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Reclaiming the (Racial) Real (ism): Silencing the Idealist School of Critical Race Theory through a Culturalological Turn in Jurisprudence

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Introduction

No intellectual historian can deny the impact of Critical Race Theory [CRT] on the discourse of race and racism in the later part of the 20th century. Critical Race Theory began in the late sixties, in the aftermath of the civil rights movement, with a series of writings by Derrick Bell. These writings focused specifically on the arrest of civil rights era gains thought to be won in 1964 and the roll back of the political guarantees of desegregation set forth in Brown v. Board of Education (1954).¹ In its inception, CRT offered a withering critique of integrationism and exposed the hope of racial equality for Blacks in America as nothing more than a mere illusion.

Largely inspired by the Black Nationalist movements of pre-integrationist America and revolutionary Black authors like W.E.B. Dubois and Frantz Fanon, Bell developed two theories which laid the theoretical foundations of the CRT movement. The first, racial realism, recognized the onerous racial reality of the United States and held that “Black Americans are by no means equal… and that racial equality is, in fact not a realistic goal.”² For Bell, the law was an instrument that whites use to preserve and perpetuate a racial caste system. Under a racial realist account, law only periodically served to protect oppressed peoples, and only then when minority gains aligned themselves with dominant white interests. Interest convergence, Bell’s second foundational theory of CRT, explained not only the futility of Blacks’ efforts to gain legal rights through the law, but also the slow-paced social and political reforms dictated by legal doctrine in the name of racial progress. From the theoretical groundwork laid by Bell and others, CRT became a pioneering critical perspective in jurisprudence. It maintained that both race, as a social construct made by the history of European domination, and racism, “which translates into a societal vulnerability of black people…in which the ‘racial bonding’ of whites would always commit to the practice of using Blacks as scapegoats for failed economic, political policies,”³ were permanent features of the American landscape. For Bell and the racial realists that followed, the historical contingency of the social construction of race did not change the sempiternal reality of anti-black racism in America.

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¹ See Richard Delgado & Jean Stefancic, CRITICAL RACE THEORY: THE CUTTING EDGE, at xv (2d ed. 2000) (1999). Critical Race Theory sprang up in the mid-1970’s with the early work of Derrick Bell (an African American) and Alan Freeman (a white), both of whom were deeply distressed over the slow pace of racial reform in the United States. It seemed to them—and they were quickly joined by others—that the civil rights movement of the 1960’s had stalled, and indeed that many of its gains were being rolled back. New approaches were needed to understand and come to grips with the more subtle, but just as deeply entrenched varieties of racism that characterize our times. Old approaches—filing amicus briefs, marching, coining new litigation strategies, writing articles in legal and popular journals exhorting our fellow citizens to exercise moral leadership in the search for racial justice—were yielding smaller and smaller returns. Id.xvi.


³ Id. at 377.
Unfortunately, the tide of CRT soon turned. Though the philosophical perspectives that eventually came to define CRT as a movement were well developed and debated among scholars of color in the early 1980’s, it was not until 1989 at the first CRT conference in Madison, Wisconsin that Kimberle Crenshaw officially named the work started by her Harvard mentor, Derrick Bell, Critical Race Theory. The Madison conference, consisting of 24 legal scholars of color dissatisfied with the distortion of race discourse in traditional legal scholarship and the absence of discourse about racism in the emerging field of Critical Legal Studies, was the first organized attempt to define the movement. Ironically, however, this conference would also popularize what to that point had been a largely underground and nationalist movement in law schools, and create new disciplinary challenges in legal scholarship.

Because CRT exhibited mordant polemics against and an earnest disregard toward white standards of merit, reason and legal education, it quickly became the target of a major academic campaign to de-radicalize the movement; what was merely a mild discomfort caused by CRT’s popularization in the legal academy, had progressed by the mid-1990’s into a full-fledged allergic reaction against the movement’s theoretical perspectives. This reaction to CRT took the form of an ideologically charged backlash in intentionally well publicized forums over the intellectual integrity and legitimacy of the movement. A further difficulty arose when Critical Race Theory’s notoriety led to attempts by various disciplines to incorporate CRT as a “cutting edge” perspective without fully embracing CRT’s fundamental suppositions. For example, the notoriety of CRT caused many educators to accept that race was an issue that deserved greater attention, but those educators ignored the role that white privilege and the social reification of individual white identities played in maintaining white supremacy when speaking about and analogizing race. By the mid-1990’s, it was apparent that CRT had started to abandon its racial realist roots—leaving structural critiques of American racism and its grounding pessimism of automatic progress under American liberal democracy to the wayside. A new, younger, (more moderate) generation of scholars, amicable to Ivy League deans and tenure committees, began writing works that “carried into the study of race, habits of speech and analysis that they had learned elsewhere [in their undergraduate and graduate studies] and that placed texts, narratives, scripts, stereotypes, and Freudian entities at the center of analysis.”

This idealist turn, in no small part influenced by the charges against CRT a decade earlier, was largely the result of CRT’s cooptation by white elite institutions and resulted in the ideological thinning of Critical Race Theory, both in jurisprudence and areas outside legal institutions, like philosophy.

The realist school holds a colonial perspective of race, according to which “racism is a means by which our system allocates privilege, status and wealth,” and acknowledges that the “West did not demonize black or native populations until it determined to conquer and exploit them and that media images in every period shift to accommodate the interests of the majority group,” the idealist school holds that

Race and discrimination are largely functions of attitude and social formation. For these thinkers, race is a social construction created out of words, symbols, stereotypes and categories. As such, we may purge discrimination by ridding ourselves of the texts,

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5 Id. at 124.
narrative, ideas, and meanings that give rise to it and that convey the message that people of other racial groups are unworthy, lazy, and dangerous.\textsuperscript{6}

This division in CRT created a tension in the study of law and the socio-political contexts that give rise to it. Unfortunately, the resolution of this tension has not progressed from Angela P. Harris’s “The Jurisprudence of Reconstruction,” which sought to carve out a theory of possibility that would lay to rest the charges from “critics of Critical Race Theory” that CRT is more concerned with deconstruction than reconstruction. This debate prompted Harris to acknowledge, “a tension … exists within CRT… that, properly understood, is a source of strength. “The success,” says Harris, “of what I call a ‘jurisprudence of reconstruction’ lies in CRT’s ability to recognize this tension and use it in ways that are creative rather than paralyzing.”\textsuperscript{5} Sadly the choice to inhabit, what Harris calls, the tension between modernity and post-modernity only results in a sequestered vision of Black subjectivity, a vision that will inevitably be thrown back on the autonomous white rationalizations of modern philosophers thinking about race in such a way that it demands that Black subjectivity be replaced by the free thinking reason of white humanity. While the idealist school is aware of the danger in appealing to “reason,” these theorists have nonetheless assumed that “universal reason,” rooted in the anthropos of the European persona and reared on the bosom of modernity, can, in expressing its postmodern discontent with itself through deconstruction, be a critical instrument in distancing “reason” from its white imperial past—a past driven by the very racialized reasoning CRT seeks to combat. What is at stake in this analysis is not the concept of reason itself, but rather the constructions of the world to which the cultural manifestations of “reason” are committed.

This essay, then, is an attempt to resolve the tensions that arise in CRT, from its conversation with Continental philosophy and Critical Legal Studies [CLS], over the “problem of the subject.” In an attempt to respond to both to Angela P. Harris’s call for a “jurisprudence of reconstruction” and her reliance on inadequate Eurocentric conceptualizations of subjectivity that lay between a modern and postmodern racial schizophrenia, I argue that CRT, while skeptical of “reason,” fails to take seriously the role that Eurocentric anthropology plays in determining the inclinations of the thinking individual. By failing to acknowledge the inextricable cultural determinism of “reason,” CRT commits itself to the same modern dispositions of European thought it seeks to criticize, effectually reducing Black subjectivity to “polemics of discontent,” instead of supporting the movement as a sustainable critique against Euro-centrism.

The acknowledgment that “reason” is nothing more than a particular reflection upon the world rather than an innate universal human faculty can potentially help CRT recognize the possible theoretical contributions of Derrick Bell’s Robesonian view of culture. Both Bell and Paul Robeson believe that Black self-reliance and African cultural continuity should form the epistemic basis of Blacks worldview. Bell’s recognition that one’s process of thinking about the world cannot be separated from the racial interest one has in constructing it is a valuable philosophical insight ignored by many racial idealists. In an attempt to develop a plausible notion of cultural subjectivity in the racial realist tradition that initially grounded CRT, I propose a theory of culturalogics which argues that constructs, like race, law, and the alleged transcendental values that sustain them, are modified—contoured—through infusions of cultural

\textsuperscript{6} Id. at 123. For a more in depth discussion of the realist-idealist split in CRT and its origins, see Richard Delgado, \textit{Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection}, 89 GEO. L.J. 2279 (2000).

\textsuperscript{7} Angela Harris, \textit{The Jurisprudence of Reconstruction}, 82 CAL. L. REV. 741, 743 (1994).
meaning. By creating a conversation between the metaphysical possibilities of cultural constructivism and the structural analysis of American racism, so prominent in the realist tradition of CRT, I hope to sustain both a radical social theory and culturalogical perspective that will invigorate the realist contribution to CRT.

This article proceeds in three parts. In part I, I will discuss the flaws of the idealist turn in CRT. Recent idealist literature in CRT has called both for the abandonment of race and for the contemplation of a freer, non-raced subjectivity, what I call an “anthropological dependence,” rooted either in Kant’s autonomous subject, Hegel’s self-conscious self, or Freudian psychoanalysis. This tendency ultimately relegates Black authors to mute guides who merely point white philosophical techniques like deconstruction to the problem of race without earnestly considering how Black authors have thought historically about that problem. In Part II, I consider the role of the subject in jurisprudence which remains the dominant question in the CRT and CLS tradition. Contemporary debates in jurisprudence have become dominated by theories that focus on how individuals determined by their culture and their society use laws to reinvent their own values and reify the social meanings of their life world. Unfortunately, the idealist emergence has failed to clarify both what is meant by a “rational actor” and the implications of thinking about race under the theories given through the prior work of CLS, inevitably falling back on transcendental values rooted in the legal and social matrices of Euro-centricity. In Part III, I propose culturalogics, as a theory aiming to establish a coherent social account of how people of African descent think about the relationship between the raw materials of reality used in the construction of society and the constructions of society left before us as reminders of colonial modernity. The utilization of this theory in jurisprudence, or what I am referring to as the culturalogical turn, could free the subject in contemporary Critical Race Theory. A decade ago, Kenneth B. Nunn said, “To successfully resist Euro-centricity, African-descended people must interpret law in light of their own cultural perspectives.”

Unfortunately, this call to action has not been heeded by race-crits and in most circles ignored in the growing idealist traditions that have come to dominate CRT.

Culturalogics is an attempt to answer Nunn’s urge for a new interpretive perspective in law by calling into question the relationship that race-crits currently have to the revelation that “race” is indeed a social construct. By devising a different approach to racial constructivism and epistemology, I argue for a cultural particularism through which the culturalogical (the epistemological relationship people of African descent have taken up with the world and the process by which African descended people actively are constructing the world) can modify the dilapidated social constructions of European modernity. As a system, culturalogics proposes a way of thinking about the world that takes holds that the law is a social construction of European culture, whose goals, processes and structure would be different given a different cultural location. Because society entails the relationships a people have historically expressed as knowledge within the world, the challenging of Europe’s world-view must begin with the
articulation of specific culturally subversive ways of knowing, constructing, and accounting for
the world outside the West’s metaphysical purview.  

The Flaws of the Idealist School

The originators of Critical Race Theory held that CRT could not be understood as an abstract
set of ideas or principles, since “among its basic theoretical themes is that of privileging
contextual and historical descriptions over transhistorical or purely abstract ones.”

For these theorists, CRT consists of six identifying elements: (1) CRT recognizes that
racism is endemic to American life. Thus the question is not how racial discrimination
can be eliminated while maintaining the integrity of other interests implicated in the
status quo…Instead we ask how these traditional interests and values serve as vessels of
racial subordination, (2) CRT expresses skepticism toward dominate legal claims of
neutrality, objectivity, color blindness, and meritocracy, (3) CRT challenges ahistoricism
and insists on a contextual/historical analysis of the law, (4) CRT insists on the
recognition of the experiential knowledge of people of color and our communities of
origin in analyzing law and society, (5) CRT is interdisciplinary and eclectic, and (6)
CRT works toward the end of eliminating racial oppression as part of the broader goal of
ending all forms of oppression.

Based in the experiences of people of color these criterion have guided the movement’s growth
over the years under a system of racism and domination. The realist tradition sought to mark
boundaries that would both protect and learn from the perspectives of Blacks and other people of
color unapologetically.

This was not the case for the idealist scholars. This new generation of race-crits saw the
promise of CRT “as a theory that would link the methods of CLS with the political commitments
of ‘traditional civil rights scholarship’ in a way that would both revitalize legal scholarship on
race and the deconstructive excesses of CLS.” Many “old school” theorists acknowledge that
the movement had predecessors in CLS and Continental social/political thought, but point out
that CRT “derives its inspiration from the American civil rights tradition, as represented by such
leaders as Martin Luther King, W.E.B. DuBois, Rosa Parks, Cesar Chavez, and from nationalist
movements, as manifested by such figures as Malcolm X and the Black Panthers.” This shift
away from the deconstructivist tendencies of CLS allowed Black scholars to develop a deeper
understanding of Black experience and focus on the theoretical consequences that experience had

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11 For a full discussion of the distinction between the European world-view and the African world-view in its social
manifestations, MARIMBA ANI, YURUGU: AN AFRICAN-CENTERED CRITIQUE OF EUROPEAN CULTURAL
THOUGHT AND BEHAVIOR (1994).
12 MARI MATSUDA ET. AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND
13 Id.at 6.
14 Harris, supra note 7, at 741.
15 Crenshaw, supra note 1, at xvi.
on jurisprudence. Unfortunately the tide changed before the realist theories of subjectivity took hold and a true culturalist perspective emerged.

This shift exposes two problems in the current movement. The first is the idealists’ focus on the critical methods employed by CLS, especially deconstruction, in their study of race. The second and somewhat more dangerous problem resides in the use of white philosophical figures as the basis of idealist scholarship in both philosophy and contemporary CRT literature on jurisprudence which urges Blacks to become liberated thinkers molded by the inclinations of Hegelian, Kantian or Freudian personalities in an attempt to balance modernist faith with postmodern discontent.  

The Baggage of the CLS Bandwagon

Under the “idealist turn,” a new problem quickly emerged: How can Black scholars justify using white philosophers to speak about the problems of race and racism, when these philosophers both believed that the Negro was inferior and that only the white race possessed reason? The focus once again turned to deconstruction for an answer. Deconstruction began as a series of rhetorical techniques in the writings of Jacques Derrida. “Although deconstructive arguments appear in critical race theory, feminist, and post-modern legal scholarship, deconstruction first emerged most clearly in the work of the Critical Legal Studies movement.”  

Deconstruction held that all texts and social structures were unstable, indeterminate, and largely rooted in the contexts of societies and the language societies use to speak about the world. These techniques mapped out ways in which philosophy could both examine the role language plays in determining our thoughts about the world and the relationship thought has in contouring the meaning of language through philosophical engagement with text and cultural contexts. CLS used deconstruction to show that “something other than legal reasoning—like political judgment—lay behind legal decision-making,” that “legal consciousness was based on the ‘false necessity’ of social and legal structures that seemed reasonable in theory but were oppressive in practice,” and that “texts undermined their own logic and had multiple conflicting meanings.”

Having a home primarily in Continental philosophy and literature, deconstruction sought to expand its horizons and eventually won acceptance in law schools across the country. These two arenas applied deconstruction to the laws, texts, and the language one uses to speak about the world. Unfortunately in its transitions between disciplines, “deconstruction became wrongly associated with the improbable claim that texts mean whatever readers want them to mean.”

(As such, deconstruction has been used as the “wonder drug” by white authors to claim that they now think differently about their whiteness and want to use their enlightenment for the

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18 Id.

19 Id. at 719.
betterment of the Black race, and by Black thinkers to claim that simply not thinking about race or transcending its social construct altogether will eliminate racism.

This is a misguided faith in deconstruction’s usefulness in CRT. To date deconstruction has only asked burdening questions that inevitably collapse at the feet of Enlightenment thinkers. Deconstructionist thought holds that people are products of language and socio-cultural circumstances, and thus the meanings we attach to the world are largely contingent and socially constructed. But to then assume that one can change the features of the very structures that make one whole is presumptuous to say the least. “Social structures and legal doctrines might be ‘contingent’ in the sense that they did not have to take any particular form, but once they were in play they would not melt away by an act of will.”\(^{20}\) The social constructions in place would appear legitimate to the individuals in the given social settings, “moreover, changes and reforms would have to be implemented using the social meanings and social structures already in place,”\(^{21}\) reifying the idea that these constructed structures actually describe something real in society. It is not as easy as deconstructionist rhetoric makes it seem; “individuals who had been socially conditioned to see existing social structures and legal categories would not easily be able to transcend the limits of their perspectives,”\(^{22}\) since it is their perspectives of the existing social and legal categories that form the world and allow them to frame and possibly address the social practices in need of change.

One cannot escape from the social situations that form the very templates of thought and the very basis of critical thinking about a particular problem. And no matter how many times “idealists” throw around the rhetorical stratagem that “race is a social construction,” we must remember “social construction caused individuals to understand the world in ways that made it difficult for them to envision alternative ways of ordering law and society,”\(^ {23}\) and regards to race, it has created the mechanism in society that not only preserves and enforces the dominance over minorities, but perpetuates the conditions that seek to justify the dogmas of racial inferiority.

Although CLS purports to be a radical theory, minorities have not flocked to it because it has failed to seriously consider the role that racial identity plays in the lives of people of color. According to Richard Delgado, “CLS lacks a political and psychological theory of racism,”\(^ {24}\) since “the principle approaches are psychoanalytic theories, which explain prejudice in terms of unconscious forces and deep-seated syndromes, such as the authoritarian personality.”\(^ {25}\) For CLS authors wholeheartedly devoted to social constructionism, race is merely a socially constructed identity that should have no bearing on the fundamental nature of the human personality, which for most of these scholars is largely rooted Freud’s Oedipal Complex. What Critical Legal scholars fail to understand is that the recognition of the race as a social construct is a demonstration of the veiled operations of privilege and power that determine most American social practices. In fact, it is this veiled dynamic that sustains the privilege of CLS not to have developed explanations of race and to propose egalitarian solutions that envision a utopia with no safeguards for racial minorities. “The CLS choice of structure for the post-revolutionary community is neutral and based on those arrangements with the greatest potential for humanity. However, that choice is not value free. Utopian society would empower whites giving them

\(^{20}\) Id. at 735.

\(^{21}\) Id.

\(^{22}\) Id.

\(^{23}\) Id. at 737.


\(^{25}\) Id. at 316.
satisfaction currently denied and disempower blacks making life even less secure that it is today."  

The Idealist school in “Doped Up on White Smack”—The Anthropological Dependence of the Idealist School

Under the idealist tradition, Black thinkers emerge as inadequate philosophical sources of insight about race. The idealist school assumes that the reason of Black subjects’, struggling under the weight of racial oppression, is cloudy and that their “being” is burdened to such an extent that it becomes impossible for that subject to think about race as a free soul and lucid reasoner. Thus idealists turn to white (European) thinkers outside of and unaffected by the racial problematic to lend their unbiased (untainted) views to Black problems, since their free, rational lives depict the ideal conditions of an unwretched Black experience. This is what I am calling an “anthropological dependency.” Because Blackness is thought by idealists to de-rationalize the people under the racial label, these idealist scholars turn to European theories of humanity that claim to freer than the “reason of the oppressed.”

Over the last decade, various writings have appeared contesting the method of idealist versus realist conceptualizations of the subject. The idealist school in drawing theoretical legitimacy from philosophy has sought to reinvent itself in the mirror image of its intellectual heroes by giving accounts of subjects (thinking “I’s”) that are based in the works of Hegel, Kant and the French deconstructionists. “In its commitment to the liberation of people of color, CRT work demonstrates a deep commitment to concepts of reason and truth, transcendental subjects, and ‘really-out-there’ objects. Thus, in its optimistic moments, CRT engages in ‘modernist narratives.’” This modernist thought that is the background of the idealist tradition, and it is only questioned when these authors cannot reconcile the contradictions between the European traditions and their racist legacy. “A faith in reason has sustained efforts to educate people into critical thinking and to engage in debate rather than violence” and it is in this commitment by CRT that “aims not to topple enlightenment, but to make its promises real.” Because the idealist perspective fails to attack the philosophic practices that sustain, perpetuate and empower white thinking, the reconstructive elements of CRT remain limited. Having failed to name,

26 Id. at 314.
27 See Robert Bernasconi, African Philosophy’s Challenge to Continental Philosophy, in POSTCOLONIAL AFRICAN PHILOSOPHY: A CRITICAL READER 183 (Emmanuel Eze, ed. 1997). According to Bernasconi, the question of “who is speaking?” is one that has been outlawed from philosophy because it seemed to set up an opposition between the authority of the author and universal reason. The deafness of neutral reason arises from its proud boast that it refuses to give weight to the identity of the speaker or writer. However, the powerful critiques of Western philosophy by African and American philosophers exceed Western philosophy and cannot be simply reinscribed within it, even when they rely on the idiom of Western philosophy for their presentation. This is because these critiques spring from the pre-philosophical experience of racism and colonialism to which neutral reason is inevitably deaf, just as it is deaf to the role of tradition within philosophy. If Continental philosophers would open themselves to a tradition seen from the outside, they would find that the hegemonic concept of reason had been displaced, and they would be better placed to learn to respect other traditions, including those that are not African.
28 Harris, supra note 7, at 751.
29 Id. at 754.
30 Id.
describe and attack the conceptual entities of white supremacy, critical race theories, utilized in CRT, remain ignorant of the cultural drives sustaining “reason” and the concretization of these cultural dispositions in politics. As long as CRT continues to act as if the theoretical obstacles Blacks encounter are not manifested as the obstacles to the advancement of our social revolt, CRT will remain theoretical impotent and philosophically insipid.

**Reggie, Please Reggie don’t go into the WHITE!: Why Robinson’s Articulation of a Kantian Subject Fails to Escape Racialization**

No Critical Race Theorist embodies the delusion in the promises of Enlightenment thought more than Reginald Robinson. In holding that Blacks should transcend race, and embrace a universal reason, Robinson maintains that liberation is ultimately to be found in a Kantian notion of subjectivity.

…powerfully ordinary people are like Kant’s autonomous subject, and they are not too different from the latest find in physics and neuroscience. Kant’s autonomous subject legislates for herself. Not minding human anthropology, this subject acts according to her idea of law. Accordingly, this subject guides herself according to principles that can be universally valid for every rational agent. By acting according to these self-given but universally valid rules, an ordinary person becomes Kant’s autonomous subject.31

For Robinson and other idealists like him, the rejection of race and the contemplation of a universal humanity is ultimately the path to liberation. These authors hold that the universal values discovered by human reason are the same for everyone. Robinson’s position is a product of the modernist/post-modernist split. In saying that his readers should transcend race, Robinson’s work is post-modernist, but in liberating the racialized subject he seeks to replace it with a Kantian subjectivity that is a little more autonomous and a great deal whiter. Robinson’s reading of Immanuel Kant is ultimately a misreading. Autonomous subjects are only so to the extent that they can pragmatically develop themselves as moral beings, and in a Kantian view this moral development is necessarily determined by a people’s physical geography and their pragmatic anthropology, or race.32 For Kant, Blackness was an indication of stupidity.33 As he

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32 It is important to recognize the role Enlightenment (modern) philosophers play in Robinson’s work. In choosing to disregard race as a cultural maker and epistemological determinate, Robinson wants to claim that European philosophy speaks to a truer human self. As a consequence of this thinking Robinson will argue that Kant describes a true human self that is free to create and understand the world as he or she pleases. This interpretation of Kant is incorrect and thin in light of his work on pragmatic anthropology and historical fact that Kant was instrumental in the creation of the modern concept of race. Kant’s view of race is at the center of the general move of enlightenment thinkers to develop philosophically rigorous notions of race that move beyond description towards metaphysics and scientism, see RACE AND THE ENLIGHTENMENT: A READER (Emmanuel Eze ed., Blackwell Publishers, 1997). Kant was especially important in this development as he was the originator of the modern concept of race, see Robert Bernasconi, *Who Invented the Concept of Race? Kant’s role in the Enlightenment Construction of Race*, in RACE 11-36 (Robert Bernasconi ed., Blackwell Publishers 2001). This notion of race developed by Kant was a teleological principle (see Immanuel Kant, *On the Use of Teleological Principles in Philosophy* (1788), in RACE 37-56 (Robert Bernasconi eds., Blackwell Publishers 2001) that was specifically defined by a geographical people’s *keime* or original seed. For a further discussion, see Immanuel Kant, *supra* note 35, at 8-22. In recent years, there has been an explosion of scholarship that has reversed the cosmopolitan humanism of Kant and revealed the
put it: “the Negroes of Africa have by nature no feeling that rises above the trifling... although
many of them have been set free, still not a single one was ever found who presented anything
great in art or science or any other praiseworthy quality.”

Robinson’s utilization of Kant as a pure, rational philosopher without the mar of the race
concept is quite puzzling. Robinson consistently ignores both Kant’s role in the development of
the race concept and Kant’s belief that reason was exclusively and essentially connected to
European whiteness. In Kant’s first attempt to give a scientifically and philosophical sound
definition of race in “Of Different Human Races,” he argued that “races are deviations that are
constantly preserved over many generations and come about as a consequence of migration, or
interbreeding with other deviations of the same line of descent, which always produces half-
breed offspring.”

Though Kant believes that Blacks and whites do not comprise different
species of human beings, he does believe that “they [Negroes and whites] comprise different
races” which owe their origins to different capacities made permanent by their climate—what
he describes as seeds. According to Kant,

human beings were created in such a way that they might live in every climate and
endure each and every condition of the land. Consequently, numerous seeds and natural
dispositions must lie ready in human beings either to be developed or held back in such a
way that we might become fitted to a particular place in the world. These seeds and
natural predispositions appear to be inborn and made for these conditions through an
ongoing process of reproduction.

Robinson may reply that Kant’s anthropological writings on race have little to do with his
critical philosophy, but Kant’s critical philosophy, especially his Critique of Judgment are
largely framed by his philosophical perspectives on race. While many scholars, including
Robinson, use Kant’s first critique— the Critique of Pure Reason, and Kant’s second critique—
the Critique of Practical Reason to mark his contributions to Enlightenment thinking, it is no
longer deniable that Kant’s pre-Critical philosophy, and his third critique—the Critique of
Judgment are inextricably tied to his anthropological research on race and racial characteristics
conducted throughout his career. In fact, Kant’s last work, his Anthropology from a Pragmatic
Point of View, written in 1798 argues all knowledge of the world (philosophical included) is
acquired through anthropology and serves to develop the human being, because “the human
being is his own final end.”

For Kant, all knowledge starts with the observation of natural
phenomena and the theorization of what that phenomena means for the human being. Philosophy is merely the act of thinking about this phenomena and itself falls under his ideas of a pragmatic anthropology.

In this regard Robinson grossly misunderstands the idea of an “autonomous subject” in Kant’s philosophy. A subject is autonomous only in the sense that the human being (Robinson’s ordinary person) is pragmatic, and this pragmatic capacity, which is “the investigation of what man as a free-acting being makes of himself, or can and should make of himself”\textsuperscript{39} belongs to pragmatic anthropology—critical teleological judgments concerning the goal of humanity and the moral steps individuals take to fulfill that goal. Not surprisingly, the use of reason as an autonomous subject is racial, since the patterns of thinking that are reproduced from one generation to the next aim to perpetuate the mentality of specific geographic peoples.

In man (as the sole rational creature on earth) those natural capacities directed toward the use of his reason are to be developed only in the species not in the individual. Reason in a creature is a faculty to extend the rules and objectives of the use of all of its powers far beyond natural instinct, and it knows no limits to its projects. However, reason itself does not operate on instinct, but requires trial, practice, and instruction in order gradually to progress from one stage of insight to another. Therefore, each individual man would have to live excessively long if he were to make complete use of all of his natural capacities; or if nature has given him only a short lease on life (as is actually the case), she requires a perhaps incalculable sequence of generations, each passing its enlightenment on to the next, to bring its seeds in our species to the stage of development that completely fulfills nature’s objective.\textsuperscript{40}

This quote, taken from Kant’s “Idea for a Universal History with a Cosmopolitan Intent,” reflects Kant’s long standing belief that races, or the “seeds in our species,” utilize reason to fulfill nature’s objective. This is not a universal reason with one unalterable aim but a reason molded to the capacities of a race and fixed by its environment. Unfortunately, however, Africa only permitted Negroes to be “lazy, indolent and dawdling,”\textsuperscript{41} and incapable of the rational inclinations possessed by the more temperately balanced European.

This faith in modernity and the possibility of an un-raced pure thinker inevitably leads to attacks on the competence of Black authors who spoke honestly about the role race and culture play in our thinking about the world. For example, Robinson argues DuBois’ double consciousness becomes a racial identity that undermines self-awareness and freedom, through which African Americans “reject their essential selves”\textsuperscript{42} and “miss their true self conscious as divine humans.”\textsuperscript{43} Simply put, double consciousness is not consciousness for Robinson in the truer, whiter, more Hegelian sense of the word. As a result, Robinson is willing to cast aside the genuine contributions of a Black scholar for the Hegelian dialectic, but in Hegel’s use of the master/ slave dialectic, subjects become self-conscious through domination. Hegel used this justification unapologetically as a justification for colonization, proclaiming that “Negroes are to

\textsuperscript{39} Id.

\textsuperscript{40} Immanuel Kant, \textit{Idea for a Universal History with a Cosmopolitan Intent} (1784), in \textit{PERPETUAL PEACE AND OTHER ESSAYS} 30 (Ted Humphrey trans., Hackett Publishing Company,1983).

\textsuperscript{41} Kant, \textit{supra} note 35, at 17.


\textsuperscript{43} Id. at 246.
be regarded as a race of children who remain immersed in their state of uninterested naiveté. They are sold and let themselves be sold without any reflection on the rights or wrongs of the matter.” Similarly to Kant, Hegel believed it was only whites who “have for their principle and character the concrete universal, self-determining thought...” after all, “the principle of the European mind is...self-conscious Reason.” No matter the extent of Black scholars’ revisionism, Hegel’s original thoughts on the matter of race will remain unchanged. For Hegel, Africans and their descendants simply could not become self-conscious human beings.

Ultimately, the recent embracing of a transcendental subject by race-crits is misplaced. This appeal to the knowing I forces oppressed people of African descent to think of themselves as if they possessed the reason and values of those who created the systems that oppress them. This revisionism asks Blacks to think of themselves as possessing the same fundamental nature as those who have created, justified, and perpetuated colonialism, as if these inclinations are what determine the basis of Blacks’ humanity. At best, Robinson’s valorizations of Enlightenment philosophy make him a heretical Critical Race Theorist; at worst; his reading and interpretation of these Enlightenment thinkers are ideologically driven and simply dishonest.

Misplaced Loyalties: The Errant Association of Racial Discontent with Post-Modernity

Angela Harris admits that CRT is pessimistic about “reason,” and turns to postmodern narratives to express CRT’s discontent and suspicion of the very “reason” that is presumed to unveil the racism of modernist constructions. However, her adoption of the post-structural disposition, whereby “intellectual movements are practices: games where rules are always evolving, played by communities with fuzzy boundaries,” limits CRT to discursive gambles whereby various rhetorical flares are utilized in a struggle for social recognition. This mood, instead of bolstering CRT’s ability to overthrow the dominate forms of imperial thinking, makes the movement vulnerable to them. This vying for discursive currency is perhaps the best explanation for why Harris and other idealists choose to read CRT into the tradition of postmodern discontent.

Harris contends that postmodernism, as law professors understand the term,

…suggests that what has been presented in our social, political and our intellectual traditions as knowledge, truth, objectivity, and reason are actually merely the effects of a particular form of social power, the victory of a particular way of representing the world that then presents itself as beyond mere interpretation, as truth itself.

It is interesting that Harris describes postmodernism as a “mood of profound doubt and skepticism,” rather than a specific movement that arose in response to the advances of modernity, instead of its collapse. In so far as CRT adopts this mood, Harris believes that CRT

45 Id. at 43.
46 Harris, supra note 7, at 745.
47 Id. at 748.
48 Id.
49 While postmodernism was a revolutionary idea in the western metaphysical tradition, CRT must admit that it was in the western metaphysical tradition, and thus separate from the racialized isolation of Africa and the thought that develop from the enslavement of African-descended people. In Lyotard’s first explorations of postmodernism, which at that time he called paganism, there was an anti-universalism that sought to root all judgment in plurality.
takes up the postmodern charge. This position however is extremely limiting given the historical
discontent people of African descent have expressed against Europe at the apex of modernity. In
choosing to place Black discontent under the rubric of postmodernism, Harris reads people of
African descent into a tradition quite separate from their historical position. The events of
slavery, segregation, lynching and the continuation of racism into the 21st century are the
demonstrative failures of Enlightenment thinking—the concrete demonstration, rather than the
abstract hypothesization, of modernity’s failure. Under Harris’s reading we cannot meaningfully
distinguish among the different reasons various historical subjects may have for being discontent
with the products of modernity, since Harris assumes that all modern discontent belongs to postmodern concern. \(^5\)

For people of African descent, what has been termed the “postmodern crisis,” exists for quite a different reason. According to DuBois,

The collapse of Europe is to us the more astounding because of the boundless faith which
we have had in European civilization. We have long believed without argument or
reflection that the cultural status of the people of Europe and of North America
represented not only the best civilization which the world had ever known, but also a goal

and particularity. This movement was a reaction to the dominance of categorical knowledge in the West, a reaction
rooted in the philosophical traditions of knowledge that grounds transcendental knowledge and an attempt to
abandon formal rules in judgment. JEAN FRANCOIS LYOTARD, JUST GAMING (Wlad Godzick trans., Univ. of
Minnesota Press1985). However, it was not until the JEAN FRANCOIS, POSTMODERN CONDITION: A REPORT
ON KNOWELDGE (Geoff Bennington and Brian Massumi trans., Manchester Univ. Press 1984) that Lyotard
introduces the term postmodernism, which he understood as an ‘incredulity towards metanarratives’ as a resistance
to the technological dominance of human knowledge. In both cases, the alienation from modernity is an
intellectualization of the crisis phenomenology, and transcendentalism have in speaking to reality, whereas the
alienation people of African descent experience come from the inability of modernity to explain or account for
Black existence.

\(^5\) Angela Harris’ work demonstrates a serious misunderstanding of postmodernism and what her alleged
postmodern commitments commit her too. Harris errantly wants to isolate postmodernism to a mood, a disposition
that questions fixed modern principles, whereas postmodernism behaves as a dynamic seeking to introduce the
in narrable into narrative. According to Jean-Francois Lyotard, “A work can become modern only if it is first
postmodern. Postmodernism thus understood is not modernism at its end but in the nascent state, and this state is
constant.” LYOTARD, POSTMODERN CONDITION, supra note 49, at 79. What Harris takes to be a movement that
overthrows modernity is merely the assertion of new narratives against the grand metanarrative in an effort to
become the new modernity. This commitment to postmodernism as a birthing of modernism is also explicitly
communicated by Lyotard.

The postmodern would be that which, in the modern, puts forward the inpresentable in presentation
itself...it must be clear that it is our business not to supply reality but to invent allusions to the conceivable
which cannot be presented. And it is not to be expected that this task will effect the last reconciliation
between language games (which, under the name of faculties, Kant knew to be separated by a chasm), and
that only the transcendental illusion (that of Hegel) can hope to totalize them into a real unity. But Kant
also knew that the price to pay for such an illusion is terror. The nineteenth and twentieth centuries have
given us as much terror as we can take. We have paid a high enough price for the nostalgia of the whole
and the one, for the reconciliation of the concept and the sensible, of the transparent and the communicable
experience. Under the general demand for slackening and for appeasement, we can hear the mutterings of
the desire for a return of terror, for the realization of the fantasy to seize reality. The answer is: Let us wage
a war on totality, let us be witnesses to the unpresentable; let us activate the differences and save the honor
of the name.

LYOTARD, POSTMODERN CONDITION, supra 49, at 81-83.
of human effort destined to go on from triumph to triumph until the perfect accomplishment was reached. Our present nervous breakdown, nameless fear, and often despair, comes from the sudden facing of this faith with calamity.

In such a case, what we need above all is calm appraisal of the situation, the application of cold common sense. What in reality is the nature of the catastrophe? To what pattern of human culture does it apply? And, finally, why did it happen? In this search for reason we must seek not simply current facts or facts within the memory of living men, but we must also, and especially in this case, seek lessons from history...the habit, long fostered of forgetting and detracting from the thought and acts of the people of Africa is not only a direct cause of our present plight, but will continue to cause trouble until we face the facts.\footnote{W.E.B. DU BOIS, THE WORLD AND AFRICA 1-2 (1946).}

Unlike Harris, DuBois understands that a lost in the faith of Europe’s anthropological certainty cannot be restored by an appeal to Europe’s rethinking of (the hu)man. DuBois asks, “To what pattern of human culture does it apply?” calling out, so to speak, the limitations of Europe’s historical record and its anthropological reach; recognizing that Europe’s thoughts on humanity are just that—Europe’s thought. In looking to Africa, DuBois communicates a very clear division between the myth that emerged as “the doctrine of the Superior Race” and the new anthropology in the cultural knowledge of African-descended peoples.

The failures of Europe’s ideas tell us nothing about the state of human knowledge, only where European thinking is false. Because the ideas of knowledge, truth, and objectivity are sustained by the illusion of white superiority and European anthropological legitimacy, the erosion of Europe’s presumed universality exposes its inadequacy. This crisis has nothing to do with knowledge, but everything to do with myth. Because the historical production of knowledge by Europe aimed to sustain the doctrine of the Superior Race, or “the theory that a minority of people of Europe are by birth and natural gift the rulers of mankind; rulers of their own suppressed labor classes and, without doubt, heaven-sent rulers of yellow, brown, and black people,”\footnote{Id. at 17.} the postmodern crisis of knowledge is nothing more than the failure of Europe’s claim that its knowledge is the template for humanity.

Reading DuBois beyond his traditional appropriation of double consciousness reveals a much deeper understanding of modernity’s collapse; an understanding of modernity that implicates all European forms of knowledge in its perpetuation. DuBois understood, “in order to establish the righteousness of this point of view, science and religion, government and industry, were wheeled into line,”\footnote{Id. at 20.} where knowledge was no longer a question of seeking truth but sustaining myth. Modernity then arose from the distortion of the European mind—its culture—from the deleterious effects of African slavery and the intellectual and spiritual energies put forth to solidify the legitimacy of the African slave trade. According to DuBois, this convenient fiction was totalizing.

Everything great, everything fine, everything really successful in human culture, was white...Without the winking of an eye, printing, gunpowder, the smelting of iron, the beginnings of social organization, not to mention political life and democracy were attributed exclusively to the white race and to Nordic Europe. Religion sighed with relief
when it could base its denial of the ethics of Christ and the brotherhood of men upon the science of Darwin, Gobineau and Reisner.\textsuperscript{54} 

DuBois understood that European thought always existed as an entanglement of contradictions that could not be answered by the appeals to the reason and culture immersed in crisis. He continues,

This way of thinking gave rise to many paradoxes, and it was characteristic of the era that men did not face paradoxes with any plan to solve them. There was the religious paradox: the contradiction between the Golden Rule and the use of force to keep human beings in their appointed places; the doctrine of the White Man’s Burden and the conversion of the heathen, faced by the actuality of famine, pestilence, and caste. There was the assumption of the absolute necessity of poverty for the majority of men in order to save civilization for the minority, for that aristocracy of mankind which was at the same time the chief beneficiary of culture.

There was the frustration of democracy: lip service was paid to the idea of the rule of the people; but at the same time the mass of people were kept so poor, and through their poverty so diseased and ignorant, that they could not carry on successfully a modern state or modern industry. There was the paradox peace: I remember before World War I stopping in at the Hotel Astar to hear Andrew Carnegie talk to his peace society. War had begun between Italy and Turkey but, said Mr. Carnegie blandly, we are not talking about peace among unimportant people; we are talking about peace among the great states of the world…Here knew lay tragedy,…for the great states went to war in jealousy over the ownership of the little people.\textsuperscript{55}

The concern for knowledge and the inquiry into knowledge’s limitations were never resolved against the cultural inclination of Europe to dominate. There always remained a very clear racial division among the voices of discontent. People of African descent had long realized that the historical accumulation of the myth of European superiority created paradoxes that could not be sustained by a blanket appeal to reason, regardless of the attempts of science, religion, history, and philosophy to substantiate whites’ unquestioned access to the foundations of reality. Because Africa and the people it birthed were not human, their dissent and resistance to modernity’s colonial domination went unheard and remained unnamed. Throughout the 1800’s Black thinkers resisted modernity, rebuking the idea that European civilization was in fact the test of humanity.\textsuperscript{56} What is unsettling about Harris’s approach is that she mistakes the historical moment at which the dissent of Black people in America coincides with the concerns of whites as the valorization of postmodernism, when in fact postmodernity is nothing more than Europeans’ discontent with Europe not living up to all the hype. CRT must resist the inclination to take advantage of its current historical

\textsuperscript{54} Id.
\textsuperscript{55} Id.at 18.
position where whites are willing to tolerate Black voices among its dissident cries against modernity. White acknowledge-ment of Black discontent does not form the basis of or give legitimacy to the historical and intellectual presence of Black resistance.

This situation that has emerged as “the crisis of human knowledge” is built on the fiction of European superiority—its failure to fulfill the promises of its white narration. Thus the problem of contemporary theoretical positions in CRT, and Harris’s in particular, is that they are reacting to the failure of European thought as if it were a universal problem of human knowledge, and not Europe’s realization that its story was a lie. What CRT needs is an acknowledgment that race is not at the periphery of modern discontent like class or gender, as Harris would have us believe, but rather that race and European domination are the organizing force directing and seeking to reclaim the plot of Western intellectual hegemony. This acknowledgment particularizes Europe’s failure and allows a necessary separation between European thought and the actual crisis of knowledge as it affects African-descended peoples.

This postmodern tendency to view the theoretical aspect of knowledge (postmodernism) as separate from the materialization of knowledge (the colonial conditions that spurred and supported the technological and industrial advances of Europe) reinforces the idea that CRT can utilize the thinking of the colonizer without embracing the manifestations of colonial thought. This quandary is where Harris’s criticism falls flat. “For race-crits,” Harris argues, “racism is not only a matter of individual prejudice and everyday practice; rather race is deeply imbedded in language, perceptions, and perhaps even ‘reason’ itself,” but we never really get to see how this suspicion of reason’s role in racism is ever addressed in the course of a “jurisprudence of reconstruction.” She continues, “The postmodernist critique is congenial to race-crits, who had already drawn from history the lesson that “racism” is no superficial matter of ignorance, conscious error or bigotry, but rather lies at the heart of American—and western—culture,” yet fails to distinguish the privilege and ontological status of whiteness necessary to criticize the forms of knowledge endemic to the postmodern critique, or explain why postmodernism is immune to criticism. If postmodernity is the outgrowth of modernity is it not just as susceptible to the racism of Western culture? Instead of creating a foundational theory, Harris opts for a theoretical schizophrenia between modern and postmodern narratives. In fact, Harris calls these mood swings the definitive characteristic of a jurisprudence of reconstruction, whose “task should not be to try to somehow resolve the philosophical tension between modernism and postmodernism, but rather consciously inhabit that very tension.” But that inhabitation locates CRT between two traditions, neither of which was created with racial experience or Africana cultural dispositions in mind. Over a decade later we can see Harris’s project has failed as contemporary critical race theorists are still trying to figure out exactly what it means to “inhabit that very tension” that results from CRT’s “desire to integrate post-modern skepticism within a modern framework of law and reason.”

The critical perspective of reason initiated by a jurisprudence of reconstruction is unfortunately as shallow as it is vague. It is not possible to build a cohesive theory of Black subjectivity through modernism by insisting that all humans are part of the same transcendental subjectivity, endowed with the same gifts of reason and values, and then claiming a post-modern slant when the theories of European philosophers do not speak to a crucial part of Black people’s

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57 Harris, supra note 7, at 743.
58 Id. at 749.
59 Id. at 760.
experience. As it stands now, CRT has placed the fate of Black people’s account of the world squarely on the backs of European philosophers through a revisionism that seeks to lure European theorists into a conversation on the condition of Blacks and other people of color in America, a world in which CRT is only post-modern when its scholars are discontent with the lack of attention given to the issues of racism in modern philosophical discourse. CRT cannot continue to content itself with participating in colonial discourse and complain only when it is not allowed to play.

The Jurisprudence of the subject; the “Problem of the subject as Jurisprudence” in post-modern critiques of law.

In contemporary CLS and CRT circles, it is largely agreed that what we know as the law is nothing more than politics. Instead of the law being a moral order ordained by God (natural law), or the general will of a society, CLS and CRT believe, as the legal realists before them, that the law comes about through the personal and political articulations of values that judges, policy-makers, and decision-makers take as truth. This theory takes issue with Langdellian formalism which holds that the law is an autonomous system of truths that endure beyond the intervention of culture or social context. As a result, jurisprudence became a sociology of law that focused on how subjects create the values and knowledge we call law.

This breakthrough forced scholars to think about jurisprudence as the ways subjects think about “thinking about law.” “Crits argued that legal categories, by creating and maintaining certain descriptions of social and legal arrangements, foreclose other ways of thinking about and organizing human life.” CRT was not far behind this line of thinking.

In echoing themes in other progressive legal discourses, primarily CLS, Critical Race Theorists argued that law reinforces racial hierarchy, reflects the views of privileged classes, serves as a weak vehicle for social change, is indeterminate and unable to provide fixed predictable outcomes for civil rights litigants, and is inherently non-neutral (and biased toward the protection of social privilege).

CRT, however, broke with CLS when the members of the movement could not ignore the “historical role that law has played in the advancement of the material and social status of persons of color...” Under CRT, this has been referred to as a “dual consciousness,” in which people of color who are discontent with the legal institutions and the dispersement of legal rights nonetheless hold a faith in the ultimate promise of the system’s idea of justice and equality. In current CRT scholarship, this dual consciousness embodies a “dual commitment to anti-racist..."
critique and the distinctive cultures formed in part by the concepts of race,“65 or what she calls a politics of difference, but this commitment both for the ideal and unrealized principles of the legal system and the experiences of oppression by the people of color at the hands of the same system suggest a problem that cannot be handled merely at the level of how one chooses to engage the politics of the legal system. The “politics of difference” fails to explain how identity politics can change the constraints placed on oppressed people and does not address how this contradiction affects the psychology of oppressed people. These scholars want to maintain that identity is a “complex and changing interaction between individual agency and structures of power,”66 but fail to clarify what is at work in individuals’ conception of the world that allows them to construct actions, or determine the value of those actions in a hostile world. Are all oppressed people really sexually repressed Oedipal subjects who turn their attention to racism. Or, are they really Hegelian personalities who seek to dominate the other for recognition of their position as master, and are just discontent with their political marginalization as the slave? Either way, CRT has failed to define the racial personality and the metaphysical commitments of that racial personality in its attempts to speak of a racialized subjectivity.

The Transcendental Path of Legal Subjectivity

CLS ran into a problem of the subject well before it became an issue for CRT, but J.M. Balkin’s essay, “Understanding Legal Understanding,” brought Critical Theorists one step closer to solving it. In the early 1990’s, Balkin developed a theory of subjectivity that would take into account the motivations and ideological dispositions of a socially constructed individual in law. Balkin sought to transform “the subject of jurisprudence into a jurisprudence of the subject—a jurisprudence that recognizes that questions about the nature of law must equally be concerned with the ideological, sociological, and psychological feature of our understanding the legal system.”67 For Balkin the recognition that the subject is socially constructed changed the concerns he had with the traditional understanding of “subject” and “subjectivity.”

Surely each of us brings something distinctive to our experience of the social world. Yet any theory of ideology presumes that many individuals will share a great deal in their beliefs, attitudes and modes of understanding. Thus “subjectivity involves an individual experience that results in part from internalization of cultural norms and shared frameworks of understanding. These cultural norms and frameworks are not simply superimposed on an individual’s preexisting beliefs; they constitute her and form part of what makes her an individual. Subjectivity is what the individual subject brings to the act of understanding; it is what allows her to construct the object of her interpretation so she can understand it.68

Balkin calls this process “rational reconstruction,” the particular activity of understanding that creates judgments of legal coherence. Subjects create a world, specifically a legal world, by

65 Harris, supra note 7, at 760. For a discussion of dual consciousness in CRT, see Robin D. Barnes, Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship, 103 HARV. L. REV 1864 (1990).
66 Harris, supra note 7, at 761.
68 Id. at 106.
making principles, objects and goals cohere in their eyes. For Balkin, a subject is so to the extent that it (the subject) is persistently constructing the world. “Because judgments of coherence and incoherence rest upon the nature of the self, they are also shaped by the self’s psychological needs.” But what if an external constraint on both the ability to create the necessary principles to make the law cohere as well as constraints limits the ability to satisfy one’s psychological needs?

Unfortunately, Balkin’s theory cannot account for cultural constructs that act independently of the individual minds that legitimate their existence.

Our subjectivity contributes to, but does not create the cultural objects we comprehend. This is the dialectic between the subjective and objective aspects of social life—between individual thought and belief and action on the one hand and language, ideology, culture, conventions, and social institutions on the other…Language, ideology, culture, conventions, and social institutions construct and constitute the individual’s subjectivity; yet language, ideology, culture, conventions, and social institutions exist only as instantiated in the thoughts, beliefs and actions of individuals.

Balkin’s account is too rationalist to consider the effects of socio-cultural contexts on the ways in which one knows objects in the world. For Balkin, race or culture would be a secondary identity ordered by the rational reconstruction of the social landscape. Reason would make the world cohere in ways that would address the needs of the self, but that creation is a rational encounter with social factors that have nothing to do with cultural identity as an epistemological source. Even if we take the race-crits seriously, none of their accounts of subjectivity could work as a postmodern or modernist project, or answer the questions raised from a serious encounter with Balkin’s theory of the subject. Even though certain kinds of objects exist only as thoughts, beliefs, and actions of individuals, Balkin fails to give an explanation of what happens when groups, societies, and institutions, moved by their subjective belief and individual actions, have determined a course of law, society, and thought, not as competing individuals but as racialized groups. Only recently has Balkin clarified his stance and developed a theory of transcendental deconstruction that presupposes “the existence of transcendental human values articulated in culture but never adequately captured by culture,” but here again this account rests on assuming that all people share the same ontological perspectives as a consequence of their innate rationality and that this rational humanism serves as the basis for social and legal construction. Clearly, CRT needs a fundamental overhaul to eliminate the pretension of this “one size fits all” transcendentalism.

The Problem of Euro-centric Reification—Law as the Expression of European Cultural Constructivism

Any attempt to escape the philosophical problem of “thinking” in the jurisprudence of the subject is doomed, because the subject, in seeking to create, is creating on a canvas that is historical and insidiously Eurocentric. “Law is the creation of a particular type of culture;” it is “a creation of

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69 Id. at 109.
70 Id. at 107.
71 J.M. Balkin, supra note 17, at 740.
72 Nunn, supra note 8, at 324.
a particular set of historical and political realities and of a particular mindset or world-view.”

This particular world-view is fundamentally Euro-centric. Law and the rationalizations that sustain the legal enterprise are the result of the specific historical and cultural relations European peoples have taken up with the world. These relations—what is mistakenly understand as manifestations of a universal and transcendental reason—define, create, and reproduce the cultural landscape that we know as law and has constructed American society around “law as a Euro-centric enterprise.”

According to Arthur De Gobineau, “A people obviously adapts its institutions to its wants and interests and will beware of laying down any rule which may thwart the one or the other.”

Beyond the realist description that law is political lays a historic dynamic of racialized culture. This impetus forces the Critical Race Theorist to concede that at its essence, the law is rooted in the logics of cultural despotism, and politics, the name given to the science of government, is driven by the impetus to dominate the cultural other. Gobineau is adamant that “the laws, always emanate from the people; not generally because it has a direct for making them, but because in order to be good laws they must be based upon a people’ point of view.”

This point of view that a people have of the world determines the normative perspectives of those governed by that people. Thus resistance against social reality is also the revolt against the perspective the ruling people impose on the world. Inevitably, this revolt is a contestation of the existence and historical legacy of the ruling people involved.

The American concept of law, because of its intimate European ideological kinship, colonizes critical race theorizations of subjectivity. The very act of legal reasoning reduces the subject to its rational drives and its search for rational coherence in the social and incarcerates thought in a European penitentiary. Reasoning about law then distracts the subject from thinking about the white cultural hegemony and supremacy of European traditions implied in encountering law through this very Western thought. Legal reasoning, in convincing the subject that there is an applied and objective method found through European philosophical analysis, persuades the subject that “reasoning” is not a particular cultural enterprise. In this process, modern subjectivity—that subjectivity intimately constituted by a transcendental reason—lacks the resources to question Euro-centrism, since it is Euro-centrism and its cultural predominance that bestows reason upon the subject. Inevitably, operating under the illusion of a transcendental or universal reason dooms the subject to take up the cultural relations that Europeans have established with the world; and in doing so, the racialized (Black) subject dismisses the cultural potentiality of Africanity, choosing to be colonized once again by the seduction of Euro-centric norms masquerading as universal. “The law supports Euro-centricty through its false universalism and it privileging of the European historical experience. Euro-centric law presents

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73 Id. at 325.
74 Id. at 325-7.
76 Id.
77 For a further discussion of this matter, see Tommy J. Curry, Please Don’t Make Touch Em: Towards a Critical Race Fanonianism as a Possible Justification for Violence against Whiteness, 5 RADICAL PHIL. TODAY 133 (2007).
78 See Kenneth B. Nunn, supra note 8, at 358-363 (where he argues that American law is a cultural derivative of European Enlightenment and common law traditions).
79 Id. at 364
80 The idea that African culture can modify and contour modernity is reflected in JOHN MBITI, AFRICAN RELIGIONS AND PHILOSOPHY (1969), and KWAME NKRUMAH, CONSCIENCISM: PHILOSOPHY AND IDEOLOGY FOR DECOLONIZATION (1964)
itself as rational, transcendent, objective without ideological content and applicable to all."81 Thus, subjective jurisprudence is the rediscovery of law’s ethereal quality through reason, a reason that establishes rational coherence in the construction of reality, which under the European worldviews, in turn, establishes a rational justification for dehumanizing people of African descent.

How, then, do we make reason Negro-friendly? A subject’s attempts to sort out the post-modern problematics of race that emerge from a politics of difference, and the discontents that arise from the essentialized racial label, inevitably fall back upon a modernist reason—a universal human reason—to negotiate and clarify the relationship of the untainted self to the historically mired self encased in Blackness. The task for CRT lies not in the continual deconstruction of European modes of thinking as inadequate methods for Black subjectivity—we already know that to be the case. The task for CRT is to create new ways to think about the thought of an anthropologically different people who possess a fundamentally different culture.

Towards the Culturalogical Turn in Critical Race Theory

Derrick Bell has taken up a conspicuous place among Black thinkers in history. As one of the few Black thinkers adamant about preferring Black thinkers like Paul Robeson, W.E.B. DuBois, Ralph Bunche, and Frantz Fanon over the insipid white thinkers like Marx, Nietzsche, or Foucault on race, 82 Bell demonstrates an intellectual acuity perfected in the historical ruminations of African-descended people over Blackness. As a legal theorist, a philosopher, and the renowned father of Critical Race Theory, Bell’s work fills a profound lacuna between Black

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81 Nunn, supra note 8, at 358.
82 This interpretation of Bell’s work is supported by Bell himself. In correspondence between Derrick Bell and I, in which I claimed that his work should be understood as a continuation of Black thought, exclusive of white influence, Bell replied,

[Tommy] You have it exactly right. I consider myself the academic counterpart of Errol Garner, the late jazz pianist from my hometown, Pittsburgh, who never learned to read music fearing, as I understand it, that it would ruin his style. I think there must be value in Marxist and other writings, but I did not really read them in college and have had little time since. I am writing this in Pittsburgh where I have been celebrating my 50th law school reunion from Pitt Law School. I do care more about the thought and writings and actions of Du Bois, Robeson, Douglass, et al. I think during my talk at UCLA, I read from the 1935 essay by Ralph Bunche about the futility of using law to overcome racism. It made more sense than so much of the theoretical writings on law, past and present, that I can barely understand and have great difficulty connecting with my experience. And you are right. At almost 77, I do not care to write in ways that whites can vindicate. My view is like that of a dear friend, Jean Fairfax. I told her back in the 1960s that she looked like a black Joan Crawford. She replied, I think you mean that Joan Crawford looks like a white Jean Fairfax.

Email from Derrick Bell, Professor of Law, NYU Law School, to Tommy J. Curry (Oct. 2, 2007) (on file with author)

Notice how Bell resolves the looming existential question so prevalent in current phenomenological investigations of race. In Jean Fairfax’s reply, what many philosophers and legal thinkers would call subjectivity is already conceptualized in the redefinition of her white counterpart. Jean’s subjectivity is and asserts itself in redefining and challenging the incongruency of the white world. In her Blackness, there is a necessary impetus to describe the world from that standpoint. Bell’s narrative demonstrates, just as his corpus, that there is a fundamentally Black and cultural standpoint from which to theorize the world absent white commentary. A standpoint that stands to be corrupted if influenced by white thought.
reality and African American philosophy. While some works reference his well known adages, there is not a single project that has engaged in a systematic study of Bell’s thought as a philosophical corpus, or a unified thinking about racial problems in jurisprudence. Bell insists that Blacks can and should sustain a cultural and racial engagement with the world beyond the promises of equality rooted in white delusions of America’s racial landscape, thus, Bell’s Robesonian and DuBoisian influences are rich starting points for philosophical inquiry into his declarations of cultural independence. While Bell’s writings do not possess the vocabulary of a culturalological perspective, his works nonetheless point to a need to name these critical reflections on American jurisprudence.

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84 Bell has constantly affirmed his admiration of W.E.B. DuBois and Paul Robeson. In ETHICAL AMBITIONS: LIVING A LIFE OF MEANING AND WORTH ch. 5 Ethical Inspirations 127 (2002), where Bell talks about his reason for naming his sons Carter Robeson Bell and Douglass DuBois Bell. In AFROLANTICA LEGACIES (1998), Bell dedicates a whole chapter to Robeson, arguing “Paul Robeson’s life, like great art, is treasured as much for the images it evokes as for the story it portrays. At one level, one can view the obvious parallel of Robeson’s contributions with those of other well-known blacks who paid a large price for their outspoken challenges to racial injustice. At another level, with Robeson’s life as model, [emphasis added] the significant but less well-known sacrifice of other blacks can be more easily recognized and appreciated.” Id. at 111.

In a lesser known work, Bell has argued that “Paul Robeson’s life, like great art, is treasured as much for the images it evokes as for the story it portrays.” Derrick Bell, Doing the State Some Service: Paul Robeson and the Endless Quest for Racial Justice, in ROBESON: ARTIST AND CITIZEN at 49, 49 (Jeffrey Stewart ed., Rutgers Univ. Press 1998).
Bell’s Articulation of Cultural Distinctiveness

Cultural independence and mental decolonization has always been a central concern of Bell’s thought on American racism. In utilizing the term “cultural independence” I mean to convey that Bell has always conceptualized African culture in America as capable of creating, governing, and sustaining its own civilization. Much like Robeson and DuBois before him, Bell has maintained the survival and perseverance of African culture in Black American thinking since slavery. Throughout Bell’s corpus, Bell has paid careful attention to the idea that Africans

85 Bell’s most thorough treatments of decolonization can be found in AFROLANTICA LEGACIES ch. 9 The Black Sedition Papers 137 (1998); AND WE ARE NOT SAVED ch.9 The Right to Decolonize Black Minds: The Chronicles of the Slave Scrolls 215 (1987).

86 Derrick Bell’s protests against racism and his Black pride have always been sustained by his religiosity and valorization of his African heritage. In the prologue of AFROLANTIC LEGACIES (1998), Bell writes

The determined humanity of our enslaved forebears is the foundation of the Afrolantica Legacies. It is not a gift that came with their color. It is the hard earned efforts to make their way in a culture everlastingly hostile to their color. It is the quest for freedom and equality that has made survival possible and salvation achievable. An aspect of that survival one that stretches toward the divine, is a perspective, an insight, and for some a prophetic power about this land and its people that is unique, a component of black art, an element of black character, a mainstay of black lives.

Id. at xiii.

Bell’s belief in the legacy of African humanity is asserted throughout his writings. In AND WE ARE NOT SAVED ch. 9 The Right to Decolonize Black Minds, Bell speaks of the lesson learned in the “Chronic les of the Slave Scrolls.” These scrolls are the legacies of perseverance passed down from our African ancestors to guide Blacks in America through the at times seemingly unbearable racism and oppression at the hands of whites.

Mainly the scrolls taught the readily available but seldom read history of slavery in America—a history gory, brutal, filled with more murder, mutilation, rape, and brutality than most of us can imagine or easily comprehend.

But the humanity of our ancestors survived, as the spirituals prove [emphasis added]. In the healing group sessions, black people discovered this proud survival and experienced the secular equivalent of being “born again.” Those who completed the healing process began to wear wide metal bands on their right wrist to help them remember what their forebears had endured and survived. Blacks left the healing groups fired with a determination to achieve in ways that would forever justify the faith of the slaves who hoped when there was no reason for hope. If revenge was a component of their drive, it was not the retaliatory “we will get them” but the competitive “we will show them.”

Id. at 217.

Bell’s religiosity and belief in the survival of Africanisms in America is nothing new in Black thought. For Bell’s most detailed treatments of Black religiosity and its effect on his political outlooks, see DERRICK BELL, GOSPEL CHOIRS: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME (1996); DERRICK BELL, ETHICAL AMBITIONS, ch. 3, supra note 84. For a contemporary discussion of Bell’s religiosity, see George H. Taylor, Racism as “The Nation’s Crucial Sin”: Theology and Derrick Bell 9 MIC. J. RACE & L. 1 (2004).

Bell’s position should be looked at the long tradition of Black thought before him. As early as 1897, W.E.B. DuBois maintained

We are Americans, not only by birth and citizenship, but by our political ideals, our language, and our religion. Further than that, out Americanism does not go. At that point, we are Negroes, members of a vast historic race that from the very dawn of creation has slept, but half awakening in the dark forests of it African fatherland. We are the first fruits of this new nation, the harbinger of that black to-morrow which is yet destined to soften the whiteness of the Teutonic today. We are that people whose subtle sense of son has given America its only American music, its only American fairy tales, its only touch of pathos and
stolen from Africa and brought to America formed a new people, and that this new people in their struggle and dedication to live fundamentally altered the landscapes around them. The mythical island of Afrolantica is Bell’s representation of Black’s cultural independence and distinction from the colonial world sustained by whiteness.

The first oceanographers to report unusual rumblings in the middle of the Atlantic Ocean...speculated that some sort of land mass was rising up from the ocean bottom. For several weeks, the area was cloaked in boiling-hot steam and impenetrable mist. When the air finally cleared, observers...saw a new land...with tall mountains...fertile valley and rich plains...and substantial deposits of precious minerals, including gold and silver.

The United States and several other countries wasted no time in dispatching delegations to claim the land or portions of it. The first explorers, an American force...landed by helicopter. They barely escaped with their lives. The crew members had a hard time breathing and managed to take off just as they were beginning to lose consciousness...On the new continent, the air pressure—estimated at twice the levels existing at the bottom of the sea—threatened human life...Not even the world’s most advanced technology allowed human beings to survive on those strange shores.

Then a team of four U.S. Navy divers tried to reach the new land under water. ...All seemed go well until, a few hundred yards up the river the divers suddenly began to experience the breathing difficulties that had thwarted earlier explorers...and began to lose consciousness. The crew chief, Ensign Martin Shufford, managed to link the three


drain amid its mad money getting plutocracy. As such, it is our duty to conserve our physical powers, our intellectual endowments, and our spiritual ideals; as a race we must strive by race organization, by race solidarity, by race unity to the realization for that broader humanity which freely recognizes differences in men, but sternly deprecates inequality in their opportunities of development.


DuBois continued almost 30 years later that

Above and beyond all that we have mentioned, perhaps least tangible but just as true, is the peculiar spiritual quality which the Negro has injected into American life and civilization. It is hard to define or characterize it—a certain spiritual joyousness; a sensuous, tropical love of, in vivid contrast to the cool and cautious New England reason; a slow and dreamful conception of the universe; a drawling and slurring of speech, an intense sensitiveness to spiritual values—all these things and others like to them, tell of the imprint of Africa on Europe in America.


Paul Robeson, much like DuBois, also saw the spirituality of African-descended people in America through the spirituals. In the 1930’s Robeson became adamant that Negro spirituals were the religious sensibility of the Negro made manifest and insisted on performing these exemplifications of Black art and intellect throughout the world. He remarks,

[Negro spirituals] are to negro culture what the works of the great poets are to English culture: they are the soul of the race made manifest. No matter in what part of the world you may find him the negro has retained his direct emotional response to outside stimuli—he is constantly aware of an external power which guides his destiny.

groggy team members together with a slender cable and to tow them back to the submarine. When the divers recovered, they hailed Shufford as a hero. He declined the honor, insisting that he had not had trouble breathing—that, in fact, he’d felt really invigorated by the new land’s water’s. The only difference between Shufford and the other members of the crew (and, indeed, all those who had tried previously to land on Atlantis) was race. Martin Shufford was an American black man.

Initially, neither the military nor government officials viewed this fact as significant. After all, peoples of color from other countries, including Africa, had tried to land on the new land with the usual near-fatal results...African Americans did appear immune to the strange air pressures that rendered impossible other human life on the new Atlantis.

In an effort to determine whether other African Americans could survive on Atlantis—a possibility man believed, given the new land’s importance, highly inappropriate—the next helicopter expedition carried on board three African-American men and, as pilot, an African American woman...After a cautious first few steps,...the party felt exhilarated and euphoric—feelings they explained upon their reluctant return (in defiance of orders, they spent several days exploring the new land) as unlike any alcohol-or-drug induced sensations of escape. Rather, it was an invigorating experience of heighten self esteem, of liberation, of waking up. All four agreed that, while exploring what the media were now referring to as “Afrolantica,” they felt free.87

Afrolantica, the Black Atlantis, is the land given to Blacks in America by divinity—a land where only Black Americans can live. Bell uses this geography to represent the potential to be found in a world where Blacks conceptualize their freedom, first, as their ability to leave behind the white world of America and embrace their Blackness culturally, and secondly as the ability to conceptualize an America that they themselves have the power to create. For Bell, this represents a possibility of self realization, a world that challenges Blacks to rethink their allegiance to the normal burdens of race that branded them Americans. In Bell’s narrative, the appearance of Afrolantica unveiled the dormant debates over Black emigration and Black Americanism. This awakening, as Bell refers to it, should not be understood to represent the physical release from the oppressive bounds of the country we call America. Rather the Afrolantica awakening should be understood as the psychic break from the dependency of Blacks on the sustaining ethic of white America—an awakening of the Black understanding’s power to create its own reality.

According to Bell, African-descended people have always maintained their humanity and exemplified that humanity in their contouring of their American environment. Even during their enslavement, “knowing there was no escape, no way out, the slaves, nonetheless continued to engage themselves. To carve out a humanity. To defy the murder of self-hood. Their lives were brutally shackled, certainly—but not without meaning despite their imprisonment.”88 In their living, the lives of Blacks were rooted in the various innovations spawned through the cultural engagement of their own African pluralities. “Though they lived and died as captives within a system of slave labor, they produced worlds of music, poetry and art. They reshaped a Christian cosmology to fit their spirits and their needs, transforming Protestantism along the way. They

87 This abridged narrative of Bell’s is from a chapter entitled Afrolantica Awakening, in FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 32 (1992).
produced a single people out of what had been many.”\textsuperscript{89} Just as Robeson before him, Bell realized that in creating a people, Blacks sustained a type of cultural thinking—a thinking indelibly marked by its steadfast orientation towards cultural freedom.

“If I strive as a Negro, am I not perpetuating the very cleft that threatens and separates Black and White America?”\textsuperscript{90} DuBois asked this question over a hundred years ago and even today its answer remains just as ideologically charged. The advocacy of Black cultural racial empowerment is almost always certain to bring about white backlash and the charging of Blacks with perpetuating racism. Insofar as Blacks claim to be Americans, they are expected to jettison their pride in race and disassociate themselves with any notion of an African cultural legacy, despite the clear connection between African colonization and Black enslavement and oppression in America. Today, even in light of the contradictions held in accepting an African American identity, Black’s Americanism is ethicized and inscribed into the identity etiquettes of America. In bringing Africa back into Black discussion of racism, Bell reintroduces a much needed skepticism of the wholesale American identity currently held by many Blacks. Because Bell draws from the later writings of DuBois, his thought is not clouded by the dominate misreadings of DuBois’ thought under phenomenology and pragmatism’s humanist inclinations that emphasize political equality, and he offers testament to Dubois’s prophetic insight into integration’s cultural threat to Blacks. Bell, like DuBois, understands that the struggle of Blacks is not a struggle for equality, but the struggle for “the possibility of black folk and their cultural patterns existing in America without discrimination.”\textsuperscript{91}

DuBois recognized that integration was just the beginning of more serious contestations over the saliency of Black culture, in which the desire to become American would fuel Blacks’ complacency over their African heritage and further the assimilation of white ideals. “What will be our aims and ideals,” asked DuBois, “and what will we have to do with the selecting of these aims and ideals. Are we to assume that we would simply adopt the ideals of Americans, and become what they are or want to be? Will we have in this process no ideals of our own?”\textsuperscript{92} DuBois understood that the journey of Blacks towards equal citizenship had a socializing effect on how Blacks thought about themselves in relation to Africa. As Blacks strive to live up to the American ideal, they learn “from their environment to think less and less of their fatherland and its folk.”\textsuperscript{93} To the extent that we embrace Black culture’s imitation of whites we encourage its self-destructiveness. “We would lose our memory of Negro history, and of those racial peculiarities with which we have been long associated,”\textsuperscript{94} ceasing to acknowledge “any greater tie with Africa than with England or Germany.”\textsuperscript{95} For DuBois and the subsequent generations of Blacks that have followed it is clear: the quest for political equality in America comes at too high a price. Thus, Bell’s racial realism compels his call for an Afrolantica awakening.

\textsuperscript{89} Id.
\textsuperscript{90} DuBois, supra note 86, at 43.
\textsuperscript{92} W.E.B. DuBois, An Address to the Black Academic Community, 60 JRN’L OF NEGRO HIST. 45 (1975).
\textsuperscript{94} DuBois, supra note 92, at 46.
\textsuperscript{95} Id.
But what would such an *awakening* entail? To answer this question Bell leaves DuBois’s critical assessments of integration to embrace Paul Robeson’s cultural idealism. In connecting the status of Africa in the minds of American Blacks to the imperial conquests of non-European peoples, Bell creates a point of rupture in the classic Black American narrative. Bell urges Blacks to see that insofar as there is an acknowledgement of the anti-Black nature of American politics, there should also be an acknowledgement of the anti-African nature of American imperialism. To challenge whiteness, Black’s must conceptually disengage the dominant European narrative. This disengagement is not to be confused with a theoretical polemicization of whiteness or Eurocentrism, rather it is the demand for a cultural struggle waged against the legitimacy of the European narrative of logocentrism. In Bell, this disengagement is a call for the non-recognition of whiteness.

It is Black’s recognition of whiteness that gives whiteness its legitimacy: “without black people in America, what would it mean to be white?” Bell’s conceptual disengagement from the racial themes that sustain the white American narrative indicates an earnest and philosophically interesting Robesonian moment in the development of Bell’s cultural philosophy. For Robeson, Africa is the cultural locus of the Negro race, and its languages, its music, and its arts provided the cultural foundations for a radically different version of humanity completely outside of Europe’s legacy. While Robeson did believe in the self-sufficiency of

96 I use the term cultural idealism here to indicate the development of Robeson’s ideas set forth in his 1919 commencement speech entitled “The New Idealism.” In that essay he says,

We of this less favored race realize that our future lies chiefly in our own hands. On ourselves along will depend the preservation of our liberties and the transmission of them in their integrity to those who will come after us…neither the old-time slavery, nor continued prejudice need extinguish self-respect, crush manly ambition or paralyze effort…no power outside himself can prevent man from sustaining an honorable character and a useful relation to his day and generation. We know that neither institutions nor friends can make a race stand unless it has strength in its own foundations; that races like individuals must stand or fall by their own merit; that to fully succeed they must practice their virtues of self-reliance, self-respect, industry, perseverance and economy

…We, too, of this younger race have a part in this new American Idealism. We too have felt the great thrill of what it means to sacrifice for other than the material. We revere our honored ones as belonging to the martyrs who died, not for personal gain, but for adherence to moral principles, principles which through the baptism of their blood reached a fruítage otherwise impossible, giving as they did a broader conception to our national life. Each one of us will endeavor to catch their noble spirit and together in the consciousness of their great sacrifice consecrate ourselves with whatever power we may possess to the furtherance of the great motives for which they gave their lives.


97 DERRICK BELL, supra note 85, at xi.

98 It is interesting that Robeson looks to Asian philosophical traditions, specifically Chinese thought as sharing in the emotive elements that describe the African psyche. Robeson also believes that Black people would find a spiritual and intellectual kinship in Asian philosophy.

I believe that Negro students who wrestle vainly with Plato would find a spiritual father in Confucius of Lao-tze. I believe that when they find cultures which command world-wide respect, yet which do not deny the emotional and intuitive approach which is typically Eastern and African, there will not only be world-
African knowledge and a genuine Black culture, it should not be assumed that this was a
categorical or essentialist description. In fact, it was very much a culturalogical articulation of
Black culture, whereby the cultural essence of a people can grasp onto the world and
ergonomically contour the chaos of modernity to its historical consciousness. As Robeson says,
“mechanical technique can be borrowed because it is an external thing—but culture is the
essence and expression of a man’s own soul.”

Robeson recognized that “there was a logic to this cultural struggle…For the question
loomed of itself: If African culture was what I insisted it was, what happens to the claim that it
would take 1,000 years for Africans to be capable of self rule.” If African culture can satisfy
the intellectual, social, and spiritual demands of African-descended people in America, why do
Blacks have such faith in liberalism, Enlightenment rationality, and white people’s goodwill?
Robeson’s answer is that Blacks are kept ignorant of who the real primitives are.

Africa, like the countries of the East, has a culture—a distinctive culture—which is
ancient, but not barbarous…In the past, African communities developed along their own
lines, in their own way, to reach a point of order and stability which may be the envy of
the world to-day.

…the whole system was balance and simplified to an extent quite unknown to the
White world…In my people there is a fundamental quality, a kind of inner logic I call
it…a trait common to the older nations of the world. A quality by which they ignore, or
take little account of, the Western ideals of intellect and science and the power to reason
logically, and depend on emotionalism and feeling. I, as an African, feel things rather
than comprehend them, and this instinct…has convinced me that our race is utterly wrong
in its tendency to become Westernized.

This is the cultural realization had in the Afrolantica awakening: the belief in cultural
sufficiency. In recognizing the inadequacy of European thought to speak to their reality, Blacks
simultaneously admit their power to create reality anew. Whereas postmodernism aims to reform
the dehumanizing addiction of Western thought, culturalogics simply dismisses the idea that
Western thinking could ever contribute to Black knowledge. In preserving the possibility, or
rather the necessity of cultural and social creativity, culturalogics admits the potential of radical
social transformation at the hands of Black peoples.

When the mythical island disappears, Blacks are transformed. Instead of seeing America
as the glaring white republic of old, America is illuminated by the shadows of its Blackness,
which inspires not only the empowerment of Blacks, but their capacities of creation—a
realization that Black culture can sustain America. Even without the land known as Afrolantica,
Bell maintains that the vision of a place ruled and inhabited only by Blacks inspires “a liberation, not of place, but of mind.”

As the armada steamed back to America, people recalled the words of Fredrick Douglass that opponents of emigration had cited to support their position: “We are Americans. We are not aliens. We are a component of the nation. We have no disposition to renounce our nationality.” Even though they had rejected that argument, it had its truth. And it was possible to affirm it, and return to America, because they understood they need no longer act as the victims of centuries of oppression. They could act on their own, as their own people [emphasis added], as they had demonstrated to themselves and other blacks in their preparations to settle Afrolantica.

Their faces glowed with self-confidence, as they walked erect and proud, down the gangplanks the next day when the ships returned to their home ports. The black men and women waiting to greet them, expecting to commiserate with them, were instead inspired. The spirit of cooperation that had engaged a few hundred thousand blacks spread to others, as they recalled the tenacity for human life which had enabled generations of blacks to survive all efforts to dehumanize or obliterate them. Infectious, their renewed tenacity reinforced their sense of possessing themselves. Blacks held fast, like a talisman, the quiet conviction that Afrolantica had not been mere mirage—that somewhere in the word America, somewhere irrevocable and profound, there is as well the word Afrolantica.

Just as Blacks possess the raw materials for resistance, so too do they possess the raw materials for the constructing of cultural realities. Just as Robeson before him, Bell believes he is American, but a citizen of an America that is Black through and through; an America whose systems of thought and spirit is defined not by its blind allegiance to its imperial legacy but guided by the fully recognized cultural freedom of its African descendents. But how do we achieve a conceptualization of America founded on Blacks thinking for and creating from themselves? What effect would this cultural freedom have on the constructing of social, political, and legal systems in America?

**From Culture to Culturalogic**

Logic has long been defined as the science of reasoning and outlining the principles by which this science may proceed to think correctly about thought. Unfortunately, however, there is

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102 BELL, supra note 87, at 46.
103 Id.
104 This common usage of the term “logic” should not be controversial to the reader. Various philosophers have defined logic along the lines of scientism and systemization for quite some time. Joseph G. Anderson, for example, defined logic as “the science of things; that is in an objective and not a subjective science; that it treats of things, and not of the thoughts or ideas, or notion of them in the human mind” Joseph Anderson, What is Logic, 9 THE JRN’L OF SPECULATIVE PHIL. 417. John Stuart Mill in wavering between considerations of logic as an art or a science, defined logic as the “science of operations of the understanding which are subservient to the estimation of evidence: both the process of advancing from known truths to unknown, and all other intellectual operations in so far as auxiliary to this.” JOHN STUART MILL, A SYSTEM OF LOGIC: RATIOCINATIVE AND INDUCTIVE: BEING A CONNECTED VIEW OF THE PRINCIPLES OF EVIDENCE AND METHODS OF SCIENTIFIC INVESTIGATION (1889). R.W.Sellers is another example of this scientification of logic, since he defines logic as “the science of the principles of correct thinking.” R.W. SELLARS, THE ESSENTIALS OF LOGIC 1 (1917).
very little scholarship that speaks to activity by which culture logically births reality upon the world, and absolutely none that discusses the roles that Africana culture plays in organizing concepts and bringing about the materialization of those concepts under a social constructivist lens. Unlike previous thinkers on the matter of logic(s) and culture, I contend that logic(s) refers to a systemic way of thinking about the relationship concepts share in such a way that the actions, values and meanings that extend from these relations appear to naturally follow. In a world that is a product of a culture’s social construction, these logic(s) refers to the ways in which the concepts of a people’s thinking are reflected in the structures, and more importantly, the relationships they take up with the structures they create in their society. In the social constructivist era, it is important to realize that a people create the structures, the institutions and the values that sustain their social life in ways that reflect the beliefs and historical consciousness of that people. And in the process, they determine a rational way of seeing the world and their logical structure.

Giving culture this type of epistemological weight fundamentally alters how CRT conceptualizes the historical contingency of race, the meaning of freedom, the value justice, or the existence of law itself. It changes the rules of the game, so to speak. Even as victims of physical and psychical subjugation, Blacks have historically acted against the stories that whites have told themselves. Instead of admitting to being murderous rapists and lynchers, whites maintain that they were civilizing African barbarism, and this narrative, while known to be false, is rarely challenged in the routine discussions of American rule of law. While CRT has reminded social, political and legal theorists of this historical fact, the movement has ignored the conceptual alternatives revealed in Black resistance to the idea that Black culture (African barbarism) is not capable of producing civilization. Propelled by the cultural impetus of its own

105 The debate over logical relativism is considered passé, among many logicians. This dispute has routinely been a conversation around the Azande and whether or not their culture adheres to the three primary laws of logic: 1) The Law of Identity: X is X; 2) The Law of Non-Contradiction: X is not both X and not X; and The Law of Excluded Middle: X or Not X. This debate arose from the various challenges to western metaphysics and the advocacy of cultural relativism in various fields like anthropology, sociology and psychology. In philosophy, however, these debates over logical relativism are very isolated. For a discussion of the logical relativism and culture debates, see Timm Triplett, Azade Logic vs. Western Logics?, 39 THE BRITISH JOURNAL FOR THE PHILOSOPHY OF SCIENCE 361 (1988); for a reply to Triplett, see Richard C. Jennings, Zande Logic and Western Logic, 40 THE BRITISH JOURNAL OF SCIENCE 275 (1989). For more contemporary revisions to the origin arguments, see Timm Triplett, Is There Anthropological Evidence that Logic is Culturally Relative? Remarks on Bloor, Jennings and Evans-Pritchard, 45 THE BRITISH JOURNAL OF SCIENCE 746 (1994). For a discussion of whether or not there is psychological evidence against the universal adherence to the law of non-contradiction, see Bill Huss, Cultural Difference and the Law of Non-Contradiction: Some Criteria for Further Research, 17 PHIL. PSYCHOL. 325 (2004).

African philosophers have also taken up this debate, for a discussion of several prominent ideas by African authors on the matter of culture and logic, see THE AFRICAN PHILOSOPHY READER chs. 1,5 (P.H. Coetzee and A.P.J. Roux eds., Routledge 1998). It would also be helpful for those interested in this problem to look at KWASI WIREDU, CULTURAL UNIVERSALS AND PARTICULARS: AN AFRICAN PERSPECTIVE chs. 1,2,3,4 (1996) (which deal with the existence of cultural universals).

This statement is not to ignore the work done by historical figures like Max Scheler, Karl Manneheim, and Karl Marx in the sociology of knowledge, or the more popular works of PETER L. BERGER AND THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY (1966); THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (1996), or the recent anthology SOCIALIZING METAPHYSICS: THE NATURE OF SOCIAL REALITY (Fredrick F. Schmitt ed., Rowman and Littlefield 2003). However, it is important to point out that these works are descriptive analyses of how “social and historical patterns of life” become knowledge. My arguments differ in that I am interested in how cultures constitute the world under racialized systems in such a way that reality emerges amidst colonial dominance.
realization, Black resistance possesses a prescriptive dimension, a dimension that concretely demonstrates how a people’s cultural action can contour the seemingly objective (social) constructions of America, unveiling the possibility that resistance is not only the refusal to submit to dominance but the constitution of alternative realities amidst domination. Because CRT concerns itself with the contestation of European objectivism, rather than simply dismissing it as irrelevant myth, CRT has overlooked the possibility that the various modes of consciousness grounded in racial experience are actually the prolepses of various cultural realities that have escaped the grasp of European thinking.

A culturalogical perspective aims to theorize about legal subjectivity beyond the decadence of contemporary conversations dedicated to the ego-logical capacity of a self to attain rational transcendence. Despite the critical inclinations of CLS and the idealist tradition of CRT, the individual’s motivations for understanding the world rely on the imperatives of rational engagement. For Blacks, however, their encounters with American jurisprudence and the politics that have sustained their legal disadvantage cannot be characterized as simply rational choices that any rational person would make given the same situations. There has to be recognition that what is rational is also culturally normative, in so far as all rationally justified or logical actions necessarily imply the fulfillment of their teleological or purposive aims. For Blacks in America, rational choices are made on the basis of considerations outside of the self. The struggle for Civil Rights, for example, was not made for the advantages it gave to the individual during the struggle, but for the generations of the Blacks that would come after. As a Black person, am I interested in the elimination of a particular harm, or the conditions that sustain that harm, the injury or the dispositions that perpetuate it? Because of race and the historical targeting of African-descended people in America, the logics involved in reaching a rational conclusion in any socio-legal situation involves the acknowledging of the historico-political reality of legal oppression towards Blacks.

European reason, in its compulsive obsession with absolutes and universals, cannot adequately describe the historical inductions of Black people. The change in Blacks’ understanding of concepts like justice, fairness, and equality from generation to generation confounds such reason. Unable to comprehend this Black logic, because of it generational situatedness, European reason deems it contingent and irrelevant. But it is reason’s imperialism that prevents it from examining itself. What CRT has come to know as “reason” is nothing more than a normative conscience—the universalization of the European historical consciousness as all that is good, ethical, and proper—where a particular people’s consciousness, or the awareness that people have historically taken up with the world, become conscience by the sustaining laws of logic that command the members of that people to perpetuate the relationships their people have with the world as their duty of group membership. The quaint skepticism of reason sustained by race-crits is simply not enough to remove fully colonial rationality.

Within the critical tradition, any discussion of jurisprudence will necessarily involve a discussion about the role that the subject plays in rationally forming and interpreting the social world. Culturalogical jurisprudence, as participating in this discussion, not only suggests that jurisprudence should take into consideration the realist mantra that law is politics, but adds that a true understanding of law requires understanding the cultural dynamics involved in the creation and the reification of law’s associations with social entities. Culturalogical jurisprudence contributions to CRT, then, lay in presenting a meaningful social theory that tells us how African-descended people in America formulate their social environment based on the nature and psychological needs of their cultural selves, beyond the polemics of systemic racism. As a social
theory, a culturallogical jurisprudence tells us how the subject sees all socially constructed phenomenon, including law, and gives us a description of what African subjects in America bring to the objects they seek to interpret. If Balkin is correct, that “…the coherence of law is ultimately based on the coherence of the world and that the coherence of the world is ultimately based upon the coherence of ourselves,” then the implication of culturalogics extends beyond the mere consideration of cultural norms in understanding values and the meaning of concepts: it is how one’s cultural orientation writes into the world the aims towards which one creates or constructs entities. Thus it is the earnestness one devotes toward creating structures, environments, and the narratives that socialize other populations to uphold the values and perspective that ground the individual and make the world cohere; this phenomenon cannot be limited to a singular function of the individual’s transcendental reason.

The use of the culturallogical subject presents a fundamental shift in debates centered on the problem of the subject. CRT should not retreat from the glimpse of illumination held in the aisles of sterile European theories, especially when the last decade of such experiments have only yielded more external attacks and postulations from scholars like Robinson. Centering the discourse of subjectivity on culture allows CRT to better respond to the postmodern/modern tension by packing up that tension’s bags and moving. There no longer needs to be an account that asks a hypothetical “how would a dialectical or autonomous subject deal with racism?” because under a culturallogical perspective the subject is already dealing with racism. To view a people under a social construct is to view the theory of a people’s strategies for negotiation and survival in their practice.

**The Culturallogical as Social Theory**

The analysis of a people’s social theory, namely, “those principles that determine the relationship of a people to one another (i.e. collective self), to other humans, (i.e., those who are other than ‘self’), and to nature,” is an analysis of the particular logics a people use to mediate and direct the socio-historical context toward their own understanding. Race, then, as a socio-historical and legal construct lends itself to an analysis of how African-descended people in America mediate the social context of the race construct toward an understanding of themselves, and their survival. According to Dr. Daudi Azibo,

A people’s social theory is, in turn reflected and realized in their “survival thrust,” which may be defined as the characteristic ways a people negotiate the environment (i.e., to extract material sustenance from the physical universe). A more erudite definition is that survival thrust is “the condition and process of survival maintenance that is indigenous to and thus characterizes a racial-cultural group’s genetic and geo-historical pattern under gird by their Cosmology.

The manipulation of a social construct then is a guided modification. This modification reflects a culturallogical theory of the social (how a people see society as the reflection of their culture’s historical relations), and “establishes a people’s guidelines of life including their values, rituals

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106 Balkin, supra note 67, at 143.
108 Id.
and ways of dealing with ‘the other.’ Therefore, a people’s authentic social theory is essential to their basic philosophical and consequent psychological orientations.” Current investigations in philosophy proper and CRT have failed to understand how cultures use conceptual constructs not only in identity politics but also as a means to articulate and protect their cultural properties in a racist and anti-black society. An analysis of race cannot then look at race outside of its inherent cultural fusion with African-descended people’s cultural and philosophical tenets. Blacks, as a people, understand themselves differently than mainstream investigations that look at race as a social construct reveal, because those “racial investigations” are not looking at how “race, specifically Blackness” functions as a cultural construction.

Black is beautiful. Why? Because the oppressive and inescapable burden of the label, “Black,” has been placed on a people despite their resistance, but this people, utilizing their cultural conscience and historical memory, has contoured the term so that it can be fitted to meet and address their contemporary needs and narrations. Simply stated, a people’s engagements with the world (their constructions in it) are meant not only to satisfy their material needs, but also the psychical demands of their historical consciousness. This analysis is particularly relevant in our attempt to understand how a racialized subject can take hold of a racial construct placed upon him and transform that construct toward the goals of his particular cultural community. What we are talking about is the ability of the African to meet the world in a process that co-authors meaning as well as the best available strategies for cultural survival. Even in the confrontation of culture and European constructions like race, culture infuses and transforms the construct.

The problem of philosophical investigations of racial subjectivity resides in the inability of authors, despite what they see before them, to attribute functionality to both the racial constructs and the relations those racial constructs entail. For some, it seems close to impossible to think of racial beliefs as the product of the racialized and oppressed cultural communities that have been burdened by racism. Black subjectivity is not the way a thinking “I” navigates the racialized social landscape as a rationally motivated “self”. Black subjectivity is not ego-logically driven; it is a culturally (communally) enduring existence, but entails a historical conscience articulating itself through an individual identity and attempting to fulfill its cultural aims.

If it is true that legal theories of coherence are based on how subjects see the world, then it seems reasonable to suggest that a racial subject responding to racism through its cultural subjectivity would give both the most effective account of the conditions that give rise to racism and the agendas that culture determines it needs as remedies, since these issues necessary coherence within Black identities. In this regard, struggle is not and cannot be extra-cultural nor outside the realm of subjectivity for African-descended people, because it is the necessary act by which Blacks can socially exist, since it is the distance gained in the process of culturally defining race for one’s people—in an effort to survive against the constant onslaught of white supremacy, which holds Blackness to be evil, immoral, etc.—that makes social existence possible. Politics, then becomes fundamental to a socially constructed and culturally respondent actor, since it is the act of the political—the assertion of power to change or direct society—that makes the community generally referred to as “the Black community” possible. Because this

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109 Id.
110 While distinct from my project, there is very interesting and recent literature on cultural trauma that speaks about the role of memory and narration in African American identity formation. See RON EYERMAN, CULTURAL TRAUMA: SLAVERY AND THE FORMATION OF AFRICAN AMERICAN IDENTITY ch.1 (2001).
action is necessitated, and is the historical view of Blackness would be the social and communal activism of the oppressed culture as a whole, or what the culturalogist would say “holds the place of” or substitutes for what we now call “the subject,” it is perhaps the best theoretical foundation from which jurisprudential questions about legal “subjectivity” can be launched. Since there are no fixed and objective social entities outside of the cultural and social perspectives responsible for their construction, this view commits race-crits and legal theorists alike to think of “cultural difference” as the test of theoretical rigor on these matters.

Conclusion

It’s not modern, it’s not postmodern; it’s culturalogic. Because racial realism accepts without hesitation the incongruity between the social reality before Blacks and the reality Blacks wish to create for themselves, an account of the process through which African-descended people struggle against the permanence of racial subordination is needed. The derelictions of present scholars in the movement to develop a theory of a subject and prevent the conceptual incarceration of Black experience through discourses of progress and transcendence demands a new theoretical course of action. We can no longer believe the characters played by historical European philosophers covered in “blackface,” as if their playing dressup speaks to the “lived experience” of Blackness. CRT must draw the line somewhere; it can no longer afford to give credence to philosophers like Kant, Hegel, and en vogue French deconstructionists who have to be modified and absolved of acts that were anti-black. Black thinkers have always been struggling against racism just as we (Blacks) are today. There is no need to resurrect the ideas of a dilapidated and diseased European thought to attempt to rectify a situation that is outside of its cultural and conceptual frame. CRT can no longer take comfort in “inhabiting the tension of modern/postmodern” traditions. The African subject under Blackness (the race construct) is not a subject torn, but a subject in struggle—this is the strength of locating a functioning cultural subject in the lived experience of the Black rather than claiming it is produced dialectically from the lived experience of the Black. The subject is always culturally orienting Black life toward a culturally meaningful product, whereas European thought treats the subject as if it is in conflict with itself over its own existence. European conceptualizations of subjectivity are simply inadequate when dealing with the complexities of cultural realities, especially when those realities are counter-hegemonic struggles against the very epistemological processes that undergird the socially constructed reality of the European world-view.

The shift to culturalogics in jurisprudence can never happen as a result of the accumulations of arguments or subsequent moments of revelation, but what this theory can do in its affirmation is empower the culturalogical agenda of African descended people as the most serious attempt at systematic and conceptual rupture from Eurocentric accounts of social and legal reality, moving African-descended people one step closer towards liberation. As Kenneth Nunn says, “contesting Euro-centricity is a primarily cultural struggle. It calls for the creation of a separate cultural base that values and responds to a different cultural logic than does Euro-centricity.\textsuperscript{111} This contestation is not a question of how we think about the world, but rather the assertion of new questioning that creates its answers in the \textit{how} of African-descended people’s thinking in the world. Values like freedom, liberty, individuality, democracy, fairness, justice, or concepts of reason, humanity, or life itself are the products of a specific people’s culturalogical orientation. To the extent that the world is socially constructed, so to are the entities in the world

\textsuperscript{111} Nunn, \textit{supra} note 8, at 365.
that represent the finished productions of the concretization of a people’s ideals. A reconstruction of jurisprudence, then, should focus not on the amelioration of Black conditions under colonization, but the creation of a social landscape separate from the colonial condition, on which African-descended people can create. Though the journey through America’s colonial wilderness requires race, the cultural aspect of how Blacks think of themselves and how they [Blacks] conceptualize their world without whites is the vision toward which CRT should strive. What is most central to this theoretical orientation is the understanding that amidst the social construction era, the world before us is not only socially constructed, but through the lives and endurance of the people within it, being constructed before our very eyes.