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"Newtrality": A Contemporary Alternative to Race-Neutral Pedagogy

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“Newtrality”: A Contemporary Alternative to Race-Neutral Pedagogy

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ABSTRACT:

This Article presents the findings of an interdisciplinary search for an alternative to race-neutral pedagogy. Ultimately, “Motivated Awareness” and “Inclusive Integrity” can build capacity for advancements in human understanding of the social sciences and inspire reconsideration of race-neutral standards which impede meaningful judicial review. Using Washington v. Davis as a timestamp, this Article outlines the pervasive nature of sanctioned systemic racism at the hands of the discriminatory intent doctrine and articulates a tangible strategy for examining an interdisciplinary system of equity through “Motivated Awareness” and “Inclusive Integrity.”

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*"[T]he injury of racial inequality exists irrespective of the motives of the defendants in a particular case. I believe that the 13th, 14th, and 15th Amendments embody a moral and constitutional duty to act affirmatively to disestablish the practices, institutional structures, and ideology of slavery and white supremacy."*¹

INTRODUCTION

With the passing of Executive Order (EO) 13950,² the country's executive landscape has dictated a creative shift in diversity, equity, and inclusion ("DEI") pedagogy that pivots from a race-conscious to a race-neutral action plan that mirrors the country's federal antidiscrimination color-blind jurisprudence. In *Washington v. Davis*, the United States Supreme Court established harmful, race-neutral doctrines that reject causes of action based on the disproportionate impact of facially neutral laws.³ This Article contends that a race-neutral approach to discrimination fails to address and prevent contemporary forms of race-based discrimination. Moreover, encoded in the concept of neutrality is impartiality toward individuals and groups without regard to their race, color, ethnicity, gender, or disabilities.

While there is much disagreement concerning the appropriate means to combat race discrimination, there is little disagreement surrounding its existence, pervasive nature, and adverse effects on societal well-being.⁴ However, that is not to say that racial discrimination affects all people equally—racial disparities have been endemic to the administration of criminal justice in this country for people of color.⁵ Further, there exists in this country a troubling historical continuity in the abandonment of marginalized populations to overcome unreasonably high—and severely uninformed—hurdles to justice. This Article offers two pedagogical theories that champion identity-based solutions in which all dimensions of

1. Charles R. Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of "The Id, the Ego, and Equal Protection,"* 40 CONN. L. REV. 931, 944 (2008) [hereinafter *Unconscious Racism Revisited*].

2. Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020). While President Biden has subsequently rescinded Executive Order No. 13950, Exec. Order No. 13985, 86 Fed. Reg. 7,009 (Jan. 20, 2021), Executive Order No. 13950 signaled a growing trend in race-neutral pedagogy as an alternative to more race-conscious tactics. This Article proposes two completely new theories for addressing race-neutral inequities.

3. *Washington v. Davis*, 426 U.S. 229 (1976).

4. See *McCleskey v. Kemp*, 482 U.S. 279, 328–30 (1987) (Brennan, J., dissenting).

5. See generally, N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., REPORT 2020 (2020), https://ncdoj.gov/wp-content/uploads/2020/12/TRECREportFinal_12132020.pdf [<https://perma.cc/9UJK-TLBA>].

diversity are salient, “Motivated Awareness” and “Inclusive Integrity.” This Article argues that the concepts of “Motivated Awareness” and “Inclusive Integrity” can serve as a sustainable, interdisciplinary remedy to teach inequities in light of the trend in race-neutral pedagogy EO 13950 signals.

I. CONTEMPORARY THREATS TO EQUITY

A. *The Power of Judicial Review: Progress and Retreat*

Judicial review continues to play an essential role in safeguarding constitutional liberties. Indeed, throughout 2019 and 2020, the United States Supreme Court has shown the power of judicial review in its issuance of monumental decisions concerning race and identity-based individual freedoms. For example, the Court extended the 1964 Civil Rights Act to protect lesbian, gay, bisexual, transgender, or queer (LGBTQ) employees from discrimination in the workplace nationwide,⁶ and the Court also protected the rights of a Black man on death row for twenty-five years when potential Black jurors were unlawfully excluded from his trial.⁷ Considering the long fight for LGBTQ rights in America,⁸ and courts’ historical apprehension to challenge *Batson* jury violations,⁹ these two decisions were significant for American civil rights. On the flip side, the Court still demonstrated a general unwillingness to reexamine the handling of matters concerning unintentional discrimination.¹⁰ For example, the Court held that federal judges did not have a role in deciding even the most

6. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020).

7. *Flowers v. Mississippi*, 139 S. Ct. 2228, 2251 (2019).

8. *See, e.g.*, *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020); *Fulton v. City of Philadelphia*, 140 S. Ct. 1104 (2020); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Lawrence v. Texas*, 123 S. Ct. 2472 (2003); *Romer v. Evans*, 116 S. Ct. 1620 (1995); *Bowers v. Hardwick*, 106 S. Ct. 2841 (1986).

9. Kenneth Melilli, *Batson in Practice: What We Have Learned About Batson and Peremptory Challenges*, 71 NOTRE DAME L. REV. 447, 503 (1996) (examining virtually all federal and state civil and criminal cases published between 1986 and 1993 and showcasing that the majority of *Batson* challenges were ultimately unsuccessful due to the party charged with the *Batson* violation being able to provide a neutral explanation that was acceptable to the judge); Shari Seidman Diamond et al., *Realistic Responses to the Limitations of Batson v. Kentucky*, 7 CORNELL J.L. & PUB. POL’Y 77, 82 (1997) (“Even if the judge suspects that the attorney’s real reason for the challenge is race or gender, the judge may be reluctant to act.”).

10. *See, e.g.*, *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017) (“[T]here must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury’s deliberations and resulting verdict.”).

egregious cases of partisan gerrymandering,¹¹ and that a plaintiff who sues for racial discrimination in contracting under 42 U.S.C. § 1981 bears the burden of showing that race was a "but-for" cause of the plaintiff's injury.¹² While the first two rulings showcase progress, the latter seems to retreat back to the color-blind logic of the *Davis* court without even considering a more nuanced approach that balances both impact and intent.

B. Decisions at the Executive Level: Exploring the Reach of EO 13950 and the Race-Neutral Pedagogy it Represents

On September 22, 2020, President Donald Trump delivered a major blow to all race-conscious pedagogy practitioners around the nation with the issuance of EO 13950, "Combating Race and Sex Stereotyping" (Order).¹³ The Order was a culmination of efforts by the Trump Administration to target "anti-American" ideas around the history and nature of race and sex discrimination in the United States—the Order worked in concert with Memorandum M-20-34 (Memo), "Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All," issued a few weeks earlier by the White House Office of Management and Budget.¹⁴ The stated purpose of the Order was "to promote economy and efficiency in Federal contracting, to promote unity in the Federal workforce, and to combat offensive and anti-American race and sex stereotyping and scapegoating."¹⁵ To that end, the Order prohibited federal agencies, federal contractors (including "subcontractors"), and federal grant recipients from providing workplace diversity and inclusion training to their employees that "inculcates" any form of blame-focused training.¹⁶ Further, the Order identified the following training concepts as divisive and impermissible:

11. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507–08 (2019).

12. *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1013 (2020).

13. Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020).

14. Memorandum from Russell T. Vought, Dir. of the Off. of Mgmt. & Budget, to the Heads of Exec. Dep'ts & Agencies 1–4 (Sept. 28, 2020) (requiring executive departments and agencies to identify and cancel all contracts or spending related to training on "critical race theory" and "white privilege," and trainings that suggest that the United States is an inherently racist or evil country, or that imply that any race or ethnicity is inherently racist).

15. Exec. Order No. 13950, 85 Fed. Reg. at 60,686–87 ("'Race or sex stereotyping' means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex 'Race or sex scapegoating' means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex.").

16. *Id.* at 60,685–87.

- (1) One race or sex is inherently superior to another race or sex;
- (2) the United States is fundamentally racist or sexist;
- (3) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (4) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
- (5) members of one race or sex cannot and should not attempt to treat others without respect to race or sex;
- (6) an individual's moral character is necessarily determined by his or her race or sex;
- (7) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- (8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or
- (9) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.¹⁷

The Order left many executives uncertain as to which diversity trainings were permitted, especially in light of inconsistent statements by the Department of Labor (DOL) officials charged with its interpretation and enforcement.¹⁸ The Federal Contract Compliance Program's webpage

17. *Id.* at 60,685.

18. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) Director Craig Leen said in public remarks that implicit/unconscious bias training is "perfectly fine" so long as it "teaches that everyone, based on the human condition, has unconscious biases." Paige Smith, *Trump Didn't Ban All Unconscious-Bias Training: DOL Official*, BLOOMBERG L. (Oct. 2, 2020), <https://news.bloomberglaw.com/daily-labor-report/trump-didnt-ban-all-unconscious-bias-training-dol-official> [https://perma.cc/P8AT-K3E6]. At the same time, Department of Labor Secretary Eugene Scalia expressed the view early on that teaching employees that being "color-blind and . . . regard[ing] one another as equal is wrong and offensive" is impermissible. Vin Gurrieri, *Diversity Training Guidance on the Horizon, DOL Chief Says*, LAW360 (Oct. 1, 2020), <https://www.law360.com/employment-authority/articles/1315905/diversity-training-guidance-on-the-horizon-dol-chief-says> [https://perma.cc/24DH-FQUT]. Since those comments, Secretary Scalia clarified in more explicit terms what the Executive Order "does not do." News Release, U.S. Dep't of Lab., U.S. Secretary of Labor Scalia Delivers Columbus Day and Our American Heritage Speech at Franciscan University of Steubenville (Oct. 12, 2020), <https://www.dol.gov/newsroom/releases/osec/osec20201012> [https://perma.cc/RQF2-QZRU]. Specifically, in remarks that he made on October 12, 2020, Secretary Scalia stated that the Order "does not prohibit workplace training about non-discrimination and equal opportunity" or "trainings about pre-conceptions or biases that people may have—regardless of their race or sex—about

proved one source of clarification concerning the Order's interpretation. On the website, unconscious or implicit bias training was expressly prohibited "to the extent it teaches or implies that an individual, by virtue of his or her race, sex, and/or national origin, is racist, sexist, oppressive, or biased, whether consciously or unconsciously."¹⁹ However, training centered on "pre-conceptions, opinions, or stereotypes that people—regardless of their race or sex—may have regarding people who are different, which could influence a worker's conduct or speech and be perceived by others as offensive" was allowed.²⁰

When the Order's fate was uncertain, equal employment opportunity professionals and DEI practitioners had to fight for the staying power of meaningful training at the federal level with creative, yet effective, alternatives. Irrespective of the fact that the Order did not survive a change in administration, its very existence showcased a national misunderstanding of the aims and importance of race-conscious pedagogy. Until this country rewires its collective consciousness to consider the benefits of race-conscious pedagogy, systemic barriers that call for race-neutral approaches will continue to sustain a racial and cultural caste system in this country.

II. MOTIVATED AWARENESS AND INCLUSIVE INTEGRITY—A NEW PEDAGOGICAL APPROACH TO EQUITY

A. *Motivated Awareness*

In order to ensure the effective, ethical, and equitable distribution of justice in a nation reckoning with its institutional, historic, and systemic blind spots, "Motivated Awareness" should be utilized as an interdisciplinary alternative to race-neutral pedagogy (RNP). Conceptually, Motivated Awareness is the active and ongoing effort to encounter, embrace, and understand the lived experiences of others by processing difference as an opportunity to explore what makes us unique. Motivated Awareness increases both individual and organizational capacity for cultural intelligence by "developing an understanding of individual identity and why that matters, examining how lived experiences impact decision making, . . . understanding the historical impact of race and culture, and

people who are different, and which could cause slights or even discrimination that's not intended." *Id.*

19. Off. of Fed. Cont. Compliance Programs, *Executive Order 13950 – Combating Race and Sex Stereotyping*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/ofccp/faqs/executive-order-13950> [<https://perma.cc/22HU-SP2X>] (last updated Oct. 7, 2020).

20. *Id.*

analyzing 21st century nuances that require immediate attention.”²¹ Transformational change occurs at the intersection of discomfort and delight. Therefore, using Motivated Awareness as an alternative to RNP will improve culture-based outcomes in the legal profession by enhancing legal actors’ ability to perceive subtlety, recognize bias, appreciate difference, register new information, and apply it accordingly.

There are numerous theories circulating the field of psychology that involve human motivation.²² Motivated Awareness is a multidisciplinary, multimethod pursuit that lies at the intersection of positive and negative psychology theory.²³ Motivated Awareness is positive in its proactive cultivation of new competencies through modified future behavior, and negative in its vital reliance on reflection to learn from past behavior. This

21. WILMOR WORKS, LLC, <https://www.wilmorworks.com/> [<https://perma.cc/9ZCL-MVJJ>].

22. Nancy H. Shanks & Amy Dore, *Management and Motivation*, in INTRODUCTION TO HEALTH CARE MANAGEMENT 85, 85–90 (Sharon B. Buchbinder & Nancy H. Shanks eds., 3rd ed. 2017); John W. Lawrence et al., *Velocity Toward Goal Attainment in Immediate Experience as a Determinant of Affect*, 32 J. APPLIED SOC. PSYCH. 788, 789–91 (2002) (discussing the correlation between attitude and motivation); JOHN MARSHALL REEVE, UNDERSTANDING MOTIVATION AND EMOTION 2–7 (7th ed. 2018) (explaining why motivation is often conceptualized in terms of drives); Edwin A. Locke & Gary P. Latham, *Building a Practically Useful Theory of Goal Setting and Task Motivation: A 35-Year Odyssey*, 57 AM. PSYCH. 705, 707 (2002) (describing the role conscious motivation plays in goal-setting theory and how that theory affects job satisfaction and performance); Thomas J. Johnson, *Goal Theories of Motivation as Rigorous Humanism*, 18 J. OF CONSTRUCTIVIST PSYCH. 311, 311–25 (2005) (discussing theories of motivation through Rychlak’s criteria for rigorous humanism); LYLE YORKS, A RADICAL APPROACH TO JOB ENRICHMENT 21–37 (1976); Patricia C. Duttweiler, *Educational Excellence and Motivating Teachers*, 59 CLEARING HOUSE 371, 371–74 (1986); RONALD L. PARDEE, MOTIVATION THEORIES OF MASLOW, HERZBERG, MCGREGOR & MCCLELLAND: A LITERATURE REVIEW OF SELECTED THEORIES DEALING WITH JOB SATISFACTION AND MOTIVATION 5–21 (1990); Roy F. Baumeister, *Toward a General Theory of Motivation: Problems, Challenges, Opportunities, and the Big Picture*, 40 MOTIVATION & EMOTION 1, 1–10 (2016); Arie Kruglanski et al., *Emerging Trends in the Social and Behavioral Sciences*, in MOTIVATION SCIENCE (Stephen Kosslyn & Robert A. Scott eds., 1st ed. 2015).

23. Nansook Park & Christopher Peterson, *Positive Psychology and Character Strengths: Application to Strengths-Based School Counseling*, 12 PRO. SCH. COUNSELING 85, 85 (2008) (“Positive psychology is the scientific study of what goes right in life. It is the study of optimal experiences—people being their best and doing their best.”); Sam Louie, *Negative Psychology*, PSYCH. TODAY: MINORITY REP. (July 18, 2019), <https://www.psychologytoday.com/us/blog/minority-report/201907/negative-psychology> [<https://perma.cc/6D7U-6F62>] (“In trauma-informed care, the goal is similar to positive psychology—to allow a person to think of themselves as lovable, accepted, and deserving of forgiveness and grace. But the big difference with trauma-informed care is that healers are willing to explore a person’s past to get to the origin of these negative thoughts. Exploration means a willingness and comfort level with addressing the neglect, trauma, or lack of validation that led to the negative thoughts in the first place . . .”).

delicate balance of both positive and negative psychology theory ensures that Motivated Awareness operates as a holistic framework premised on cultural humility,²⁴ and extends through the development of both a growth and global mindset.²⁵ To that end, individuals must actively fight against human inertia, or one's predisposition to resist change unless acted upon by a greater force.²⁶ Motivated Awareness can serve as that greater force. Motivation is one of the most valuable human commodities. Multiplied only by action, its value is dependent upon the depth of one's commitment to both a growth and global mindset. An individual and/or organization must be ready and willing to engage with and learn from culturally rich environments,²⁷ as cultivating a learning culture has proven effective for organizational success,²⁸ in addition to individual life fulfillment.²⁹

24. Melanie Tervalon & Jann Murray-García, *Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education*, 9 J. HEALTHCARE FOR POOR & UNDERSERVED 117, 118 (1998) (describing cultural humility as a commitment to and active engagement in self-reflection and self-critique as lifelong learners and reflective practitioners challenging power imbalances and maintaining respectful and dynamic relationships); Katherine A. Yeager & Susan Bauer-Wu, *Cultural Humility: Essential Foundation for Clinical Researchers*, 26 APPLIED NURSING RSCH 251, 251–56 (2013); Cynthia Foronda et al., *Cultural Humility: A Concept Analysis*, 27 J. TRANSCULTURAL NURSING 210, 210–17 (2016).

25. Stephen H. Rhinesmith, *Global Mindsets for Global Managers*, 46 TRAINING & DEV. 63, 64 (1992) (defining a global mindset as an identity or paradigm for viewing the world holistically; people with global mindset drive for the broader picture; accept the complexity of the world; trust process more than structure; value diversity and cultural differences; are comfortable with change, surprise and ambiguities; and constantly re-examine themselves and their boundaries.); Carol Dweck, *Mindsets: Developing Talent Through a Growth Mindset*, OLYMPIC COACH MAG., Winter 2009, at 4, 4–7 ("People with a growth mindset . . . think of talents and abilities as things they can develop—as potentials that come to fruition through effort, practice, and instruction.").

26. Jim Taylor, *Life Inertia: Like an Asteroid Hurling Through Space*, PSYCH. TODAY (Nov. 28, 2011), <https://www.psychologytoday.com/us/blog/the-power-prime/201111/life-inertia-asteroid-hurling-through-space> [<https://perma.cc/3ZJG-PPQ3>] (defining human inertia as "[t]he tendency of people, having once established a life trajectory, to continue on that course unless acted on by a greater force").

27. Todd S. Braver et al., *Mechanisms of Motivation-Cognition Interaction: Challenges and Opportunities*, 14 COGNITIVE, AFFECTIVE, & BEHAV. NEUROSCIENCE 443, 443–72 (2014).

28. James M. Sinkula et al., *A Framework for Market-Based Organizational Learning: Linking Values, Knowledge, and Behavior*, 25 J. ACAD. MKTG. SCI. 305 (1997); Joana S. Story, *Testing the Impact of Global Mindset on Positive Organizational Outcomes: A Multi-Level Analysis* (Apr. 2010) (Ph.D. dissertation, University of Nebraska-Lincoln), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1004&context=aglecdiss> [<https://perma.cc/ZY36-S2L8>]; Grace Amin & Genoveva Claudia, *The Effect of Motivation, Competency and Organizational Learning Towards Global Mindset (Study of PUC Employees on Competitive in AFTA 2015)*, 4 UNIVERSAL J. MGMT. 228 (2016).

29. ABRAHAM MASLOW, *TOWARD A PSYCHOLOGY OF BEING* 91–96 (3d ed. 1998).

Motivated Awareness requires one to believe in their own capacity to grow and change. Touching on one major impediment to this required mentality, Dr. Daniel Gilbert explains the “end of history illusion.”³⁰ In his TED Talk, “The Psychology of Your Future Self,”³¹ Dr. Gilbert describes how humans have the bias of thinking that the person they are today is the person they will always be: “Human beings are works in progress that mistakenly think they’re finished.” We choose “the ease of remembering versus the difficulty of imagining.”³² Dr. Ellen Langer alludes to this very phenomenon further in what she describes as “mindlessness.”³³ According to Dr. Langer, individuals cling so tightly to the permanent labels they have constructed for themselves that they leave little wiggle room for change and growth.³⁴ Motivated Awareness offers an autonomy of cognition that is critically important to overcoming impairments to both a growth and global mindset. Individuals with these mindsets seek out new information, and thus activate their capacity to continually grow and change at pace with an ever-evolving world.³⁵

B. Inclusive Integrity

In addition to the concept of Motivated Awareness, Inclusive Integrity emerges as an additional interdisciplinary strategy for change-making. Conceptually, Inclusive Integrity finds its origins in the published work of Dworkin,³⁶ who posits that, with respect to matters of justice, integrity alone is not sufficient.³⁷ Instead, Dworkin argues that Inclusive Integrity is comprised of two characteristics—one focused specifically on the pursuit of justice (pure integrity), the other focused on the integrity of political power (fairness integrity).³⁸ While Dworkin’s conceptual framework provides a nuanced understanding of matters of justice, Inclusive Integrity

30. Jordi Quoidbach et al., *The End of History Illusion*, 339 *SCIENCE* 96, 96 (2013) (“[P]eople have a fundamental misconception about their future selves In other words, people may believe that who they are today is pretty much who they will be tomorrow, despite the fact that it isn’t who they were yesterday.”).

31. Dan Gilbert, *The Psychology of Your Future Self*, TED (Mar. 2014), https://www.ted.com/talks/dan_gilbert_the_psychology_of_your_future_self/transcript?language=en [https://perma.cc/Y7APK239].

32. *Id.*

33. ELLEN J. LANGER, *MINDFULNESS* 1–6 (1989).

34. *Id.* at 43–57.

35. Benjamin Hardy, *Take Ownership of Your Future Self*, *HARV. BUS. REV.* (Aug. 28, 2020), https://hbr.org/2020/08/take-ownership-of-your-future-self?utm_medium=social&utm_source=linkedin&utm_campaign=hbr [https://perma.cc/KXH4-TYXH].

36. RONALD DWORKIN, *LAW’S EMPIRE* 404–07 (1986).

37. *Id.* at 202–06.

38. *Id.* at 404–07.

also serves as a useful alternative to race-neutral pedagogy. Inclusive Integrity, or the responsibility to do what is right for all citizens, is the underpinning of a just and equitable society. Similarly, the concept contextualizes the necessity for equality under the law. This distinction is important because it provides language to grapple with historic inequities that have been present within the nation. Notions of Inclusive Integrity, as a pedagogical strategy, should focus on centering the experiences of historically excluded and underrepresented communities and requires the removal of self-interest, a commitment to appreciative inquiry, and an applied understanding of empathy and compassion.

Implicit in the understanding of Inclusive Integrity is the idea that privilege, as witnessed throughout societal hierarchies, often creates a set of winners and losers, or an "us versus them" dichotomy. The practice of Inclusive Integrity involves the active and ongoing pursuit of what is right for all communities, even when that which is required comes at a level of expense or inexpedience. Scholars have found that self-interest is often an impediment to the advancement of inclusion and diversity. For example, Skocpol³⁹ argued that, particularly when inclusive policies impose a financial burden, white Americans are unlikely to support them.⁴⁰ However, the work of equity involves the removal of self-interest and the embrace of egalitarian principles that focus on enhancing the common good. While the complete removal of self-interest is impossible, the work of Inclusive Integrity involves a deep immersion into the experiences of historically marginalized communities, to better understand distinctions in lived experiences, access to equitable resources, and societal involvement and participation.

The work of Inclusive Integrity also demands a commitment to appreciative inquiry. Conceptually, appreciative inquiry originated as an anti-deficit-based strategy focused on unearthing opportunities for growth through a focus on understanding what is working, rather than a focus on what is wrong. It also centers inquiry as an important and integral part of growth in inclusion and diversity work. Particularly in an age tempered by race-neutral policies, the work of appreciative inquiry allows for a strengths-based approach to growth in inclusivity, rather than centering blame, as a method of engagement and education. Instead of focusing on what does not exist, appreciative inquiry focuses on preexisting success. For example, in the work of inclusion, appreciative inquiry would work to

39. Theda Skocpol, *Targeting Within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in *THE URBAN UNDERCLASS 411* (Christopher Jencks & Paul E. Peterson eds., 1991).

40. *Id.* at 413.

identify the ways in which inclusion already manifests and seek opportunities to replicate inclusion in other contexts.⁴¹

Finally, the work of Inclusive Integrity also compels adherents to understand and apply concepts of empathy and compassion within their interpersonal networks. This applied understanding of empathy and compassion ensures that inclusive integrity remains inward in its reflection but outward in its application. The work of inclusive integrity is active, ongoing, and visible. It is also sensitive to the dynamic needs of historically underrepresented populations. Inclusive Integrity provides a venue in which the concepts of empathy and compassion are central to successful education in diversity and inclusion work. In an era in which race-neutral pedagogy abounds and marginalized and minoritized experiences are often questioned, Inclusive Integrity argues that the experiences of historically underrepresented communities should be centered and allowed space to be understood. The acquisition of a posture of empathy is a practical, well-researched strategy to open understanding and empower individuals to develop increased tools of communication.

C. *Motivated Awareness and Inclusive Integrity in Action*

*“Lawyers throughout the history of the United States have always been in the forefront; have always taken the forward step. They have always educated society to what is best.”*⁴²

The North Carolina Bar Association’s (NCBA) November 2020 report (the Report) identifying relationships between the NCBA and systemic racism in North Carolina provides a prime example of Motivated Awareness and Inclusive Integrity in action.⁴³ The Report, released by the Executive Director of the NCBA to the NCBA Board of Governors and the

41. Brenda Alston-Mills, *Using Appreciative Inquiry to Promote Diversity Management in Higher Education*, 6 J. DIVERSITY MGMT. (No. 3) 1, 2 (2011).

42. N.C. BAR ASS’N, REPORT FROM THE EXECUTIVE DIRECTOR TO THE NORTH CAROLINA BAR ASSOCIATION (NCBA) BOARD OF GOVERNORS AND THE NORTH CAROLINA BAR FOUNDATION (NCBF) BOARD OF DIRECTORS REGARDING RELATIONSHIPS BETWEEN THE NCBA AND SYSTEMIC RACISM IN NORTH CAROLINA 51 (2020), <https://www.ncbar.org/wp-content/uploads/2020/12/Report-Regarding-Relationships-Between-the-NCBA-and-Systemic-Racism-11-30-2020.pdf> [<https://perma.cc/9WRW-4BFB>] (statement of Eric Michaux at the Oct. 27, 1966, NCBA Board of Governors Meeting).

43. *Id.* at 1 (“This report is the result of research that began in relation to the North Carolina Bar Foundation Justice Fund that honors Governor Charles B. Aycock. Research into Aycock’s involvement in the founding of the North Carolina Bar Association led to the need to more fully understand the involvement of individuals who participated in the white supremacy political campaign of 1898 with the organization of the North Carolina Bar Association, and to understand the struggle required for the Association to admit its first non-white members in 1967.”).

North Carolina Bar Foundation Board of Directors, acknowledged the role that several NCBA founding members and early officers played in the white supremacy campaign of 1898, the Wilmington Massacre and Coup d'État of 1898, and the institution of Jim Crow laws in North Carolina.⁴⁴ Moreover, the Report recognized the lasting harm to generations of Black communities in North Carolina as a result of these events.

The Report's unwavering candor embodies the principles of Motivated Awareness. Specifically, NCBA's initial inquiry into its past displays a foundational imperative of Motivated Awareness—cultural humility. It took a profound amount of cultural humility for NCBA to (1) accept its limitations in intuitively understanding the history and lived experiences of its diversity of members and beneficiaries, (2) proactively research the disturbing details of its dark past, and (3) reveal its skeletons to the world. This act is particularly poignant and representative of Motivated Awareness when placed in the context of 2020—a socially and politically unstable year marked by civil unrest, the coronavirus pandemic, and the rise of cancel culture.⁴⁵ However, NCBA had the motivation to increase its capacity for cultural intelligence by understanding the historical impact of race and culture in its organization. To our knowledge, this was a voluntary endeavor. Regardless, NCBA maximized this moment in time by using a race-conscious approach to effect organizational change.

NCBA's expressed commitment to change showcased a level of accountability equivalent to that required by Inclusive Integrity. For an organization to possess integrity, it must live in accordance with its deepest values. The Report's deep immersion into the experiences of historically marginalized communities illustrates NCBA's firm commitment to its deepest values, as expressed in both its Mission Statement⁴⁶ and its

44. *Id.* ("The [NCBA] was organized on February 10, 1899 In the prior year, 1898, the North Carolina Democratic Party returned to power through a statewide political campaign based upon white supremacy Prominent leaders of the 1898 white supremacy campaign, the Wilmington Coup and the 1899 legislature were members of and leaders in the founding of the [NCBA] in 1899. White supremacist policies and ideas were incorporated into the founding constitution of the NCBA by limiting membership to 'any white person' and included in addresses during the Association's early annual meetings." Even once this limiting language was eradicated in 1965, new barriers to membership were instituted, including the recommendation of three members and the requirement of a vote of approval by a supermajority of the Board of Governors.)

45. See Ryan Lizza, *Americans Tune in to 'Cancel Culture' – and Don't Like What They See*, POLITICO (July 22, 2020, 4:30 AM), <https://www.politico.com/news/2020/07/22/americans-cancel-culture-377412> [<https://perma.cc/9GNQ-SNHJ>] (defining cancel culture as "the practice of withdrawing support for . . . public figures and companies after they have done or said something considered objectionable or offensive").

46. *About NCBA*, N.C. BAR ASS'N, <https://www.ncbar.org/about/> [<https://perma.cc/7RX6-25VZ>] ("To serve the public and the legal profession by promoting the administration of

Diversity Statement.⁴⁷ Further, the work of Inclusive Integrity is active, ongoing, and visible, and NCBA's public and decisive display of opposition to racism demonstrates a clear commitment to advancing equity through strategy and action. For example, NCBA committed to prioritizing diversity, racial equity, and inclusion education for all members and employees and to create a task force and staff position to continue research and develop recommendations for action. This applied understanding of empathy and compassion, as expressed through the accountability action items in the Report, is essential to Inclusive Integrity.

III. THE HISTORICAL CONTEXT FROM *WASHINGTON V. DAVIS*

Considering the role of the judicial branch in upholding American ideals of democracy and protecting the sanctity of the Constitution, the decision in *Washington v. Davis*⁴⁸ set a dangerous precedent and provided a legally sanctioned means for maintaining the racial status quo in America. The *Davis* decision was an inflection point for the use of race-neutral analyses. This section of this Article will describe the historical context leading up to and after the *Davis* decision. That context reaffirms Professor Charles Lawrence's plea for a cultural meaning test, which subsequently supports the use of Motivated Awareness and Inclusive Integrity as an alternative, interdisciplinary tool for analysis.

A. *The Birth of the Discriminatory Purpose Doctrine*

Our country's forefathers designed separation of powers as a system of checks and balances⁴⁹ and as a mechanism to ensure ultimate accountability.⁵⁰ Antidiscrimination is a fundamental principle of American jurisprudence, legislation, and executive power. Since the birth of Equal Protection through the codification of the 14th Amendment, leaders of our nation have sought to right the wrongs of slavery and provide protections for certain classes of citizens who might otherwise be subject to unjust laws and treatment. This is evident in executive orders designed to protect employees from unlawful discrimination, laws and statutes that

justice and encouraging the highest standards of integrity, competence, civility and well-being of all members of the profession.”).

47. *Id.* (“The NCBA is an inclusive organization committed to recognizing, respecting, promoting and encouraging diversity among its leadership, its membership and the entire legal community.”).

48. *Washington v. Davis*, 426 U.S. 229 (1976).

49. U.S. CONST. art I; *id.* art II; *id.* art III.

50. U.S. CONST. art I; *id.* art II; *id.* art III.

provide cover to protected-class citizens, and judicial decisions that prevent the misuse of constitutional interpretation.

While elected officials govern the trajectory of both the executive and legislative branches, the highest level of the judicial branch, the United States Supreme Court, is not beholden to any one group, political party, or philosophy. Rather, our justices are protectors of constitutional interpretation, with a responsibility that far exceeds that of either the executive or legislative branches. Supreme Court Associate Justice John Marshall Harlan was emboldened by the judiciary's duty to protect the secondary social status of historically oppressed groups, as showcased by his lone dissent in *Plessy v. Ferguson*.⁵¹ In *Plessy*, the Court had to decide whether separate but equal public accommodations compromised the principles of antidiscrimination.⁵² While the Court majority held that separate but equal accommodations were legal since they inflicted no harm on the separated groups,⁵³ Justice Harlan argued that "[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens."⁵⁴ Justice Harlan further contended that this case would "perpetuate a feeling of distrust" between races.⁵⁵ Here, Justice Harlan laid out the tension between the Constitution's requirement that decision-makers be color-blind and its affirmative requirement that the vestiges of prior inequality be eradicated, seemingly calling for a race-conscious decision-maker.

With knowledge of the irreparable harm done to slaves and their descendants by the federal government, generation after generation has attempted to undo this harm. By 1976, the year *Davis* was decided, our nation had endured reconstruction, post-reconstruction terror, and a visible civil rights movement—a fight for freedom that was televised, narrated, and broadcasted for not only our nation, but the world, to see. Forcing complainants to establish discriminatory intent in light of the cultural context of the 1970s relies on an assumption that all actions designed to discriminate are blatant and ignores the ever-present reality that invisible barriers can often cause irreversible harm, particularly in the context of race.

Social scientists have analyzed the social construct of race and how it manifests in overt, and covert, actions over generations.⁵⁶ Prior to the ruling in *Davis*, the United States Supreme Court was unclear about its stance on

51. *Plessy v. Ferguson*, 163 U.S. 537, 554 (1896) (Harlan, J., dissenting).

52. *Id.* at 542.

53. *Id.* at 548.

54. *Id.* at 559 (Harlan, J., dissenting).

55. *Id.* at 560.

56. Victor F. Caldwell, Book Note, 96 COLUM. L. REV. 1363, 1364–67 (1996) (reviewing CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995)).

intent versus impact but consistently held that disparate impact was the most significant consideration.⁵⁷ Holding that equal protection requires that a government act have a discriminatory purpose to be deemed unconstitutional, *Davis* represented a drastic shift in thinking and served, to some degree, as a bedrock for institutionalizing systemic impact, regardless of disparate harm.⁵⁸ Dissenting, Justice Brennan predicted that the decision to focus on racial animus would lead to greater institutionalized disparities for marginalized groups.⁵⁹ Professor Charles Lawrence, in analyzing the harm that could come from *Davis*, called on the Court to apply a cultural meaning test and require an examination of historical context in cases involving protected classes.⁶⁰ The cultural meaning test asks the quintessential question: “Have societal attitudes about race influenced the governmental actor’s decision?”⁶¹

B. Systemic Impact

The concept of race-neutrality has been used repeatedly throughout history to enact legally sound policies designed to disenfranchise and discriminate against underrepresented populations, in particular, the descendants of slaves. In essence, the concept of race-neutrality operates more as a legal fallacy rather than a sound doctrine. Viewing the concept of race-neutrality through the lens of segregation, it is apparent that neutrality has long been a strategy for maintaining the racial status quo.

The Equal Justice Initiative paints a vivid picture of the racial tension that ensued for generations prior to *Davis*,⁶² with many instances occurring less than ten years prior to this monumental decision. The unequivocal

57. See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886); *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960).

58. *McCleskey v. Kemp*, 481 U.S. 279, 292 n.10 (1987) (citing *Davis* when rejecting an equal protection challenge to the administration of Georgia’s death penalty statute in which the Plaintiff introduced a study that demonstrated that defendants charged with killing whites were 4.3 times more likely to receive a death sentence than defendants charged with killings Blacks).

59. *Davis*, 426 U.S. at 259 (Brennan, J., dissenting) (“I suggest that today’s decision has the potential of significantly weakening statutory safeguards against discrimination in employment.”).

60. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 355–56 (1987). The cultural meaning test requires an evaluation of government conduct and determination of symbolic messaging that attaches racial significance. *Id.*

61. *Id.* at 328.

62. “*Segregation Forever*”: *Leaders of White Supremacy*, EQUAL JUST. INITIATIVE, <https://segregationinamerica.eji.org/report/segregation-forever-leaders.html> [https://perma.cc/63RU-264G].

desire to maintain a racial caste system for Black Americans was clear and would not have been ignored by a standard that allowed for the use of historical context in legal analysis.

Separate but equal was never equal, and attempts to integrate school systems post *Brown v. Board* was wrought with terror and intimidation.⁶³ States became creative, enacting race-neutral laws that were ultimately designed to delay, and even halt, integration efforts.⁶⁴ We are still living with the damage done by disproportionate resource distribution in schools. In the deep South, states punished share croppers who registered to vote or were voting-rights activists with legal evictions, another strategy of maintaining a race-neutral approach to affirming a caste system.⁶⁵ In addition, the United States has a history of overt discrimination, particularly related to voter disenfranchisement, military affiliation, and political affiliation.⁶⁶ Post *Brown II*,⁶⁷ the country saw federal courts utilizing the Civil Rights Act of 1964 and the Voting Rights Act of 1965 to combat segregation. Prior to *Davis*, there was an active fight for equality that resulted in a loss of life for many. Lynching, bombings, economic deprivation, beatings, and ultimate racial terror was the cost for the civil rights movement.

Most Americans, particularly southern Americans, wanted to maintain segregation.⁶⁸ By the time of *Davis*, many segregationists remained in

63. Ethan Roy & James E. Ford, *Deep Rooted: A Brief History of Race and Education in North Carolina*, EDNC (Aug. 11, 2019) <https://www.ednc.org/deep-rooted-a-brief-history-of-race-and-education-in-north-carolina/> [<https://perma.cc/TP28-TGRA>] (discussing North Carolina's torrid history with desegregation wrought with terror, displacement, and fear).

64. By authorizing local school districts to assign students to schools based on a long list of subjective, "race-neutral" criteria, the law maintained nearly all-white schools without explicit legal segregation. *Id.*

65. *From Slavery to Segregation*, EQUAL JUST. INITIATIVE, <https://segregationinamerica.eji.org/report/from-slavery-to-segregation.html> [<https://perma.cc/2KWW-3BBX>] ("Unchecked racialized violence and disenfranchisement of Black voters kept America's racial hierarchy intact. Public education was legally segregated throughout the South, and residential segregation in the North and West was widespread. Leisure and recreation spaces across the country were segregated by race, and many states banned interracial marriage.").

66. *Id.* ("In 1942, in response to Black leaders' threat to stage a march on Washington, President Franklin D. Roosevelt signed Executive Order 8802, which prohibited racial discrimination in the national defense industry. Six years later, President Harry Truman signed Executive Order 9981, which abolished racial discrimination in the military and ended segregation in the armed forces.").

67. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955).

68. *From Slavery to Segregation*, *supra* note 65 ("[O]pinion polls in the 1940s reported that approximately two of every three white Americans supported racially segregated schools, and a majority supported racial discrimination in hiring.").

power, utilizing race-neutral means to advance a legacy of discrimination. Segregationists knew that overtly racist policies would not survive strict scrutiny. Lawrence's cultural meaning test allows for a deeper analysis that considers historical context and the long-term impact of our nation's battle with segregation.

Applying cultural meaning to the facts of *Davis*, where Black applicants to the Washington, D.C. police force argued that a competency test was discriminatory,⁶⁹ would have required a deeper understanding of the historical context of Baltimore, a city near Washington, D.C. that fully embraced segregation⁷⁰ and vehemently opposed integration of public spaces.⁷¹ *Davis* was an important turning point for our nation and a missed opportunity. Three of the nine justices on the *Davis* Court witnessed this terror and understood the racial context.⁷² Infusing historical context and cultural meaning would have allowed for a stronger and more meaningful analysis.

The harm done by the discriminatory purpose doctrine not only defers from the original intent of equal protection⁷³ but also extends well beyond employment cases. The wealth gap between white and Black Americans has more than doubled;⁷⁴ certain marginalized groups are less likely to own

69. *Davis*, 426 U.S. at 233.

70. *Beyond Brown: Opposition Intensifies*, EQUAL JUST. INITIATIVE, <https://segregationinamerica.eji.org/report/beyond-brown.html> [<https://perma.cc/LZ4T-3FDH>] (“By 1950, Baltimore had six whites-only swimming pools; the one pool for African Americans was so crowded that children had to swim in shifts. Threats of violence delayed implementation of a 1956 court order to integrate the pools, and in 1962, a mob of 1000 white people threw stones and bottles at African American children swimming in a traditionally white pool.”).

71. *Id.* (“In 1960, 90 percent of Baltimore restaurants refused to serve African Americans. When a group of high school and college students boycotted a segregated lunch counter, Chief Judge of the Maryland Court of Appeals Robert Bell recounted: ‘People were spitting and yelling and screaming at us; the epithets were ones you would imagine they would be in the context of that situation. Some people on the picket line were hit, although there was not as much physical violence as I thought there might be. The police were standing about, watching, but they didn’t intervene to protect us from getting hit and they didn’t arrest anyone.’”).

72. *Justices 1789 to Present*, SUP. CT. U.S., https://www.supremecourt.gov/about/members_text.aspx [<https://perma.cc/D7FU-M2S8>].

73. *Unconscious Racism Revisited*, *supra* note 1, at 944–45.

74. Katherine Schaeffer, *6 Facts About Economic Inequality in the U.S.*, PEW RSCH. CTR. (Feb. 7, 2020), <https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/> [<https://perma.cc/PU7K-WKFG>] (“The black-white income gap in the U.S. has persisted over time The wealth gap between America’s richest and poorer families more than doubled from 1989 to 2016”); Rakesh Kochhar & Anthony Cilluffo, *How Wealth Inequality Has Changed Since the Great Recession by Race, Ethnicity, and Income*, PEW RSCH. CTR. (Nov. 1, 2017), <https://www.pewresearch.org/fact->

a home;⁷⁵ Black employees earn less than similarly situated white counterparts;⁷⁶ and Black students pursuing higher education are more likely to leave college with substantial student loan debt compared to their white counterparts.⁷⁷ Furthermore, the criminal justice system presents additional opportunities to explore this analysis.

C. Race-Based Outcomes in the Criminal Justice System

Before discussing race-based outcomes in the criminal justice system, one must possess a general understanding of the term "systemic racism." Similar to misinformation and misunderstanding concerning race-conscious pedagogy, systemic racism is often misinterpreted as a blanket claim that everyone in a given system is racist.⁷⁸ However, systemic racism refers rather to systems and institutions, not people, that produce racially disparate outcomes.⁷⁹ These outcomes persist regardless of the intentions of the individuals who work within a given system.⁸⁰ Regarding the criminal

tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/ [https://perma.cc/7B24-EESK] ("Among lower- and middle-income households, white families have four times as much wealth as black families and three times as much as Hispanic families . . . Wealth gaps between upper-income families and lower- and middle-income families are at the highest levels recorded."); *Beyond Brown: Opposition Intensifies*, supra note 70 ("From 1960 onward, the unemployment rate for black Americans stayed at double the rate for white Americans. Even after the Civil Rights Act outlawed racial discrimination in employment, job advertisements in the *New York Times*, *Washington Post*, and *Chicago Tribune* sought 'white applicants only.'").

75. Drew Desilver & Kristen Bialik, *Blacks and Hispanics Face Extra Challenges in Getting Home Loans*, PEW RSCH. CTR. (Jan. 10, 2017), <https://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans/> [https://perma.cc/R7KX-DWWR] ("Black and Hispanic households today are still far less likely than white households to own their own homes (41.3% and 47%, respectively, versus 71.9% for whites).").

76. Eileen Patten, *Racial, Gender Wage Gaps Persist in U.S. Despite Some Progress*, PEW RSCH. CTR. (Jul. 1, 2016), <https://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/> [https://perma.cc/D6C5-BLHV].

77. MORGAN TAYLOR ET AL., RACE AND ETHNICITY IN HIGHER EDUCATION: 2020 SUPPLEMENT (2020), <https://devacerehe.wpeengine.com/wp-content/uploads/2020/11/REHE-2020-final.pdf> [https://perma.cc/NYA8-AU92].

78. Evelyn Y. Young, *The Four Personae of Racism: Educators' (Mis)Understanding of Individual vs. Systemic Racism*, 46 URB. EDUC. 1433, 1434 (2011) ("Critical race theory (CRT) scholars attribute racism as the underlying cause of inequalities in law, employment, health care, housing, and education. They reject the viewpoint that racism is symptomatic of individual pathology; instead, they position racism as a systemic condition that is pervasively and permanently rooted in the ideology of the masses.").

79. *Id.*

80. DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 288 (1987); Sabrina E. Vaught & Angelina E. Castagno, "I Don't Think I'm a Racist":

justice system, systemic racism is present throughout all of its stages, from policing to prosecutorial decisions, pretrial release processes, sentencing, correctional discipline, and even reentry.⁸¹ It affects children as well as adults and is especially punitive for people of color who are also marginalized along other lines, such as gender, class, and ability.⁸²

Much of the criminal justice system was established during the Jim Crow era—an era rife with racism.⁸³ Vestiges of this era are maintained and legitimized in a modern color-blind criminal justice system in which:

- Police are more likely to pull over drivers of color;⁸⁴
- People of color disproportionately experience the use of force when they come into contact with the police;⁸⁵
- People of color are more likely to be killed by police;⁸⁶

Critical Race Theory, Teacher Attitudes, and Structural Racism, 11 ETHNICITY & EDUC. 95, 288 (2008).

81. Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, PRISON POL'Y INITIATIVE (July 27, 2020), <https://www.prisonpolicy.org/blog/2020/07/27/disparities/> [<https://perma.cc/HJ8F-A7FJ>]; see also N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., *supra* note 5.

82. Sawyer, *supra* note 81.

83. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 30–35 (2010).

84. Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 737 (2020). While Black people were much more likely to be pulled over than whites, the disparity lessens at night, when police are less able to distinguish the race of the driver. *Id.* The study also revealed that Black and Latino drivers are more likely to be searched for contraband—even though white drivers are consistently more likely to be found with contraband. *Id.* See also FRANK R. BAUMGARTNER ET AL., *SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE* (2018). After reviewing 20 million traffic stops, researchers found that Black drivers are almost twice as likely to be pulled over as white drivers—even though whites drive more on average and Black drivers are more likely to be searched following a stop. *Id.* at 66–77. Researchers also found that Blacks were more likely to be searched despite the fact they are less likely to be found with contraband as a result of those searches. *Id.* at 100–15.

85. ELIZABETH DAVIS ET AL., U.S. DEP'T OF JUST., *CONTACTS BETWEEN POLICE AND THE PUBLIC*, 2015, at 16–17 (2018), <https://www.bjs.gov/content/pub/pdf/cpp15.pdf> [<https://perma.cc/XP3Z-BREL>].

86. Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the U.S. by Age, Race—Ethnicity, and Sex*, 116 PROC. NAT'L ACAD. SCI. U.S. 16793, 16794–96 (2019), <https://www.pnas.org/content/116/34/16793> [<https://perma.cc/LJ5C-GY4T>]. This research article found that between 2013 and 2018, Black men were about 2.5 times more likely than white men to be killed by police, and that Black men have a 1-in-1,000 chance of dying at the hands of police. *Id.* at 2. Black women were 1.4 more times likely to be killed than white women. *Id.* Latino men were 1.3 to 1.4 times more likely to be killed than white men. *Id.* Latino women were between 12% and 23% less likely to be killed than white women. *Id.*

- Black men on average receive sentences almost 20% longer for the same crimes as white men;⁸⁷
- Black people are more than 3.5 times more likely to be arrested for marijuana offenses than white people, despite data showing that both races use the drug at similar rates;⁸⁸
- Black people comprise about 5% of drug users but account for 29% of arrests for drug crimes and 33% of those incarcerated for drug crimes;⁸⁹
- The risk of incarceration in the federal system for someone who uses drugs monthly and is Black is more than seven times that of a white counterpart;⁹⁰
- Black men and women are overrepresented in solitary confinement;⁹¹
- Black people are disproportionately serving sentences of life, life without parole, or "virtual life";⁹²
- Black people are overrepresented on death row;⁹³

87. U.S. SENT'G COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf [<https://perma.cc/F4PA-524J>].

88. ACLU, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 5 (2020), https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf [<https://perma.cc/3P3J-MXTA>].

89. *Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/> [<https://perma.cc/CFV6-84GH>].

90. ELIZABETH HINTON ET AL., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 6 (2018), https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf [<https://perma.cc/AD4T-J2JD>].

91. THE ASS'N OF STATE CORR. ADM'RS & THE LIMAN CTR. FOR PUB. INT. L. AT YALE L. SCH., REFORMING RESTRICTIVE HOUSING: THE 2018 ASCA-LIMAN NATIONWIDE SURVEY OF TIME-IN-CELL 23–24 (2018).

92. Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, SENT'G PROJECT (May 3, 2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences> [<https://perma.cc/2ALT-RMQK>].

93. People who identified themselves as Black or African American represent 13.4% of the U.S. population but represent more than 41% of death row inmates. *QuickFacts United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/RHI825219> [<https://perma.cc/A5RS-46B3>]; Deborah Fins, *Death Row U.S.A.: Winter 2020*, NAACP LEGAL DEF. & EDUC. FUND, INC. 1 (2020), <https://www.naacpldf.org/wp-content/uploads/DUSAWinter2020.pdf> [<https://perma.cc/NJ9U-9BLN>].

- White people make up less than half of the country's murder victims,⁹⁴ but roughly 80% of the people on death row in the United States killed a white person;⁹⁵
- Murderers in North Carolina who kill white people are three times more likely to get the death penalty than murderers who kill Black people;⁹⁶
- Murders of white neighborhoods are more likely to be solved than murders in Black and Latino neighborhoods;⁹⁷
- White people make up roughly 75% of the United States population,⁹⁸ but make up 83% of state trial court judges and 80% of state appellate court judges.⁹⁹

As shown in this data, evidence of racial bias in the U.S. criminal justice system is more than convincing; it is overwhelming. However, in the wake of the *McCleskey* decision, which held that the racially disproportionate impact indicated by a comprehensive scientific study was not enough to mitigate a determination without a showing of a racially discriminatory purpose,¹⁰⁰ racial minorities bear the brunt of the *Davis* rule—the rejection of a cause based on the disproportionate impact of facially neutral laws. Until society revisits and reconsiders *McCleskey*'s landmark ruling and commits to reforming this standard with the help of a race-conscious lens, data will continue to be unpersuasive and ultimately ineffective in the pursuit of justice.

D. From The Id, the Ego, and Equal Protection to *Black Lives Matter*

The Id, the Ego, and Equal Protection has been cited by many, particularly for the science of unconscious motivation, and has inspired

94. *Number of Murder Victims in the United States in 2019, by Race/Ethnicity and Gender*, STATISTA (Oct. 1, 2020), <https://www.statista.com/statistics/251877/murder-victims-in-the-us-by-race-ethnicity-and-gender/> [<https://perma.cc/3DVL-E84L>].

95. AMNESTY INT'L, UNITED STATES OF AMERICA: DEATH BY DISCRIMINATION—THE CONTINUING ROLE OF RACE IN CAPITAL CASES 1 (2003), <https://www.amnesty.org/download/Documents/104000/amr510462003en.pdf> [<https://perma.cc/D8DF-YWGQ>].

96. Michael L. Radelet & Glenn L. Pierce, *Race and Death Sentencing in North Carolina, 1980–2007*, 89 N.C. L. REV. 2119, 2140 (2011).

97. Jeffrey Fagan & Amanda Geller, *Police, Race, and the Production of Capital Homicides*, 23 BERKELEY J. CRIM. L. 261, 280 (2018).

98. *QuickFacts United States*, *supra* note 93.

99. Tracey E. George & Albert H. Yoon, *The Gavel Gap: Who Sits in Judgment on State Courts?*, AM. CONST. SOC. 7 (2016), <https://gavelgap.org/pdf/gavel-gap-report.pdf> [<https://perma.cc/5K65-ANED>].

100. *McCleskey v. Kemp*, 481 U.S. 279, 315–19 (1987).

decades of research on unconscious and implicit bias.¹⁰¹ Lawrence called on courts to re-examine the impact of unconscious racism and ultimately paved the way for an acknowledgment that facially neutral policies can have disproportionate impacts on marginalized groups. Lawrence posited that without intervention at the highest levels of government, these policies would deepen gaps and strengthen inequity. In 2008, Lawrence revisited his initial work and cited the cultural meaning test as the most important takeaway that scholars left behind.¹⁰² Again, the reach of discriminatory intent now extends far beyond employment cases and has impacted desegregation, the administration of the death penalty, and race in admissions lawsuits.¹⁰³

Contemporary society makes it clear that relying on intent is insufficient in combatting discriminatory outcomes. The injustice that has persisted over time has ultimately manifested in the creation of a modern civil rights movement that is unapologetic and clear in its statement that Black Lives Matter (BLM). The founder of BLM states that the effort is designed "[t]o make sure we are creating a world where black lives actually do matter."¹⁰⁴ The BLM movement calls on every aspect of society to critically examine the presence and experiences of Black people in America. In 2020, Black women should not be dying a higher rate than any other racial or ethnic group, but, sadly, this is the state of healthcare for Black women in America.¹⁰⁵

In the legal profession, only 5% of attorneys identify as African-American, with only 1.97% holding a partnership title.¹⁰⁶ For Black women in law, the challenges extend far beyond merely achieving critical mass. More specifically, the climate for Black women in law firms often results in social isolation, inequity in promotions, and the exertion of

101. See, e.g., MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013).

102. *Unconscious Racism Revisited*, *supra* note 1, at 938–40 (examining the harm done by a color-blind approach to legal jurisprudence, particularly related to decisions related to desegregation).

103. *Id.* at 953–55 (noting that even with sound statistical analysis, the Court has repeatedly opted to use a race-neutral approach).

104. Elizabeth Day, *#Black Lives Matter: The Birth of a New Civil Rights Movement*, *GUARDIAN* (July 19, 2015, 5:00 PM), <https://www.theguardian.com/world/2015/jul/19/black-livesmatter-birth-civil-rights-movement> [<https://perma.cc/A8BZ-4QWP>].

105. Press Release, Ctrs. for Disease Control & Prevention, *Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths* (Sept. 5, 2019), <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html> [<https://perma.cc/49J7-99A4>].

106. *Legal Profession Statistics*, A.B.A. (Aug. 5, 2019), https://www.americanbar.org/ab-out_the_aba/profession_statistics/ [<https://perma.cc/BSN4-QMWB>]; *Diversity Scorecard 2011*, *AM. LAW.* (June 7, 2011, 12:00 AM), <https://www.law.com/americanlawyer/almID/1202494725139/diversity-scorecard-2011/> [<https://perma.cc/MVZ3-9CRL>].

the additional labor required in order to be “seen” by partners and peers.¹⁰⁷ In law school, Black women report negative perceptions of race relations compared to their peers and are more likely to be challenged for their academic ability.¹⁰⁸ With a lack of representation in the legal profession, Black Americans are often left out of important moments to affirm and uphold the ideals of justice for all.

Achieving the goals of equal protection requires a holistic and systematic approach to advancing equity that does not wholly ignore cultural context. Lawrence’s cultural meaning test serves as an important foundation, and experts in psychology, medicine, and the social sciences have continued to identify and advance meaningful and impactful theories.

Ultimately, the *Davis* Court was at a crossroads. It could have stood behind the ideals of Equal Protection and protected Black Americans from legally sanctioned discrimination, or it could creatively affirm institutionalized racism through the doctrine of racial neutrality. It chose the latter.¹⁰⁹ Notably, the Court had already permitted victims of employment discrimination to sue under theories of disparate impact or disparate treatment under Title VII.¹¹⁰ However, while those two theories coexisted under Title VII, they failed to find a home under the Equal Protection Clause, even in spite of the Court later formulating potential discriminatory intent factors in *Metropolitan Housing Development Corp. v. Arlington Heights*.¹¹¹ That being said, plaintiffs’ high burden to prove those *Arlington Heights* factors makes the factors insufficient to get around

107. Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer,”* HARV. BUS. REV. (Aug. 7, 2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer> [https://perma.cc/M7KB-BQG2].

108. *Women of Color: A Study of Law School Experiences*, NALP FOUND. L. CAREER RSCH. & EDUC. & CTR. FOR WOMEN L. (2020), <https://www.nalpfoundation.org/uploads/products/WomenofColor-AStudyofLawSchoolExperiencesReport.pdf> [https://perma.cc/RFW9-CZL4].

109. “*Massive Resistance*,” EQUAL JUST. INITIATIVE, <https://segregationinamerica.eji.org/report/massive-resistance.html> [https://perma.cc/4FNY-BEZN] (“The Supreme Court was a reliable partner in maintaining slavery and in the campaign to rebuild and strengthen racial hierarchy and white supremacy after the Civil War.”).

110. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (establishing the disparate standard, whereby any employment policy, practice or criteria that has a disproportionate impact on a protected group, such as racial minorities, must be justified by showing that the policy, practice, or criteria is job related to and consistent with business necessity).

111. *Metro. Hous. Dev. Corp. v. Arlington Heights*, 429 U.S. 252, 266–68 (1977). Those factors are (1) the discriminatory effect of the official action; (2) the historical background of the decision; (3) the specific sequence of events leading up to the challenged decision; (4) departures from the normal procedural sequence; (5) departures from the normal substantive standards; and (6) the legislative and administrative history of the decision. *Id.*

the race-neutral theory of *Davis*. Motivated Awareness and Inclusive Integrity are born out of *Davis*'s historical context and supported by various contemporary theories of social learning.

IV. LESSONS FROM OTHER INDUSTRIES

Scholarship has found that race-neutral pedagogy and philosophy permeate contemporary education, policy, and inclusion and diversity scholarship.¹¹² And though race-neutral pedagogy may not be intended to disproportionately impact racial minorities, there can be an unintended consequences that breed disparate outcomes. In an attempt to challenge race-neutral pedagogy and philosophy, several interdisciplinary studies have detailed the historic and contemporary effect of racism within societal structures. This section will discuss a few of those theories and how Motivated Awareness and Inclusive Integrity comport with them.

A. Critical Race Theory

Among the approaches challenging race-neutral pedagogy, Critical Race Theory (CRT) emerges as a prominent scholarly contribution, commonly used in legal scholarship. Constructed by attorney and author Derrick Bell, CRT provides a lens by which scholars have assessed the history and impact of race and racism in society. As a framework, CRT has been used across disciplines to examine the predominance of racism within law, history, education, and sociology.¹¹³

While using CRT as a lens through which to view and assess the merits of race-neutral pedagogy, there are two particularly relevant tenets: (a) the centrality of race and racism in society, and (b) the challenge to dominant ideology. The centrality of race and racism in society provides a basis for examining the context in which highly racialized policies, systems, and laws have adversely affected marginalized groups—thus creating a necessity for education that exposes and dismantles long-standing ideology. The dominant ideology tenet of CRT is useful to understanding the importance of race-conscious pedagogy and education, as it necessitates and justifies a need to grapple with the wide-reaching effects of meritocracy and color blindness. This tenet also challenges constructs of whiteness as the

112. Amy Stuart Wells, *Seeing Past the "Colorblind" Myth of Education Policy: Addressing Racial and Ethnic Inequality and Supporting Culturally Diverse Schools*, 1 NAT'L EDUC. POL'Y CTR. (2014), https://nepc.info/sites/default/files/pb-colorblind_0.pdf [https://perma.cc/4BB8-BBDG].

113. María C. Ledesma & Dolores Calderón, *Critical Race Theory in Education: A Review of Past Literature and a Look to the Future*, 21 QUALITATIVE INQUIRY 206, 206 (2015).

normative standard and instead finds its foundation and conceptual framework in the lived experiences of people of color.¹¹⁴ Understanding the CRT theme provides a space by which systems of oppression, inequity, and racism can be viewed as salient to the acquisition of a more just society.

B. Unconscious Bias Training

In addition to the contribution of CRT, a host of studies have emerged which challenge race-neutral philosophy, contextualize racism, and provide a means by which individuals can temper exclusionary practices and mitigate automatic assumptions.¹¹⁵ For example, in the recent past, unconscious and implicit bias trainings have gained national prominence as a strategy to understand and mitigate deeply entrenched exclusionary beliefs and behavior.¹¹⁶ Particularly in moments of highly visible diversity crises, companies have employed unconscious bias trainings to display an organizational commitment to inclusion.

Conceptually, unconscious bias work involves the idea that implicit attitudes, which subconsciously persuade an individual's perceptions, commonly affect our interpersonal interactions, behavior, and decisions. Tenets of unconscious bias training often include a focus on: (1) the pervasiveness of implicitly held beliefs and biases; (2) the distinguishing characteristics of implicit and explicit bias; (3) the often incongruent nature of implicit bias with declared beliefs; (4) the tendency to possess an implicit bias that favors one's own identity group; and (5) the degree to which implicit biases can be malleable.¹¹⁷ There have been, however, a host of studies whose results have questioned the efficacy of unconscious bias

114. See Daniel G. Solorzano & Dolores Delgado Bernal, *Examining Transformational Resistance Through a Critical Race and Latcrit Theory Framework: Chicana and Chicano Students in an Urban Context*, 36 URB. EDUC. 308 (2001).

115. See, e.g., EQUAL. CHALLENGE UNIT, UNCONSCIOUS BIAS IN HIGHER EDUCATION 7–68 (2013), https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/ecu/unconscious-bias-and-higher-education_1579011683.pdf [<https://penna.cc/2KXF-VEMK>].

116. Devine, Patricia G., Forscher, Patrick S., Austin, Anthony J., & Cox, William T.L., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL SOC. PSYCH., 1267, 1267–78 (2013).

117. Nilanjana Dasgupta, *Implicit Attitudes and Beliefs Adapt to Situations: A Decade of Research on the Malleability of Implicit Prejudice, Stereotypes, and the Self-Concept*, 47 ADVANCES EXPERIMENTAL SOC. PSYCH. 233, 235–40 (2013).

training.¹¹⁸ For example, Frank Dobbin and Alexandra Kalve¹¹⁹ found that: unconscious bias trainings have failed to result in behavior change, when the trainings are approached as short-term interventions; anti-bias training efforts may embolden and activate stereotypes; training may inspire unrealistic confidence in DEI programs; training programs often leave white participants feeling marginalized and shamed; and trainings are often mandatory and compliance-based.¹²⁰ And though some studies have questioned the efficacy of implicit bias training, other studies have found an increased relevance and efficacy when they are included as part of a catalog of additional educational efforts focused on systemic change, rather than a stand-alone, ancillary strategy.¹²¹

C. *Microaggression Theory*

An additional interdisciplinary theoretical framework that can be used to analyze the impact of racism is that of microaggression theory. The origins of microaggression theory emerged from the work of Chester Pierce, who first used the term to contextualize subtle, and often unquantifiable, indignities and insults against Black individuals who were “the major vehicle for racism” in the United States.¹²² Peggy Davis underscored the subtleness of microaggression theory and its connection to the racial hierarchy when she wrote that microaggressions are “automatic acts of disregard that stem from unconscious attitudes of white superiority and constitute a verification of Black inferiority.”¹²³ While early research concerning microaggressions focused on the experiences of Black Americans and their interactions with whites, recent studies have focused on exploring the ways in which other marginalized populations are affected by microaggressions.¹²⁴

118. DOYIN ATEWOLOGUN ET AL., EQUAL. & HUM. RTS. COMM’N, UNCONSCIOUS BIAS TRAINING: AN ASSESSMENT OF THE EVIDENCE FOR EFFECTIVENESS (2018), <https://www.equalityhumanrights.com/sites/default/files/research-report-113-unconscious-bias-training-an-assessment-of-the-evidence-for-effectiveness-pdf.pdf> [<https://perma.cc/D2XM-9KBN>].

119. Frank Dobbin & Alexandra Kalve, *Why Doesn’t Diversity Training Work? The Challenge for Industry and Academia*, 10 ANTHROPOLOGY NOW 48 (2018).

120. *Id.*

121. *Id.*

122. Chester M. Pierce, *Psychiatric Problems of the Black Minority*, in 2 AMERICAN HANDBOOK OF PSYCHIATRY 512 (Silvano Arieti & Gerald Caplan eds., 2d ed. 1974).

123. Peggy C. Davis, *Law as Microaggression*, 98 YALE L. J. 1559, 1576 (1989).

124. See Jessica C. Harris, *Multiracial College Students’ Experiences with Multiracial Microaggressions*, 20 RACE ETHNICITY & EDUC. 429 (2017); Kevin L. Nadal et al., *Interpersonal and Systemic Microaggressions Toward Transgender People: Implications for Counseling*, 6 J. LGBT ISSUES IN COUNSELING 55 (2012).

While microaggression theory continues to prevail in the scholarship on race, it has not gone without its share of dissension. As a challenge, some scholars have questioned the efficacy of microaggression theory through a critique of its research methodology. Other research has questioned the veracity of microaggression theory by arguing that it creates opportunities for historically underrepresented populations to buy into “victim culture” and that it unfairly portrays whites as aggressive, in an increasingly post-racial society.¹²⁵ And while there is a variance in the scholarship concerning the veracity of microaggression studies, other scholars have argued that the study of microaggressions are important to the study of racism as it furthers the systemic nature of racism within the structures and societal orders.¹²⁶

D. Cultural Competence & Humility

The term cultural competence has emerged as another DEI concept focused on empowering individuals to move from tacit knowledge of diversity to an understanding of the unique needs impacting individuals across difference. Cultural competence frameworks emerged in response to the realities of an increasingly diverse society to ensure effective and authentic engagement with diverse populations. “Cultural competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross-cultural situations.”¹²⁷ The work of cultural competence has served as an interdisciplinary approach for effective diversity management, often covering fields including healthcare¹²⁸ and business.¹²⁹ Cultural competence finds its conceptual origin in the social work literature and was originally described as ethnic competence.¹³⁰ Cultural competence has two thematic tenets, chiefly that it

125. See BRADLEY CAMPBELL & JASON MANNING, *THE RISE OF VICTIMHOOD CULTURE: MICROAGGRESSIONS, SAFE SPACES, AND THE NEW CULTURE WARS* (2018).

126. Matthew W. Hughey et al., *Making Everyday Microaggressions: An Exploratory Experimental Vignette Study on the Presence and Power of Racial Microaggressions*, 87 *SOCIO. INQUIRY* 303 (2017).

127. TERRY L. CROSS ET AL., *TOWARDS A CULTURALLY COMPETENT SYSTEM OF CARE: A MONOGRAPH ON EFFECTIVE SERVICES FOR MINORITY CHILDREN WHO ARE SEVERELY EMOTIONALLY DISTURBED* 13 (1989).

128. Rohini Anand & Indra Lahiri, *Intercultural Competence in Health Care: Developing Skills for Interculturally Competent Care*, in *SAGE HANDBOOK OF INTERCULTURAL COMPETENCE* 387 (Darla K. Deardorff ed., 2009).

129. Alvino E. Fantini, *Assessing Intercultural Competence: Issues and Tools*, in *SAGE HANDBOOK OF INTERCULTURAL COMPETENCE* 456 (Darla K. Deardorff ed., 2009).

130. Joseph S. Gallegos et al., *The Need for Advancement in the Conceptualization of Cultural Competence*, 9 *ADVANCES SOC. WORK* 51 (2008).

is a necessary condition for engaging effectively across differences, and that cultural competence is a skill and proficiency that can be acquired, applied, and achieved.¹³¹ Increased knowledge of another culture will lead to more effective competence within practice.¹³² Other research has argued the importance of preparing lawyers for the acquisition of skills that will lead to a more culturally competent practice.¹³³ For decades, cultural competence has dominated the scholarship as an effective way to navigate cross-cultural exchange and promote health equity.

Cultural humility research originated in an effort to advance and refine the work of cultural competence. Cultural humility is the "ability to maintain an interpersonal stance that is other-oriented (or open to the other) in relation to aspects of cultural identity that are most important to the [person]."¹³⁴ The work of cultural humility adds to the cultural competence scholarship an idea that cross-cultural learning should be a lifelong process marked by a commitment to intermittent self-reflection and self-critique.¹³⁵ The tenets of cultural humility are: a lifelong commitment to self-evaluation and self-critique; a desire to fix power imbalances; and a dedication to developing partnerships with other advocates.¹³⁶

The concepts of Motivated Awareness and Inclusive Integrity follow in the tradition of the foregoing theories by focusing and further clarifying the importance of critical self-reflection in the facilitation of an inclusive environment. Further, Motivated Awareness and Inclusive Integrity serve as a clear contrast to race-neutral philosophy by identifying the importance of repudiating apathy, exclusion, and intolerance and embracing inclusion through the vehicle of perpetual growth, inquiry, and self-critique.

CONCLUSION

Motivated Awareness and Inclusive Integrity embody the true essence of equal protection and provide a solid framework for addressing issues that continue to persist across our nation. Both steeped in historical context and

131. Antonio Chiarenza, *Developments in the Concept of 'Cultural Competence,'* in 2 *INEQUALITIES IN HEALTHCARE FOR MIGRANTS AND ETHNIC MINORITIES* 66 (2012).

132. *Id.*

133. Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 *INT'L J. LEGAL INFO.* 22 (2011).

134. Joshua N. Hook et al., *Cultural Humility: Measuring Openness to Culturally Diverse Clients*, 60 *J. COUNSELING PSYCH.* 353 (2013).

135. Melanie Tervalon & Jann Murray-García, *Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education*, 9 *J. HEALTHCARE FOR POOR & UNDERSERVED* 117 (1998).

136. *Id.*

lived experiences, Motivated Awareness and Inclusive Integrity call for a nuanced approach in examining the roles individuals play in producing equitable outcomes, at home and in their daily lives. Unapologetic in approach, Motivated Awareness and Inclusive Integrity call on every citizen, whether you are directly impacted or not, to take an honest and humble look at our country's past. For example, Inclusive Integrity calls on teachers to offer honest pedagogical approaches that appropriately challenge systems that seek to silence historical inequities. Motivated Awareness requires employers to use data and metrics to measure equity-related success. Remaining connected to empirical evidence of how employees gain access to and experience a business's organization is a key aspect of Motivated Awareness. Long gone are the days where "I went through it so you can survive, too" reigns as doctrine, because absent from that statement are all of the reasons why "you" were able to survive.