Turn The Chapter Or Change The Book: Taking Critical Race Theory Forward

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**Abstract**

Differentiations between groups are now conceived along cultural lines instead of morphological or geographical lines. This is substantively reflected in academia, law and practical experience. Adoption of an alter-cultural solution will sweep aside arbitrary limits based on an old idea of race, replacing them with porous and readily traversed boarders. It will place autonomy and self-agency firmly at the core of human ambition and achievement. I illustrate this by applying an altercultural lens to a persistent area of Critical Race debate – racial underrepresentation in the legal profession.

Critical Race literature should begin to adopt culture as its root concept, being the ideal vehicle for disseminating this idea to the wider academic and (eventually) legislative corpus. I suggest ways it can go about doing this and look forward to more hopeful days.

**New Beginnings**

Imagine you strike up a conversation with a stranger. His initial reception is cold, but he gradually opens up and a dialogue is established. At some point he makes a comment about your excellent command of the English language, which takes you aback and leads you on a causative inquiry.

You are a member of the stranger’s racial group. Appearance, personality, gender and class are among the variety of possible factors accounting for his reception and comment. You are not a member of the stranger’s racial group. The same explanations arise, with the noticeable addition of race. As a divider of groups and individuals, ‘race’ has been responsible for state-sanctioned genocide, war, slavery and death. As a core concept of Critical Race Theory (‘CRT’), its arbitrariness and historical encumberance stunts progress and perpetuates the injustices the theory seeks to identify and redress.
The concept of race is fundamentally flawed. I propose that a fresh, alter-cultural delineator be substituted. Section I identifies the insufficiency of ‘race’ as a core theoretical concept of CRT. Section II proposes a superior substitution with greater fidelity to legal, academic and social realities. Section III rebuts CRT critiques on liberalism through the microcosmic context of the corporate legal profession, showing how traditional racial conceptualisations have contributed to the impasse and how an altercultural substitution may take us past it. Section IV charts a wider agenda emanating from our new concept, particularly in the context of CRT, and Section V concludes.

**Progressivity and the normative perspective**

Brooks encapsulates the progressive nature of CRT in identifying its ‘two-pronged’ methodology. The first prong asks us whether the rule in question subordinates racial interests. The second prong seeks ways to remedy it.\(^1\) CRT is a solution oriented movement, and this work is no different. In its argument for imperative reassessments and proposals for positive solutions, this work subscribes in measure to the wide methodological approach of CRT, which incorporates relevant interdisciplinary reference to human and social sciences.

CRT scholarship acknowledges the need for the racial writer’s unique insight, and any writing in the field is informed by liminal or subliminal experiences of the writer. Lopez writes that scholars are intrinsically racial actors, and self-assessment of how race has

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shaped one’s life is prerequisite to legitimate CRT contribution.² Tara Yosso states that the systematic process of any interpretation and argument is neither neutral nor objective. The essential core of CRT scholarship is the balance of theoretical sensitivity and cultural intuition.³ This work argues for greater objectivity in CRT, but penumbral issues are necessarily informed by my a priori understandings.

Having thus defined the scope of our project, we descend into the inscrutable.

I. The Ontological Insufficiency of Race

CRT postulates a persistent and substantive inequality in law stemming from racial differences. Much ink has been spilt explaining the causes, manifestations and effects of substantive racial inequality. Bell regards racial self interest as the fundamental cause,⁴ while Alan Freeman suggests it is caused by ignorance.⁵ Chang identifies a manifestation in the slow rate of federal reparations for historical wrongs wrought along racial lines, and the resultant feelings of alienation and disenfranchisement.⁶ Such second-level arguments are premature in absence of adequate delineation of the dividing lines across which this inequality is perpetuated. In this section we confront the matter squarely and ask, what exactly is ‘race’?

² I. Lopez, Race, Law and Society (Ashgate, Hampshire 2007) pf. xxi
³ T. Yosso, Critical Race Counterstories along the Chicana/Chicano educational pipeline (Routledge, London 2006)
The Oxford English Dictionary defines ‘race’ as ‘(1) each of the major divisions of humankind, having distinct physical characteristics. (2) racial origin or distinction. (3) a group of people sharing the same culture, language, etc.; an ethnic group...(5) (Biology) a distinct population within a species; a subspecies.’ Hoffman points out a putative correlation between race and the first definition, which include features such as colour and physical appearance. This is indeed the traditional, putative conception of race. Racial individuals and groups have been referred to as white, black, yellow and brown. Pejorative references are also made to distinguishing features to characterise races. The following subsections will show the fallacy of this correlation.

**Scientific fallacy**

There is no scientific consensus concerning genetic racial categorisations, despite scientists persistent efforts. The most recent manifestation of this is found in the 2002 report in Science which genetically categorised individuals into five geographical locations. Hayman and Levit thoroughly encapsulate arguments against such categorisations. They have highlighted equal or greater intraracial DNA variations compared with interracial DNA variations, increasing intermarriage and outmoded

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socio-historical prejudices which underlay early scientific method as factors which render genetic racial formulations untenable.⁸

As a matter of legal history, ‘scientific’ formulations of race which found acceptance in the courtroom have been grounded in the dual test of social construction and morphology. This proved untenable, as evinced in the early 20th century US Supreme Court naturalisation cases United States v. Ozawa and United States v. Thind.⁹ These cases concerned applicants from Japan and East India arguing that they were ‘white’ and thus eligible for American naturalisation as members of the Caucasian race, in keeping with the race exclusive naturalisation laws of the period. The latter case reversed the formers’ endorsement of a partly morphological, partly putative ‘race’ test, with the US Supreme Court decrying scientific manipulation which had led to a body of legal precedent that heterogeneously expanded the Caucasian race to include Syrians, Asian-Indians and people of widely varying skin tones and phenology - something that the ‘average well informed white American’ would be astonished to learn.¹⁰ Lopez points out that this judicial backlash arose from a frustration with science and its inability to accord with the ‘common knowledge’ test. He argues that the ‘scientific’ morphological test was merely a report of social beliefs from the scientists (more accurately, anthropologists) perspective. The uncertainty in the courtroom spilled over to the Executive level, creating odious consequences. Olivas describes how repatriation operations in 1946 proved the impossibility of separating Mexican-Americans from deportable Mexicans. Many United States citizens were mistakenly

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⁹ 260 U.S. 178, 198 (1922) and 261 U.S. 204,211 (1922) respectively
¹⁰ 261 U.S. 204, 211 (1922) (n. 9)
repatriated to Mexico, including men of non-Mexican descent deemed to be in possession of Mexican features. Gossett concludes that the nineteenth century bore witness to an exhaustive but ultimately futile search for criteria to define and describe race differences.\textsuperscript{11}

Nowhere it seems, does the Platonic aphorism that science is nothing but perception ring truer than in the ‘science’ of racial morphology. While not definitive indicators of total failure, the US Supreme Court and repatriating case studies mentioned represent institutional attempts at empirically separating races based on the insufficient delineator of quantifiable physical characteristics. The inability of this ‘scientific’ method to withstand its own scrutiny invariably led the US Supreme Court to reject its ‘unsupportable’ and ‘subversive’ basis.\textsuperscript{12}

\textit{The social construction dilemma}

Thind entrenched a purely putative test for race based on ‘common knowledge’, marking judicial acknowledgment of race as a social construction. This was affirmed in 2002.\textsuperscript{13} ‘Race as a social construct’ has been achieved near universal acknowledgement in CRT. Chang goes so far as to call it a ‘mantra’ of the movement. We are thus presented with a puzzling phenomenon. To acknowledge its social construction is to acknowledge that race hinges upon normative conceptualisations, and invariably differ between minority communities, sub-groups and individuals. The


\textsuperscript{12} \textit{Loving v. Virginia} 388 U.S. 1 (1967)

\textsuperscript{13} \textit{United States v. Nelson} 277 F.3d 164, 176 (2002) (Per Calabresi, 2\textsuperscript{nd} Circuit Judge, ‘the modern usage (of race) may well itself be a fiction, in the sense that it groups people into what are no more than socially constructed categories.’)
subjectivity inherent in such a construction does not negate the possibility of a correct formulation – one may exist on some theoretical plane of perfect information, which a ‘Herculean’ scholar might identify. These economies of knowledge and scholarship are beyond our reach. In their absence, the social construction definition is unable to offer us a determinate answer as to what exactly race is.

Take differing accounts of the ‘Asian’ as microcosmic illustration, specifically concerning the 19th/Early 20th century Chinese exclusion acts. Chang sees the legislation as excluding along solely geo-political lines, referring to the laws that directly attacked the development of entire Chinese immigrant communities in their respective states. Calavita differs and identifies class-based distinctions in the effect of the laws, which distinguished between Chinese immigrant ‘labourers’ (who were repatriated) and ‘merchants’ (who were not). Even with reference to the same racial group, there seems to be a monumental difficulty in identifying exactly which sub-group experiences discrimination to the degree that CRT scholars seek to communicate, or even if the discrimination experienced by sub-groups are capable of comparison.

The most convincing response of CRT has been the postulation of a ‘Voice of Colour’, its foremost proponent being Mari Matsuda. This Voice is characterised by the essentialism of a common experience of persecution that transcends intra- and inter-racial abstractions. Formed as such, this Voice is a vehicle by which CRT may confront racial hegemony in a unified manner, objectively setting aside superficial differences and

15 Chang (n. 6)
setting the bounds between the persecutor and the persecuted. In this dual intention, Matsuda casts the Voice as a wide, all-accessible net for minority scholars. Unfortunately, this net frays easily at the ends owing to differing opinions of its content, means and ends.

The first problem is that of content. Matsuda believes that any who speak from a racial ‘experience of domination’ speak in the Voice. This seems to include a wide range of potential participants. Culp draws the limits more restrictively, reserving the Voice for those who oppose racial oppression.\[18\] Yet this seems to include non-coloured scholars, who may not necessarily speak from an experience of domination or persecution which is Matsuda’s prerequisite. To compound the confusion, there is no consensus on which ‘race’ defines the Voice of persecution, or if other segregational factors produce a more faithful definition. Johnson expresses concern that the Voice seems to be better characterised by classism; that even if one substituted racial terms for classist terms like ‘poor’, the content of essentialist CRT literature would be, by and large, unchanged. Further sub-categories exist to obfuscate a clear Voice, such as minority homosexuality and feminism.

The second problem is illustrated by Crenshaw, who distinguishes those who call for external deconstruction and criticism of the dominant institution, and others who call for change from within.\[19\] ‘The persecution you speak of is not the persecution we experience’, come the despairing cries from within. The indeterminacy of content and

\[19\] Crenshaw (n. 5)
multiplicity of ends threatens to devolve the Voice into the very normativity it sought to remedy.

Constitutive problems of ‘race’

The semantic construction of ‘race’ has led to considerable social harm. Hutchinson points out that racial consciousness breeds a culture of inferiority, victimization, and helplessness among persons of colour. This vertical positioning, coupled with the subjectivity of socially constructed definitions, has led to politicisation, discrimination and as Hoffman puts it succinctly, ‘the oppression, subjugation, and even extermination of millions of people.’

The continued use of the terminology of ‘race’ has become a progress paralyser in CRT. By adopting racial terminology and understandings into their literature, CRT scholars have adopted the accompanying presumptions of hierarchical ordering and racially drawn lines of superiority and inferiority. This preserves a sub/conscious semantically-induced mental frame which limits belief in the merits of one’s culture and places her in a position of arbitrary powerlessness. Furthermore, some CRT scholars have condensed ‘race’ into a sort of Rashomon, a conveniently wielded conception with no externally verifiable meaning but which few dare challenge, which is used as the justificatory basis for a range of arguments and opinions.

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Given the harms that have arisen from the inadequate racial construction, a crucial starting point for reformulation is that of compositional determinacy.

The need for Determinacy

Dworkin warns us that the open texture of language presents the danger of speaking at cross-purposes. He illustrates a debate on the content of a bookshelf rendered ineffectual by the differing conceptualisations of what exactly passes for a ‘book’.22 On a parallel dimension, CRT scholars cannot hold effective discourse without conceptual similitude of its fundamental component. If ‘race as social construction’ has perpetuated such abstruseness between Critical Race scholars, how may we articulate its construction in a wider societal context? We echo a Fuller-ian sensibility in the idea that there is intrinsic value in conceptual clarity. This value lies in its fundamental importance for a determinate theoretical and analytical calculus. I here distinguish determinacy from demonstrability, which requires objective validation. The former demands only that we strive for componential uniformity in the fundamental concept of CRT. Only when scholars speak to each other, may they speak for one another.

Previous racial formulations have proved untenable in bringing us closer to a correct formulation. Let us start anew.

II. A superior composition

22 Dworkin (n. 14)
The roots of a culture-centric concept of race lie outside the domain of CRT. Anthropologist Franz Boas encapsulates ‘culturalism’ in stating that biological differences are altogether irrelevant as compared with the influence of the cultural environment in which the group lives.\textsuperscript{23} I refer to ‘culture' in a wide sense in this section. It encompasses the social, political, traditional, economical and/or geographical background of the subject, the way in which these affect the behavioural and interactional capacities of the subject, and the putative assumptions of others about the subject’s background based on a plain-sight impressionistic interaction.

Intellectual honesty demands coherence in a theory’s descriptive and justificatory capacities, in relation to that which it describes or justifies.\textsuperscript{24} I will show that transplantation of a culturalist formulation of race into CRT better ‘fits’ its substantive legal, academic and social realities and depicts group delineations with greater exactitude.

\textit{Legal culturalism}

Legal manifestations of ingroup responses to outgroups have shifted toward cultural lines, particularly after the removal of race based naturalisation laws. I refer to the House of Lords decisions in the refugee cases of \textit{Sivakumaran} and \textit{Bugdaycay};\textsuperscript{25} in which asylum seekers were denied refugee status based on a judgment of the degree and specificity of the persecution taking place in their home countries. Douzinas and Warrington criticise the decisions as being based on the fundamental and fallacious

\textsuperscript{23} P. Pascoe, ‘Miscegenation Law, Court Cases, and Ideologies of ‘Race’ in Twentieth-Century America’ in Lopez (n. 2)
\textsuperscript{24} Dworkin (n. 14)
assumption that the judge can occupy the place of the refugee and share his pain. Their contention took place on a cultural plane, alleging that cultural experiences of judge and applicant were hermetically isolated experiences, and that given the lack of true experiential communication the judgments were unjust. These cases are signals for a broader shift in legal conceptions of ‘others’; modern courts draw conclusions from political and experiential backgrounds, rather than plain-sight appearances.

Academic culturalism

There is mounting dependence upon cultural particularities in describing the parameters of persecution in CRT scholarship. Barnes’s criticism of liberalism incorporates a cultural element, as she laments that non-whites are urged to adopt mainstream cultural values to the subordination of their own, while simultaneously regarded as being inferior. Austin identifies a ‘politics of identification’ wherein peculiar cultural identities within racial communities calcified in response to white socio-cultural impositions and served to distinguish anti-assimilationists from those of the same racial group who chose to assimilate within the majority culture. These narratives convey the extent to which CRT incorporates culture as the indicia of outgroup cohesion. Many CRT academics hold the erroneous view that race conveys an accompanying cultural meaning, which the relational experiment below shall debunk.

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Cultural underpinnings of microaggression

Social discrimination has evolved beyond old racial lines. I refer to microaggressions, which Delgado defines as sudden dispiriting transactions, including small acts of consciously or unconsciously perpetrated racism, which mar the days of people of colour. These have evolved beyond colour or physical characteristic based aggressions to incorporate larger cultural elements. Microaggressions of old such as ‘thick lips’ and ‘brownie’ have been replaced by terms like ‘raghead’ and ‘terrorist’. The former term refers not to any discernable biological traits but rather the alien ‘otherness’ of the victims culture and traditions. Similarly, the latter term inflicts insult by general reference to a negative-stereotype of religious fundamentalism and criminality.

Hoffman astutely observes the shift away from traditional colour-centric lines in common parlance, as ‘the American public has altered its vocabulary several times, switching from “Negro” to “Colored” to “Black” to “Afro-American” and finally, to “African-American”’. Delgado further identifies cultural stereotypes which underlie differences in treatment of different outgroups, pointing out that blacks will be yelled at for being welfare leeches or having too many children out of wedlock, but never accused of being foreigners or of destroying the automobile industry. Asian-looking people on the other hand tend to experience the opposite. These microaggressions also operate upon implicit stereotypical meanings of the victims culture. Cultural meanings have superseded colour or physical attributes as the determinative

30 Hoffman (n. 21) p. 1144
31 Delgado, CRT: An Introduction (n. 29)
delineator of people within the social zeitgeist. Our expressions for describing resultant dynamic must undergo similar transformation.

A relational experiment

Lopez is party right that social construction is determinative only on a relational level. I shall explore this in the individual context, and use a relational experiment to illustrate the greater accuracy of culture as a differentiator of people. The crucial point of divergence is in the social, political and geographical fabric from which the individual emerges, which textures his/her interpersonal understandings, humour, preferences, subtexts and contexts.

Take a dark skinned British-Indian (‘BI’) and a fair skinned British-Chinese (‘BC’). We assume they are identical in social class, education and sex. On a putative plain-sight comparison they are racially distinguishable. Yet this difference goes only as far as the individual viewer’s socially attuned criteria allow, which are only superficial. Place opposite them a Malaysian-Indian (‘MI’) and Malaysian-Chinese (‘MC’) of equivalent social class, education and sex. Examination of the substantive differences between the BI and BC might rightly yield religious, parental or peer influenced morality, habits, behaviours and so on. Such differences undoubtedly exist between MI and MC also, in varying degrees. Apply a cross-cultural comparative calculus however, and the substantive differences between MI and BI, or indeed MC and BC, outweigh the intracultural differences. Their subtextual and contextual interactions are textured by

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their backgrounds, and micro-aspects of the social dynamic such as accent, linguistic understanding and inherent comfort serve not only to establish commonality within the respective cultural groups, but also establish the ‘otherness’ of the juxtaposed cultural group. Of course, this experiment only gauges initial levels of commonality, and does not deny the possibility of inter-cultural dialogues forming out of mutual curiosity. It must also be noted that nationality is not the paramount indicator of cultural differences, merely one among a host of different considerations. A Malaysian-Indian may have more in common with an Asian-Indian than a Malaysian-Chinese, or she might not.

This experiment does establish that socially constructed racial conceptions of ‘Indian’ and ‘Chinese’ fail completely to account for substantive differences between subjects of similar physical appearance but different cultures. Cultural background plays a far more potent role in separating individuals and establishing commonality among others.

‘Altercultural’ – a superior designation

I propose substitution of the term ‘Altercultural’ as a new delineator of groups and individuals. Alterculturalism encapsulates geographical domicile, nationality, language, ancestry, socio-political traditions, moral structures, and finally observable colour and physical traits. The first four components lend themselves to a level of demonstrability, while socio-political traditions and moral structures (including religion) are more determinable components compared to colour and traits.
Hoffman writes of the expressive power of language, and the capacity to which words can adopt extra-semantic, charged meanings. The terminology of ‘race’ is encumbered with historical weight of negative meanings and connotations. It has also constructed arbitrary lines, neutering belief and personal agency in the psychological bound that certain elements of one race are fundamentally unsuited or unavailable for another. This has been a paralysing factor which has compromised the effectiveness of liberalist institutions, and a false paralysis that many within CRT have adopted.

The true strength of alter-cultural semantics is that it avoids the trap of perpetuating vertical or lateral hierarchy. It places dissimilar cultures on a horizontal metric and thus invites mutual understanding and tolerance. Altercultural lines are not hermetically sealed, but are permeable; their constitutive components transpositional. For example, the multitudinous elements which fall under the umbrella of ‘socio-political traditions’ and ‘moral structures’ may be readily exchanged for those of another cultures.

The altercultural theory is a result of postmodernist trashing of the concept of ‘race’. However as a platform of analysis that prioritises determinacy as a prerequisite for progressivity it calls against a further perpetuation of nihilism inherent in postmodernist jurisprudence. It proposes liberalist-esque values of belief and self-agency, but distinguishes itself from the wider classification of liberalism in that it advocates a multilateral dialogue of cultures. In the context of CRT, alterculturalism describes the transpositionality and mutability of cultural elements as the prime determinant of self identity, not internally or externally imposed racial classifications based on social construction of physical characteristics.

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33 Hoffman (n. 21)
Diminishing relevance of colour

A vast proportion of minority members still rely upon traditional racial criteria to define their self-image, a sense of community and linked fate. Designations of colour and morphology continue to play a subsistent role in formulating altercultural lines, if only to avoid a premature nihilism in community formation and self-image of those who depend upon them.

This relevance is diminishing. As mentioned above, increasing rates of intermarriage, normative social construction and a globalised world are among the factors which have accelerated a blurring of these lines. Alterscultural elements are considered to the extent that they are relevant to an accurate definition of individual and group cultures. I anticipate the day we may wield Occams Razor and amputate the redundant concepts of ‘colour’ and ‘physical qualities’ from the altercultural definition.

Before expanding upon the wider descriptive and justificatory aspects of alterculturalism in section IV, the next section will apply our altercultural approach to CRT criticisms of liberalism. We shall identify and address the academic impasse which traditional racial understandings have contributed to, and provide a limited defence of core liberalist tenets.

III. Altersculturalism Applied: A limited defence of Liberalism

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34 Hoffman (n. 21) p. 1137
In the context within which CRT theorists launch their critiques, liberalism is broadly defined as legal and political institutions which propagate formal equality. These include, *inter alia*, human rights, anti-discrimination legislation and affirmative action policies. A major criticism of liberalism has been concerned with its insufficiency as a vehicle for delivering substantial equality between races. Bell asserts that liberalism is a ‘white created’ concept and thus perpetuates white interests. Others claim that liberalist vehicles such as human rights over-essentialise, creating ‘token bourgeoisification’ of non-white individuals that disregards group-specific experiences.35

I shall address critiques of liberalism in the domain of the corporate legal profession, a hotly debated area which is a microcosm to the broader movement of CRT liberal-scepticism, and show that the insufficiency of liberalist critiques in this area underscore the weaknesses of broader arguments against liberalism. Taken together the writings of Davila, and Wilkins and Gulati, may be taken to exemplify contemporary liberalist critiques in this microcosmic context; an isolated metaphor for non-white exclusion from ‘elite sectors of the economy’. Davila writes from the Hispanic perspective while Wilkins and Gulati write from the African-American perspective. I refer to them collectively as ‘Corp-crits’. For the purposes of this section I shall construe common threads of argument as representative of essentialised ‘outgroup’ sentiment toward corporate barriers, so as to lend their arguments encompassing applicability.36

36 This is done at the expense of sub-outgroups which may have more positive corporate experiences, but it is crucial in presenting Corp-crit arguments in their most favorable light.
Before moving on to their substantive criticisms, it is crucial to identify and debunk a fallacy that is implied by Corp-crits.

*White culture not identical to corporate culture*

Corp-crits argue against a common ‘ingroup’ – whites. They also agree that there is a distinctive ‘corporate culture’ and take for granted equivalence between the two. Under this fallacious presumption, accusations purporting that corporate culture is specifically attuned to whites to the exclusion of non-whites are bound to hold greater weight. I shall rebut this presumption on two levels – the inadmissibility of essentialised ‘white’ culture and the fallacy of wholesale cultural identicality.

References to a ‘white’ culture is essentialisation of the cultural plurality within that group. Just as the Voice of Colour is diluted by intersections, so is a ‘white’ identity rendered inscrutable. Lopez has noted that putative and legal constructions of whiteness have included those from a plethora of national and cultural backgrounds.37 Further intersections such as religion, gender and sexual orientation further compound the inscrutability.

Let us accept an essentialised ‘white’ or ingroup culture. I reject the proposition of a wholesale overlap between ingroup culture and corporate culture. To say that all ingrouper applicants possess a pre-existing affinity is falsehood. Even those ingroupers (who themselves constitute the minority of the whole body of ingroup law students) who do gain entrance to notable corporate firms have to positively adopt corporate values.

37 Lopez (n. 32)
This is evinced in the necessity for commercial tests, interviews, internships and trainee periods. Ingrou%, outgroup and corporate cultures are distinct conceptual entities, although varying degrees of overlap exist among them.

The unaddressed fractious nature of ingroup classification, coupled with the incomplete overlap between ingroup and corporate cultures weakens Corp-crits arguments to the extent that they have not adequately identified the discriminating element in the corporate legal profession.

Corp-crits also use the term ‘corporate law firm’ synonymously with ‘elite law firm’. Their intention is focused on showing that outgroupers are denied entry into highly competitive and sought after sectors of the financial marketplace. For economy’s sake, we shall adopt this synonymy, despite the fact that there are corporate law firms which are not considered elite, and elite firms which specialise in non-corporate practices.

Having marked out more accurate delineations between the various cultures and addressed the elite corporate law firm synonymity, we embark to defend liberalism and ask the first question regarding outgrouper entry into the corporate firm.

What’s stopping them?

**Liberalist deficiencies**

*Institutional bias*

Our starting point is in educational institutions, which are the quintessential liberalist-sanctioned gateway to progress. This is a period of significant foundational value for outgroup students aspiring to a corporate legal career, and Corp-crits allege an
inherent ability bias in the educational system toward ingroupers. The attack against
the liberalist vehicle of educational institutions fails on three counts. It fails to show that
the substantive courses are indeed biased against outgroups, misconstrues their
pedagogic nature and overstates their importance to the corporate legal profession.

Wilkins and Gulati argue that due to the extent that corporate firms make hiring
decisions based on cumulative signals such as grade point averages, as opposed to
the substantive content of the courses a student has taken, outgroup students will
eschew the more difficult corporate-related courses. This is because outgroup students
have little or no background knowledge in these areas and will logically avoid these
otherwise useful courses. This continues a downward spiral in which outgroup students
lack ab initio corporate knowledge, which leads to a corporate law knowledge deficit
during University, and consequently a lower chance of recruitment into a corporate law
firm. The fundamental incompatibility of outgroup students with ingroup-oriented
courses which facilitate entry into corporate law is an indictment of the de facto
liberalist educational machine.

I would query the implication that outgroup students lack background knowledge of
these courses, which draws a bizarre correlation between race and previously acquired
corporate law knowledge. A host of other factors such as family background, friends or
personal interest play a far greater role in the acquisition of prior knowledge. The
contemporaneous implication that only those with prior knowledge actively pursue
these courses also beggars belief, especially given the fact that these corporate

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38 D. Wilkins and G. Gulati, ‘Why Are There So Few Black Lawyers In Corporate Law Firms? An
Institutional Analysis’ in D. Brown, Critical Race Theory (West, a Thompson Business, Minnesota
2003)
courses are only introduced at a tertiary level. Wilkins and Gulati offer no positive reinforcement for their sweeping statement. There is a further element of ludicracy given the fact that the outgroup subjects of Corp-crit discussion inhabit elite law schools from which corporate firms recruit,\textsuperscript{39} which presupposes high academic ability; even accepting a degree of affirmative action (‘AA’) mitigation. For Corp-crits to state otherwise would mean the self-defeating concession that these outgroup students do in fact lack inherent academic/intellectual ability necessary for corporate entry, something which would undermine the core Corp-crit assumption of ability equivalence. In any case, they misconstrue the very nature of courses in a law school curriculum, which are designed not requiring prior substantive knowledge but rather to impart substantive knowledge.

They are further silent as to the exact scope of usefulness of these courses, and conversely how outgroupers suffer disadvantage at having avoided them. We may creatively construe two possible advantages, in the context of the corporate law firm, from having taken corporate law courses - gaining recruitment to and excelling within these firms.

It is plausible that corporate courses might pose an advantage in recruitment to corporate firms, presumably at the interview stages. Corp-crits unanimously reject claims that outgroups are less interested in corporate law careers than ingroups.\textsuperscript{40} To say that one is interested in practicing corporate law is to presuppose an interest in either corporate law in general or its corresponding financial remuneration. In either case it is fair to assume that far from avoiding corporate courses outgroupers would

\textsuperscript{39} Wilkins and Gulati (n. 38 above)
\textsuperscript{40} Wilkins and Gulati (n. 38)
invest equal, if not more, effort in gaining corporate knowledge than their ingroup peers out of interest or to raise their marketability to corporate firms. This impetus, coupled with the assumption that they do not possess a comparative disadvantage in performing in such courses due to a lack of prior knowledge or natural ability, strongly suggests that outgroup applicants interested in corporate law would pursue course-selection strategies contrapositive to those suggested by Corp-crits.

The value of corporate law courses post-recruitment is dubious. There is a marked divergence between academic theory and practical application, and trainees have to go through identical periods of training regardless of their particular course modules at tertiary level. In terms of corporate post-recruitment, Corp-crits overstate the worth of these modules, which further diminish in relevance in relation to practical training and work experience.

Passive racism

Corp-crits second contention is more difficult, and far more damning of liberalism if it holds weight. They contend that while overt racist attitudes have declined, there subsists a more subtle and insidious form of racism.41 A crucial stage of corporate entry is the interview stage, and it is here that Corp-crits assert that passive racism is most marked.

Corp-crits believe that recruiters and interviewers set between themselves and the outgroup applicant an unbridgeable gap based on unconscious biases and scepticism

of applicant credentials.\textsuperscript{42} The conscious or unconscious biases emerge from stereotypes of outgroup inferiority, clearly evinced in cases such as ingroup interviewers attributing outgroup member negative acts to personal disposition, while positive acts are discounted as the product of luck or special circumstances.\textsuperscript{43} Their belief in outgroup inferiority also leads interviewers to question outgroup applicants' credentials. Due to variance in AA application at tertiary level, interviewers cannot ascertain the true merit of the outgroup applicant.\textsuperscript{44} As interviewers know that they will hire only outstanding outgroupers, owing to these biases, they expect outgroupers to provide 'false positives' and aggrandise their credentials. Doubt is cast on outgroup credentials to a greater degree than those of ingroupers.

Corp-crit narratives are distressing, but they lose substantive bite when we subject their fundamental foundations to investigation, namely institutional complicity and the profile of the interviewers. Corp-crits paint the vast majority of corporate interviewers as ingrouper males with a propensity for liminal or subliminal racial and sexual discrimination. A common theme seems to be that 'whites evaluate blacks' or 'interviewers – who are mostly white males – may not see Hispanics as fitting the...behavior of white males'.\textsuperscript{45} The female outgroup applicant faces a double burden as '(s)exual harassment and other forms of overt discrimination against women' work against her.\textsuperscript{46} Where Corp-crits have identified an underrepresentation of outgroupers in corporate law, they have left a gapping evidentiary lacuna beneath their assertion of the institutionalisation of practices engendering this

\textsuperscript{42} Wilkins and Gulati (n. 38) and Davila (n. 41)
\textsuperscript{43} Wilkins and Gulati (n. 38)
\textsuperscript{44} Wilkins and Gulati (n. 38)
\textsuperscript{45} Davila (n. 41)
\textsuperscript{46} Wilkins and Gulati (n. 38)
underrepresentation and beneath the depiction of the corporate interviewer’s ethnicity, sex or behavioural tendencies. One ventures to deduce that except in the unlikely circumstance that the firm has a formal policy of discrimination, recruitment interviewers will be chosen based on their ability to shortlist applicants who are best suited to the mental rigours of the job, and who have communicated substantive interest and drive in pursuing corporate law. In a culture that prioritises the minimisation of inefficiency and profit maximisation, this is rational.

Corp-crit narratives posit these interviewers as either willing proponents of discriminatory recruitment practices in the case of conscious discrimination, or unwitting perpetuators in the case of unconscious discrimination. I reject Corp-crits Hobbesian formulation of interviewers – atomistic individuals who deny the objective betterment of their larger institutions to satisfy their self-serving interests and motives. Even if interviewers do possess such preconceptions, there are factors which might propel them to subordinate or override them. These might include a commitment to impartiality, a personal/professional separation or an informed understanding that such compulsions harm the wider community fabric.

Any positions advanced on the underlying assumption of institutionalised, bigoted, ingroup male interviewers are at best unsubstantiated, and at worst an invitation to partake unquestioningly in Corp-crits normative strawmanning.

While it is true that the means, implementation and ends of AA have varied widely in their political, societal and academic contexts, the context of Corp-crit discussion is limited indeed. They refer to outgroup students in elite institutions. In this context the variance of AA is limited. Also, one might expect corporate firms to enjoy substantial
economies of information which facilitate demystification of any mitigating policies of
their target institutions.

Furthermore, interviewers know outgroupers ‘have an incentive to signal themselves as
superstars when they are in fact average, and that this strategy (if successful) will be
difficult to detect, firms have an incentive to discount indicia of accomplishment’.

The charge of interviewer ‘superstar’ scepticism is predicated on positive ingroup
preference. Academically average ingroupers will be preferred to outgroupers of
identical credentials because, unsurprisingly, of pervasive racism. The next subsections
decompose and examine this ‘racism’ from an altercultural perspective and suggest
that far from bifurcating between groups, differences may in fact work to outgroupers
advantage.

The Altercultural perspective

‘Racism’

In positing racism as the perpetuating factor for a failure of liberalist institutions, Corp-
crits inevitably fall prey to progressive paralysis inherent in its root concept of ‘race’.

Viewed from a prism of alterculturism these intransient separations cease to be
impassible. Alterculturalism presents cultures on an even metric, eschewing the prior
vertical positioning that hegemonised ‘race’ relationships. It posits that cultural
elements are horizontally transferable and may be adopted on a cross-cultural basis.

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47 Wilkins and Gulati (n. 38)
A wider, overarching assumption inherent in Corp-crit literature is that the underlying interactional dynamic between corporate lawyers and applicants hinge primarily on *prima facie* value judgments of race. Where they do pay regard to cultural factors, they regard them as static and untranspositional. The applicant described is situated in a position of powerlessness, fettered on one arm by what superficial difference she projects to the ingrouper and on the other by cultural incompatibility. Superficial differences can convey a multiplicity of meanings to different viewers, and may convey positive meanings regarding the outgroupers cultural compatibility to corporate culture as well. We shall categorise the range of these meanings as ‘cognitive externalities’. Racism assumes cognitive externalities communicate exclusively negative meanings based on negative stereotypes, which manifest in negative treatment to the outgrouper. Racism is constitutive of both superficial and assumed cultural differences between actors, and is predicated on the irreconcilable nature of these differences. Davila captures this perfectly in noting that ‘Hispanics come from homes that instilled family loyalty and spiritual values rather than materialistic ones. Thus, fewer Hispanics have been exposed to the materialistic value systems that pervade corporate law firms and they may feel isolated and uncomfortable as a result.’\(^{48}\) She notes the cultural gap and accepts as fact that the isolated Hispanic cannot do anything to cross it. I disagree. This narrative paints Hispanics and relevant outgroups in too patronising a light. Here Davila seems herself to adopt and apply the *Rashomon* of a racial stereotype to justify her cultural claim. She forgets that the outgroup applicant in discussion has excelled by liberalist standards, within a liberalist environment to be in such a position. The applicant has either come from a family of a different profile than the one Davila describes, or

\(^{48}\) *Davila* (n. 41)
that the outgrouper has consciously made and pursued the decision to prioritise other values above those inculcated.

This consolidates the thesis that where nurture might guide behaviours, the autonomy inherent in our natures allows us to decide whether or not to live our lives so guided.

**Autonomy as basis for cross-cultural adoption**

The driving force behind cross-cultural adoption lies squarely in the realm of individual autonomy. Accepting that cultures are transferable, some have argued that liberalism inherently demands a unilateral adoption of ingroup-similar cultures like corporate cultures. In that sense, liberalism serves the self interests of the ingroup, in that this displaces important outgroup values and continues a hegemonic, vertically positioned relationship between cultural merit. ⁴⁹

This argument is palpably untrue. It reduces the outgroupers concerned to mere automatons devoid of agency and entirely subject to externally imposed circumstances. Accepting that culture is the primary shaper of self-identity frees us from fixed conceptualisations of race. Individuals, regardless of culture or colour, possess autonomy which they exercise in the adoption of whichever means they deem necessary to achieving their life goals and ambitions. Ingroupers and outgroupers adopt cultural elements according to their free will.

Suppose that in the isolated context of corporate culture, outgroupers must choose to horizontally adopt corporate values to a far greater degree than their ingroup

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⁴⁹ *Bell* (n. 4)
counterparts. In deciding whether this is fair, we must first critically assess the reasons underlying their corporate career pursuit.

The ‘Sell out’ fallacy

Let us inhabit the outgroup applicants position for a moment. Corp-crits are clear as to what they desire – a corporate law career, and expand lengthily on the barriers. However, they leave unaddressed the why. The following analysis suggests that these barriers may be part of a larger enterprise integral to the driving forces behind outgroup corporate ambitions.

To aspire to an end is to seek its attainment per se; to seek it as a static ideal. The surrounding benefits, material or otherwise, of the idealised end which is sought are contingent upon the existence and perpetuation of its constituent functional elements.

When applied to corporate law, this driving force legitimates and prioritises unilateral cultural adoption by outgroupers. The benefits driving outgrouper aspiration to corporate law might be multitudinous, but let us group them into three broad categories – an affinity for corporate culture, prestige, and a desire for the accompanying remuneration. Each and all of these form intrinsic and integral components of an idealised notion of corporate law within the outgrouper applicants mind; a conceptual photograph of an enterprise stationary in space and time. As they pursue this enterprise outgroupers are necessarily convinced of the merits of the structure, foundations, means and ends of the enterprise itself. It is a logical deduction that if any or more of these change, it mutates both the formal and substantive
elements of the enterprise itself, as well as the static idealised notion within the minds of its pursuers.

The *per se* nature of the driving force legitimates unilateral outgroup adoption even if we subscribe temporarily to Corp-crit accusations, and allow that Corporate cultures are largely identical to those of the ingroup male. The reason for this may be historical – corporate culture flourished at a time of formal inequality, where the prime movers and majority population of the industry were ingroup males who indelibly left ingroup male structures in their wake. It could be protectionist – these structures were erected as a barrier to entry into the industry. It could also have been discriminatory; these ingroup males believed anyone not conforming to their profile was fundamentally unsuited for corporate law. Regardless, these structures have produced the conventions, capital proliferation and putative respect to which applicants aspire. A change in the substantive practices of any structure, for example a deliberate change in recruitment policy away from the ingroup male cultural characteristic, invariably mutates its structure and resultantly its derivatives. This mutation might not necessarily result in a quantifiable economic decrease; it might have the opposite effect. The variety of other branching benefits may fare as well, or they might not. Nevertheless the totality of the ideal both objective, in terms of quantifiable benefits and renumerations, and subjective, in terms of the held notional ideal of the enterprise in outgroupers psyches, has been lost.

Given the contingency of their sought *per se* ideal upon the continued operation of its constituent structures, corporate law applicants must accept that the removal or mitigation of any of these structures may compromise the very ideal they pursue. It is
irrelevant whether the said removal or mitigation is in their favour. The impetus to adopt
the cultures which facilitate their entry into corporate law lies predominantly in their
hands.

When this adoption is undertaken, we see that aforethought detrimental *prima facie*
differences may work in outgrouper favour.

*What happens when they do?*

We shall disregard the possibility of AA influencing recruitment policy for this subsection.
Corporate firm recruiters/interviewers recruit those suited to corporate culture. Cross-
adopting cultures according to their desires, I posit that cognitive externalities diminish
significantly as a barrier for outgroup applicants. Indeed, there might be instances
where they work in their favour.

Rejecting the negative Corp-crit presumption that interviewers are bigoted and
deliberately discriminatory, we picture a situation of an outgroup applicant interviewed
by an ingroup interviewer. Despite discernable differences in appearance, the
applicant shares substantive commonalities with the interviewer by virtue of having
adopted corporate cultures in pursuance of his ambitions in corporate law.

The behavioural theory of cognitive dissonance suggests that an incompatibility of an
external interaction with a preconceived belief creates an amplificatory impact on the
interactor. Closely linked to the understanding that humans react positively to novelty
so long as its effect is benign or positive, it emphasises the meaning of the interaction in
a positive light if the dissonance has served to invalidate a negative preconception or belief. This is true in the opposite as well.

Applied to our scenario, this phenomenon might have the paradoxical effect of working in favour of the outgroup applicant if indeed interviewer holds negative stereotypes in mind. So long as the substantive communications from the applicant fall within the sphere of the interviewers notional exemplary candidate, any preconceived belief of the applicants group being inherently unsuitable or uninterested in corporate law would have been challenged. The degree to which this is challenged is relative to the degree of amplification of the interaction. In any case the applicant’s internalisation of relevant cultures has allowed him to compete on an even if not favourable recruitment scenario as compared to his ingroup counterpart.

**IV. The Way Forward**

While alterculturalism advocates certain liberalist ideals and offers a limited defence of liberalism, it is not a liberalist concept. Steady perfection of information in what economists term the ‘shrinking world’ has enabled cultures to be portrayed with accuracy, revealing the contingency of old stigma-laden racial terminology and allowing dissective analysis of each culture’s constituent elements. Cross-cultural adoptions may take place with fidelity to their original natures and adoptors are well informed of the cultures they take on.

The concept of alterculturalism is both descriptive and prescriptive. It describes an existing multilateral exchange of cultural elements on an even metric, and prescribes further perpetuation of this phenomenon as a means by which ‘best answers’ to contemporary issues may be reached. I shall posit an example of contemporary
cultural transpositions in the above-introduced context of corporate institutional culture, and subsequently suggest an altercultural agenda for CRT, through which the outmoded and harmful conceptualisation of race may be substituted with one that fuels belief and encourages the exercise of self-agency.

Changing Institutions

The shifting social fabric has necessitated the adoption of cultures which would have been regarded by the traditional corporate mentality as counter-intuitive. I have argued that due to their idealised conceptions the cultural adoptive obligation falls on outgroupers. However, corporate culture has invariably changed (albeit in varying degrees across the board) to incorporate outgroup cultures. AA policies and the contemporary rise of Corporate Social Responsibility (CSR) are illustrations of tangential departures from traditional corporate culture vis-a-vis demographic and social-consciousness changes in the population. There is economic merit in these policies in the increasingly conscience-focused marketplaces. The International Business Report acknowledges the impact of globalisation and information perfection in giving rise to this new societal impetus on corporations to be committed to principles of human rights and the environment.  

There are factors beyond economics that have caused a change in corporate culture. Corporations cultures exert influence on the identities of its dependents. A significant

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part of one’s moral self-image is drawn from her interactions with corporations, be it as a member, affiliate or consumer. It is from these aspects of her life that she draws certainty and around which she orders her expectations and goals. Yet these aspects are not the sole determinants of one’s self-image for as members of a wider community, the community’s ethical culture exerts influence on one’s morals and actions as well. In that sense, corporations which consist of and connect to these community members are affected and transformed by the ethical fabric of the community. Rebecca DeWinter describes how corporations have affected the norms and tendencies of consumers through marketing and identification with behavioural trends of the community, building a culture of consumerism. In engineering this identification, corporations have been subject to infusions from the ethical cultures of the community, to the point of being afforded a form of moral agency.51

I am minded that multilateral cultural exchanges have and will continue to benefit participating institutions by revealing relevant solutions to contemporary problems. These institutions will invariably change as a result of these exchanges, but there will not be a wholesale assimilation by any single institution. Instead, a creolised meta-culture will emerge that exhibits cultural elements of each institution.

**CRT as altercultural vehicle**

As regards the magnitude and rate of internalising the altercultural concept into CRT, this project does not envision an immediate and overriding displacement of old racial concepts and terminology. Traditional formulations of race are still deeply embedded within the self-identification of individuals and communities, and a body of CRT

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literature addresses current racial inequality with reference to undeniable historical injustices wrought over old racial lines. A gradual substitution is proposed, which begins with consequential tonal and narrative shifts in CRT Storytelling.

Storytelling is an overarching theme within CRT which invites writers to apply their normative experiences to their critical or analytical narratives. They suffuse all aspects of CRT literature and manifest in the form of suppositions, assumptions, syntactical meanings and mechanical narratives embedded within larger narratives or critical essays, or take a variety of self-contained forms such as perspectival interpretations of legal or cultural phenomena, parables, biographies, and literary narratives. A trend which cuts across this range of mediums is the operation of nomos, or writer constructed norms, which dictate the operation and dynamics of their constructed universes. When Chang writes of a positive stereotype of American-Chinese which has marginalised the experiences of poor and uneducated Chinese-looking immigrants caught by the stereotypical classification, while crudely veiling off from the social consciousness the historical injustices suffered by the American-Chinese of previous generations, he communicates several stories to us. First, that this stereotype exists. Second, that it encompasses based on cognitive similarities, and third that historic injustices have indeed been eclipsed by this stereotype. These are not based on reason or objectively verifiable fact, but operate on the nomos of the writer.

CRT scholars assert that formal doctrines from which academics draw ‘legitimate’ approaches such as logic and rationality, in the form of history books, theoretical

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52 Chang (n. 6)  
53 Yosso (n. 3) pp. 7-11  
54 Bell (n. 4)
textbooks and case law, are ingroup narratives that operate on ingroup nomos. These contribute to a ‘cultural hegemony’, marginalising outgroup perspectives and making it difficult for reformers to make race an issue. Stories are ways by which CRT writers help readers ‘bridge the gap between their worlds and those of others’, provide an outlet for the voice of the disenfranchised and counter positive and negative stereotypes that work against outgroups.

**Affirmative Storytelling**

Regardless of form, the near universal trend has been to construct negative nomos; to tell bad stories which convey negative ideological meanings. The prime example of this is Bell’s story of the Alien space-traders, which famously illustrates wide-scale racial abandonment of blacks by whites, given sufficient economic incentive.

There is merit to this approach. By narrating from the perspectives of victims, CRT creates awareness of the humiliation and hurtfulness of racial persecution. It also reminds liberalists that formal equality is insufficient to remedy historical wrongs and prevents subsisting inequalities from dropping out of the social zeitgeist. Negative storytelling has also served a noble enabling function as an outlet for minorities to raise issues.

It is important to guard against the experience of the disenfranchised being imputed to the wider body of outgroupers. The proportion of these bleakly toned experiences

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55 *Bell* (n. 4)
56 *Delgado, CRT: An Introduction* (n. 29) pp. 39-40
57 *Delgado, CRT: An Introduction* (n. 29) pp. 41-6
exceeds its necessity, and the cumulative effect of these negative narratives has been to compromise the credibility of CRT. Accusations of unanalytical fallaciousness and even ‘lunatic’ distortions hold grains of truth.\textsuperscript{58} This may be traced to a fatal imbalance within CRT between theoretical sensitivity and cultural instinct, in stark favour of the latter. However, the true detriment of this tonal imbalance within the storytelling aspect of CRT has been the cost to the belief and agency of those it seeks to defend. The inherent inevitability of narratives robs the reader of choice, as he inhabits the writers nomos and is made to experience the helplessness, indignation and powerlessness that discrimination inflicts. The repeated subjection to these nomos instils nascence to the efficacy of the readers own self-agency and a sense of helplessness. The wrongs described in the story, and the underlying racial dynamics that cause them, are projected from the writers nomos into the readers reality through mentally-induced belief cycle

Adopting the altercultural approach, CRT scholars may begin to affect tonal shifts in their stories. Narrations based on altercultural foundations will allow writers to communicate the superficiality of race and the primacy of culture as a self-actualiser. These stories utilise the inherent inevitability of the narrative form to place the reader in an affirmative nomos wherein one’s foundational circumstances are not the sole determinant of destiny. Here differences are acknowledged but overcome through self-agency, and cultural bounds are impassable to the extent the narrator deems the elements of the other culture worthy of adoption.

\textsuperscript{58} Criticisms from Daniel Faber and Suzanna Sherry, and Judge Posner respectively in Delgado, CRT: An Introduction (n. 29) pp. 90-91
I will suggest two examples, the biography and the mechanical narrative, in which alterculturalism may be effectively integrated.

(i) The Biography

As with the legal doctrine of *stare decisis*, biographies hold a precedent value. Biographies present a charted course through an experienced life that shapes the belief systems of those who identify with the subject described. The election of a half-black man to the highest political office in the world’s superpower, through the very system liberalism critics argue is structured to maintain white self-interest, is a potent biography. While a biographical account of his story is without the scope of our work, it may be posited with some accuracy that a significant part of his success is owed to the adoption of cultures prerequisite to each incremental institutional stage of his legal and political career. As a global figure the new President is a death knell for old racial theories that placed cognitive externalities and cultural differences as impassable barriers to progress within a liberalist system. An account of President Obama’s success lies in his self-agency, belief and cultural adoptions. Whether as a self-contained story or incorporated as part of a larger work, this biographical narrative is testament to the practical fidelity and progressive capability of the altercultural concept.

(ii) The Mechanical Narrative

I define mechanical narratives as micro-stories which draw from the writers’ normative intuitions and expectations and describe the cause and effect mechanics of racial
dynamics within wider narrative frames. We see examples of mechanical narratives in Bell’s alien slave trader story when he describes that blacks are deported with ‘a seventy percent approval rating’ given sufficient economic incentive, and in Corp-crit’s assumptions that interviewers will mistreat outgroup applicants due to a subsistent racism. These micro-stories have a significant effect on the overarching narrative, but are manifestations of personal rationalisation that arbitrarily guide the narrative toward a nomos of disenfranchisement and persecution.

By adopting an altercultural perspective in deciding the direction of these micro-stories, CRT writers may easily change the cumulative effect of their narratives. Bell’s alien space traders may indeed offer whites economic plenty in exchange for black deportation. Rather than decide based on the simplistic dichotomy of economic-gain-versus-black-human-rights however, the fictional world leaders decide considering a range of issues. They consider the substantive cultural understandings and similarities between superficially different humans, the importance of their cultures in achieving contemporary answers to a multitude of other global issues, their embeddedness in a long term sustainable world economy, and the fundamental rights of all human beings. Based on these, the leaders decide to unequivocally reject the alien’s offer and politely invite them leave the Earth. This conclusion is arrived at by simple shifts in the micro-stories which infuse the narrative, and is no less rational or possible than Bell’s original conclusion.

Positive results

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59 Bell (n. 4)
60 Wilkins and Gulati (n. 38) and Davila (n. 41)
Affirmative tonal shift would bring academic and progressive advantages. It restores an objective balance in the literature of CRT, reintroducing the critical alongside the intuitive. The multiplicity of perspectives contributes to the overarching impartiality of the movement and adds credibility to its literature. This balance also serves a reorienting function. It halts desensitisation to the negative narratives and facilitates evaluation of both negative and positive stories on their own merits, rather than in comparison to a overwhelming body of bleak narratives.

The positive *nomos* of altercultural stories augments belief in both outgrouper and ingrouper readers. The augmentation of outgrouper belief will encourage them to exercise self agency in engaging in their own altercultural conversations to improve their situation proactively. Positive storytelling also shapes the normative conceptualisations and belief of ingrouper readers. The mutually respectful, conciliatory *nomos* will correspond with practical and behavioural changes from both ingroupers and outgroupers. This change will fuel further dialectic cultural exchange that takes us closer to CRT’s goal of institutional change.

**V. Conclusion**

Critical Race Theory will lose its contemporary relevance if it continues to engage in discourse based upon outmoded racial conceptualisations. It risks becoming a disenfranchising agent - neutering belief among those it seeks to empower, and alienating those it seeks to enlighten. I have posited an altercultural theory which describes cultural conversations in all aspects of our globalised world. These cultures engage for the purpose of finding the most relevant answers to present problems. The
altercultural prescription for Critical Race Theory begins with the realisation that we are not bound to our life paths and associations by the colour of our skin or the shape of our features. Our past, present and future identities have and will be shaped more by cultural elements, which may be exchanged for others in accordance with our ambitions. Adopting the altercultural conceptualisation will affect a tonal and analytical balance in Critical Race scholars’ discourse and narratives. It will enable them to speak in terms which are grounded in common understands, free from historical and socially constructed encumbrances, which exhibit a greater fidelity to reality. Critical Race Theory will then be able to turn the page to a new chapter of progress.
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