

ARTICLES

AWAKENING THE LAW: KATE STONEMAN—AN AWAKENED WOMAN

BASED UPON ALBANY LAW SCHOOL'S KATE STONEMAN CELEBRATION SPEECH

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PROLOGUE

Like all Stoneman award recipients, I am grateful to Kate Stoneman for paving the way to an awakened life in which seeking justice is a non-negotiable aspiration. I will explain the title of this Essay—*Kate Stoneman, an Awakened Woman*—in the next section. But before engaging Stoneman's exceptional life and contributions, I take the liberty to utilize this humbling and exciting opportunity to acknowledge several special Albany Law School ("ALS") connections as well as share some personal experiences that have shaped my life and academic pursuits.

It is with deep appreciation that first I thank Dean Alicia Ouellette and Professor Mary Lynch for inviting me to deliver the Stoneman keynote. It is also important to acknowledge other significant ALS influences in my law and life journey. At the top of the list is Professor Michael Hutter who commenced teaching at ALS my 2L year. During my years attending law school, beyond required courses, rather than enrolling in classes based on subject matter, I

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enrolled in courses based on teachers; I sought out those who were challenging and interesting. Professor Hutter was one I followed; I took every course he taught. I would be remiss if I don't note that he is the only professor with whom I studied who is still on the faculty. Thank you, Professor Hutter, for being an inspiration and a role model.

Of course, there are many others. Professor Katheryn Katz, an ALS alumna herself, started teaching my 1L year and taught Contracts to my section. An unforgettable image of Professor Katz is from the day after the ERA was defeated. She walked into the classroom wearing a black armband and demanded a moment of silence. Professor Sandra Stevenson exuded a passion for and knowledge about the environment that was way ahead of the times. Professor Bernie Harvith had a "no pass" policy, and if he called on someone who was unprepared he would simply require that we think through the problem—providing the facts and asking what the proper outcome would be by applying the law. John Sands' teaching of constitutional law was life changing. But I do not want my gratitude to be limited to life in the memory lane. In that vein, I acknowledge Anthony Farley, a friend whom I've known for many years; I am so very proud that he is now engaging in his critical work at my alma mater!

I want to thank my family—Vivian, Nikolai, Nadal, and Natalia—and my dear friend Eva Egensteiner for being here to share this honor. I am very grateful for their presence and support at this momentous occasion. Let me elaborate on that.

My Stoneman journey started when, in September 2021, I received a letter from Dean Ouellette and Professor Lynch inviting me to deliver the keynote at the yearly Kate Stoneman Day celebration designed to honor powerful women "who have demonstrated a commitment to seeking change and expanding opportunities for women in law."¹ The letter listed various "trailblazers" who had received this award: Justice Sonia Sotomayor, Judge Constance Baker Motley, Chief Judge Judith Kaye. Being in the company of these sheroes was as much an immense honor as it was hugely daunting.

To center, I paused and listened to Tara Brach, psychologist and Buddhist teacher and scholar who blends Eastern and Western philosophies.² She has reflected that:

¹ Kate Stoneman Day, ALB. L. SCH., <https://www.albanylaw.edu/kate-stoneman-day> [<https://perma.cc/6D9K-TU3M>].

² See TARA BRACH, <https://www.tarabrach.com/> [<https://perma.cc/T2MY-GHNJ>].

As long as you are alive, you will feel fear. It is an intrinsic part of your world, as natural as a bitter cold winter day or the winds that rip branches off trees. If you resist it or push it aside, you miss a powerful opportunity for healing and freedom.³

I told myself: “*you know how to do this.*” Heeding Tara’s counsel, I faced my fears and took the Stoneman keynote invitation as an opportunity for awakening. Before focusing on the very awakened Kate Stoneman, I will share some significant personal life experiences that comprise my own awakening journey, some of which took place within these very walls.

The first flashback that came to mind was my ALS graduation. When Acting Dean John (“Jack”) Welsh announced that I was graduating with honors, the faculty member handing out the diplomas not only dropped his jaw; he dropped my diploma! Why, I will never really know. But I suspect it was my first-semester recitation in criminal law. You see, back when I was a 1L, this particular professor called on the men as Mr. So-and-So; the women, on the other hand, were simply So-and-So. In fact, this criminal law professor was the only professor for our section who required that we stand up to recite cases and respond to questions. When I heard “Hernández,” I stood up and responded to the questions. However, although respectful, I did not respond to the Professor’s questions in the traditional way. Nontraditional it may have been, but I never got called on in the class again—and back then the course was year-long!

Thinking back to the experience of the dropping of my diploma, I realize I should not have been fully surprised as throughout life I had experienced other comparable incidents. One was in high school when, at the insistence of Mr. Wedge, my headmaster in Puerto Rico, I applied for early admission to Cornell only to receive a nicely written letter informing me that early admission was only for boys. Another eye-opening event occurred at Cornell as, notwithstanding the early admissions rebuke, I chose to attend the university (again at Mr. Wedge’s strong insistence). In my senior year, I sought out a career counselor to receive guidance on applying to law school, only to be told that I did not really want to go to law school; that I should

³ Tara Brach, *Face Fears for a True Spiritual Awakening*, YOGAJOURNAL (Oct. 1, 2007), <https://www.yogajournal.com/yoga-101/philosophy/befriend-fears/> [https://perma.cc/Y6HT-DV99]; see generally TARA BRACH, RADICAL ACCEPTANCE: AWAKENING THE LOVE THAT HEALS FEAR AND SHAME WITHIN US (2003).

instead become a teacher and return home to “help my people.” Honestly, I had no idea then about what he meant. Ironically, the counselor was right—I *am* a teacher. Although, somehow, I can’t imagine that my being a law professor is what he had in mind.

In my own awakening journey, I have learned that being oblivious helps sometimes. Having failed to receive any of the information I was seeking from the career counselor, I remained undaunted. Rather than retreat, I simply marched to the law school admissions office to see if I could obtain whatever materials I needed to apply to law schools. Surprises continued to emerge. Rather than provide the information I sought, the dean of admissions lamented: why hadn’t I come earlier? He had just accepted a “Black girl from Duke.” I was clueless then; Kate Stoneman would have understood right away.

These inharmonious encounters were not limited exclusively to the academic setting. I distinctly recall an instance when I was being recruited by a firm in Washington D.C. The last scheduled interview was with the main partner in the hiring group, who also happened to be the lead partner in the practice group for which I was being recruited. After the customary perfunctory greeting, the partner turned to me and inquired, really *demanding*—one does not forget these things—“Little lady, do you think you would be comfortable in a room full of foul-mouthed, cigar-smoking labor organizers?” By now not as clueless as I had been during my education, I knew there was no way I would want to work at that firm, much less with such a leader. So I responded, “Well, my grandfather was a cigar-smoking, non-foul-mouthed labor organizer in Cuba, and I was fine with him.”

By the conclusion of my visit to the firm, I knew the environment was not right for me (or others). I parted as quickly as I could politely exit and immediately called my parents. In that pre-cell phone era, *mami y papi* would get on extensions so we could all chat. Mom was a lawyer in Cuba and could not fathom the partner’s query. My dad, on the other hand, fully understood, although his response was rather amusing. He simply said, “Why didn’t you tell him you are not a lady, you are a lawyer?”

Although the events I have recounted might appear harsh and unsettling, they are not upsetting memories. When I lived those stories, when those life experiences occurred, they were simply statements about the status quo—the way things were. Because I did not question the status quo, I was asleep. Only when one undertakes questioning the status quo does one embark on a life that entails a process of awakenings. It is certainly an intentional (and challenging) path that Kate Stoneman chose.

In retrospect, these experiences that I can now label unsettling were moments that provided nudges for my awakenings. They made me the person I am today: always thinking of and searching for how things *should be*, for justice. *Soy Yo!* I'm me. Just like Kate Stoneman was herself: teacher, lawyer, suffragette, what today we would designate a social justice warrior.

There are other *Soy Yo*—who I am—stories defining circumstances and experiences in my life. I was born in Cuba. My *mami* went to Havana to study because it was home to Cuba's only university at the time. There, at seventeen, she met my *papi*, a poor and brilliant kid from the inner city. An unlikely pair whose love lasted on this earthly plane for seventy-three years until my dad passed at ninety, in 2017. Castro's arrival led my family to leave the island, a first major transition in my life.

I learned English in Miami. We then moved to Puerto Rico, where I lived through high school. I went off to college at the same time my parents and younger brother moved to Europe. When I arrived in college, I had no idea that I was different—an “other”—*because* I am Latina; *Latinidad* was all I had ever known. While in college, I appreciated just how different I was—viewed through the normative lens—when I realized I liked girls; perhaps a non-issue in today's world (at least for most people) but a huge deal when I was in college.

After college, I worked for a year and then attended ALS where I was one of thirty-two women, one of eight students of color, and one of two Latines out of 280 students in my class. After graduation, I worked at the U.S. Department of Justice in Washington, D.C., where I was the only Latina in the Antitrust Division. When I started teaching law, I was one of twenty-four Latines in tenure-track positions in the entire United States, and one of two Latinas. Today I am the only Latina (there is one Latino) on the tenure track at the Levin College of Law of the University of Florida, a school in a state in which Latines comprise 24.73% of the population.⁴

These life experiences guided and shaped me. Little by little I unveiled who I am. The self-discovery and the discovery of “American” culture—my *Soy Yo* process—fueled my flames of justice-seeking. We are all complex, what I call multidimensional, beings⁵—

⁴ *Florida Population*, POPULATIONU, <https://www.populationu.com/us/florida-population#:~:text=Percentage%20wise%2024.73%20percent%20are,included%20in%20applicable%20race%20categories> [https://perma.cc/TYB6-ASAW].

⁵ See generally Berta Esperanza Hernández-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex*, 53 U. MIA. L. REV. 811 (1999) [hereinafter Hernández-Truyol, *Latina Multidimensionality*].

a reality of which Kate Stoneman was fully aware and a principle on which she lived her life. Multidimensionality recognizes and embraces that every individual is formed by and identifies with a culture, a sex, a gender, a language, an ethnicity, a sexuality, a gender identity, a level of education, a set of abilities, a socioeconomic status, and a set of religious beliefs. Notwithstanding that commonality, the persons who have constructed and defined the status quo and are consequently categorized and defined as normative by the status quo they fabricated do not have to think about their form of multidimensionality. All these markers—*what we are*—frame the discovery of *who we are*—*quien Soy Yo*.

More recent times in my life, which remains—and always will be—a work in progress, have also been deeply instructive, especially my learning about grief and loss and beautiful recovery. Before marriage equality, I lost my partner of over twenty years to a short but incredibly cruel battle with cancer. When I went to the funeral home to make arrangements, the funeral director told me I could not make any decisions; in their eyes, my partner and I were strangers. So, I used my tools. I had a power of attorney, which of course died when she died, but the funeral director did not know that. I showed them the power of attorney; I made the arrangements. That experience was as much an unconventional challenge to the status quo as my non-traditional recitation in criminal law. In both cases, justice prevailed. *Soy Yo*.

I thought there would be no more unexpected chapters in my book of life, but I was wrong. I met my now wife, Vivian—someone with a similar experience of loss—and we became quick friends. And now, with marriage equality, we are happily married with three great kids. *Tengo muchas experiencias “Soy Yo.”*

AWAKENING

My *Soy Yo* moments have been awakenings, personal foundations for the *Awakening the Law* concept conceived and developed during my 2021 sabbatical. Awakenings are experiences that allow the realization and understanding that the status quo is not a neutral position. Rather, the status quo internalizes in each of us, and renders normative in our lives, the practices and beliefs of the social structures that surround us—family, society, culture, school, religion, law. In the legal field, the status quo perpetuates the structures of legal systems, legal processes, and the law itself—the way things are. It blinds us and impedes us from thinking about how

things ought to be. It normalizes subordination, vulnerability, marginalization, exclusion, and injustice.⁶

Kate Stoneman, in her life-long quest for justice, is the personification of awakedness. Awakening signifies reaching intentional consciousness. The awakening idea dovetails with attaining critical consciousness.⁷ As a concept, critical consciousness was originally developed by Paulo Freire to foster literacy among the oppressed.⁸

Contemporary justice discourses in myriad disciplines, such as political science,⁹ theology,¹⁰ psychology,¹¹ education,¹² economics,¹³ and sociology,¹⁴ embrace, develop, urge, and advance the concept of awakening. In these fields, awakening represents attaining increasing consciousness of the world outside of oneself. Therefore, to be awakened is to be aware—aware of issues that may be overlooked by others in society, in the family, and in relational experiences. Awakening experiences expand, enrich, and intensify awareness of one's surroundings, thereby allowing awakened persons to relate both to a diverse, complicated world replete with disparities and to the problems suffered by others—especially others who are different in culture, religion, education, age, and ability—in a deeper way.

Across disciplines the awakening formulae have foundational commonalities: awakening necessitates questioning of the status

⁶ See Berta Esperanza Hernández-Truyol, *Awakening the Law: A LatCritical Perspective*, SEATTLE J. FOR SOC. JUST. 927 (2022) [hereinafter Hernández-Truyol, *Awakening the Law*].

⁷ See Alexis Jemal, *Critical Consciousness: A Critique and Critical Analysis of the Literature*, 49 URB. REV. 602, 603–06 (2017).

⁸ See PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 35 (Bloomsbury 2000) (1970).

⁹ See, e.g., Hsin-Yi Yeh, *Using an Awakening Narrative to Leave Behind a Former National-Identity: An Investigation of the Conversion of National-Identity in Taiwan*, 22 NATIONS & NATIONALISM 542 (2016).

¹⁰ See, e.g., Nancy Ross & Jessica Finnigan, *Mormon Feminist Perspectives on the Mormon Digital Awakening: A Study of Identity and Personal Narratives*, 47 DIALOGUE: J. MORMON THOUGHT 47 (2014).

¹¹ See, e.g., DR. SHEFALI, *A RADICAL AWAKENING* (2021) [hereinafter SHEFALI]; BRACH, *RADICAL ACCEPTANCE*, *supra* note 3.

¹² See, e.g., Saliha Kozan, David L. Blustein, Michael Barnett, Catherine Wong, Alice Connors-Kellgren, James Haley, Amie Patchen, Chad Olle, Matthew A. Diemer, Ava Floyd, R. P. Benjamin Tran & Deborah Wan, *Awakening, Efficacy, and Action: A Qualitative Inquiry of a Social Justice-Infused, Science Education Program*, 17 ANALYSES SOC. ISSUES & PUB. POL'Y 205 (2017).

¹³ See, e.g., Alexis Habiyaemye, *'Angola-Mode' Trade Deals and the Awakening of African Lion Economies*, 25 AFR. DEV. REV. 636 (2013).

¹⁴ See, e.g., Patrick Michael Casey, *Conversion to Islam: Narratives of Awakening, Continuity, and Return*, 34 SOC. F. 752 (2019).

quo.¹⁵ In questioning the status quo in all disciplines, including law, awakening explores locations and hierarchies of power to ascertain whose narrative the status quo confirms and whose it obscures. Awakening results in interrogations that examine whether the powerful exclude the marginable.¹⁶ The ultimate goal of a legal awakening is justice. A legal awakening unearths, interrogates, analyzes, and rejects inequities, unfairness, and injustices. Awakening leads to processes that craft measures to eradicate prejudices, inequalities, and biases.¹⁷

Awakening recognizes that every person is guided by what I have coined our perceptual playbooks—the collection of systems of beliefs,¹⁸ cognitive scripts,¹⁹ fabricated, enforced, and perpetuated for generations by families, religious traditions, cultures, societies, educational systems, as well as by the law, the legal system, and its developed jurisprudence. Awakening elucidates that our perceptual playbooks are replete with ideas, theories, and tropes that not only define us as individuals but rule how we perceive human interactions. Those perceptual playbooks delineate how we comprehend and relate to society and the world.²⁰

Awakening exposes our playbooks' built-in prejudices. Such recognition and awareness of the biased foundation of our viewpoints effects the realization that we must engage in a critically conscious analysis to expose the series of assumptions and patterns of behavior embedded in each of our perceptual playbooks. Thus, to awaken the law, lawmakers, judges, and lawyers must become aware of learned cognitive biases inherent in our perceptual playbooks in order not to

¹⁵ See e.g., Melissa Summer, "You Are a Racist": An Early Childhood Educator's Racialized Awakening, 105 SOC. STUD. 193 (2014).

¹⁶ *Marginable* is a word coined by the author to encompass marginalized and vulnerable people. Berta Esperanza Hernández-Truyol, *Globalizing Women's Health and Safety: Migration, Work, and Labor*, 15 SANTA CLARA J. INT'L L. 48, 51 (2017).

¹⁷ See, e.g., Andrew R. Chow, *People Expected Police Behavior to Change After George Floyd's Murder. The Numbers Tell a Different Story*, TIME (May 13, 2021, 6:30 AM), <https://time.com/6046645/police-killings-2021/> [<https://perma.cc/BA2P-DMZ9>]; see generally Ram Subramanian & Leily Arzy, *State Policing Reforms Since George Floyd's Murder*, BRENNAN CTR. FOR JUST. (May 21, 2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder> [<https://perma.cc/9NJY-LC6X>].

¹⁸ See generally SHEFALI, *supra* note 11.

¹⁹ See Anna Welpinghus, *The Imagination Model of Implicit Bias*, 177 PHIL. STUD. 1611, 1622 (2020).

²⁰ See, e.g., Berta Esperanza Hernández-Truyol, *Hope, Dignity, and the Limits of Democracy*, 10 NE. U. L. REV. 654 (2018) [hereinafter Hernández-Truyol, *Dignity*]; Hernández-Truyol, *Latina Multidimensionality*, *supra* note 5; Berta Esperanza Hernández-Truyol, *Borders (En)Gendered: Normativities, Latinas, and a Latcrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997) [hereinafter Hernández-Truyol, *Borders (En)Gendered*]; see also Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093 (2008).

weave those biases into the fabric of the law, the legal system, and legal structures. Raw truth—“a truth that eschews learned dualities of good/bad; right/wrong;” worthy/unworthy, etc.—emerges upon the unearthing of the foundations of scripted beliefs.²¹

Awakening is a difficult process for myriad reasons. It makes us confront our own blemishes as well as difficult realities about beloved institutions such as culture. For example, let me share a challenging piece of my awakening process. Raised consciousness unveiled the disturbing reality that my culture—*la cultura Latina*—does not embody or define the “truth” in many contexts. On sex/gender issues I realized that *machismo*²² and its lesser-known flip side, *marianismo*,²³ are *not* the “correct and only” way to be; that such binaries are constructed to control; that many tropes that establish hierarchies are simply the heteropatriarchy asserting its power. On race, on the other hand, *la cultura Latina* has internalized the colonizer’s racial hierarchies, resulting in intra-Latine colorism and anti-Black racism.²⁴

Whether it is the claimed superiority of men that results in the subordination of women or the desirability of Whiteness that results in anti-Black (or anti-darker skin) bias, internalizing the status quo translates to internalized oppression. Kate Stoneman would have none of that. She fought against the status quo and never abandoned seeking justice for the subordinated and the marginable.

To awaken is to refuse to act based upon the flawed knowledge that results from our perceptual playbooks’ constructed misinformation. The status quo allows us to engage complex, novel problems without deploying deep analysis. Blind faith in the status quo is the foundation for the creation of stereotypes—racialized, ethnicized, classed, gendered, sexualized—that are incorporated into our perceptual playbooks and create a persona of someone we do not know such as that stranger walking down the street, or sidling too closely to us on a park bench or in a movie theater or a crowded subway. “Stereotypes—usually negative and subordinating . . . fill in knowledge gaps by creating automatic associations based on” the

²¹ Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 941; *see also* Hernández-Truyol, *Dignity*, *supra* note 20; Hernández-Truyol, *Latina Multidimensionality*, *supra* note 5; Hernández-Truyol, *Borders (En)Gendered*, *supra* note 20.

²² *See* Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 941; Hernández-Truyol, *Borders (En)Gendered*, *supra* note 20, at 916.

²³ *See* Hernández-Truyol, *Borders (En)Gendered*, *supra* note 20, at 915; Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 941.

²⁴ *See generally* TANYA KATERI HERNANDEZ, *RACIAL INNOCENCE* (2022).

reflexive categorization guided by perceptual playbooks.²⁵ Such automatic labeling interferes with real knowing and, consequently, justice. “Psychological studies have shown that these gap fillers activate in [our] brains even if [we] ‘disavow the normative content’ of the stereotype.”²⁶ To benefit from an awakened law, the stereotypes as well as the implicit and structural biases that have been embedded in perceptual playbooks by our society, culture, and family—and our social, educational, and legal systems—must be critically examined and dismantled.

Awakening allows us to pierce the veil of our life’s narrative as imprinted in our perceptual playbook and opens the road to liberation. Awakening exposes a mistaken self that is the product of fabricated tropes. Awakening enables the emergence of an authentic self that becomes aware of existing patterns, interrogates the patterns and the sources, systemically challenges and dismantles the belief systems, and creates new narratives based on justice rather than hierarchies inherent in and defined by the status quo.²⁷

To be sure, awakening is a life-long process of critical deconstruction of the false, deceptive tropes that are embedded in our perceptual playbooks. Awakening deploys a process of truth and reconciliation,²⁸ imbued with incessant cycles of progress and retrenchment.²⁹ The cycles are patent in the not-yet-completed journeys towards racial, sex, sexuality, economic, and ability justice, to name a few.

HISTORY AND CYCLES OF AWAKENING

Analysis of historical events unveils cycles of awakenings—ebbs and flows of progress and backlash in the quest for justice. In the context of race, the mere existence of slavery, an atrocity that denies personhood and citizenship³⁰ based solely on the color of one’s skin,

²⁵ See Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 937.

²⁶ *Id.* at 937 (quoting Tamar Szabó Gendler, *On the Epistemic Cost of Implicit Bias*, 156 PHIL. STUD. 33, 36–37 (2011)).

²⁷ Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 491; see Lisa Bilyeu, *Psychologist Debunks 5 Love Myths That Will Change Your Life: Dr. Shefali on Women of Impact*, YOUTUBE (May 12, 2021), <https://www.youtube.com/watch?v=6h68dh4bKIU&t=27s> (discussing the cycle of belief system, leading to a condition, which leads to a thought, which leads to a feeling, which leads to behavior); see also BRACH, RADICAL ACCEPTANCE, *supra* note 3.

²⁸ See Dr. Shefali, *Day 1 Viral Wisdom 4 10 20*, YOUTUBE (Apr. 15, 2020), <https://www.youtube.com/watch?v=MNcaBfB6few>.

²⁹ See Peter P. Amato, *The Theory of Awakening: A Classic Grounded Theory* 99–102 (May 2016) (Ph.D. dissertation, Saybrook University) (ProQuest).

³⁰ See, e.g., *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

is evidence of an unawakened law. The three-fifths clause that engraved in the Constitution the idea that an enslaved person is less than a full human but gets to count to benefit the slaveholders in their congressional representation³¹ was intentional but evil. Yet because society remained unawakened, “[w]ith the freeing of enslaved persons came [unfounded] White fears,” the basis of which was the racial and racialized stereotypes embedded in the perceptual playbooks—stereotypes some of which persist to date.³² The irrational fears of racial others “led to the creation of the Ku Klux Klan and other organizations aimed at intimidating Black people and continuing Black [persons’] subordination.”³³

The Thirteenth Amendment’s legal termination of slavery resulted in backlash against Black persons. Fears surrounding emancipation led to the proliferation of Black Codes, repressive laws that not only limited rights but also permitted continued labor exploitation of Black persons.³⁴ The Reconstruction era, while opening political office to Black persons and resulting in an increase in Black business ownership,³⁵ also resulted in sociopolitical and legal backlash including events like the Tulsa Race Massacre³⁶ and the passage of Jim Crow laws.³⁷ The Civil Rights Movement elicited individual and collective moments of consciousness as well as legal reform.³⁸ Yet equality and racial justice remained elusive. Indeed, a longer view of the movement unveils ongoing unrest and race-based violence such as the twenty-first century killings of George Floyd, Ahmaud Aubrey, Breonna Taylor, and Tyre Nichols (to name a few).³⁹

³¹ See U.S. CONST. art. I, § 2, cl. 3.

³² Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 495–96.

³³ *Id.* at 945; see *White Southern Responses to Black Emancipation*, PBS: AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/reconstructionwhite-south-ern-responses-black-emancipation/> [<https://perma.cc/R7MP-EWHS>].

³⁴ See *supra* text accompanying note 33.

³⁵ See *Reconstruction*, HIST. (Jan. 11, 2023) <https://www.history.com/topics/american-civil-war/reconstruction> [<https://perma.cc/VA28-9VDJ>].

³⁶ *Tulsa Race Massacre*, HIST. (May 24, 2022), <https://www.history.com/topics/roaring-twenties/tulsa-race-massacre> [<https://perma.cc/RX3Z-TRJH>].

³⁷ *Jim Crow Laws*, HIST. (Jan. 11, 2023), <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> [<https://perma.cc/4PYK-8HH7>].

³⁸ See *Civil Rights Movement*, HIST. (Jan. 10, 2023), <https://www.history.com/topics/black-history/civil-rights-movement> [<https://perma.cc/7DAY-3YDT>]; Civil Rights Act of 1964, 42 U.S.C. §§ 2000a–2000h–6.

³⁹ See *Subsequent Protests: George Floyd, Ahmaud Arbery, and Breonna Taylor*, BRITANNICA, <https://www.britannica.com/topic/Black-Lives-Matter/Subsequent-protests-George-Floyd-Ahmaud-Arbery-and-Breonna-Taylor> [<https://perma.cc/9JJJ-SSXE>]; see also Kiara Alfonseca, Nakylah Carter & Ivan Pereira, *Tyre Nichols: A Timeline of the Investigation into His Death*, ABC NEWS (Feb. 17, 2023, 11:28 AM), <https://abcnews.go.com/US/tyre-nichols-timeline-investigation-death/story?id=96695791> [<https://perma.cc/H87S-LVP7>].

Although these losses resulted in individual and collective awakenings, they appear not to be of a lasting kind, as this country is experiencing backlash against the Black Lives Matter movement as well as a proliferation of laws that patently seek to obfuscate if not deny the country's anti-Black history.⁴⁰ For example, in 2022 the state of Florida passed, and the Governor signed, HB7, the so-called Stop WOKE Act that constrains how workplaces and educational institutions can discuss racism, racial bias, race relations, and diversity; it bans teaching critical race theory ("CRT") in schools and universities—although an injunction was issued with respect to teaching CRT in higher education institutions.⁴¹ Most recently, in January 2023, the Governor rejected an Advanced Placement course on African-American Studies because it "lack[ed] educational value."⁴² In response to the potential economic loss if a large student population in Florida is prohibited from enrolling in our A.P. Course, the College Board has stripped the course's curriculum of much of the material to which Florida objected.⁴³

The existence of a progress-backlash model journeys beyond race; it also plays out in matters of sex and gender. Women's attained right to control their bodies led to backlashes, the activism of which has

⁴⁰ Bill Hutchinson, *Turning Point: Black Lives Matter Organizers Say Right-Wing Backlash Was Expected As Movement Grew*, ABC NEWS, (Oct. 25, 2020, 10:00 AM), <https://abcnews.go.com/US/turning-point-black-lives-matter-organizers-wing-backlash/story?id=72863444> [<https://perma.cc/Y32F-9XGC>]; see, e.g., 2022 Fla. Sess. Law Serv. ch. 72 (West) (Individual Freedom Act, formerly called the Florida Stop WOKE Act, amending the Florida Educational Equity Act to prohibit "training or instruction that espouses, promotes, advances, inculcates, or compels . . . student[s] or employee[s] to believe [eight specified concepts that revolve around race]").

⁴¹ See 2022 Fla. Sess. Law Serv. ch. 72 (West); *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, No. 22-cv-304, 2022 U.S. Dist. LEXIS 208374, at *152 (N.D. Fla. Nov. 17, 2022); see also *Governor Ron DeSantis Signs Legislation to Protect Floridians from Discrimination and Woke Indoctrination*, RON DESANTIS: 46TH GOVERNOR OF FLA. (Apr. 22, 2022), <https://www.flgov.com/2022/04/22/governor-ron-desantis-signs-legislation-to-protect-floridians-from-discrimination-and-woke-indoctrination/> [<https://perma.cc/THZ3-BWRB>].

⁴² Alison Durkee, *Rejecting AP Studies, Restricting Libraries: Here's How DeSantis and His 'Anti-Woke' Policies Are Impacting Florida Education*, FORBES (Jan. 20, 2023, 11:02 AM), <https://www.forbes.com/sites/alisondurkee/2023/01/20/rejecting-ap-studies-restricting-libraries-heres-how-desantis-and-his-anti-woke-policies-are-impacting-florida-education/?sh=48190f2d7150> [<https://perma.cc/U5Q9-DU2A>].

⁴³ Anemona Hartocollis & Eliza Fawcett, *A.P. Curriculum for African American Studies*, N.Y. TIMES (Feb. 9, 2023), <https://www.nytimes.com/2023/02/01/us/college-board-advanced-placement-african-american-studies.html>. The State combines its work to mandate proper parameters of higher education with its latest battle cry of "education" (Civics) not "indoctrination" (CRT). Ironically, while the elimination of indoctrination includes not only excising CRT from the curriculum but also entire departments, African Studies and Women's Studies, under the rubric of "education" the state is funding the establishments that promote Western values, such as the Hamilton Center at the University of Florida. See, e.g., UF Hamilton Center, <https://hamilton.center.ufl.edu/>.

succeeded in restricting if not rescinding women’s autonomy. In the 2022 *Dobbs v. Jackson*⁴⁴ ruling, the Supreme Court, for the first time in history, overturned precedent to abolish a right that for over fifty years was deemed fundamental.⁴⁵ By viewing the conflict through the lens of religion,⁴⁶ and thus elevating the fetus’s potential life above all of a pregnant woman’s interests, the Court denied women’s constitutional rights including depriving women of established privacy, liberty, and autonomy rights.⁴⁷ The unawakened decision commodifies women by forcing some, against their will and regardless of circumstances, to carry a pregnancy to term—a process more dangerous to the health of women than an abortion⁴⁸—regardless of the woman’s constitutional rights, including liberty, privacy, health, and equality.

Yet, legal backlashes beyond race and sex appear to be almost commonplace. The ruling of *Employment Division v. Smith*⁴⁹ led to the Religious Freedom Restoration Act (RFRA)⁵⁰ to “ensure that interests in religious freedom are protected.”⁵¹ The *Obergefell*⁵² ruling that couples of the same sex are entitled to the fundamental right to marriage led to a proliferation of state RFRA-like bills and

⁴⁴ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

⁴⁵ *See id.* at 2240, 2284; *see also* Sara Rosenbaum, Katie Keith & Timothy S. Jost, *The United States Supreme Court Ends the Constitutional Right to Abortion*, COMMONWEALTH FUND (June 27, 2022), <https://www.commonwealthfund.org/blog/2022/united-states-supreme-court-ends-constitutional-right-abortion> [<https://perma.cc/3K7H-LXS5>].

⁴⁶ *See* Linda Greenhouse, *Religious Doctrine, Not the Constitution, Drove the Dobbs Decision*, N.Y. TIMES (July 22, 2022), <https://www.nytimes.com/2022/07/22/opinion/abortion-religion-supreme-court.html> [<https://perma.cc/7NU3-5G5A>].

⁴⁷ *See* *Roe v. Wade*, 410 U.S. 113, 153 (basing its decision to find a fundamental right to terminate a pregnancy, within certain parameters, on the “Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people”); *see also* *Griswold v. Connecticut*, 381 U.S. 479, 482, 484 (1965) (finding a right of privacy that protects the right of married couples to obtain contraceptives and holding that the right of privacy is grounded in the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments).

⁴⁸ *See* Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 217 (2012).

⁴⁹ *Emp. Div. v. Smith*, 494 U.S. 872, 878–79 (1990) (Religious beliefs do not excuse “compliance with an otherwise valid law prohibiting conduct that [government] is free to regulate.”).

⁵⁰ 42 U.S.C. §§ 2000bb–2000bb-4.

⁵¹ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693, 736 (2014) (Kennedy, J., concurring).

⁵² *Obergefell v. Hodges*, 576 U.S. 644, 675–76 (2015) (holding that the Due Process Clause of the Fourteenth Amendment guarantees the right to marry as one of the fundamental liberties it protects, and that analysis applies to same-sex couples as well as opposite-sex couples).

anti-LGBT religious exemption legislation.⁵³ In 2020, *Bostock*,⁵⁴ a Title VII case that held that the statutory term *sex* includes protection for gay, lesbian, and transgender persons, led to an explosion of anti-trans bills across the country.⁵⁵

In Florida, the “Don’t Say Gay” bill has been signed into law, effectively seeking to erase LGBTQ+ identities through the prohibition of sexual orientation or gender identity education,⁵⁶ much like the Stop WOKE Law seeks to erase race.⁵⁷ Significantly, the law’s moniker is a misnomer. The law utilizes a nod-and-wink approach to eliminate any mention of LGBTQ+ identities, persons, and families from existence.⁵⁸ However, the law, by its terms, does not prohibit talk of LGBTQ+ families alone. Rather, its prohibition is on education about sexual orientation and gender identity.⁵⁹ As everyone has a sexual orientation (be it heterosexual, gay, lesbian, bisexual, queer, pansexual, or asexual) and a gender identity (be it transgender, cisgender, or non-binary), the law, in reality, prohibits conversations about and learning opportunities around everything concerning sexual orientation or gender identity.⁶⁰ The promoters of

⁵³ See *Past Anti-LGBT Religious Exemption Legislation Across the Country*, ACLU, <https://www.aclu.org/other/past-anti-lgbt-religious-exemption-legislation-across-country> [https://perma.cc/N3JS-MEJE].

⁵⁴ *Bostock v. Clayton County*, 140 S. Ct. 1731, 1754 (2020) (holding that Title VII prohibition of discrimination on the basis of sex includes a prohibition against discrimination in employment against gay and transgender persons).

⁵⁵ See Rachel Epstein, *Anti-Trans Legislation Is in the Works Across the Country*, MARIE CLAIRE (Feb. 18, 2021), <https://www.marieclaire.com/politics/a35479305/anti-transgender-legislation-2021/> [https://perma.cc/Q3V7-CG99]; see also Grace Eliza Goodwin, *Utah Just Banned Gender-Affirming Healthcare for Transgender Kids. These 21 Other States are Considering Similar Bills in 2023*, INSIDER (Feb. 1, 2023, 10:19 AM), <https://www.insider.com/states-considering-bills-ban-gender-affirming-healthcare-transgender-youth-2023-1> [https://perma.cc/Z4N4-VTUY]; *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/sports_participation_bans#:~:text=Map%20Table%20Format%20Recently%2C%20anti-LGBTQ%20opponents%20have%20introduced,allowed%20to%20participate%20in%20sports%20with%20other%20girls [https://perma.cc/PD4C-5GD3].

⁵⁶ Jaelyn Diaz, *Florida’s Governor Signs Controversial Law Opponents Dubbed ‘Don’t Say Gay,’* NPR (Mar. 28, 2022), <https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis> [https://perma.cc/CBM8-HVFK].

⁵⁷ See *supra* text accompanying notes 40–42.

⁵⁸ See Alexander Panetta, *Florida’s ‘Don’t Say Gay’ Bill Part of Republican Drive to Limit Talk of Sex and Race in U.S. Classrooms*, CBC NEWS (Mar. 20, 2022), <https://www.cbc.ca/news/world/florida-bill-controversy-1.6389308> [https://perma.cc/5NNB-4RLA].

⁵⁹ Diaz, *supra* note 56.

⁶⁰ See Matt Lavietes, *Here’s What Florida’s ‘Don’t Say Gay’ Bill Would Do and What It Wouldn’t Do*, NBC NEWS (Mar. 16, 2022, 6:34 AM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/floridas-dont-say-gay-bill-actually-says-rcna19929> [https://perma.cc/WF24-4U9K]; see also Laurel Wamsley, *A Guide to Gender Identity Terms*, (June 2, 2021, 6:01 AM),

the law rely on the perceptual playbooks that normalize the status quo and ingrain normativity as the only acceptable way of being. Their intent is to link the prohibition on discussions of sexual orientation to only LGBTQ+ sexuality, and to link the prohibition on discussions of gender identity to only transgender identity. In doing so, they act as if heterosexuality isn't a sexual orientation and cisgender isn't a gender identity. This mirrors the idea behind the Stop WOKE Act: that Whiteness is not a racial identity. The "Don't Say Gay" law and the Stop WOKE Act reveal how unawakened laws perpetuate the status quo and maintain hierarchies of power. According to these unawakened laws, Whiteness, heterosexuality, and cisgender are the norm; everything else is a deviation—an undesirable, marginalized, and demonized otherness.

In the twenty-first century's short history, significant events have effected backlashes. The election of a Black president and more recently, Black and Jewish senators in Georgia, have opened the floodgates of voting restriction laws across the states.⁶¹ These realities underscore that awakening is not the same as intentionality; consciousness is not the same as knowledge. All these moves are as intentional as they are unconscious. There is a great need for awakening the law. This is the work for legal justice warriors: to awaken the laws that are asleep. Kate Stoneman eagerly undertook the work of effecting legal awakenings in her time; her legacy urges us to continue that work.

NUDGES

Throughout history, there have been cycles of social and legal nudges that have led to periods of awakenings. Kate Stoneman nudged successfully with respect to bar admissions in her quest for justice and in her commitment to racial and sex equality. Social movements that have prodded awakenings include the

<https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq> [https://perma.cc/NPZ5-HF8W].

⁶¹ See Steve Peoples, Bill Barrow & Russ Bynum, *Warnock, Ossoff Win in Georgia, Handing Dems Senate Control*, AP NEWS (Jan. 6, 2021), <https://apnews.com/article/Georgia-election-results-4b82ba7ee3cc74d33e68daadaee2cbf3> [https://perma.cc/S255-FE6H]; Fredreka Schouten, *19 States Passed This Year Laws to Restrict Voting, New Tally Finds*, CNN POL.: VOTING RTS. UNDER ATTACK (Oct. 4, 2021, 1:38 PM), <https://www.cnn.com/2021/10/04/politics/voting-laws-restrictive-mapoctober/index.html> [https://perma.cc/ZXZ7-RA4J].

emancipation,⁶² anti-miscegenation,⁶³ civil rights,⁶⁴ feminist,⁶⁵ queer,⁶⁶ and social and criminal justice movements.⁶⁷ To be sure, each of these has triggered backlashes, as evidenced by the above discussion about history.

Similarly, and frequently developing in a track parallel to the pertinent social movements, legal theoretical movements have laid the foundations necessary to awaken the law. In its heyday, starting in 1881 with Oliver Wendell Holmes and from the 1920s until the 1950s, legal realism posited that law derives, and judges adjudicate, not only from abstract rules but from social interests and social policy.⁶⁸ Recognizing the ubiquity of perceptual playbooks, legal realists believe that the law is far from a system of rules that can be objectively applied; instead, legal applications and outcomes simply reflect the predilections of judges and society's power elite.⁶⁹

Critical legal theory provided an awakening to the reality that not only is law meshed with social issues, but it is imbued with social biases.⁷⁰ Legislators who write the law, the executive who enforces the law, and judges who interpret the law all are influenced by their perceptual playbooks: information upon which they rely to make, enforce, and interpret the law. Thus, following legal realism, in the 1970s Critical Legal Studies ("Crits") exposed how at all stages the law serves the interests of those in power, maintains subordination of the marginable, and retains the status quo-dependent hierarchy.⁷¹

With prolific writings on feminist legal theory, Feminist Legal theorists ("femcrits") took the Crits to task for ignoring the role of sex/gender in law and legal institutions—in the legal perceptual

⁶² *Emancipation Movements, SLAVERY & REMEMBRANCE*, <http://slaveryandremembrance.org/articles/article/?id=A0077> [<https://perma.cc/5Q2B-ZKX2>].

⁶³ *On This Day: Supreme Court Rejects Anti-Interracial Marriage Laws*, NAT'L CONST. CTR. (June 12, 2021), <https://constitutioncenter.org/blog/today-in-supreme-court-history-loving-v-virginia> [<https://perma.cc/A5J8-7WCB>].

⁶⁴ *Civil Rights Movement*, *supra* note 38.

⁶⁵ Constance Grady, *The Waves of Feminism, and Why People Keep Fighting Over Them, Explained*, VOX (July 20, 2018, 9:57 AM), <https://www.vox.com/2018/3/20/16955588/feminism-waves-explained-first-second-third-fourth> [<https://perma.cc/MQE7-UR4P>].

⁶⁶ Christina B. Hanhardt, *Queer History*, ORG. OF AM. HISTORIANS, <https://www.oah.org/tah/issues/2019/may/queer-history/> [<https://perma.cc/7YAAAWNRR>].

⁶⁷ Aldon Morris, *From Civil Rights to Black Lives Matter*, SCI. AM. (Feb. 3, 2021), <https://www.scientificamerican.com/article/from-civil-rights-to-black-lives-matter1/> [<https://perma.cc/3WUC-BZWC>].

⁶⁸ *See generally* WILLIAM W. FISHER III, MORTON J. HORWITZ & THOMAS A. REED, *AMERICAN LEGAL REALISM* (1993) (law is enmeshed with social issues).

⁶⁹ *See generally* OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* (1881).

⁷⁰ *See generally* ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986).

⁷¹ *See generally id.*

playbooks.⁷² Feminism exposed that law and history have been written from a particular perspective—the male point of view—that relies upon a specific belief system. The perspective that imbues the law—lawmaking, enforcement, and adjudication—embeds and reinforces male values and renders normative all things male. Femaleness becomes “less than”—different and other—a deviation from the norm.⁷³

CRT is much in the news these days,⁷⁴ mostly because it has become the bogeyman for some right-wing ideologies, which wholly misrepresent it as racial favoritism and anti-Whiteness.⁷⁵ In reality, CRT simply examines the role of race in law—the racial biases embedded in the legal playbook. It reveals how law and legal systems have been deployed to perpetuate racial subordination.⁷⁶ By

⁷² See generally Berta Esperanza Hernández-Truyol, *Crossing Borderlands of Inequality with International Legal Methodologies—The Promise of Multiple Feminisms*, 44 GERMAN Y.B. INT’L L. 113 (2001) (for a general description of diverse feminist legal theory).

⁷³ CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (deconstructing the meaning of “objectivity,” which is invariably aligned to the “systemic” and “hegemonic” male perspective observing that

Men’s physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—defines history, their image defines god, and their genitals define sex.

Id. at 36.

⁷⁴ See generally Stephen Sawchuk, *What Is Critical Race Theory, and Why Is It Under Attack?*, EDUC. WK. (May 18, 2021), <https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05> [<https://perma.cc/P5WX-9JY2>]; *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, No. 22-cv-304, 2022 U.S. Dist. LEXIS 208374, at *70–71 (N.D. Fla. 2022) (noting that by teaching CRT professors would violate the law).

⁷⁵ See Benjamin Wallace-Wells, *How A Conservative Activist Invented the Conflict over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory> [<https://perma.cc/HRA3-UPGD>]; Trip Gabriel, *He Fuels the Right’s Cultural Fires (and Spreads Them to Florida)*, N.Y. TIMES (Apr. 24, 2022), <https://www.nytimes.com/2022/04/24/us/politics/christopher-rufo-crt-lgbtq-florida.html> [<https://perma.cc/C7NH-X2PP>]. But see RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 3 (Dev Publishers & Devs., 3d ed. 2017) (2001) [hereinafter DELGADO & STEFANCIC, *CRITICAL RACE THEORY*] (“Unlike traditional civil rights discourse, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”).

⁷⁶ See generally NIKOLE HANNAH-JONES, N.Y. TIMES MAG., *THE 1619 PROJECT: A NEW ORIGIN STORY* (Jake Silverstein, Caitlin Roper & Ilena Silverman eds., 2019); DELGADO & STEFANCIC, *CRITICAL RACE THEORY*, *supra* note 75; KIMBERLÉ CRENSHAW, NEIL GOTANDA, GARY PELLER & KENDALL THOMAS, *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (1996).

unveiling the conspiracy of law and legal systems in perpetuating subordination, CRT unveils how perceptual playbooks perpetuate the racial subordination that started with slavery and was incorporated into the national story by way of the belief systems of those who write, enforce, and interpret the law.⁷⁷

CRT exposes the inherent racial biases of the existing legal system[and] seeks to eliminate the hidden and patent partiality with that revealed knowledge base. . . . [CRT] proposes a dismantling of the existing biased systems and a reconstruction of the law and legal structure that promotes equality and justice for all. In short, CRT teaches the systemic impacts of racial subordination that had been at best ignored and at worst erased from the prevalent history narratives contained in books and embraced and taught in this country.⁷⁸

To this day the founding script of racial subordination is part of the fabric of the structures of U.S. law and society. Florida's Stop WOKE Act (HB7)⁷⁹—by prohibiting Florida's public schools and private businesses from making people feel uncomfortable or guilty over their race, sex, or national origin⁸⁰—seeks to perpetuate the status quo and thus further to embed racial hierarchy in law and society.

Queer critical scholars engage in a similar unveiling of the sexualized hierarchy favoring heteropatriarchy;⁸¹ disability critical theorists unmask the scripts that presume and normalize a

⁷⁷ See Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 934–35.

⁷⁸ *Id.* at 935.

⁷⁹ 2022 Fla. Sess. Law Serv. ch. 72 (West).

⁸⁰ In the context of public schools, the law provides that “[a] person should not be instructed that he or she must feel guilt, anguish, or other forms of psychological distress for actions, in which he or she played no part, committed in the past by other members of the same race or sex.” *Id.* (codified at FLA. STAT. § 1003.42(3)(f) (2023)). The law prohibits “as a condition of employment . . . any . . . required activity that espouses” that “[a]n individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, sex, or national origin.” *Id.* (codified at FLA. STAT. § 760.10(8)(a)(7) (2023)); see also Zoe Christen Jones, *Florida Legislature Passes “Stop WOKE Act,” Second Controversial Education Bill This Week*, CBS NEWS (Mar. 10, 2022), <https://www.cbsnews.com/news/florida-critical-race-theory-education-stop-woke-act/> [<https://perma.cc/5QJS-RP4P>]; Jennifer W. Corinis & Katie Molloy, *Florida Passes “Stop W.O.K.E. Act”—Prohibits Employers from Requiring Employees to Attend CRT-Inspired Training*, GREENBERGTRAURIG (May 6, 2022) <https://www.gtlaw.com/en/insights/2022/5/florida-passes-stop-woke-act-prohibits-employers-requiring-employees-crt-inspired-training> [<https://perma.cc/VW6A-BMKX>].

⁸¹ See, e.g., NIKKI SULLIVAN, *A CRITICAL INTRODUCTION TO QUEER THEORY* (2003) (unveiling sexualized hierarchy favoring heteropatriarchy).

particular conceptualization of ability;⁸² and class crits, coming full circle with legal realism, reveal how legal scripts embed economic hierarchies.⁸³ Because Latines can be of any race, sex, sexuality, ability, economic class, etc., Latine Critical Theorists (“LatCrit”) unveil bias from the perspective of the multidimensionality and complexity of every human being.⁸⁴ Notwithstanding all these invaluable and consistent nudges, the law remains asleep.

AWAKENING THE LAW

Just what does an awakened law look like? An awakened law is conscious. Significantly, intentionality is not synonymous with consciousness. Indeed, as the brief historical analyses elucidate, much of the legal system in the United States was intentionally designed to exclude, marginalize, and render (or maintain) powerless individuals or groups considered inferior or less important than the dominant classes that controlled law and society and located themselves at the top of the hierarchy of power. Awakenedness is awareness—consciousness—that the law and legal system (as well as other social structures) as intentionally created are unjust. Kate Stoneman knew about intentionality and consciousness.

The overarching goal of our awakened law is the centrality of justice. In the context of that aspiration, laws, legal structures, and legal processes must be analyzed to ascertain whether they promote four core ideas: dignity, anti-subordination, multidimensionality, and marginability.⁸⁵ Human dignity⁸⁶—“a concept that captures the uniqueness of the human spirit” and dictates “how every human should be treated simply because of their humanity”⁸⁷—is a foundational value. Significantly, the word *dignity* is absent from the U.S. Constitution, although some cases, notably cases on queer rights, embrace dignitarian rights.⁸⁸ Moreover, international human rights law, which is part of U.S. law, centers dignity.⁸⁹ In such a framework, if a law is an affront to dignity, it is asleep.

⁸² See, e.g., DISCRIT (David J. Connor, Beth A. Ferri & Subini A. Annamma eds., 2016) (unmasking the scripts embedding disability).

⁸³ See, e.g., Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859 (2008).

⁸⁴ See *About LatCrit*, LATCRIT, <https://laterit.org/about-laterit/> [<https://perma.cc/7Z39-ATB3>].

⁸⁵ See Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 956–57 (detailing articulation of the paradigm).

⁸⁶ See generally Hernández-Truyol, *Dignity*, *supra* note 20.

⁸⁷ Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 956.

⁸⁸ Hernández-Truyol, *Dignity*, *supra* note 20.

⁸⁹ See generally *id.*

Beyond dignity, the awakened law paradigm incorporates three central and indivisible principles—all of which are at the heart of the Stoneman way: anti-subordination, multidimensionality, and anti-marginability. Dignity and the three principles provide a methodological structure that enables the exposure of biased playbooks and the resolution of inequities and subordinations. Such injustices are often obscured by the way things are—the status quo as embedded in law and legal systems. The Awakening the Law methodology designs the just way—the way things should be—when one examines legal interests and norms.

The anti-subordination element serves to identify, interrogate, and deconstruct hierarchical assumptions in law. The deployment of an anti-subordination perspective uncovers the existence and nature of hierarchies, hierarchical ideologies, assumptions, and beliefs embedded in both individual and structural perceptual playbooks. In turn, those playbooks privilege some and subordinate others. An anti-subordination analysis guides the unveiling and deconstruction of the hierarchies underlying them: the status quo that enables the unconscious privileging of some over others. An awakened law will, like Kate Stoneman did, eschew such hierarchies.

An anti-subordination analysis requires that no dominance be ascribed to a person or class of persons over another.⁹⁰ Comporting with the ideals of equality and justice, the awakened analysis rejects legally and socially entrenched subordination. The new paradigm provides that hierarchies among classes or between protected rights are constitutionally unacceptable, as they perpetuate inequality.⁹¹

Kate Stoneman was awakened. She worked against subordination, and she toiled against hierarchies of privilege. Her insistence on ending the exclusion of both women and Black persons from the legal profession establishes her consciousness about injustice and true equality.

In the Awakening the Law project, once the anti-subordination analysis exposes existing hierarchies of power, the second principle,

⁹⁰ Anti-dominance safeguards people not just as individuals but also as part of a protected class. See Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 940.

⁹¹ The anti-subordination literature suggests that there is a core principle of a “contextual effort to analyze power dynamics, systems, attitudes, and practices that operate explicitly or implicitly to maintain social, economic, and political dominance by one group over another.” Lucinda M. Finley, *Sex-Blind, Separate but Equal, or Anti-Subordination? The Uneasy Legacy of Plessy v. Ferguson for Sex and Gender Discrimination*, 12 GA. ST. U. L. REV. 1089, 1122 (1996). Anti-subordination not only takes into account the differences among groups, but also places importance on the “cultural constructions and hierarchies of power” that force the “differences to be interpreted as inherent and as better or worse on a hierarchy of social value and domination.” *Id.*

multidimensionality,⁹² requires a multilayered assessment of the possible locations of the exposed perceptual playbooks' bias that result in unjust laws, their application, and outcomes.⁹³ Multidimensionality embraces persons as the complex beings we all are: the aggregate of our myriad human identities. A person's multiple identity factors exist in varied combinations of dominant and subordinated identity traits that can result in unjust treatment; what subjects a person to subordination or privilege is the non-normative aspects of their multidimensionality. Any legal approach that relies upon only one identitarian factor to ascertain justice is myopic, as it cannot capture the entire panorama of real peoples' real lives.

The law has created axes of privilege and subordination grounded upon fabricated normative identitarian characteristics, ideologies imbued in perceptual playbooks. An awakened law and legal system centers the person in all their complexity, including the reality that some of their identitarian characteristics may be privileged and some subordinated. The embrace of humans' multidimensionality transforms legal analysis to allow an inquiry that can fully and fairly evaluate the context of any conflict by unveiling hidden biases in the

⁹² The author coined the term *multidimensionality* in 1994. See Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 377 (1994) [hereinafter Hernández-Truyol, *Crossroads*]; see also Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 957 n.162. For other writing on multidimensionality, see Athena D. Mutua, *Multidimensionality Is to Masculinities What Intersectionality Is to Feminism*, 13 NEV. L.J. 341, 367 (2013) (noting that multidimensionality “better [than intersectionality] captures the complexity of identities and the multiplicity of hierarchical structures”); Athena D. Mutua, *The Multidimensional Turn: Revisiting Progressive Black Masculinities*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 78, 78 (Frank Rudy Cooper & Ann C. McGinley eds., 2012) (explaining that multidimensionality results in individuals and groups not being seen as one social identity but as their combined social identities that are “materially relevant and mutually interacting and reinforcing” as well as revealing that interactions of diverse groups or individuals needs to be contextualized to see how they operate within the hierarchies); Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 301–02 (2001) (noting that multidimensionality is important because “courts have failed to recognize that the cumulative effect of multiple forms of discrimination may create a unique type of victimization that [is different] from the sum of individual acts of discrimination”); Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship or Legal Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409, 1414–15, 1449–50 (1998) (asserting that multidimensionality “reminds all outgroups that *all* forms of identity hierarchy [rely] on the social and legal interests of their members” and thus provides an “interconnected way” to address the subordination across multiple groups; and describing how multidimensionality maps and explains the “interconnected structuring of subordination”).

⁹³ Hernández-Truyol, *Awakening the Law*, *supra* note 6, at 957.

perceptual playbooks that weigh against a just outcome.⁹⁴ The process of unearthing bias enables the search for finding an awakened—a just—solution to any conflict.

Multidimensionality is interrelated with anti-subordination, as it exposes the insufficiency, inefficacy, and injustice from which a myopic probe suffers.⁹⁵ As Kate Stoneman knew, an individual is the sum of their identities, not simply an isolated trait.

Unlike the Supreme Court's inability to recognize a Black-woman category, notwithstanding the reality that Black women experience life and discrimination in a way different from Black men or White women,⁹⁶ almost a century earlier Kate Stoneman recognized such category. Therefore, when she fought for her ability to practice law, she realized that if she fought only for the right of women to practice law, Black women would still be excluded from the profession because there also existed an exclusion on the basis of race. Because she was awakened and understood the importance of a multidimensional approach to effect justice, instead of pursuing only her own interest, Kate Stoneman fought to terminate not only the sex-based prohibitions but also the race-based exclusion. She understood that every person and group experiences discrimination differently.

Multidimensionality invites a Kate Stoneman-like rights—impact analysis that accounts for a real possibility for justice. It considers that the impact on the resolution of one right, the right of women to practice law should translate to include *all* women. In order to effect liberation for all women, not only sex but also race (and ethnicity, class, ability, etc.) exclusions must be ended as well.

With an awakened law, every person or group becomes free from the shackles of discrimination.⁹⁷ Kate Stoneman knew that to attain

⁹⁴ This concept is not foreign to legal analysis. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570, 689–90 (2008) (Breyer, J., dissenting) (stating that he would have adopted an interest-balancing inquiry and noting that “where a law significantly implicates competing constitutionally protected interests in complex ways, the Court generally asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects upon other important governmental interests” (quoting *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 402 (2000) (Breyer, J., concurring))).

⁹⁵ For example, for Latinas/os to attain equality there is a need to develop a paradigm that understands multidimensionality, including Latinas/os’ differential treatment on the basis of any of a number of traits or a combination of the traits such as “surname, language (including accent), national origin, sex, alienage, and race and color.” See Hernández-Truyol, *Crossroads*, *supra* note 92, at 376–77. The same is true in considering any classification, as every individual is comprised of multiple classifications that together construe the self.

⁹⁶ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

⁹⁷ See, e.g., Hernández-Truyol, *Borders (En)Gendered*, *supra* note 20.

justice and to deploy the true and constitutional equality, an awakened law needs to replace the legal “monocle [with] a prism that allows a multidimensional perspective that will result in an analytical framework that can accommodate the complexities of our society.”⁹⁸

The third pillar of an awakened law is marginability, which embodies the effect on persons and groups of the perceptual playbooks’ establishment of hierarchies regardless of their focus (race, sex, sexuality, class, or ability). A marginability analysis exposes the vulnerability and marginalization that results in systems based on the embrace and deployment of the ingrained biases as embedded in the individual and structural playbooks. The element of marginability in the proposed paradigm evaluates existing biases and designs corrective measures by centering the interests of and listening to the narratives of the out-groups. Those centered are the interests and identities excluded, ignored, and even erased from a place at the legal table by the dominant, status-quo reinforcing perceptual playbooks. Such re-centering unmasks the false claim to neutrality in law, legal systems, and legal actors and leads to awakening the law. Centering the marginable in justice analysis reveals whether and how the legal concepts and structures embedded in perceptual playbooks are burdening, erasing, or ignoring some rights, interests, or identities and consequently effecting unjust subordinations.⁹⁹

One way of applying the marginability inquiry is, again, in the Kate Stoneman context of challenging exclusions from legal practice based on sex and race.¹⁰⁰ The marginability assessment refines the (in)justice analysis in the context of the other two pillars. The awakened analysis requires two steps to ascertain not only whether a regulation is awakened with respect to its impact on the practice of law, but also whether the court’s proposed solution denies protected rights of the individual(s) affected by the decision. The first inquiry is whether the law burdens a right (or privilege) of citizenship—in Stoneman’s case, it was the pursuit of the trade of one’s choice. The second step asks whether the proposed solution denies the enjoyment of equality/nondiscrimination—whether it places an undue

⁹⁸ See Hernández-Truyol, *Crossroads*, *supra* note 92, at 382.

⁹⁹ *But cf.* *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022) (The Court is essentially doing away with the holistic burden analysis’s existence by refusing to take into account privacy, intimacy, and equality rights of those who can bear children.)

¹⁰⁰ See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (noting that liberty means “not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life”).

encumbrance on the rights of others affected. This approach allows for a holistic analysis of all the rights affected in any scenario in which a rights-denial exists and allows for a resolution that not only protects all rights but also avoids the subordination of some persons, groups, or rights to others.

In Stoneman's pursuit of justice to eradicate a law that excluded all women—White women and Black women alike—as well as Black men from the practice of law, she centered the interests of those excluded. Stoneman argued for the inclusion of all, and she succeeded in her arguments. She prevailed in awakening the law.

In sum, this proposed new approach asks two essential questions: (1) what and whose rights are obscured by the ingrained biases of ruling perceptual playbooks, and (2) looking through a multidimensional lens, are proposed solutions inclusive of all those who have been subordinated and marginalized? The dignity foundation and the three principles provide a framework for evaluating justice when dominant perceptual playbooks effect erasures of rights and liberties.¹⁰¹ The methodology enables awakening the law to avoid the myopic approaches of the law, legal processes, law enforcers, and law interpreters. Failing to account for all the rights involved in any particular context results in asleep exclusions that cause harms. The proposed model ensures that all rights affected as well as all the individuals involved will be included in the context in which the law is crafted, analyzed, and applied. An awakened law methodology provides consistency in evaluating claimed exclusions and marginalizations; it safeguards all persons affected and their interrelated rights.

The proposed paradigm enables a radical deconstruction of the structural and individual biases forming the foundation of the perceptual playbooks that have rendered the law asleep. At a structural level, the awakening analysis facilitates the recognition of the bias in laws and legal institutions and exposes the injustices enabled by the structural bias. Once the biases are unveiled, awakening the law requires deliberation in which a justice-centered reconstruction of the existing laws and legal systems is possible. Such a process results in the design of a fair system where equality and justice can be a reality—a system that would rise to the Stoneman ideals.

¹⁰¹ Although this test has been developed in the context of a First Amendment claim conflict, it can apply to any two constitutional rights in collision. See Berta Esperanza Hernández-Truyol, *Awakening the Law—Unmasking Free Exercise Exceptionalism*, 74 EMORY L.J. (forthcoming 2023).

On the individual bias level, the process provides a blueprint for the parallel scrutiny of the actions of those involved in making, interpreting, and enforcing the law. The paradigm creates the pathway for deconstruction of the perceptual playbooks' implicit and structural biases that plague the law and legal system; it effects the recognition and exposure of the skewed perceptual playbooks' grounding on an asleep law and provides the structure for deliberation by considering multiple narratives and histories, allowing solutions to effect a just—awakened—reimagining of the law.

CONCLUSION

Kate Stoneman was an awakened woman. She saw injustice and she remedied it. Kate Stoneman was intentionally conscious. Prior keynoters have called her intersectional; I call her awakened and multidimensional. She did not opt to fight for the right of only those like herself—White women—to join the bar. She refused to ignore the fact that Black persons were also excluded. She insisted that all women be able to practice law, and to attain that end, by centering the multidimensional and marginable, she eradicated the sex *and* the race bar to practice.

One can imagine Kate Stoneman listening to Sojourner Truth asking “Ain’t I a woman?”¹⁰² She would have readily answered “Yes, you are. Of course, you are. We are.” Kate Stoneman did not accept the status quo as a neutral position; she saw it for what it was: unjust and unconscious, even if intentional. She was an awakened woman.

Today, as in Stoneman’s day, we live in a world that needs much love. There are global migration crises, caused by desperate conditions of privation; there are wars being fought causing much destruction and fear, and illegally targeting civilians; there are kids in cages—both literal and socially fabricated; there are melting ice caps; there are disappearing species; there is racial, ethnic, and gender injustice; there are pandemics; there are the hungry and the poor; there are the marginable. These and more are the challenges lawyers are called to resolve because of our unique training equipping us to seek justice and our professional responsibility to pursue and uphold that justice. Kate Stoneman understood that lawyers occupy a privileged location and possess an ample toolkit designed to effect justice.

¹⁰² *Sojourner Truth: Ain't I a Woman?*, NAT'L PARKS SERV., <https://www.nps.gov/articles/sojourner-truth.htm> [<https://perma.cc/84UZ-D66T>].

Every person is a potential justice warrior in a Stoneman justice corps. Each of us needs to ask ourselves daily: Am I going to take the easy road, and affirm the status quo? Or am I going to take a Kate Stoneman bold leap, say *Soy Yo*, and fight injustice wherever I see it? What will your answer be when you ask yourself: *¿Quien Soy Yo?* Are you going to support the status quo? Or are you going to take up the Kate Stoneman banner and challenge it? Really, is it even a choice?