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Written by **William P. Hoar** on March 26, 2024

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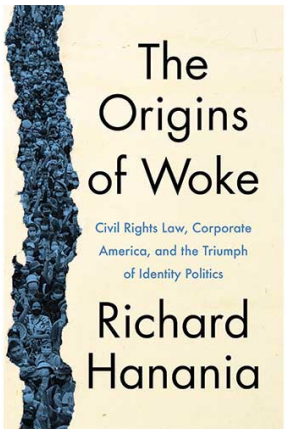
Unmasking Identity Politics

Like an aggravating itch, wokeness keeps poking at us: It's always in the background, tormenting. Where did it come from, and, perhaps more urgently, how can we get a break from it?



It would be nice to have a panacea, but because of the government's compelling interests, those are hard to come by. What we have offered here is, if not a remedy, a roadmap to relief.

Before that, however, it helps to know more about the tormentor itself. Have we generally misunderstood wokeness — whether we use that term or call it politically correct behavior, or cultural Marxism, or cancel culture — as a purely cultural phenomenon? Yes, argues *The Origins of Woke: Civil Rights Law, Corporate America, and the Triumph of Identity Politics* by Richard Hanania. While assuredly not ignoring its cultural aspects, it makes the case that this force, so prevalent in public discourse over the last decade, has its roots in U.S. law dating back more than a half-century. What has given this ideology the upper hand of late is culture catching up to law.

At the core is the view that wokeness is government policy. The relationship between the legal system and wokeness was also at the heart of the author's article in 2021 entitled "Woke Institutions Is Just Civil Rights Law," which grew into this thoughtful volume.

The author makes his case seriously: Don't look for generous measures of memorable wordsmithing. The language is careful, not cute — more lawyerly, less lyrical. He sprinkles, with plenty of footnotes, the particulars with specific laws and the numbers of executive orders. The book concentrates on three "central pillars" of wokeness. They are truncated here: 1) the belief that disparities equal discrimination; 2) the need for speech restrictions, particularly directed at those who argue against the first point, in the interest of overcoming the disparities; and 3) the requirement for a full-time bureaucracy (such as human-resources personnel) to enforce correct thought and action.

Did the original law (or laws) stipulate this? Not really. But honest observers with a bit of foresight should have been able to tell what would happen in short order — perchance by a party with (as the waggish Dave Barry might put it) the collective IQ of a flatworm. But no. Accordingly, the bureaucracies and the judiciary took over and expanded the laws that were passed, such as occurred with the Civil Rights Act of 1964.

Speaking of that measure, Minnesota Senator Hubert Humphrey (later U.S. vice president under Lyndon B. Johnson), for example, insisted to a skeptical colleague that if he could find "any language which provides that an employer will have to hire on the basis of percentage or quota related to color … I will start eating the pages." Indeed, other text was added that seemed to double down on this understanding. But, in practice, that aspect was ignored. The ever-garrulous Democratic senator never ate his words, but the federal bureaucracy and judiciary did just what they wanted to do. This, as pointed out by Hanania, raises "serious questions about who ultimately has the power to make law

under our system of government."

Hanania is a research fellow at the University of Texas, and the president and founder of the Center for the Study of Partisanship and Ideology. He earned his Ph.D. in political science from UCLA, and is a graduate of the University of Chicago Law School. (He also has been visited of late by cancel culture, but that's another story.)

As the author relates, there were numerous points while the Civil Rights Act was first being debated when critics

> expressed concern that it might do *x*. In response, supporters of the bill would say, "no, it won't do *x*," and the two sides could agree to a compromise that involved entering a clause into the bill in effect saying that "*x* is prohibited." Usually within a decade, the EEOC [Equal Employment Opportunity Commission] and the federal courts would do *x* anyway.

A compromise is sometimes said to be a deal in which two sides get what neither of them wanted. Maybe. But why do left-wingers always smile to themselves after it happens?

Twisting the Mechanisms of Civil Rights Law

In a key section of *The Origins of Woke*, Hanania cites a professor saying that "disparate impact" makes "almost everything illegal." That means the federal government can simply decide (and has done so) whom to target. Or, as Hanania puts it, we "are left with a system in which courts and the federal bureaucracy have arbitrary power over how institutions function and behave."

Disparate impact — and the early all-but-unanimous claim that preferential treatment, or even "reverse discrimination," would not be allowed — is one of the four "great innovations" in civil rights law addressed within an incisive chapter. Others are affirmative action, harassment law, and Title IX (of the Education Amendments of 1972) "as a tool to regulate education." (A helpful table describes — just some of them, of necessity — the ways that the government uses race, gender, and sexuality to "encourage certain identities and discourage others," restrict speech, discriminate "between its citizens, and interfere in private affairs.")

In his discussion on "Sports and Sexuality," the author goes into how the Office for Civil Rights (OCR) has made the interpretations and "clarifications" of the vague law that was passed. "Simply requiring equality in the number of varsity athletes," he writes, "has not settled the issue, however." For whatever reason, "competitive cheering and tumbling" didn't make the cut, but "women's rowing" became a favorite.

The social engineers have their own tastes. Never mind that there is nothing in the text of Title IX, as the author reminds us, "that mentions sports, and women outnumbering men in student government, music, and other kinds of extracurricular activities has never bothered OCR or the federal judiciary."

He keeps his eye on "civil rights law," saying,

> Just as civil rights law in employment imposes soft quotas to get around the fact that some groups have more productive workers than others, so too colleges and universities have had to deal with the hard fact that men are more interested in athletics by cutting male sports

> and padding their numbers of female athletes through methods such as including on lists those who never attend practices or games and double- or triple-counting participants.

Certain lawyers and courts appear to be willing to spend your last dollar (and mine) to prove that they are right. In that regard, as we read in *The Origins*, a federal court in Maryland in 2022 ruled "that Title IX even applies to private schools that do not get federal funding, on the theory that being exempt from taxation means that an institution is receiving a subsidy." Once again, we find that a political promise today means another tax tomorrow.

Richard Hanania

Creating New Official Races

The recent history of civil rights law, as described in this book, is broader than one might think — including our checkered race policies and the huge growth in the human-resources bureaucracy. The category of human resources was just a blip nationally in the 1950s, reaching 140,000 personnel or so by 1968. A spiking graph in the book shows it hitting 1.5 million in 2021, all the better to consider race, sex, and other protected identities.

There's a head-shaking review of how the government came up with new races and genders — as we learn, for instance, how Pakistanis, Samoans, and Koreans became the same "race." We find out about the lobbying that resulted in the OMB (Office of Management and Budget) giving "Pacific Islanders" their own category — so a group representing "no more than 0.4 percent of the American population" became one of the five major "races" in the country.

How people referred to themselves was altered to the point that "Chinese Americans," "Japanese Americans," and "Korean Americans" were more likely to be filed under "Asian American" and "Asian American Pacific Islander," even though that "AAPI" concept hardly existed before the Civil Rights Act. "Hispanic" was also a made-up term; never mind that, for example, Cuban Americans, Puerto Ricans, and Mexican Americans had different origins and didn't see themselves as "Hispanics" or (certainly not) "Latinx" people. But the government needed an "ethnicity" for jobs and grants and other categories.

There are spots in this chapter where you feel inclined to laugh, lest you burst into tears over the

insipid nature of our masters' bizarre categorizations of Americans. As Hanania puts it:

> The fact that even a quarter of the people of Latin American descent called themselves "Hispanic" is a testament to the power of government classification, given how completely fabricated the label is. It would be as if a substantial number of Americans of Italian or French descent came to call themselves "Romance Americans" based on the languages that their ancestors spoke. Back in the 1950s, such an outcome would probably have looked not much less likely than the emergence of Hispanics.

Classification in this country, as the author notes, pushed some groups out of the "white" category, while others were welcomed. He notes that his family came from the Middle East, and there was confusion when, as a young student in this country, he and fellow Arabs had to identify themselves in standardized tests. One result of this "underrepresentation" is that there are fewer official numbers about Arabs and Muslims.

Hanania seems less concerned about that than does the Biden administration, which has been pushing to remove "MENA" (Middle East and North Africa) from the "white" category on federal forms. Indeed, that was the topic of a major piece ("No Box to Check") that appeared in the left-wing *New York Times* as we were reading this book.

Anti-wokeness Agenda

Throughout, the author recognizes that the current interpretations of civil rights law are massively unpopular. He sees this as an opportunity for Republicans — who could put themselves on the side of the public, uniting to the advantage of the GOP. However, he also recognizes (and goes through its history to show) that the GOP has done relatively little in this regard over recent decades. Hanania sees this as the time to roll back what he calls the "excesses of civil rights law."

In fact, he offers a detailed "anti-wokeness agenda," giving the essentials of targets. He may be correct about the relative feasibility of "low-hanging fruit," but going beyond that would be a very tough task. The author sees "executive orders" as the easiest way to go.

However, what he calls "more difficult" solutions are likely flights of fancy. It'll be more than the day after tomorrow before we force congressional actions on (for example) defunding or taking power from the OCR, Office of Federal Contract Compliance Programs, and the EEOC; repealing the Civil Rights Act of 1991 and the Civil Rights Restoration Act of 1987; imposing a federal ban on programs that are race- and sex-conscious; and removing punitive damage for civil rights lawsuits.

There are, to his thinking, better chances here — actions that

> can be taken through the executive branch or judiciary that are likely to be either actively supported by or ignored by the public, meaning they present few political risks. Amending Executive Order 11246 [mandating affirmative action across major institutions] can be done on the first day of a Republican administration. Abolishing disparate impact as a standard for determining whether an action is discriminatory under Title VI [of the Civil Rights Act, prohibiting discrimination under any program that receives federal financial assistance] can similarly be done through the executive branch, and the same is likely true to a limited

> extent for Title VII [discrimination in employment].

Would this be difficult? Of course. Nonetheless, the author would put the fundamentals to a stress test, taking aim at affirmative action, disparate impact, harassment law, and Title IX, reasoning that they could largely be handled through the executive branch and courts alone.

Wokeness depends on government support. Indeed, as the author emphasizes, even when it has state support, "and with practically unlimited rhetorical backing from elite institutions, it still struggles to win hearts and minds."

Hanania knows, and is honest about its prospects, that getting the state completely out of the social-engineering business is unlikely to happen. But, as he also insists, some of it really could. There is a long road ahead.

The social engineers want us to be discouraged — because pessimists burn their bridges before they get to them.

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