2000

Critical Race Theory and International Law: Convergence and Divergence Racing American Foreign Policy

Ruth Gordon, *Villanova University School of Law*

CRITICAL RACE THEORY AND INTERNATIONAL LAW: CONVERGENCE AND DIVERGENCE RACING AMERICAN FOREIGN POLICY

*by Ruth Gordon**

The purpose of this lecture is to inquire into intersections between international law and Critical Race Theory (CRT). I am going to focus on how race shapes American foreign policy and American perspectives on international law. But in the CRT tradition, a tradition that validates and celebrates narrative,[1] I would like to begin with a story that reveals why CRT has become important to me as a scholar of international law, and as a scholar of color.

My interest in the position of race in international law and foreign policy is long-standing. It began with my legal education at New York University School of Law, where I studied international law under the tutelage of the current president of the Society, Professor Thomas Franck. My first paper for Professor Franck was a comparative law project that compared the apartheid laws of South Africa with the Jim Crow laws that had been prevalent in the United States. My interest in international racial matters deepened with my first legal position—a summer job with the National Lawyers Guild, where I utilized law to hasten the demise of apartheid in Southern Africa, work I continued in my early legal career at the Lawyers Committee for Civil Rights Under Law with Gay McDougall, one of the foremost legal activists in this arena. To this then young African American, the lukewarm opposition of the international community, or perhaps I should say the lukewarm opposition of "the West" and the United States, to apartheid, and the outright hostility of the West to the demands for social and economic justice emanating from the Third World, seemed eerily reminiscent of the response to demands for justice being made by peoples of color in the United States

As I studied nationalization and expropriation in graduate school at the London School of Economics during the mid-1980s my doubts grew, for there seemed to be something fundamentally wrong with a system where colonial powers could appropriate resources from colonies at will, return in a different guise in the postcolonial era and make contracts that were inherently inequitable, and then, according to international law, be entitled to compensation when the nations where those resources were located demanded control over them and a fair price for their exploitation. Although a majority of the world contended to the contrary, international law demanded prompt, adequate, and effective compensation. If customary international law is really the practice of states accompanied by *opinio juris*, I could not understand why customary international law was not transformed when the vast majority of states demanded that it be transformed. Some states appeared to be more important than others in determining the content of international law, and while the colonized may have been granted sovereignty, they were not equal players in this contest. It seemed to be the assertion of power, pure and simple, and it was power exercised by Europe, by America, basically by the West, against the colored world. The people of the Third World appeared to be destined to remain mired in poverty, as their wealth was controlled by the West, or they would be bankrupted trying to buy it back. To this then young mind, the entire system manifested the subordination of peoples of color and it exemplified white supremacy.

* Professor of Law, Villanova University School of Law.

[1] *See* John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993); Steven L. Winter, *The Cognitive Dimension of the* Agon *between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225 (1992); ON NARRATIVE (W. Mitchell ed., 1981).

But I could not find the words to convey these impressions. International law shrouded this debate in such concepts as sovereignty, *pacta sunt servanda* and the protection of aliens and their property; curiously, colonialism and imperialism were omitted. What seemed to me to be fundamental inequities in the international system were difficult to articulate within the language and concepts afforded by international legal discourse, for it did not afford the language or the conceptual models within which my reflections could be voiced—or at least voiced in a way that mattered, for this debate was structured in a way that ensured defeat. I can still recall my profound frustration, and that of my classmates from African and Middle Eastern countries, as we tried to challenge a paradigm that robbed them of their wealth and then rendered them voiceless to challenge the theft.

But I began to find a voice, my voice, in Critical Race Theory. I first employed CRT to respond to proposals to employ trusteeship to assist so-called failed states. The Critical Race critique of race and racism in contemporary discourse helped explain how theories such as redeeming colonialism might surface and thrive, in contemporary international legal discourse, even as we thought colonialism, and the racial subordination that supported it, had perished.[2] A symposium was held in October 1999 at Villanova University School of Law, which examined how CRT might help us understand, analyze and perhaps transform the international system, and how an international dimension might enrich the Critical Race critique of race and rights. A distinguished and brilliant group of scholars, including my colleague, Professor Henry Richardson, brought a wealth of insights to these questions. Fortunately, these papers will be published in the Villanova University School of Law Review.[3]

How CRT and international law intersect is a challenging question. CRT has been grounded in the American racial quagmire, and it embodies and embraces race consciousness.[4] International law and discourse, however, are now framed in terms of formal equality, and race consciousness seems to have been rejected. While there is an International Convention on Racial Discrimination,[5] the only recent international legal precedent where race was conspicuous and pivotal was the international struggle against apartheid in Southern Africa, and even this campaign was sometimes framed by policy makers and attorneys in the nomenclature of domestic jurisdiction, sovereignty and violations of human rights. International legal theory rarely mentions race these days, much less employs it as a basis of analysis.

This does not necessarily lead to the conclusion that race is absent or irrelevant, however, and CRT may be a valuable means of deconstructing international legal discourse and revealing racial subordination where it is now camouflaged or hidden. For it is obvious and beyond doubt that the Third World—the South, the developing countries, the impoverished world—is largely the colored world, and efforts to bring about more than the formal equality accorded to states under international law have been met with profound hostility and resistance. We might recall the reaction to the New International Economic Order, the Charter of Economic Rights and Duties of States, and more recently to the Right to Development.[6] Since decolonization, the nations of the Third World have sought to create legal obligations as instruments of economic justice, and have sought to establish and maintain a more "just and equitable economic and

[2] Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion*, 12 AM. U.J. INT'L L. & POL'Y 903 (1997).

[3] Symposium, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. (forthcoming 2000).

[4] The domestic legal discourse now espouses colorblindness, however. *See, e.g.*, Neil Gotanda, *A Critique of Our Constitution is Color-Blind*," *in* CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED THE MOVEMENT 257 (Kimberle Crenshaw et al. eds., 1995).

[5] International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 UNTS 195 (entered into force Jan. 4, 1969).

[6] *See* Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L.J. 353, 376–77 (1998).

social order."[7] Despite overwhelming support for these legal concepts, however, they have been doomed to failure, for Western states, led by the United States, have overwhelmingly rejected them. Today the West, as embodied in states and nongovernmental organizations (NGOs), insists that human rights consist only of individual civil and political rights,[8] while economic rights, such as the right to development, are challenged as being with the rights lexicon at all.

Is it only technology, economic wealth or industrialization, that separates the First, Second, and Third Worlds? Are these the sole determinants of hierarchy, the contemporary mediums of subordination? Or is it in part racial subordination, the subordination of "the other," who is different from self and perhaps not quite as deserving? CRT provides valuable insights into subordination and it introduces the concept of intersectionality, which may be highly relevant in dissecting this conundrum.[9] That is, the explanation may be that subordination results from a combination of all, or some, of the above rationales. Nonetheless, the question of race cannot be easily dismissed, for the West has defined the terms of the debate and controlled the international law-making process and its content, and racial subordination has been an integral part of the history of the West for the last 500 years. If there are doubts about this proposition, abundant evidence can be found in an even cursory examination of history, and an appraisal of the virulent racism against immigrants presently sweeping across Europe.[10] Moreover, it has certainly propelled the history and law of the United States, and it is to the United States that I would like to now turn.

Let me interject a few definitions. Critical race theorists have put forward various constructions of *race* and *racism*, and attempts to define and categorize the "other."[11] They postulate that the concept of race cannot be separated from the historical context in which it arises, for when we talk about race we are considering much more than mere phenotypes. What is key is the significance accorded to racial characteristics, rather than the racial characteristics themselves, and this significance arises from social and historical processes. Thus, the meaning of race and racism fluctuates. Throughout most of its history, the United States has been a racial dictatorship, where white supremacy was an integral part of the social, economic, and political landscape, a landscape that roundly and routinely excluded people of color. This racial dictatorship was characterized by segregation and subordination at all levels of society, and sometimes by sheer terror; it was anchored and supported by the state. Americans proclaimed the natural rights of man, yet at the same time, religious, political, and eventually scientific principles were relied upon to demonstrate a natural basis for the existing racial hierarchy, a hierarchy that was reinforced by law.[12] Race became a biological concept, a matter of species. The Negro and the Indian, and later the Mexican and Chinese, were different and inferior to

[7] Isabella D. Bunn, The Right to Development: Implications for International Economic Law, (paper presented at American Society of International Law, International Economic Law Section Meeting, Mar. 2000).

[8] Makau Wa Mutua, *The Ideology of Human Rights*, 36 VA. J. INT'L L. 589, 597, 617 (1996); Makau Wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L L. 339, 341 n.7 (1995); Mickelson, *supra* note 6.

[9] Makau Wa Mutua, *Critical Race Theory and International Law: The View of an Insider-Outsider*, 45 VILL. L. REV. (forthcoming 2000).

[10] Jill Lawless, *Immigration and Politics: Xenophobia Wins Votes, Parties Find*, SEATTLE TIMES, May 3, 2000, at A3, available in 2000 WL 5534096; Ray Moseley & Tom Hundley, *Right-Wing Views Beginning to Influence Official Policies*, CHI. TRIB., May 7, 2000, at 19, *available in* 2000 WL 3663414; Carol J. Williams, *Danes Cast Cold Eye on Immigrants: Denmark's Tight Controls Reflect Europe's Intensifying Dilemma. While Industry Sees an Expanding Need for Skilled Labor, Nationalist Appeals Are Closing Doors*, L.A. TIMES, Apr. 28, 2000, at A1, *available in* 2000 WL 2235555; *but see* Roger Cohen, *Social Democrats Win Re-election in Germany's Largest State*, N.Y. TIMES, May 15, 2000, at A11. The anti-immigrant backlash in Europe indicates just how complex "race" may be in a particular context. The backlash extends to people of color from the Middle East and Africa, as well as those from Eastern Europe, who may not be Christian and who are European, but not Western European.

[11] MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S at 54–76 (2d ed. 1994). All references to the role of race in the domestic milieu are taken from this text, unless otherwise noted.

[12] *See, e.g.*, Plessy v. Ferguson, 163 U.S. 537, (1896); Dred Scott v. Sandford, 60 U.S. 393 (1857); *see also* Gotanda, *supra* note 4, at 259–63.

the white man, and this difference and inferiority were used to justify the blatantly inequitable allocation of political, social, and legal rights.

What was an integral part of the domestic sphere was reproduced on the international stage, for all nations bring their national ideology to the international arena. Given what was taking place in America, it is not surprising that the historical record is replete with examples of the racialized nature of American foreign policy, and of how the United States carried out and propounded international legal principles. Racial constructs meant that in "the new world," two international projects, the enslavement of Africans and the extermination of Native Americans, could be justified on racial grounds, because race made such peoples lesser human beings. These enterprises were legal under international law, where racial subordination was employed as a basis for according plenary authority over indigenous peoples, and under which the slave trade was not illegal.[13] As the United States carried out its "Manifest Destiny," Mexican peoples were found to be inferior to Anglos because of their race, and thus their land and political power could be appropriated. The explicitly racial nature of American immigration law and policy have been well documented by a number of scholars, especially with respect to Chinese and Japanese peoples.[14] And of course this is the just the tip of the iceberg.

Let me illustrate with a more detailed example that describes how the United States carried out the census in the Philippines at the turn of the last century.[15] Americans believed they were charged with developing the native "other," and in the American psyche, considerations of color and race subsumed religious and other differences. Consequently, they proceeded to racialize the peoples of the Philippines. Negroids were aboriginal black dwarfs who were so racially distinct as to be historically removed from the rest of the population. They were primitive man, who had succumbed to the more culturally sophisticated and physically better endowed Malayans. The Malayans were later checked by the Catholic Spaniards. Americans explained the racial diversity of the population in terms of the inevitable retreat of darker-skinned and, to them, more savage inhabitants in the face of advancing groups of lighter-skinned and, to them, more civilized and physically superior conquerors. The effect of racializing the social structure and cultural history of the Philippines was to position the country as naturally destined for conquest and the United States as manifestly destined to colonize it.

The imperial project was justified in part on racial grounds, and it reproduced the racial ideology found in America and in European imperialism around the globe.[16] Both imperialism and colonialism were legal under international law. As Professor Antony Anghie has brilliantly and cogently demonstrated, international law divided the world into European and non-European realms, with rights accorded only to the former. Duties were therefore owed only to those of the same race—to other Europeans. Non-Europeans could not legally oppose the sovereign will of European states, for international law recognized "backwards races" only to the extent necessary to determine European rights over such peoples. Europeans could freely lay claim to their wealth, land and labor, and disputes over such claims could arise only vis-à-vis other European states, for the peoples themselves were denied sovereignty. Europeans justified imperialism, colonialism and sovereignty only for European peoples, on the grounds of the prevailing racial and cultural hierarchy. Whites were civilizing the barbarian coloreds;

[13] *See* Gordon, *supra* note 2, at 934–37.

[14] *See, e.g.*, Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998); Kenzo S. Kawanabe, *American Anti-Immigrant Rhetoric against Asian Pacific Immigrants: The Present Repeats the Past*, 10 GEO. IMMIGR. L.J. 681 (1996); James F. Smith, *A Nation That Welcomes Immigrants? An Historical Examination of United States Immigration Policy*, 1 U.C. DAVIS J. INT'L L. & POL'Y 227 (1995).

[15] This account is taken from Vicente L. Rafael, *White Love, Surveillance and Resistance in U.S. Colonization of the Philippines*, *in* CULTURES OF UNITED STATES IMPERIALISM 185 (Amy Kaplan & Donald E. Pease eds., 1994).

[16] For a full discussion of these concepts, see Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999); Gordon, *supra* note 2.

undertaking the white man's burden. As in America, people of color around the globe had no rights the white man was bound to respect.[17]

After World War I, self-determination was not contemplated for the peoples of Africa, Asia or the Middle East, and most remained subject to imperial or colonial rule. These peoples were deemed incapable of self-government, and this inadequacy was often ascribed to race. Certain peoples were simply not ready for civilization, which was defined as European, Australian, South African, American—essentially as white. Because these peoples were denied sovereignty, mandates and protectorates for peoples of color were sustained, even as the right to self-determination was beginning to be recognized for some Europeans.

World War II marked a turning point, however, both at home and abroad. On the American home front, Japanese Americans were being forced into internment camps for the crime of being Japanese, a policy that was later upheld by the U.S. Supreme Court.[18] Indeed, during the war against Japan, the Japanese people were characterized by negative racial images that were strikingly similar to those ascribed to African Americans.[19] While the enemy in Europe was horrible and deadly, they were still people; they were Nazis rather than Germans. The Japanese, however, were viewed as being both repulsive and subhuman. They were referred to as monkeys, baboons, gorillas, apes, dogs, mice, rats, rattlesnakes, cockroaches, and vermin, and were portrayed as being inherently inferior men and women who were characterized by primitivism and childishness. Such terms were part of an everyday discourse that racially stigmatized the Japanese, and defined "us" versus "them."

Yet the colonized across the globe observed cracks in the armor of their colonizers during World War II. In the United States, African Americans were becoming restless, having fought for democracy abroad while being subjected to racial subjugation at home. Resistance to imperialism, colonialism and white supremacy grew, and the discourse evolved both domestically and internationally. The 1950s and 1960s saw the emergence of racially based social movements in the United States that posed radical challenges to the dominant racial order, and ultimately destabilized it, leading to a comprehensive process of reform.[20] These decades also witnessed waves of decolonization across the globe. Things would never again be entirely as they had been.

These civil rights struggles, and I believe decolonization internationally, irrevocably altered the ideology of white supremacy and white privilege and the discourse that surrounded it. The nature of race and racism in America changed, and one result was that overt racism became taboo. Although race continues to pervade all aspects of American life, albeit in constantly evolving, intricate and multidimensional ways, the racialized nature of our culture, our political institutions, our social relationships, indeed the racialized nature of our very being, has become imperceptible to the majority. White supremacy and white privilege are now recognized for the most part only by those who suffer its consequences.

Moreover, the meanings of race and racism are currently contested in the United States. Whites often equate color consciousness with racism, and the absence of such consciousness with colorblindness. Non-whites tend to view race and racism as a system of power that is central to history and everyday experiences, while whites view it as peripheral. The current neoliberal racial paradigm attempts to eliminate race as a significant dimension of politics in an attempt to avoid divisive politics. Indeed, I would venture that many international lawyers would argue that introducing race is divisive and contrary to the international legal paradigm. Unfortunately, trying to eliminate race from the dialogue only masks a false universalism that ignores the increasing complexity of racial politics and racial identity in American society.

[17] Dred Scott, 60 U.S. at 407.

[18] Korematsu v. United States, 323 U.S. 214, 226 (1944).

[19] JOHN W. DOWER, WAR WITHOUT MERCY: RACE & POWER IN THE PACIFIC WAR 79, 81 (1982). This description of American views of the Germans and Japanese during World War II is taken from this excellent account.

[20] OMI & WINANT, *supra* note 11, at 96–97.

Meanwhile, as neoliberals seek to ignore race, the neoconservative position is one of a color-blind society.

Yet if race continues to shape the core of the domestic sphere, and Critical Race theorists would maintain that it does, surely it is manifested in how we view the international, for ideology invariably crosses borders. Consider the cases of Kosovo and Rwanda. The North Atlantic Treaty Organization (NATO) launched a massive air war against the Federal Republic of Yugoslavia to quell the possibility of genocide and ethnic cleansing in the province of Kosovo. NATO also maintained that it was undertaking humanitarian intervention, and thus the use of force was arguably legal under international law.[21] My purpose is not to debate the legality, wisdom, or competence of the use of force in Kosovo. Rather, it is to compare Kosovo with another case that merited such intervention, if we deem humanitarian intervention permissible. In 1994 the United Nations, in part because of American intransigence, failed to intervene in Rwanda, where a half million people were slaughtered and approximately five million people were displaced.[22] Indeed, the world has not witnessed genocide of this magnitude since World War II. Why was humanitarian intervention not warranted in Rwanda, for surely this was an egregious and critical case? Why were these lives less worthy of saving? We might ask whether the war crimes tribunal established to try those who took part in this slaughter was more than an afterthought, and if it would have been established if not for the Yugoslav war crimes tribunal established to try war crimes in Bosnia.[23] If there was a possibility of genocide on the scale witnessed in Rwanda against a European population, and especially against a Christian Western European population, would the West have taken action to prevent or halt it wherever it was taking place? Somehow I believe the West would have sprung into action. And if you also believe this, honestly ask yourself why.

If the reply to my query is that the UN Security Council must first find a threat to international peace and security before humanitarian intervention can be undertaken, and such a finding is a political question under the UN Charter, then we are back to my central thesis. American foreign policy, in this instance, becomes international law because the United States currently dominates the Security Council, and thus American foreign policy concerns and interests determine the content of international norms regarding whether intervention is warranted in a particular case. Because the United States regularly takes the position that assisting certain peoples is not within its national interest, and I would maintain that that "interest" is shaped in part by racialized views of the "other," then the racial ideology of the United States is being reproduced internationally. For it would seem that if international law permits humanitarian intervention, then all lives would be equally valuable and worth saving.

Africa has been routinely deemed unimportant to the American national interest. Recall that Secretary-General Boutros Boutros Ghali had to cajole the Security Council into taking action in

[21] *See* Charles Babington & William Drozdiak, *Belgrade Faces the 11th Hour, Again; U.S. Sends Envoy as NATO Readies an Aerial Assault*, WASH. POST, Mar. 22, 1999, at A1, *available in* 1999 WL 2206748; Norman Kempster, *Crisis in Yugoslavia: Leaders and Scholars Clash over Legality International Law; U.S., Others Say U.N. Charter, Resolutions Back NATO Action*, L.A. TIMES, Mar. 26, 1999, at A26, *available in* 1999 WL 2142809; *Lawyer Sam's War*, ECONOMIST, Apr. 24, 1999, at 30, *available in* 1999 WL 7362645; *see also* Aaron Schwabach, *Yugoslavia v. NATO, Security Council Resolution 1244, and the Law of Humanitarian Intervention*, 27 SYRACUSE J. INT'L L. & COM. 77, 78, 91–92 (2000); Abraham D. Sofaer, *International Law and Kosovo*, 36 STAN. J. INT'L L. 1, 3 (2000).

[22] Pamela Constable, *World Response to Rwanda Crisis Questioned; Critics Cite Lack of Plan, Will to Intervene*, BOSTON GLOBE, July 28, 1994, at 18, *available in* 1994 WL 5987931; Joe Lauria, *Inaction by UN Cited in Report on Rwanda Killings*, BOSTON GLOBE, Dec. 17, 1999, at A2, *available in* 1999 WL 30400899; Keith B. Richburg, *Rwanda Again Surpasses Itself in Tragedy*, WASH. POST, July 16, 1994, at A1, *available in* 1994 WL 2430175; Paul Richter, *Rwanda Violence Stumps World Leaders Africa: Though Clinton and Boutros Boutros-Ghali Have Made Guarded Threats, Calls for Action Have Been Eerily Absent*, L.A. TIMES, Apr. 30, 1994, at 13, *available in* 1994 WL 2160357.

[23] *See* Makau Wa Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 TEMP. INT'L & COMP. L.J. 167, 174 (1997). Professor Mutua also notes that Eastern European Bosnians did not rate the same treatment as Western Europeans, and that they were left to be slaughtered. *Id.* at 173–75. Perhaps Kosovo was Western atonement for this sin.

Somalia, and he did so by comparing the lack of action in Africa with UN efforts in the former Yugoslavia, an enterprise that was deeply flawed, but an effort that was made nonetheless. I believe this lack of interest will continue despite recent American overtures toward Africa.[24] Moreover, it is characteristic of U.S. attitudes toward black people throughout the African diaspora. For example, the United States is currently in a dispute with the European Union over the EU's importation of bananas from the Carribean. The U.S. Government understands that winning this dispute means destroying the sustenance of small producers in Caribbean nations for whom selling bananas is their sole livelihood. Not a single banana is grown in the United States, and thus this dispute has nothing to do with protecting American jobs—rather it is all about advancing the interests of American corporations, plain and simple. Professor Ibrahim Gassama will be publishing an article in the *National Black Law Journal* on the banana dispute.

Asian peoples have been the consistent objects of racism, fear, and castigation in the United States. Consider that almost all of the wars fought by the United States since 1940 have been against Asian nations: Japan, Korea and Vietnam; consider where the United States dropped the atomic bomb. Consider the profound unease felt by American policy makers, the news media, and the public at large at the ascension of Japan in the 1980s and of China today. No similar discomfort is evident as the European nations consolidate to become a world power to rival the United States, trade disputes with the EU notwithstanding. The EU is not viewed as a looming menace, even as it is viewed as an economic rival. Do perceptions of the Asian "other" shape how we deal with China and Japan on a broad range of issues, including human rights, trade and security?

This small sample serves as a backdrop to a very complex question, for the reasons behind all of these scenarios is varied and complex. None are based solely on perceptions of race. Nonetheless, I believe race figures into each of these calculation on some level. This is not to say that those who make American foreign policy, or formulate American positions on international law, are being overtly racist. If anything, those who are interested in international affairs are more likely than most Americans to seek out and accept difference. Thus, my point is not to ascribe racial animus or bias to those who shape these processes. Indeed, I doubt race is ever discussed or even consciously contemplated by these women and men. If only it were so simple.

I am contending that certain racial perceptions are part of the American context and subtext; they are simply a part of us and who we are. They are part of our identity, and they shape our ideology. We all come to our respective public roles with ourselves, and that self is shaped by culture, environment, history, and particular social milieus. Race is the predominant American paradigm, one that is at the center of our existence as a people whether it is conscious or unconscious, whether it is acknowledged or unacknowledged.[25] We see race when we see others, and we see it in a particular context because we live, work, and exist in America with its particular racial history and framework. You all see my blackness and it says something about me to each of you. It has meaning. The content of that meaning, and what you choose to do with what you see, is another matter. Nonetheless, we all notice race. I believe that the racial ideology of America is reflected on some level in our foreign policy and in how we view the international legal system, even if it is no longer overt or consciously acknowledged. Race shapes our perceptions, our reactions, our recommendations and our solutions. It determines who and what is important or expendable, and whether we act or falter. We must name and understand this construct, if we are to define, transform, and bring about some measure of social and economic justice in the international system.

[24] In January 2000, the United States used its one-month presidency of the Security Council to examine the plight of Africa. A national summit on Africa was held in Washington, DC, in March 2000 that was attended by President Bill Clinton and many other high-level U.S. officials.

[25] Charles R. Lawrence, III, *The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism, in* CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED THE MOVEMENT 235 (Kimberlé Crenshaw et al. eds., 1996).