham, *Civil Rights Era*, pp. 149–51.
27. Glazer, *Affirmative Discrimination*, p. 45.
28. Belz, *Equality Transformed*, pp. 28–29.
29. *Ibid.*, pp. 125–28.
30. Graham, *Civil Rights Era*, pp. 384–89.
31. Rivers, Richard R. 1973. "In America, What You Do Is What You Are: The Equal Employment Opportunity Act of 1972." *Catholic University Law Review* 22(2): 455–66, pp. 462–63.
32. Blumrosen, Alfred W. 1971. *Black Employment and the Law*. Rutgers University Press: pp. 58–59.
33. Heriot, Gail, and Alison Somin. 2018. "The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong for Students and Teachers, Wrong on the Law." *Texas Review of Law & Policy* 22: 471–566.
34. Moran, Rachel F. 2005. "Undone by Law: The Uncertain Legacy of *Lau v. Nichols*." *Berkeley La Raza Law Journal* 16(1): 1–10.
35. *Gulino v. Board of Education of the City School District of N.Y.*, 907 F. Supp. 2d 492 (S.D.N.Y. 2013).
36. Heriot, Gail L. 2020. "Title VII Disparate Impact Liability Makes Almost Everything Presumptively Illegal." *NYU Journal of Law & Liberty* 14(1): p. 37.
37. Pierce, Michelle Ridgeway. 1989. "Sexual Harassment and Title VII—A Better Solution." *Boston College Law Review* 4(4): 1071–1101, pp. 1072–74.
38. Volokh, Eugene. 1997. "What Speech Does 'Hostile Work Environment' Harassment Law Restrict?" *Georgetown Law Journal* 85(3): 627–48.
39. "Harassment." Accessed Aug 29, 2022. US Equal Employment Opportunity Commission. <https://www.eeoc.gov/harassment>.
40. Matsakis, Louise. Feb 16, 2018. "Labor Board Rules Google's Firing of James Damore Was Legal." *WIRED*. <https://www.wired.com/story/labor-board-rules-google-firing-james-damore-was-legal/>.
41. Melnick, R. Shep. 2018. *The Transformation of Title IX: Regulating Gender Equality in Education*. Brookings Institution Press: pp. 40–41.
42. For example, the NBA has over one hundred times the revenue of the WNBA, with the latter having never even generated a profit. The very existence of women's professional basketball is something of an economic mystery. Faria, Zachary. Dec 8, 2022. "The 'Pay Gap' Debate Between the NBA and WNBA Is a Joke." *Washington Examiner*. <https://www.washingtonexaminer.com/opinion/the-pay-gap-debate-between-the-nba-and-wnba-is-a-joke>.
43. Melnick, *Transformation of Title IX*, pp. 87–89.
44. *Ibid.*, p. 43.
45. *Ibid.*, pp. 15–16.
46. *Ibid.*, pp. 7–12.
47. *Ibid.*, p. 85.
48. *Ibid.*, p. 78.
49. *Ibid.*, pp. 132–33; Gray, Gary R., and John A. Pelzer. 1995. "The Impact of Title IX on the Discontinuation of NCAA Division I Wrestling Programs." *Journal of Legal Aspects of Sports* 5(2): 117–22.
50. Eisenburg, Jeff. 2022. "Counting Men as Women?: Inside the Fuzzy Math of Title IX

Compliance.” *Yahoo! News*. <https://sports.yahoo.com/counting-men-as-women-inside-the-fuzzy-math-of-title-ix-compliance-132707743.html>.

51. Ibid.
52. Melnick, *Transformation of Title IX*, pp. 187–91.
53. Gersen, Jacob, and Jeannie Suk. 2016. “The Sex Bureaucracy.” *California Law Review* 104(4): 881–948, pp. 897–902.
54. Melnick, *Transformation of Title IX*, pp. 191–96.
55. Gersen and Suk, “The Sex Bureaucracy.”
56. Ibid., p. 907.
57. Ibid., pp. 918–22.
58. Melnick, *Transformation of Title IX*, pp. 206–10.
59. “Questions and Answers on Title IX and Sexual Violence.” Apr 29, 2014. U.S. Department of Education. <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
60. “Notice of Language Assistance: Dear Colleague Letter on Title IX Coordinators.” Apr 24, 2015. U.S. Department of Education. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.
61. Ibid.
62. The Violence Against Women Reauthorization Act of 2013, Pub. L. 113–4, 127 Stat. 54, 90 (2013) (codified at 20 USC § 1092(f)(8)).
63. Gersen and Suk, “The Sex Bureaucracy,” p. 912.
64. Ibid., p. 928.
65. Gersen and Suk, “The Sex Bureaucracy,” pp. 909–10; 20 US Code § 1682.
66. Johnson, KC. Oct. 2017. “The Campus Sex-Crime Tribunals Are Losing.” *Commentary Magazine*. <https://www.commentary.org/articles/kc-johnson/campus-sex-crime-tribunals-losing/>.
67. Sapir, Lior. 2020. “Regulate Now, Explain Later: Understanding the Civil Rights State’s Redefinition of ‘Sex.’” PhD dissertation: ch. 1.
68. Reilly, Kate. Sep 7, 2017. “Betsy DeVos Moves to End Obama’s Guidelines for Campus Sexual Assault Investigations.” *TIME*. <https://time.com/4931796/betsy-devos-title-ix-sexual-assault/>.
69. “Rescinded Policy Guidance.” Last accessed Aug 29, 2022. US Department of Education. <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/respolicy.html>.
70. Melnick, *Transformation of Title IX*, pp. 221–22.
71. “The US Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment.” Jun 23, 2022. US Department of Education. <https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment>.
72. *Buettner-Hartsoe v. Baltimore Lutheran High School Association*, No. RDB-20–3132, 2022 BL 255532 (D. Md., Jul 21, 2022).
73. *Richmond v. J. A. Croson Co.*, 488 US 469, 109 S. Ct. 706 (1989): part III.
74. Unz, Ron. Dec 3, 2013. “Statistics Indicate an Ivy League Asian Quota.” *The New York Times*. <https://www.nytimes.com/roomfordebate/2012/12/19/fears-of-an-asian-quota-in-the-ivy-league/statistics-indicate-an-ivy-league-asian-quota>. It appears that more Asians were admitted after public awareness of the quota issue grew starting around 2012: see VerBruggen, Robert. Apr 28, 2022. “Racial Preferences on Campus: Trends in Asian Enrollment at US Colleges.” Manhattan Institute. <https://www.manhattan-institute.org/verbruggen-racial-preferences-trends-in-asian-enrollment-at-us-colleges>.
75. Wong, Alia. 2018. “Harvard’s Impossible Personality Test.” *The Atlantic*. <https://www.theatlantic.com/education/archive/2018/06/harvard-admissions-personality/563198/>.
76. Wax, Amy L. 2011. “Disparate Impact Realism.” *William & Mary Law Review* 53: 621–712.
77. Dorn, Emma, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg. Dec 8, 2020.

- "COVID-19 and Learning Loss—Disparities Grow and Students Need Help." McKinsey & Company. <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help>.
78. Stolberg, Sheryl Gay, and Erica L. Green. Aug 18, 2021. "The Biden Administration Will Use a Federal Civil Rights Office to Deter States from Banning Universal Masking in Classrooms." *The New York Times*. <https://www.nytimes.com/2021/08/18/us/politics/biden-masks-schools-civil-rights.html>.
 79. Bovard, "Job-Breakers."
 80. Thernstrom, Abigail M. 1987. *Whose Votes Count?: Affirmative Action and Minority Voting Rights*. Harvard University Press.
 81. Bernstein, David E. 2019. "Antidiscrimination Law and the Administrative State: A Skeptic's Look at Administrative Constitutionalism." *Notre Dame Law Review* 94(3): 1381–1415, pp. 1392–94.
 82. Bernstein, David E. 2003. *You Can't Say That!: The Growing Threat to Civil Liberties from Antidiscrimination Laws*. Cato Institute: Introduction; Thorsby, Devon. 2015. "What Your Real Estate Agent Can't Tell You." *U.S. News & World Report*. <https://realestate.usnews.com/real-estate/articles/what-your-real-estate-agent-cant-tell-you>.
 83. Claburn, Thomas. May 9, 2019. "Oracle's Legal Woes Deepen: Big Red Sued (Again) for Age and Medical 'Discrimination.'" *The Register*. https://www.theregister.com/2019/05/09/oracle_sued_age_discrimination/; Scheiber, Noam. Feb 12, 2022. "Making 'Dinobabies' Extinct: IBM's Push for a Younger Work Force." *The New York Times*. <https://www.nytimes.com/2022/02/12/business/economy/ibm-age-discrimination.html>; Baron, Ethan. Jul 23, 2019. "Google Settles 'Age-Discrimination' Class-Action Lawsuit with More than 200 Workers for \$11 Million." *The Seattle Times*. <https://www.seattletimes.com/business/google-settles-age-discrimination-class-action-lawsuit-with-more-than-200-workers-for-11-million/>.
 84. Johnson, Judith J. 2006. "Rescue the Americans with Disabilities Act from Restrictive Interpretations: Alcoholism as an Illustration." *Northern Illinois University Law Review* 27: 169–246, pp. 212–37.
 85. "Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2021." Accessed Aug 29, 2022. US Equal Employment Opportunity Commission. <https://www.eeoc.gov/statistics/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021>.
 86. *PGA Tour, Inc. v. Martin*, 532 US 661, 121 S. Ct. 1879 (2001).
 87. *Jones v. Mayer Co.*, 392 US 409, 88 S. Ct. 2186 (1968).

Chapter 3. The Standardization of the American Workplace and University

1. Mousavizadeh, Philip. Nov 10, 2021. "A 'Proliferation of Administrators': Faculty Reflect on Two Decades of Rapid Expansion." *Yale Daily News*. <https://yaledailynews.com/blog/2021/11/10/reluctance-on-the-part-of-its-leadership-to-lead-yales-administration-increases-by-nearly-50-percent/>.
2. Kundla, Alek. Dec 28, 2021. "Ohio's Wasteful and Divisive Commitment to 'Equity, Diversity and Inclusion.'" *National Review*. <https://www.nationalreview.com/2021/12/ohio-states-wasteful-and-divisive-commitment-to-diversity-equity-and-inclusion/>.
3. E. S. and William McGill. 1972. "Universities in Danger: The United States Office for Civil Rights *Contra* Columbia University." *Minerva* 10(2): 319–22.
4. Melnick, *Transformation of Title IX*, p. 21.
5. Dobbin, Frank. 2009. *Inventing Equal Opportunity*. Princeton University Press: p. 169.
6. *Meritor Sav. Bank v. Vinson*, 477 US 57, 106 S. Ct. 2399 (1986).
7. "Best Practices and Tips for Employees." Last accessed Aug 29, 2022. US Equal Employment Opportunity Commission. <https://www.eeoc.gov/initiatives/e-race/best-practices-and-tips-employees>.

8. Dobbin, Frank, and John R. Sutton. 1998. "The Strength of a Weak State: The Rights Revolution and the Rise of Human Resources Management Divisions." *American Journal of Sociology* 104(2): 441–76.
9. For the growth in private enforcement regimes in the American system and the history of civil rights law in that context, see Farhang, Sean. 2010. *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* Princeton University Press.
10. Heriot, Gail L. 2022. "The Roots of Wokeness: Title VII Damage Remedies as Potential Drivers of Attitudes Toward Identity Politics and Free Expression." San Diego Legal Studies Paper 22–001, *Texas Review of Law & Politics*, forthcoming; pp. 19–21.
11. Farhang, *The Litigation State*, pp. 147–49.
12. Resnick, Jordan L. 1995. "Beyond Mastrobuono: A Practitioners' Guide to Arbitration, Employment Disputes, Punitive Damages, and the Implications of the Civil Rights Act of 1991." *Hofstra Law Review* 23(4): pp. 913–73, p. 917, fn 16; The Americans with Disabilities Act of 1991 states that the remedies available to plaintiffs are the same as under the Civil Rights Act of 1964, for which the Civil Rights Act of 1991 creates punitive damages. For discussion and references to the law, see *Kramer v. Banc of America Securities, LLC*, 355 F.3d 961 (7th Cir., 2004).
13. Belz, *Equality Transformed*, pp. 44–45.
14. Mattera, Philip. January 2019. "Big Business Bias: Employment Discrimination and Sexual Harassment at Large Corporations." Good Jobs First. <https://www.goodjobsfirst.org/wp-content/uploads/docs/pdfs/BigBusinessBias.pdf>.
15. For a discussion of this case, see Hanania, Richard. Oct 12, 2021. "Wokeness as Saddam Statues: The Case of the Tesla Elevator Operator." <https://richardhanania.substack.com/p/wokeness-as-saddam-statues-the-case>.
16. Torchinsky, Rina. Apr 14, 2021. "Judge Cuts the Payout in a Black Former Tesla Contractor's Racial Discrimination Suit." NPR. <https://www.npr.org/2022/04/14/1092804493/telsa-racial-discrimination-lawsuit-15-million>; *Diaz v. Tesla, Inc.*, 3:17-cv-06748-WHO (N.D. Cal. Oct. 1, 2021).
17. "Justice Department Reaches Settlement with Bank of America to Resolve Claims of Disability Discrimination and Compensate Victims." Jul 23, 2020. U.S. Department of Justice. <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-bank-america-resolve-claims-disability-discrimination>.
18. Fitzpatrick, Brian T. "An Empirical Study of Class Action Settlements and Their Fee Awards." *Journal of Empirical Legal Studies* 7(4): 811–46, p. 824.
19. Brimelow, Peter, and Leslie Spencer. Feb 15, 1993. "When Quotas Replace Merit, Everybody Suffers." *Forbes*: pp. 80–102.
20. "Coca-Cola Settles Race Suit." Nov 16, 2021. CNN Money. <https://money.cnn.com/2000/11/16/companies/coke/>.
21. Koenig, Andy. Aug 28, 2016. "Look Who's Getting That Bank Settlement Cash." *The Wall Street Journal*. <https://www.wsj.com/articles/look-whos-getting-that-bank-settlement-cash-1472421204>.
22. See Hersch, Joni, and Jennifer Bennett Shinall. 2015. "Fifty Years Later: The Legacy of the Civil Rights Act of 1964." *Journal of Policy Analysis and Management* 34(2): 424–56, pp. 441–46.
23. "Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2021." Accessed Aug 29, 2022. US Equal Employment Opportunity Commission. <https://www.eeoc.gov/statistics/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021>.
24. In fig. 3.3, civil case totals are from the Statistical Tables of the Federal Judiciary for 1976–2020. For 1965–1975, see Shughart II, William F., and Gokhan R. Karahan. 2004. "Study of the Determinants of Case Growth in US Federal District Courts, Final Report." <https://www.ojp.gov/pdffiles1/nij/grants/204010.pdf>. Civil rights case totals are from the Statistical Tables of the Federal Judiciary for 1976–2020. For the period 1970–1975, they are found at the website of the Federal Judicial Center. For the period 1967–1969, they

are estimated from the same source based on how many cases are closed beginning in 1970. The same methodology is used for calculating employment cases and ADA cases in fig. 3.4.

25. Heriot, “The Roots of Wokeness,” pp. 36–37.
26. The possibility that this could happen was brought up by Gail Heriot in an interview for the *Institutionalized* podcast that can be found at <https://podbay.fm/p/institutionalized/e/1649839500>.
27. Farhang, *The Litigation State*, pp. 173–99.
28. See Miller, Benjamin P. n.d. “Title VII Affirmative Defense in the Real World: Recent Application of *Ellerth/Faragher* and What They Require”: p. 7. https://web.archive.org/web/20160327223342id_/http://www.miller-attorney.com:80/articles/MillerTitleVII.pdf.
29. Ibid.
30. “Best Practices and Resources.” Last accessed Aug 29, 2022. Office of Federal Contract Compliance Programs. <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/resources>.
31. “Best Practices for Fostering Diversity & Inclusion” Last accessed Aug 29, 2022. *Office of Federal Contract Compliance Programs*. <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/hbcu-initiative/best-practices>.
32. “Promising Practices for Preventing Harassment.” Last accessed Aug 29, 2022. US Equal Employment Opportunity Commission. <https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment>.
33. Kalev, Alexandra, Frank Dobbin, and Erin Kelly. 2006. “Best Practices or Best Guesses?: Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies.” *American Sociological Review* 71(4): 589–617, p. 90.
34. Heriot, “The Roots of Wokeness,” pp. 42–44.
35. Ibid., p. 42, fn 117.
36. Lynch, Frederick R. 2017. *The Diversity Machine: The Drive to Change the “White Male Workplace.”* Routledge: pp. 25–27.
37. Al-Gharbi, Musa. Sep 16, 2020. “Diversity-Related Training: What Is It Good For?” *Heterodox: The Blog*. <https://heterodoxacademy.org/blog/diversity-related-training-what-is-it-good-for/>.
38. Ibid.
39. Dobbin, *Inventing Equal Opportunity*, p. 87.
40. Ibid., pp. 95, 115, 122.
41. Ibid., pp. 96, 112–24.
42. I first heard Gabriel Rossman use the term “force multiplier” in this context.
43. Pompeo, Joe. Jun 4, 2020. “New York Times Employees Rebel Against Tom Cotton’s Send-in-the-Troops Op-Ed.” *Vanity Fair*. <https://www.vanityfair.com/news/2020/06/new-york-times-employees-rebel-against-tom-cotton-send-in-the-troops-op-ed>.
44. Yoffe, Emily. Oct. 2019. “I’m Radioactive.” *Reason*. <https://reason.com/2019/08/23/im-radioactive/>.
45. Oliver Darcy. Jun 10, 2022. “The Washington Post Fires Reporter Felicia Sonmez after a Week of [Her] Feuding Publicly with Her Colleagues.” CNN. <https://www.cnn.com/2022/06/09/media/felicia-sonmez-washington-post/index.html>.
46. Wax, “Disparate Impact Realism”; Singal, Jesse. 2021. *The Quick Fix: Why Fad Psychology Can’t Cure Our Social Ills*. Farrar, Straus and Giroux.
47. Epstein, Richard. 1992. *Forbidden Grounds*. University of Chicago Press: p. 289.
48. Graham, Hugh Davis. 2000. “The Civil Rights Act and the American Regulatory State,” in Grofman, Bernard, ed. *Legacies of the 1964 Civil Rights Act*. University of Virginia Press: 43–64, pp. 46–52.
49. Clegg, Roger. Dec 1, 2001. “Disparate Impact in the Private Sector: A Theory Going Hay-

- wire.” American Enterprise Institute: pp. 4–5. <https://www.aei.org/research-products/report/disparate-impact-in-the-private-sector/>.
50. Stoll, Ira. Summer 2022. “Growth in Administrative Staff, Assistant Principals Far Outpaces Teacher Hiring.” Education Next. <https://www.educationnext.org/growth-administrative-staff-assistant-principals-far-outpaces-teacher-hiring/>.
51. Leslie, Larry L., and Gary Rhoades. 1995. “Rising Administrative Costs: Seeking Explanations.” *The Journal of Higher Education* 66(2): 187–212, p. 187.
52. Zywicki, Todd J., and Christopher Koopman. 2017. “The Changing of the Guard: The Political Economy of Administrative Bloat in American Higher Education.” George Mason Law & Economics Research Paper No. 17–12: pp. 14–15.
53. Leslie and Rhoades, “Rising Administrative Costs,” p. 194.
54. Hartocollis, Anemona. Mar 29, 2016. “Colleges Spending Millions to Deal with Sexual Misconduct Complaints.” *The New York Times*. <https://www.nytimes.com/2016/03/30/us/colleges-beef-up-bureaucracies-to-deal-with-sexual-misconduct.html>.
55. Ibid.

Chapter 4. Government as the Creator of New Races and Genders

1. Mora, G. Cristina. 2014. *Making Hispanics: How Activists, Bureaucrats, and Media Constructed a New American*. University of Chicago Press: p. 99.
2. Petri, Alexandra E., and Daniel E. Slotnik. Oct 15, 2021. “Attacks on Asian-Americans in New York Stoke Fear, Anxiety and Anger.” *The New York Times*. <https://www.nytimes.com/2021/02/26/nyregion/asian-hate-crimes-attacks-ny.html>.
3. VerBruggen, “Racial Preferences on Campus.”
4. Unz, Ron. Dec 2012. “The Myth of American Meritocracy.” *The American Conservative*. <https://www.unz.com/wp-content/uploads/2013/09/AmericanMeritocracy.pdf>.
5. “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity.” Oct 30, 1997. Office of Management and Budget. https://obamawhitehouse.archives.gov/omb/fedreg_1997standards.
6. “DIRECTIVE NO. 15: Race and Ethnic Standards for Federal Statistics and Administrative Reporting.” May 12, 1977. Office of Management and Budget. <https://wonder.cdc.gov/wonder/help/populations/bridged-race/directive15.html>.
7. “Arrests by Race and Ethnicity, 2018.” 2018. FBI: UCR. <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-43>; “Annual Demographic Report: Fiscal Year 2018.” 2018. Office of the Director of National Intelligence. https://www.dni.gov/files/documents/EEOD/FY18_IC_Annual_Demographic_Report_V6_ExecSec.pdf.
8. “Admissions Statistics.” Last accessed Aug 29, 2022. Harvard College. <https://college.harvard.edu/admissions/admissions-statistics>.
9. “Undergraduate Student Profile.” Last accessed Aug 29, 2022. Stanford University. <https://facts.stanford.edu/academics/undergraduate-profile/>.
10. “Fast Facts: SAT Scores.” Last accessed Aug 29, 2022. National Center for Education Statistics. <https://nces.ed.gov/fastfacts/display.asp?id=171>; “2021 Annual Diversity Report.” 2021. Google. https://static.googleusercontent.com/media/diversity.google/en/annual-report/static/pdfs/google_2021_diversity_annual_report.pdf?cachebust=2e13d07.
11. Masci, David. Oct 11, 2016. “How Income Varies Among US Religious Groups.” Pew Research Center. <https://www.pewresearch.org/fact-tank/2016/10/11/how-income-varies-among-u-s-religious-groups/>.
12. Discussion in this part of the chapter is based on Skrentny, *Minority Rights Revolution*, ch. 4. See also Graham, Hugh Davis. 2003. *Collision Course: The Strange Convergence of Affirmative Action and Immigration Policy in America*. Oxford University Press: pp. 137–43.
13. Pearson, Henry G. 1966. “Title VII: Reporting and Record Keeping.” *Boston College Law Review* 7: 549–60, p. 552; Anderson, *Pursuit of Fairness*, p. 99.

14. Skrentny, *Ironies of Affirmative Action*, p. 127.
15. Skrentny, *Minority Rights Revolution*, p. 86.
16. Hammerman, Herbert. 1988. "Affirmative Action Stalemate': A Second Perspective." *Public Interest* 93: 130–34, p. 131.
17. "1970 Census." n.d. U.S. Census Bureau. https://www.census.gov/history/pdf/1970_questionnaire.pdf.
18. Mora, *Making Hispanics*, p. 3.
19. Ibid., pp. 25–26.
20. Ibid., pp. 31–36.
21. Ibid., p. 35.
22. Ibid., p. 39.
23. Ibid., pp. 44–45.
24. Ibid., pp. 159–60.
25. Ibid., pp. 50–51.
26. Ibid., pp. 69–74.
27. Ibid., ch. 3.
28. "Census Questions on Race Assailed as Political by Population Experts." May 14, 1978. *The New York Times*. <https://www.nytimes.com/1978/05/14/archives/census-questions-on-race-assailed-as-political-by-population.html>.
29. Mora, *Making Hispanics*, p. 101.
30. Taylor, Paul, Mark Hugo Lopez, Jessica Martínez, and Gabriel Velasco. Apr 4, 2012. "When Labels Don't Fit: Hispanics and Their Views of Identity." Pew Research Center. <https://www.pewresearch.org/hispanic/2012/04/04/when-labels-dont-fit-hispanics-and-their-views-of-identity/>.
31. Lopez, Mark Hugo. Oct 22, 2013. "Three-Fourths of Hispanics Say Their Community Needs a Leader." Pew Research Center. <https://www.pewresearch.org/hispanic/2013/10/22/three-fourths-of-hispanics-say-their-community-needs-a-leader/>.
32. "The Use of 'LatinX' Among Hispanic Voters." n.d. Bendixen & Amandi International. <https://www.politico.com/f/?id=0000017d-81be-dee4-a5ff-efbe74ec0000>.
33. Sowell, Thomas, 1983. *The Economics and Politics of Race: An International Perspective*. William Morrow: p. 187.
34. Bernstein, David E. 2022. *Classified: The Untold Story of Racial Classification in America*. Simon & Schuster: p. 9.
35. Orlans, Harold. 1989. "The Politics of Minority Statistics." *Society* 26(4): 24–25.
36. "The Population of Hawai'i by Race/Ethnicity: US Census 1900–2010." Jun 16, 2011. Native Hawaiian Data Book. <http://www.ohadatabook.com/To1-03-11u.pdf>.
37. Skrentny, *Minority Rights Revolution*, ch. 5.
38. Graham, *Collision Course*, pp. 146–49.
39. "SBA Releases FY 2020 Disaggregated Contracting Data." Dec 1, 2021. US Small Business Administration. <https://www.sba.gov/blog/sba-releases-fy-2020-disaggregated-contracting-data>.
40. "Counting in the Dark: Michael Omi Shows That the Census Has Become a Critical Racial Battleground." Apr 30, 2001. *Colorlines* 12; Bernstein, *Classified*, pp. 23–24.
41. For a discussion of the political activity of white ethnics, see Skrentny, *Minority Rights Revolution*, ch. 9.
42. Ibid., pp. 281–82.
43. Ibid., pp. 287–89.
44. Ibid., pp. 294–95.
45. Bernstein, *Classified*, p. 73.
46. Hanania, Richard. 2021. "Cui Bono?: Partisanship and Attitudes Toward Refugees." *Social Science Quarterly* 102(1): 166–178.
47. Cohn, D'Vera, Eileen Patten, and Mark Hugo Lopez. Aug 11, 2014. "Puerto Rican Population Declines on Island, Grows on US Mainland." Pew Research Center. <https://www.pewresearch.org/hispanic/2014/08/11/puerto-rican-population-declines-on-island-grows-on-us-mainland/>.

- www.pewresearch.org/hispanic/2014/08/11/puerto-rican-population-declines-on-island-grows-on-u-s-mainland/; Gonzalez-Barrera, Ana, and Mark Hugo Lopez. May 1, 2013. "A Demographic Portrait of Mexican-Origin Hispanics in the United States." Pew Research Center. <https://www.pewresearch.org/hispanic/2013/05/01/a-demographic-portrait-of-mexican-origin-hispanics-in-the-united-states/>.
48. See Schultz, Vicki. 2002. "The Sanitized Workplace." *Yale Law Journal* 112(8): 2061–193; p. 2075, fn 20.
 49. Discussion of government policy with regard to discrimination against women in the years after the Civil Rights Act relies on Skrentny, *Minority Rights Revolution*, pp. 111–19.
 50. *Ibid.*, p. 117.
 51. *Peltier v. Charter Day Schools*, No. 20–1001 (4th Cir., Jun 14, 2022).
 52. *Ibid.*, Wynn concurrence, fn 6.
 53. Kaufmann, Eric. May 30, 2022. "Born This Way?: The Rise of LGBT as a Social and Political Identity." Center for the Study of Partisanship and Ideology. <https://www.cspicenter.com/p/born-this-way-the-rise-of-lgbt-as-a-social-and-political-identity>; Stevenson, Betsey, and Justin Wolfers. 2009. "The Paradox of Declining Female Happiness." *American Economic Journal: Economic Policy* 1(2): 190–225. <https://www.nber.org/papers/w14969>.
 54. Melnick, *Transformation of Title IX*, pp. 85–86.
 55. *Parker v. Franklin County Community School Corp.*, 667 F.3d 910 (7th Cir., 2012); Melnick, *Transformation of Title IX*, p. 287.
 56. Melnick, *Transformation of Title IX*, pp. 114–15.
 57. *Wilson v. Southwest Airlines Co.*, 517 F. Supp. 292 (N.D. Tex. 1981).
 58. Campbell, Alexia Fernández. Jun 20, 2019. "These News Anchors Say Their Bosses Are Grooming Younger Women Who Look Like Them to Take Their Jobs." *Vox*. <https://www.vox.com/2019/6/20/18691881/ny1-anchors-sue-age-discrimination>.
 59. Schultz, "The Sanitized Workplace."
 60. Melnick, *Transformation of Title IX*, ch. 11.
 61. Brennan, Megan. Oct 24, 2019. "Record-High 56% of US Women Prefer Working to Homemaking." Gallup. <https://news.gallup.com/poll/267737/record-high-women-prefer-working-homemaking.aspx>.
 62. Rosenfeld, Michael, Rueben J. Thomas, and Sonia Hausen. 2019. "Disintermediating Your Friends: How Online Dating in the United States Displaces Other Ways of Meeting." *PNAS* 116(36): 17753–58, fig. 1.
 63. Ortiz-Ospina, Esteban, and Sandra Tzvetkova. Oct 16, 2017. "Working Women: Key Facts and Trends in Female Labor Force Participation." Our World in Data. <https://ourworldindata.org/female-labor-force-participation-key-facts>.
 64. Liptak, Adam. Jun 15, 2020. "Civil Rights Law Protects Gay and Transgender Workers, Supreme Court Rules." *The New York Times*. <https://www.nytimes.com/2020/06/15/us/gay-transgender-workers-supreme-court.html>.
 65. Kaufmann, "Born This Way?"
 66. Sailer, Steve. Jul 8, 2012. "Diversity Before Diversity: James Jesus Angleton." *iSteve*. <https://isteve.blogspot.com/2012/07/diversity-before-diversity-james-jesus.html>; Sailer, Steve. Jan 19, 2014. "Diversity Before Diversity: Oklahoma's 1907 Senators." *The Unz Review*. <https://www.unz.com/isteve/diversity-before-diversity-oklahomas/>; Sailer, Steve. Jul 6, 2012. "Diversity Before Diversity: Duke Kahanamoku." *iSteve*. <https://isteve.blogspot.com/2012/07/diversity-before-diversity-duke.html>.
 67. Fuller, Thomas. Feb 27, 2021. "He Came from Thailand to Care for Family. Then Came a Brutal Attack." *The New York Times*. <https://www.nytimes.com/2021/02/27/us/asian-american-hate-crimes.html>.
 68. Naylor, Brian. Nov 23, 2020. "Alejandro Mayorkas, Biden's Pick for DHS Head, Would Be 1st Latino in Post." NPR. <https://www.npr.org/sections/biden-transition-updates/2020/11/23/938027626/alejandro-mayorkas-bidens-pick-for-dhs-head-would-be-first-latino-in-post>.

69. “Best Practices for Fostering Diversity & Inclusion.” Last accessed Aug 29, 2022. Office of Federal Contract Compliance Programs. <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/hbcu-initiative/best-practices>.

Chapter 5. Social Engineering as a Cause of Stagnation, Ennui, and Social Strife

1. On the ubiquity and universality of ethnic differences in outcomes, see Sowell, *Discrimination and Disparities*.
2. Ibid., pp. 179–245.
3. Farron, “Prejudice Is Free,” 231–38.
4. Ibid.
5. Fukuyama, Francis. 2011. *The Origins of Political Order: From Prehuman Times to the French Revolution*. Farrar, Straus and Giroux.
6. Hoogenboom, Ari. 1959. “The Pendleton Act and the Civil Service.” *The American Historical Review* 64(2): 301–18, p. 302.
7. Jenckes, Thomas E. 1868. “The Civil Service Report of Mr. Jenckes, of Rhode Island, from the Joint Select Committee on Retrenchment, Made to the House of Representative of the United States, May 14, 1868.” US Government Printing Office: p. 13.
8. The text of the Pendleton Act is available on the website of the National Archives, at <https://www.archives.gov/milestone-documents/pendleton-act>.
9. Hoogenboom, “The Pendleton Act,” p. 303.
10. Ibid., p. 304.
11. Ibid., p. 317.
12. For discussion of this point, see Wax, “Disparate Impact Realism,” pp. 637–44.
13. Ibid., pp. 644–64.
14. Belz, *Equality Transformed*, p. 28.
15. Berns, Walter. May 1, 1981. “Let Me Call You Quota, Sweetheart.” American Enterprise Institute. <https://www.aei.org/articles/let-me-call-you-quota-sweetheart/>.
16. Belz, *Equality Transformed*, p. 119.
17. “Federal Civil Rights Enforcement: A Report of the United States Commission on Civil Rights.” Sep 1970. US Commission on Civil Rights: p. 81–84. <https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/cr12en2.pdf>.
18. Belz, *Equality Transformed*, pp. 124–26.
19. Malbin, Michael J. Sep 29, 1973. “Employment Report/Proposed Federal Guidelines on Hiring Could Have Far-reaching Impact.” *National Journal*: 1429–34.
20. Belz, *Equality Transformed*, p. 127.
21. Quoted in Glazer, *Affirmative Discrimination*, p. 55.
22. Belz, *Equality Transformed*, pp. 127–28.
23. Berns, “Let Me Call You Quota.”
24. Rein, Lisa. Apr 2, 2015. “For Federal-Worker Hopefuls, the Civil Service Exam Is Making a Comeback.” *The Washington Post*. <https://www.washingtonpost.com/news/federal-eye/wp/2015/04/02/for-federal-worker-hopefuls-the-civil-service-exam-is-making-a-comeback/>.
25. Bovard, James. Mar 1994. “Job-Breakers: The EEOC’s Assault on the Workplace.” *The American Spectator*: pp. 32–37.
26. Greenlaw, Paul S., and Sanne S. Jensen. 1996. “Race-Norming and the Civil Rights Act of 1991.” *Public Personnel Management* 25(1): 13–24.
27. Lasley, James. 2012. *Los Angeles Police Department Meltdown: The Fall of the Professional-Reform Model of Policing*. CRC Press: pp. 109–10.
28. Associated Press. Mar 23, 2022. “Army Eases Fitness Test Standards for Women, Older Troops.” *U.S. News & World Report*. <https://www.usnews.com/news/politics/articles/2022-03-23/army-eases-fitness-test-standards-for-women-older-troops>.

29. Belz, *Equality Transformed*, p. 123.
30. Wayt, Theo. Mar 15, 2022. "Silicon Valley Firm Apologizes After Asking Job Applicants for IQ Scores." *New York Post*. <https://nypost.com/2022/03/15/silicon-valley-firm-apologizes-after-asking-applicants-for-iq-scores/>.
31. Wax, "Disparate Impact Realism," pp. 648–50, 672.
32. *Ibid.*, pp. 642–44, 655–56.
33. Ramey, Garey, and Valerie A. Ramey. Mar 2010. "The Rug Rat Race." Brookings Institution. https://www.brookings.edu/wp-content/uploads/2010/03/2010a_bpea_ramey.pdf.
34. The discussion on happiness research in this paragraph is based on the discussion in Stephens-Davidowitz, Seth. 2022. *Don't Trust Your Gut: Using Data to Get What You Really Want in Life*. Dey Street Books: ch. 8 and ch. 9.
35. *Dobbs v. Jackson Women's Health Organization*, No. 19–1392, 597 US ____ (2022). See Part II.D.3 of the opinion.
36. Leiter, Brian. 2012. *Why Tolerate Religion?* Princeton University Press.
37. Graf, Nikki. Feb 25, 2019. "Most Americans Say Colleges Should Not Consider Race or Ethnicity in Admissions." Pew Research Center. <https://www.pewresearch.org/fact-tank/2019/02/25/most-americans-say-colleges-should-not-consider-race-or-ethnicity-in-admissions/>.
38. *Davis v. Monsanto Chemical Co.*, 858 F.2d 345 (6th Cir., 1988).
39. Dunbar, Robin I. M. 1998. "The Social Brain Hypothesis." *Evolutionary Anthropology* 6(5): 178–190.
40. Schumpeter, Joseph A. 1942. *Capitalism, Socialism and Democracy*. Harper Torchbooks: p. 83.
41. Becker, Gary S. 2010. *The Economics of Discrimination*. University of Chicago Press.
42. Jeste, Dilip V., Ellen E. Lee, and Stephanie Cacioppo. 2020. "Battling the Modern Behavioral Epidemic of Loneliness: Suggestions for Research and Interventions." *JAMA Psychiatry* 77(6): 553–54.
43. Wee, Sui-Lee, and Raymond Zhong. Sep 1, 2021. "After Proudly Celebrating Women, Alibaba Faces Reckoning Over Harassment." *The New York Times*. <https://www.nytimes.com/2021/09/01/technology/china-alibaba-rape-metoo.html>.
44. Cheng, J. Yo-Jud, and Boris Groysberg. Jan 8, 2020. "How Corporate Cultures Differ Around the World." *Harvard Business Review*. <https://hbr.org/2020/01/how-corporate-cultures-differ-around-the-world>.
45. Boxell, Levi, Matthew Gentzkow, and Jesse M. Shapiro. 2022. "Cross-Country Trends in Affective Polarization." *The Review of Economics and Statistics* 1(60).
46. Klein, Ezra. 2020. *Why We're Polarized*. Simon & Schuster.
47. Abramowitz, Alan, and Jennifer McCoy. 2019. "United States: Racial Resentment, Negative Partisanship, and Polarization in Trump's America." *The Annals of the American Academy of Political and Social Science* 681(1): 137–56.
48. Perlstein, *Nixonland*, Preface and ch. 1.
49. See, e.g., Gilens, Martin. 1995. "Racial Attitudes and Opposition to Welfare." *The Journal of Politics* 57(4): 994–1014; Sears, David O., Richard R. Lau, Tom R. Tyler, and Harris M. Allen Jr. 1980. "Self-interest vs. Symbolic Politics in Policy Attitudes and Presidential Voting." *American Political Science Review* 74(3): 670–84; Gilens, Martin. 1996. "Race Coding' and White Opposition to Welfare." *American Political Science Review* 90(3): 593–604; Hawley, George, and Richard Hanania. Nov 29, 2020. "The National Populist Illusion: Why Culture, Not Economics, Drives American Politics." Center for the Study of Partisanship and Ideology. <https://www.cspicenter.com/p/the-national-populist-illusion-why-culture-not-economics-drives-american-politics>.
50. Enders, Adam M. 2021. "A Matter of Principle?: On the Relationship Between Racial Resentment and Ideology." *Political Behavior* 43(2): 561–84.
51. For a less biased take on the data, see Hawley and Hanania, "The National Populist Illusion."

52. Anderson, *Pursuit of Fairness*, pp. 116–27.
53. See “Affirmative Action on the Ballot.” Last accessed Aug 30, 2022. Ballotpedia. https://ballotpedia.org/Affirmative_action_on_the_ballot. This analysis excludes two referenda listed on the page as of February 2021 because they did not deal with affirmative action. One was a successful Colorado 1992 initiative that rejected sexual orientation as a protected class in the state, and the other a failed 2003 California initiative to completely do away with all racial classification in public education, public employment, and government contracting.
54. “‘EEO Is the Law’ Poster.” Last accessed Aug 30, 2022. US Equal Employment Opportunity Commission. <https://www.eeoc.gov/employers/eeo-law-poster>.
55. Chait, Jonathan. Feb 8, 2022. “The Left Is Gaslighting Asian Americans About College Admissions.” *New York Magazine*. <https://nymag.com/intelligencer/2022/02/the-left-is-gaslighting-asian-americans-on-school-admissions.html>.
56. Goldberg, Jonah. Apr 2, 2016. “Trump’s Lies Are a Loyalty Test for His Followers.” *National Review*. <https://www.nationalreview.com/g-file/donald-trump-michelle-fields-corey-lewandowski-lies-followers/>; Parker, Ashley, and Marianna Sotomayor. May 2, 2021. “For Republicans, Fealty to Trump’s Election Falsehood Becomes Defining Test.” *The Washington Post*. https://www.washingtonpost.com/politics/republicans-trump-election-falsehood/2021/05/01/7bd380ao-a921-11eb-8c1a-56f0cb4ff3b5_story.html.
57. Anderson, *Pursuit of Fairness*, pp. 105–6.
58. Kotlowski, *Nixon’s Civil Rights*, pp. 127–30.
59. Sowell, Thomas. 2005. *Affirmative Action Around the World: An Empirical Study*. Yale University Press.

Chapter 6. Republicans and Civil Rights Law

1. Hanson, Robin. Mar 13, 2019. “To Oppose Polarization, Tug Sideways.” *Overcoming Bias*. <https://www.overcomingbias.com/2019/03/tug-sideways.html>.
2. For a summary, see Bazelon, Simon, and Matthew Yglesias. Jun 21, 2021. “The Rise and Importance of Secret Congress.” *Slow Boring*. <https://www.slowboring.com/p/the-rise-and-importance-of-secret>.
3. Ahmari, Sohrab. May 29, 2019. “Against David French-ism.” *First Things*. <https://www.firstthings.com/web-exclusives/2019/05/against-david-french-ism>.
4. Soave, Robbie. Apr 21, 2021. “Why the Conservative War on Woke Capital Is Doomed to Fail.” *Reason*. <https://reason.com/2021/04/21/woke-capital-conservatives-regulate-rich-and-hanania/>.
5. Hanania, Richard. Winter 2021. “The Weakness of Conservative Anti-Wokeness.” *American Affairs*. <https://americanaffairsjournal.org/2021/11/the-weakness-of-conservative-anti-wokeness/>; Hanania, Richard. Feb 23, 2022. “Conservatives Are Walking into a Trap on Antitrust.” *Newsweek*. <https://www.newsweek.com/conservatives-are-walking-trap-anti-trust-opinion-1681927>.
6. “Text of Goldwater Speech on Rights.” Jun 19, 1964. *The New York Times*. <https://www.nytimes.com/1964/06/19/archives/text-of-goldwater-speech-on-rights.html>.
7. Har, Janie. Nov 4, 2020. “Politically Liberal California Rejects Affirmative Action.” AP News. <https://apnews.com/article/race-and-ethnicity-campaigns-san-francisco-college-admissions-california-4c56c600c86f37289e435be85695872a>.
8. Bazelon, Simon, and David Shor. Sep 28, 2021. “A Permanent CTC Expansion with a Sharper Means-Test Would Protect Poor Kids Better and Be More Popular.” *Slow Boring*. <https://www.slowboring.com/p/a-permanent-ctc-expansion-with-a>.
9. Greenberg, Stanley B. Mar 25, 2022. “The Real Lesson for All Factions of the Democratic Party.” *The American Prospect*. <https://prospect.org/politics/real-lesson-for-all-factions-of-the-democratic-party/>.

10. Saad, Lydia. Jul 30, 2021. "Americans' Confidence in Racial Fairness Waning." Gallup. <https://news.gallup.com/poll/352832/americans-confidence-racial-fairness-waning.aspx>.
11. Cited in Wolters, Raymond. 1996. *Right Turn: William Bradford Reynolds, the Reagan Administration, and Black Civil Rights*. Routledge: Introduction.
12. Lochhead, Carolyn. Nov 4, 2004. "Gay Marriage: Did Issue Help Re-Elect Bush?" *SFGate*. <https://www.sfgate.com/news/article/GAY-MARRIAGE-Did-issue-help-re-elect-Bush-2677003.php>.
13. Block, M., and S. Twist. 1994. "Report Card on Crime and Punishment." US Department of Justice. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/report-card-crime-and-punishment>.
14. Eskridge, William N., Jr. 1991. "Reneging on History?: Playing the Court/Congress/President Civil Rights Game." *California Law Review* 79(3): 613–84, pp. 618–23.
15. Perlstein, *Nixonland*, ch. 6.
16. Kotlowski, *Nixon's Civil Rights*, p. 7.
17. See Teles, Steven M. 2012. *The Rise of the Conservative Legal Movement*. Princeton University Press.
18. Yalof, David Alistair. 2001. *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees*. University of Chicago Press: pp. 97–99.
19. Melnick, *Transformation of Title IX*, pp. 39–41.
20. Graham, *Civil Rights Era*, p. 340; Skrentny, *Ironies of Affirmative Action*, ch. 7.
21. Skrentny, *Ironies of Affirmative Action*, ch. 3, ch. 5.
22. Cohen, Alex, and John F. Kowal. Mar 19, 2019. "Is the GOP Warming Up to the Equal Rights Amendment?" <https://www.brennancenter.org/our-work/analysis-opinion/gop-warming-equal-rights-amendment>.
23. Teles, *Rise of the Conservative Legal Movement*.
24. Wolters, *Right Turn*, ch. 1.
25. Dobbin, *Inventing Equal Opportunity*, pp. 136–37; DuRivage, Virginia. 1985. "The OFCCP Under the Reagan Administration: Affirmative-Action in Retreat." *Labor Law Journal* 36(6): 360–68, pp. 364–65.
26. DuRivage, "The OFCCP Under the Reagan Administration," p. 364.
27. On Reagan's second term, see Wolters, *Right Turn*, ch. 13.
28. "Son of Bob Jones." Feb 19, 1986. *The Washington Post*. <https://www.washingtonpost.com/archive/politics/1986/02/19/son-of-bob-jones/c5fe1e76-d6d9-40b4-8fc1-f3f909f402fc/>.
29. Melnick, *Transformation of Title IX*, p. 254.
30. Graham, Hugh Davis. 1998. "The Storm Over Grove City College: Civil Rights Regulation, Higher Education, and the Reagan Administration." *History of Education Quarterly* 38(4): 407–29, pp. 408–9, 422.
31. See, e.g., Walker, Dana. Jan 15, 1986. "Meese Says Affirmative Action Agreement Near." UPI. <https://www.upi.com/Archives/1986/01/15/Meese-says-affirmative-action-agreement-near/8154506149200/>; "Son of Bob Jones."
32. Eskridge, Jr., "Reneging on History?" p. 633.
33. Holmes, Steven A. Oct 23, 1990. "President Vetoes Bill on Job Rights; Showdown Is Set." *The New York Times*. <https://www.nytimes.com/1990/10/23/us/president-vetoes-bill-on-job-rights-showdown-is-set.html>.
34. Heriot, "The Roots of Wokeness," p. 32.
35. Anderson, *Pursuit of Fairness*, pp. 211–12.
36. "Foes Pledge to End 'Affirmative Racism.'" Feb 13, 1997. *Deseret News*. <https://www.deseret.com/1997/2/13/19294912/foes-pledge-to-end-affirmative-racism>.
37. Merida, Kevin. Jul 29, 1995. "Within GOP, Conflicts on Affirmative Action." *The Washington Post*. <https://www.washingtonpost.com/archive/politics/1995/07/29/within-gop-conflicts-on-affirmative-action/56168550-bad7-42bb-b973-02387af26e10/>.

38. Merida, Kevin. Jul 21, 1995. "Senate Rejects Gramm Bid to Bar Affirmation [sic] Action Set-Asides." *The Washington Post*. <https://www.washingtonpost.com/archive/politics/1995/07/21/senate-rejects-gramm-bid-to-bar-affirmation-action-set-asides/f66a3755-21ba-44e3-b4dd-e1a0c7819013/>.
39. "Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundred Fourth Congress Pursuant to Clause 1(D) Rule XI of the Rules of the House of Representatives." Jan 2, 1997. GovInfo. <https://www.govinfo.gov/content/pkg/CRPT-104hrpt879/html/CRPT-104hrpt879.htm>.
40. Broder, David S. Jul 22, 1995. "Kemp Says GOP Candidates Wrong on Affirmative Action." *The Washington Post*. <https://www.washingtonpost.com/archive/politics/1995/07/22/kemp-says-gop-candidates-wrong-on-affirmative-action/72820c28-397c-4cb1-bd8d-5292065ff2e4/>.
41. "Bush's Statement on Affirmative Action." Jan 15, 2003. *The New York Times*. <https://www.nytimes.com/2003/01/15/politics/bushs-statement-on-affirmative-action.html>.
42. Songer, Michael J. 2005. "Decline of Title VII Disparate Impact: The Role of the 1991 Civil Rights Act and the Ideologies of Federal Judges." *Michigan Journal of Race & Law* 11: 247–73.
43. The version passed by the Senate was then adopted by voice vote in the House.
44. Hare, Christopher, Keith T. Poole, and Howard Rosen. Feb 13, 2014. "Polarization in Congress Has Risen Sharply. Where Is It Going Next?" *The Washington Post*. <https://www.washingtonpost.com/news/monkey-cage/wp/2014/02/13/polarization-in-congress-has-risen-sharply-where-is-it-going-next/>; Khazatsky, Andrei. 2022. "The Rise of Political Polarization and Partisanship in the US." *The UNISVerse*. <https://theunisverse.com/2031/features/the-rise-of-political-polarization-and-partisanship-in-the-u-s/>.
45. Andris, Clio, et al. 2015. "The Rise of Partisanship and Super-Cooperators in the US House of Representatives." *PLOS ONE* 10(4).
46. For this trend in the U.S. as part of a global phenomenon, see Gethin, Amory, Clara Martínez-Toledano, and Thomas Piketty. 2022. "Brahmin Left Versus Merchant Right: Changing Political Cleavages in 21 Western Democracies, 1948–2020." *The Quarterly Journal of Economics* 137(1): 1–48.
47. See Hanania, Richard. Nov 1, 2021. "Liberals Read, Conservatives Watch TV." <https://richardhanania.substack.com/p/liberals-read-conservatives-watch>; Hanania, Richard. Oct 22, 2022. "A Psychological Theory of the Culture War." <https://richardhanania.substack.com/p/a-psychological-theory-of-the-culture>.
48. Melnick, *Transformation of Title IX*, ch. 2, figs. 2–2, 2–4.
49. Steinhauer, Jennifer. Dec 4, 2012. "Despite Bob Dole's Wish, Republicans Reject Disabilities Treaty." *The New York Times*. <https://www.nytimes.com/2012/12/05/us/despite-doles-wish-gop-rejects-disabilities-treaty.html>.
50. 117th Congress (2021–2022). n.d. "H.R.5—Equality Act." Congress.gov. <https://www.congress.gov/bill/117th-congress/house-bill/5?q=%7B%22search%22%3A%5B%22equality+act%22%5D%7D&s=1&r=3>.
51. Melnick, *Transformation of Title IX*, pp. 247–51.
52. Wolters, *Right Turn*, ch. 5.
53. Hawley and Hanania, "The National Populist Illusion."
54. See Thoreson, Ryan. Jan 8, 2021. "Trump Administration Again Weakens LGBT Protections." Human Rights Watch. <https://www.hrw.org/news/2021/01/08/trump-administration-again-weakens-lgbt-protections>.
55. See Gersen, Jeanie Suk. May 16, 2020. "How Concerning Are the Trump Administration's New Title IX Regulations?" *The New Yorker*. <https://www.newyorker.com/news/our-columnists/how-concerning-are-the-trump-administrations-new-title-ix-regulations>.
56. See Dorman, Sam. Sep 2, 2020. "Chris Rufo Calls on Trump to End Critical Race Theory 'Cult Indoctrination' in Federal Government." Fox News. <https://www.foxnews.com/politics/chris-rufo-race-theory-cult-federal-government>; Meckler, Laura, and Josh Dawsey.

- Jun 21, 2021. “Activist Christopher Rufo Fuels GOP’s Critical Race Theory Fight.” *The Washington Post*. <https://www.washingtonpost.com/education/2021/06/19/critical-race-theory-rufo-republicans/>.
57. Meckler, Laura, and Devlin Barrett. Jan 5, 2021. “Trump Administration Seeks to Undo Decades-Long Rules on Discrimination.” *The Washington Post*. https://www.washingtonpost.com/education/civil-rights-act-disparate-impact-discrimination/2021/01/05/4f57001a-4fc1-11eb-bda4-615aaefdo555_story.html.
 58. Skrentny, “Republican Efforts to End Affirmative Action,” p. 148.
 59. Reilly, Wilfred. 2019. *Hate Crime Hoax: How the Left Is Selling a Fake Race War*. Simon & Schuster.
 60. See “How Popular Is Joe Biden?” *FiveThirtyEight*. <https://projects.fivethirtyeight.com/biden-approval-rating/>.

Chapter 7. What Is to Be Done?

1. Link, Devon. Jul 9, 2020. “Fact Check: Sex Between Police Officers and Their Detainees Isn’t Illegal in Many States.” *USA Today*. <https://www.usatoday.com/story/news/fact-check/2020/07/09/fact-check-police-detainee-sex-not-illegal-many-states/5383769002/>.
2. “Statistics and Historical Comparison.” Accessed Sep 2, 2022. GovTrack. <https://www.govtrack.us/congress/bills/statistics>; “Executive Orders.” Accessed Sep 2, 2022. The American Presidency Project. <https://www.presidency.ucsb.edu/statistics/data/executive-orders>.
3. “About the Supreme Court.” Accessed Sep 2, 2022. U.S. Courts. <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-re-sources/about>.
4. Caldwell, Christopher. 2020. *The Age of Entitlement: America Since the Sixties*. Simon & Schuster: ch. 8.
5. Heriot, “Title VII Disparate Impact Liability,” pp. 42–43.
6. Gerstein, Josh, and Ximena Bustillo. Sep 24, 2021. “DOJ Forgoes Appeal of Order Blocking Money for Minority Farmers.” *Politico*. <https://www.politico.com/news/2021/08/24/doj-appeal-minority-farmers-506820>.
7. Teles, Steven M. 2012. *The Rise of the Conservative Legal Movement*. Princeton University Press: ch. 1.
8. Meckler, Laura, and Devlin Barrett. Jan 3, 2019. “Trump Administration Considers Rollback of Anti-Discrimination Rules.” *The Washington Post*. https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874fiac36_story.html.
9. Heriot, “Title VII Disparate Impact Liability,” pp. 99–103.
10. Sullivan, Charles A. 2003. “The World Turned Upside Down: Disparate Impact Claims by White Males.” *Northwest University Law Review* 98(4): 1505–66, p. 1546.
11. For arguments regarding the unconstitutionality of disparate impact based on discrimination against whites and the broad delegation of authority, see Heriot, “Title VII Disparate Impact Liability,” pp. 143–69.
12. “The US Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment.” Jun 23, 2022. US Department of Education. <https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment>.
13. See “US Department of Labor Announces Best Year for Compliance Assistance by Office of Federal Contract Compliance Programs.” Oct 19, 2021. US Department of Labor. <https://www.dol.gov/newsroom/releases/ofccp/ofccp2021019-0>; “Federal Civilian Employment.” Sep 2017. U.S. Office of Personnel Management. <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/>; Hill, Fiona. May 27, 2020. “Public Ser-

- vice and the Federal Government.” Brookings Institution. <https://www.brookings.edu/policy2020/votervital/public-service-and-the-federal-government/>.
14. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 US ____ (2015).
 15. Wolter, *Right Turn*, ch. 14; Anderson, *Pursuit of Fairness*, p. 272.
 16. Anderson, *Pursuit of Fairness*, pp. 252–53.
 17. Wiggins, Bradford J., and Cody D. Christopherson. 2019. “The Replication Crisis in Psychology: An Overview for Theoretical and Philosophical Psychology.” *Journal of Theoretical and Philosophical Psychology* 39(4): 202–17.
 18. Melnick, *Transformation of Title IX*, ch. 12.
 19. *Comcast Corp. v. National Association of African American–Owned Media*, 589 US ____ (2020): II.A.
 20. “*Gratz v. Bollinger*; *Grutter v. Bollinger*.” n.d. The Center for Individual Rights. <https://www.cir-usa.org/case/gratz-v-bollinger-grutter-v-bollinger/>.
 21. Storm, Roy. Nov 20, 2019. “Snubbing Trump, Lawyers Doling More Cash to Democrats.” *Bloomberg Law*. <https://news.bloomberglaw.com/us-law-week/snubbing-trump-lawyers-doling-more-cash-to-democrats>.
 22. Epstein, Richard A. 1995. *Forbidden Grounds: The Case Against Employment Discrimination Laws*. Harvard University Press: pp. 415–16.
 23. Gray, C. Boyden. Apr 27, 2021. “Re: Coca-Cola’s Racially Discriminatory Outside Counsel Policy.” Boyden Gray & Associates PLLC. https://mma.prnewswire.com/media/1498756/POFR_COKE_Boyden_Gray_21_4_27_Letter_to_Coca_Cola_FINAL.pdf?p=pdf.
 24. Heriot, “Title VII Disparate Impact Liability,” p. 139.
 25. DuRivage, “The OFCCP Under the Reagan Administration,” p. 364.
 26. See “Diversity on Boards.” Accessed Mar 18, 2022. California Secretary of State. <https://www.sos.ca.gov/business-programs/diversity-boards>.
 27. Skrentny, “Republican Efforts to End Affirmative Action,” p. 140.
 28. Heriot, Gail L. Apr 17, 2018. “It’s Time for the Executive Branch to Conduct a ‘Disparate Impact Inventory’: Remarks at the Federalist Society’s Sixth Annual Executive Branch Review.” Washington, DC. San Diego Legal Studies Paper No. 18–347.
 29. Farhang, *The Litigation State*.
 30. Atterbury, Andrew. Dec 16, 2021. “DeSantis Pushes Bill That Allows Parent to Sue Schools Over Critical Race Theory.” *Politico*. <https://www.politico.com/news/2021/12/16/desantis-bill-critical-race-theory-525118>; see Sen. Diaz. 2022. “Florida Senate—2022: SB 148.” The Florida Senate. <https://www.flsenate.gov/Session/Bill/2022/148/BillText/Filed/HTML>.
 31. Temple-West, Patrick, and Joshua Franklin. Aug 7, 2022. “US Banks Tout Fossil Fuel Credentials After Republican ESG Backlash.” *Financial Times*. <https://www.ft.com/content/a35dc7ce-defb-4181-b528-c0b1e34e1d07?shareType=nongift>.
 32. I’d like to thank Jonathan Mitchell for bringing the idea of using state contracting to go after wokeness to my attention.
 33. Claburn, Thomas. May 9, 2019. “Oracle’s Legal Woes Deepen: Big Red Sued (Again) for Age and Medical ‘Discrimination.’” *The Register*. https://www.theregister.com/2019/05/09/oracle_sued_age_discrimination/; Scheiber, “Making ‘Dinobabies’ Extinct”; Baron, “Google Settles ‘Age-Discrimination’ Class-Action.”
 34. Hochman, Nate. Mar 7, 2022. “Another Republican Drops Support for the Pro-Trans Fairness for All Act.” *National Review*. <https://www.nationalreview.com/corner/another-republican-drops-support-for-the-pro-trans-fairness-for-all-act/>.
 35. “Booker Applauds Bipartisan Vote in House to Pass CROWN Act.” Mar 18, 2022. <https://www.booker.senate.gov/news/press/booker-applauds-bipartisan-vote-in-house-to-pass-crown-act>. For the text of the bill: <https://www.congress.gov/bill/117th-congress/house-bill/2116/text>.

36. Rovner, Julie. Dec 14, 2009. "Abortion Funding Ban Has Evolved Over the Years." NPR. <https://www.npr.org/templates/story/story.php?storyId=121402281?storyId=121402281>.
37. Rovner, Julie. Mar 21, 2018. "Clash Over Abortion Stalls Health Bill, Again." NPR. <https://www.npr.org/sections/health-shots/2018/03/21/595191785/clash-over-abortion-hobbles-a-health-bill-again-here-s-how>.

Conclusion. Unleashing American Freedom and Creativity

1. See Lyons, N. S. Jan 18, 2022. "No, the Revolution Isn't Over." *The Upheaval*. <https://theupheaval.substack.com/p/no-the-revolution-isnt-over?s=r>.
2. See Marcus, Ezra. Jun 17, 2021. "The Lindy Way of Living." *The New York Times*. <https://www.nytimes.com/2021/06/17/style/lindy.html>.
3. "Most of Post-War Justice Ministry Were Nazis: Report." Oct 10, 2016. *The Local*. <https://www.thelocal.de/20161010/most-of-post-war-justice-ministry-were-nazis-study/>.
4. I thank a commentator who goes by the name "Mark" on my Substack for making this point. https://twitter.com/RichardHanania/status/150745110509293977?s=20&t=aQp_vnl-CAYLY1zjEo6LKQ.
5. Cowen, Tyler. Sep 19, 2021. "Why Wokism Will Rule the World." *Bloomberg*. <https://www.bloomberg.com/opinion/articles/2021-09-19/woke-movement-is-global-and-america-should-be-mostly-proud>.
6. Pinker, Steven. 2018. *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*. Penguin Books: ch. 17.
7. McAuley, James. Jun 26, 2020. "How France's Aversion to Collecting Data on Race Affects Its Coronavirus Response." *The Washington Post*. https://www.washingtonpost.com/world/europe/coronavirus-france-race-data/2020/06/25/e5b4d0a6-b58d-11ea-9a1d-d3db1cbe07ce_story.html.
8. Onishi, Norimitsu. Feb 9, 2021. "Will American Ideas Tear France Apart?: Some of Its Leaders Think So." *The New York Times*. <https://www.nytimes.com/2021/02/09/world/europe/france-threat-american-universities.html>.
9. Poushter, Jacob, and Nicholas Kent. Jun 25, 2020. "The Global Divide on Homosexuality Persists." Pew Research Center. <https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/>.
10. Neely, Tucker. Jan 7, 2016. "He Got His Way. Then He Got a Mess." *The Washington Post*. <https://www.washingtonpost.com/sf/national/2016/01/07/decidersbush/>.
11. Douthat, Ross. 2020. *The Decadent Society: How We Became the Victims of Our Own Success*. Simon & Schuster: ch. 4; Douthat, Ross. Mar 7, 2018. "The Autumn of the Oscars." *The New York Times*. <https://www.nytimes.com/2018/03/07/opinion/oscars-irrelevant-decline-ratings.html>.