History, Identity, and Alienation Commentary: Critical Race Theory: A Commemoration: Response

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This Commentary Article sets forth a grid for distinguishing between approaches to racial justice by differentiating between liberal and critical approaches in general, and between integrationist and nationalist stances regarding race in particular. The Article then utilizes the grid to contend that Kimberlé Crenshaw and others on the left wing of Critical Race Theory have accomplished a significant breakthrough in identity theory and nationalist practice by articulating a critical, historicist way to understand race. The Article then considers the criticism, lodged by some theorists claiming postmodern sophistication, that critical race theorists mistakenly attribute essentialist meaning to race. The Article concludes that this anti-essentialist criticism fails to comprehend differences between fundamentalist and critical identity projects and tends itself to assume the liberal individualism that forms the primary target of postmodern critical practices.
ARTICLE CONTENTS

I. INTRODUCTION ................................................................. 1481

II. LIBERAL AND CRITICAL APPROACHES TO
SOCIAL JUSTICE ........................................................................... 1482

III. INTEGRATIONIST AND NATIONALIST
ACCOUNTS OF RACE ...................................................................... 1483

V. NATIONALISM MEETS CLS .................................................... 1489

VI. BURNING DOWN THE (MASTER'S) HOUSE ............................ 1492

VIII. CONCLUSION ................................................................. 1501
History, Identity, and Alienation

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I. INTRODUCTION

As Professor Kimberlé Crenshaw notes in her Article, in the context of claims that American society is now “post-racial,” virtually any work that treats race as a salient factor in social analysis has come to be associated with “Critical Race Theory” (CRT). Given the big-tent nature of such a generalized designation, a template for distinguishing between works and positions within the genre might be useful.

In this Commentary Article, I propose a rough grid for cataloguing ideologies of racial justice. I focus on distinguishing between “liberal” and “critical” approaches to issues of justice in general, and then between “integrationist” and “nationalist” families of race theories. I then use this grid to locate and distinguish the version of CRT represented by Crenshaw’s account of the movement’s emergence and central commitments, and then similarly to locate and respond to “anti-essentialist” critiques of the project. While the structures that I describe are simplistic and reductionist, I hope that they help highlight the unique contribution that Crenshaw and her generation of CRT scholars have made to social theory about race in particular, and about identity in general, and to help identify the particular point of contention between CRT and some of its most vociferous critics.

In her narrative of “origins,” Crenshaw highlights CRT’s early engagement with white leftists (such as me) in the Conference on Critical Legal Studies (CLS), as well as its posture toward traditional civil rights approaches. In both cases, she emphasizes “misalignments” that helped propel the CRT project as a discursive dynamic in struggle on these two ideological fronts.

In this Comment, in contrast, I partially focus on what was aligned and in common between the dominant CLS project and CRT at its inception, and the particular theoretical direction that Crenshaw and others in CRT have since taken. I delineate a recognizable understanding of CRT—often

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2 Id. at 1263.
identified with "intersectionality," that employs a "historicist" interpretative methodology and that, like CLS projects, is critical of the "neutrality" claims of liberalism and of the rule of law conception of social justice. The fusion of a critical, historicist social and legal theory with identity-based political and theoretical commitments is one of the historic intellectual achievements of Crenshaw and others on the left wing of CRT.

II. LIBERAL AND CRITICAL APPROACHES TO SOCIAL JUSTICE

By the time that CRT emerged in the mid-1980s, CLS had already been going for more than a decade. The CLS project focused on a critique of the claim that there could be a sharp distinction between law and politics. Instead, legal discourse purported to be neutral and objective but was in fact ideological and political, resting for its neutral veneer on the assumptions about our social life that are in fact controversial. A critical unmasking could show the historical or analytic contingency of the "rule of law," the manner in which law bore the marks of power.

The "critical" approaches are distinguished from liberal approaches to social justice in this basic way. Liberals take social justice to mean the right of individuals to be treated neutrally and objectively when subject to collective power (through law or any other state act). The liberal conception of justice is one of transcending bias and prejudice in the name of rationality—one of neutral and "equal rights." The regulative ideal is to achieve neutrality in order to guarantee individual liberty.

Critical approaches reject as impossible if not undesirable the universalism and individualism that liberal approaches take as their regulative ideals. Instead, in legal studies as practiced by CLS writers, and in many other fields under the banner of "critical theory" generally, writers "interrogate," "unmask," or "contest" the liberal practices that purport to be neutral and objective in order to reveal their socially, historically constructed, contingent character, their articulated and differentiated status. Rather than continue the liberal project of trying to transcend the particularity of contingent social power in the name of the neutral treatment of each individual—the project of universalism—critical approaches see liberal discourses as themselves ideologies, as discourses that (mis)represent the contingent exercise of social power as necessary or neutral, and that therefore often work to legitimate rather than challenge social injustice, and as discourses that take individuals as pre-social givens and thereby fail to account for our social constitution.

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3 See infra note 59 and accompanying text.
4 Crenshaw, supra note 1, at 1263–64.
5 See, e.g., JOHN RAWLS, POLITICAL LIBERALISM 212–54 (2d ed. 2005).
III. INTEGRATIONIST AND NATIONALIST ACCOUNTS OF RACE

Whites and Blacks have historically understood race according to different basic structures of intra-racial conflict.⁷

Among whites in America, the belief structure that I call “integrationism” has dominated progressive thinking about race for over a century, tracing its roots to the abolitionist movement. Integrationism historically opposed and eventually came to predominate over “racist” or “segregationist” or “white supremacist” thinking among whites.⁸

The integrationist ideology that whites historically have embraced is rationalistic, legalistic, and liberal. It takes race consciousness—thinking about people in terms of their race—to be the central evil of racism.⁹ Race consciousness is therefore to be avoided (except, perhaps, in order to help remedy past racism, one of the issues that distinguishes conservative and liberal integrationists). In this mindset, thinking in terms of race reflects a stereotype or bias, a distortion of rationality. Being rational means being colorblind in the sense of not making anything turn on the arbitrary fact of skin color. Racial “discrimination” in social practices such as school admissions and job selection should be replaced with “equal treatment regardless of race,” that is, by selection according to individual “merit.” “Segregation” should be replaced with “integration.”¹⁰ Integrationism, in short, imagines an ideal set of social practices and institutional cultures that are neutral to race.¹¹

In what I am calling “liberal” integrationist approaches to race, the problem of racism is characterized as a form of irrational discrimination that deviates from the ideals of neutrality and objectivity—the liberal commitment that social power should be exercised according to a neutral and unbiased rule of law and that social goods should be distributed according to objective merit rather than through subjective favoritism. In the self-image of this ideology, liberal societies like ours are on a teleological path eventually to purge racism and other distortions from the terms upon which wealth is distributed and power is exercised. Racial justice means achieving neutrality with respect to race, freeing racial minorities from the pre-liberal caste systems of segregation and apartheid, just as other reform efforts are aimed at transcending other forms of prejudice and irrational social discrimination. Once “biases” such as racial

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⁷ I develop the analysis of American racial ideologies that I describe here more fully in GARY PELLER, CRITICAL RACE CONSCIOUSNESS: RETHINKING AMERICAN IDEOLOGIES OF RACIAL JUSTICE (2011).
¹⁰ Peller, Reason and the Mob, supra note 6, at 29.
¹¹ Peller, Race Consciousness, supra note 8, at 778.
prejudice are removed, selection criteria for employment or education would be based on an objective, apolitical, or at least aracial “merit.”

Among Blacks, thinking about race has followed a different structural trajectory. As Harold Cruse has stated, “American Negro history is basically a history of the conflict between integrationist and nationalist forces in politics, economics, and culture, no matter what leaders are involved and what slogans are used.”

Integrationism within the African American community has had two main, and divergent, meanings. Rather than signify the opening of American institutions neutrally to all, as it has historically for virtually all white liberals and progressives, many African Americans have historically understood racial integration as more problematic because it also signified cultural assimilation rather than liberal neutrality. As Professor Cruse, a nationalist, argued, integration means assimilation, because it means integrating into white cultural practices, or “the Negro... transform[ing] himself into a white black-man,” as Robert Browne, another nationalist intellectual, put it.

Primarily among middle-class Blacks there has traditionally existed another strand of integrationist ideology, articulated along the lines of the Frederick Douglas/NAACP tradition that did not see integration as cultural assimilation. Like its counterpart among whites, this integrationism consisted of a liberal, rights-oriented conception of the triumph of rationality and equality over prejudice and discrimination, reflected in terms of encompassing African Americans as full citizens in liberal American democracy. The words of Martin Luther King, Jr. evoke the idea of a day where men “will not be judged by the color of their skin but by the content of their character.”

As Cruse describes its class dimensions, Black integrationism is associated with the Black middle class because that class is the only Black group for whom such integration could seem attainable:

[T]he Negro working class has been roped in and tied to the chariot of racial integration driven by the Negro middle class. In this drive for integration the Negro working class is being told in a thousand ways that it must give up its ethnicity and

14 Id. at 397–99.
15 Id.
17 CRUSE, supra note 13, at 4–6.
become human, universal, full-fledged American. Within the context of this forced alliance of class aims there is no room for Negro art . . . or Negro art institutions . . . because all of this is self-segregation which hangs up "our" drive for integration.\textsuperscript{19}

The integrationist philosophy sees Negro ghettos as products of racial segregation that should not even exist. Hence, nothing in the traditions of ghettos are [sic] worth preserving even when ghettos do exist in actuality. This is typical integrationist logic on all things social.\textsuperscript{20}

Black nationalism, on the other hand, involves the centering of race consciousness to identify a Black community, based on the idea that race constitutes African Americans as a distinct social group.\textsuperscript{21} "In contrast to the integrationist premise that blacks and whites are essentially the same, the idea of race as the organizing basis for group-consciousness asserts that blacks and whites are different, in the sense of coming from different [social histories and dissimilar conditions of life]."\textsuperscript{22} Black nationalism is different from other emergent nations only in that it consists of forcibly transplanted colonial subjects who have acquired cohesive identity in the course of centuries of struggle against enslavement, cultural alienation, and the spiritual cannibalism of white racism. This common history which the Black people of America share is manifested in a concrete national culture with a peculiar "spiritual complexion," or psychological temperament. Though the Black nation expresses its thoughts, emotions, and aspirations in the same tongue as American whites, the different conditions of existence . . . have, from generation to generation, welded the bonds of a national experience as different from that of white existence as day is from night. And what differentiates nations from one another are dissimilar conditions of life.\textsuperscript{23}

Rather than see race consciousness as a sign of irrationality to be transcended in the name of reason, nationalism sees in race consciousness the historically created basis for intra-community recognition and

\textsuperscript{19} CRUSE, supra note 13, at 283.
\textsuperscript{20} Id. at 234.
\textsuperscript{21} Gary Peller, Race Consciousness, supra note 8, at 792.
\textsuperscript{22} Id.
\textsuperscript{23} James Turner, Black Nationalism: The Inevitable Response, BLACK WORLD, Jan. 1971, at 7–8 (quoting C. Munford, Black National Revolution in America, Address at Utah State University (May 1970)).
solidarity, as a ground of social, cultural, and artistic meaning rather than as a distortion of reason. Race is, in short, a frame of identity.

At the outset, nationalism appears categorically more critical than integrationism because the nationalist positions are united in rejecting the ideal of achieving racial or cultural neutrality in social practices. Integrationism appears as the dominant frame for liberal race ideologies, and nationalism for critical race ideologies.

Within integrationism, one can identify a spectrum of positions. First, as noted above, one wing of the integrationist position conceives of racial integration as assimilation to dominant cultural practices. According to a traditional strand of nationalist discourse in the Black community, much of the Black middle class has come to believe in the superiority of white culture and desires to assimilate into it through integration. Among whites, this kind of non-liberal integrationist position was represented by "melting pot" sociological theories of cultural assimilation, non-liberal because proponents made no pretense of presenting the dominant culture as in any way just, in the sense of being neutral to race or ethnicity.

Today, openly assimilationist articulations of integrationism are virtually non-existent and would likely be marginalized as a form of cultural imperialism. Instead, integrationist ideology is predominantly liberal in the broad sense of the term described above, and the liberal integrationist ideology overwhelmingly dominates public discourse and debate. Racial justice is conventionally framed as a commitment to end discrimination in the name of equal opportunity "regardless of race." But there are also liberal and critical tendencies within the liberal integrationist framework itself. For example, there is disagreement among liberal integrationists over how to identify continuing racial bias and what

24 Gary Peller, Race Consciousness, supra note 8, at 761 ("[B]lack nationalists asserted a positive and liberating role for race consciousness, as a source of community, culture, and solidarity to build upon rather than transcend.").


26 See EDWARD FRANKLIN FRAZIER, BLACK BOURGEOISIE: THE RISE OF A NEW MIDDLE CLASS IN THE UNITED STATES 130-49 (1957) (describing the forces that led to feelings of inferiority among middle-class Blacks and the "quest for status").

27 For a discussion of the origin of the metaphor and the assimilationist conception that it represented, see GARY GERSTLE, AMERICAN CRUCIBLE: RACE AND NATION IN THE TWENTIETH CENTURY 51 (2002).

28 The roots of the idea that overcoming racism would mean integration, understood as assimilation, can be found in academic thought in a widely influential study by Robert Park. See generally ROBERT PARK, RACE AND CULTURE (1950) (describing a structure of race-relations based on distinct stages of contact, competition, accommodation, and assimilation). Park's basic model was somewhat refined by Louis Wirth. See generally Louis Wirth, The Problem of Minority Groups, in THE SCIENCE OF MAN IN THE WORLD CRISIS 347, 347-72 (Ralph Linton ed., 1945); see also NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, BEYOND THE MELTING POT 20-22 (1963); MILTON M. GORDON, ASSIMILATION IN AMERICAN LIFE 62-66 (1964) (discussing Park's definition of assimilation).
measures to take to remedy it.29 The conservative wing of contemporary integrationism insists on a narrow definition of what constitutes racial discrimination—the constitutional requirement of intent, for example—while a more critical wing advocates for a broader definition—advocating an impact rather than intent standard for equal protection. The conservative wing of integrationism takes colorblindness as the definition of racial justice and therefore opposes racial affirmative action, while a more critical wing advocates the need for race consciousness in order to remedy the broader effects of racial discrimination that it identifies.30 Conservative integrationists tend to depict discrimination as a thing of the past. More critical integrationists emphasize “structural” discrimination and “unconscious” racism. Integrationists decry the nationalist position as “self-segregation.”31 Nationalists decry integrationism as assimilationism.32

The nationalists also encompass competing camps. Nationalist ideologies can themselves be distinguished by how “critical” they are with respect to the boundaries of identity, whether that identity be of the “Black community” or of the “white community.”

At one end, I would describe a family of right-wing nationalist discourses that, like CRT, are anti-liberal in the sense of not being oriented toward the achievement of neutrality to race, and yet they must be classified as the least “critical” of nationalist ideologies. They are properly understood as “racialist” in the sense that they take racial categories as pre-given starting points for analysis rather than seeing racial categories and identities as themselves socially constructed and contested.33 Racialist theories seek to depict various exercises of power in society as explicable in terms of a straightforward understanding of racial interests, much like a form of “vulgar Marxism” is traditionally accused of reducing complex social relations to class interests.

At the opposite end of the nationalist category, I would describe left-wing, critical discourses such as CRT. In my description, the critical wing of nationalism is identified by “historicism” with respect to the terms of nationalist identity, seeing them as contingent, socially constructed, and contested rather than simply given. From the historicist perspective, racialist approaches “essentialize” the group’s characteristics into a form of fundamentalism about the group’s identity, characteristics that are supposed to exist outside of the contingencies of history and geography.34 I would categorize the Nation of Islam and various Afro-centric

29 See Peller, Notes, supra note 25, at 1096.
30 See id.
31 CRUSE, supra note 13, at 283.
32 See id. at 283–84.
33 See CRITICAL RACE THEORY, supra note 12, at xxiv; Peller, Race Consciousness, supra note 8, at 794 (identifying racial relations as a social creation).
34 Peller, Race Consciousness, supra note 8, at 794.
movements in the same manner: they attempt to ground African American identity in essential, timeless characteristics. The Nation of Islam seems to posit patriarchy as an essential trait. The Afro-centric movements tend to posit an essential African cultural heritage that was distorted by the American experience.\textsuperscript{35}

The more critical nationalist discourses do not try to universalize the characteristics of racial and other communities, but rather take the common culture that ties a community together as the contingent result of historical contestation, as something open to future political transformation.\textsuperscript{36} I would categorize as representing this historicist, left-wing of nationalist thought the analyses of Harold Cruse, Malcolm X, much of the discourse of the Black Panthers, and, for reasons that I discuss below, the faction of CRT reflected in Crenshaw’s approach.

IV. NATIONALISM MEETS LIBERAL INTEGRATIONISM

In the 1980s law school context in which CRT emerged, the ideology of liberal integrationism was hegemonic.\textsuperscript{37} Mainstream legal discourse about race in constitutional and discrimination law was conducted entirely on integrationist premises, with racial justice conceived as the attempt to identify, remedy, and compensate for the irrational use of race in the distribution of social benefits and burdens, that is, to purge selection criterion of stereotype and prejudice in the name of merit and reason.\textsuperscript{38} Debate consisted of how narrow or wide to identify when racial discrimination had taken place (the debate over whether to require intent or impact)\textsuperscript{39} whether to use race in order to remedy past racial discrimination,\textsuperscript{40} and how widely to enforce remedies. To the extent that the “civil rights” tradition that Crenshaw alludes to was represented in law schools, it fit easily within the conventional discourse, as the more critical wing of integrationism unwilling to believe prematurely that racism had been rooted out of social practices.

I hope that this background helps to put into relief the enormous historical significance of Derrick Bell that Crenshaw highlights. In the mid-1970s, Bell’s staunch assertion of a nationalist understanding of race was jarring. In \textit{Serving Two Masters}, he questioned the ethical ground of liberal integrationist lawyers who advocated school busing to achieve integration when Black parents preferred better funding for Black

\textsuperscript{35} \textit{Id.} at 818–19.
\textsuperscript{36} \textit{Id.} at 819.
\textsuperscript{37} \textit{Id.} at 758–59.
\textsuperscript{38} \textit{Id.} at 769–770.
\textsuperscript{39} Charles R. Lawrence, III, \textit{The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism}, in \textit{CRITICAL RACE THEORY}, supra note 12, at 235, 236–37.
\textsuperscript{40} Peller, \textit{Race Consciousness}, supra note 8, at 776.
schools.\textsuperscript{41} His \textit{Race, Racism and American Law} casebook opened with Thomas Smith and John Carlos giving the Black Power salute at the 1968 Summer Olympics in Mexico City, and the organizational premise of the entire book was to view law from the perspective of its impact on racial minorities, particularly African Americans.\textsuperscript{42} Bell thus rejected the conventional organization of legal casebooks around doctrinal categories such as "equal protection." Instead he took for granted that race consciousness was a legitimate lens through which to interpret and think about law. He made the theory explicit with the publication of his "interest-convergence" thesis, organizing a positive and predictive theory of doctrinal change by attention to the diverging and converging interests of separate white and Black communities.\textsuperscript{43}

In my analysis, Bell represents the first wave of CRT, in that his work reflects the open articulation of a race-conscious scholarly perspective in direct challenge to the liberal integrationism of prevailing doctrine, ideology, and law school culture. The key dramatic feature of his interventions was the assertion of a nationalist account of race in the face of liberal integrationism that characterized both legal doctrine and scholarly convention.\textsuperscript{44} His stance was illiberal because he asserted that what was taken to be neutral and objective in liberal sensibilities—colorblindness, scholarly standards—were really reflections of white culture and white power.

\section*{V. NATIONALISM MEETS CLS}

At the point of the initial CRT engagement with CLS, white leftists like those in CLS were for the most part ignorant of the Black nationalist tradition, or at least did not see its connection to the critical project that occupied white leftists. For the most part, the white left was deeply integrationist and tended to think of the race issue in terms of whether individuals had racist ideas or acted in racially discriminatory ways.\textsuperscript{45}

\begin{thebibliography}{99}
\bibitem{42} DERRICK A. BELL, \textit{RACE, RACISM AND AMERICAN LAW} (5th ed. 2004).
\bibitem{44} CRITICAL RACE THEORY, supra note 12, at xix–xxi.
\bibitem{45} This was not exclusively true. Prior to the emergence of CRT, Alan David Freeman, a prominent crit, had written an influential work showing how anti-discrimination law worked to legitimate race discrimination. His work emphatically rejected the "bias" construct of racial power in favor of an account of structural racism. And his work was emphatically critical (in fact, among the classic early CLS texts) in seeing legal discourse as a site of power and ideological legitimation rather
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CLS scholarship was involved in trying to show that the liberal rule of law was really inherently political and that presenting it as neutral and objective suppressed its socially and historically constructed character. Within that broad project, a central theoretical preoccupation within CLS in the early to mid-1980s was the competition between the "tilt" and "indeterminacy" positions as to whether legal doctrine was "tilted" to serve class interests or too indeterminate to serve that function. By the mid-1980s, the "indeterminacy thesis" was dominant. Its central claim was that, for the same reasons that legal doctrine was too indeterminate to serve as an objective and neutral base for the rule of law, it was not determinate and coherent enough to explicate through structures of interpretation such as class analysis. The tilt/indeterminacy debate provided the theoretical background within which many in CLS perceived gender and race interventions with suspicion, as similarly vulnerable attempts to posit a determinate structure for social analysis that exists itself outside the social field. If class didn’t work to provide a determinate structure for interpreting the vectors of social power, why should gender or race?

Now, to re-describe the alignment of CLS and the early racecrits: CLS and the racecrits were aligned in the rejection of a liberal, and the embrace of a critical, stance toward social practices—whether they be the "rule of law," the "market," or definitions of "merit" for job and school selection. The early racecrits were aligned with CLS in the rejection of liberalism, I think, because of independent engagements with race politics, in which they had already adopted a nationalist perspective on race and had already rejected the colorblindness of liberal integrationism in favor of race consciousness, an identity-based rejection of the universalist assumptions of liberal universalism. Identity nationalists like Crenshaw were attracted than as the transcendence of power in the name of reason. While his work moved well beyond an individualist account of racial power and was well to the left of any liberal rule of law, he remained for the most part in the integrationist tradition in the sense of conceiving of the problem of racial power as "discrimination." See Alan David Freeman, Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine, 62 MINN. L. REV. 1049, 1102-03 (1978).

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48 Id. at 917-18.
49 That debate was eclipsed in the mid- to late-1980s by the femcrit insurgency, which was soon followed by the race intervention, both of which Professor Crenshaw describes. See Crenshaw, supra note 1, at 1290-92.
50 Id. at 1295.
51 I should make clear that much of the work does not fit cleanly in one or another of the categories. Richard Delgado's groundbreaking work, The Imperial Scholar, exposed that American scholarly discourse about constitutional law was conducted among an all-white group of scholars who cited each other exclusively. Delgado, supra note 43, at 561-62. It was not totally clear how much Professor Delgado intended to flow from that fact, however. The article might have been interpreted to make an integrationist point about the wrongful bias against work of scholars of color, along the lines that those scholars were also qualified to engage in the discourse that the white scholars were engaged
to CLS ideologically because of a shared interest in unmasking the claims of liberal integrationists to neutrality and objectivity, CLS from a general "law is politics" critique of legal ideology and the emerging racecrits from the nationalist orientation critical of claims that the "rule of law" was racially neutral.\textsuperscript{52} Crits and emerging racecrits were \textit{aligned} in pursuing critiques of liberal claims to neutrality. They were \textit{misaligned}, however, in part because, with respect to race, the crits for the most part had not developed particularly critical approaches and instead embraced the same liberal integrationist ideologies that distinguished liberal and progressive whites from racist whites.\textsuperscript{53} Moreover, the idea of using race as a category for interpreting social power seemed subject to the same indeterminacy critique that the crits had pointed to in liberal claims to neutrality.\textsuperscript{54}

Within CLS, then, distinct positions emerged with respect to the early efforts to articulate a critical race discourse. Alan Freeman represented a transition point within CLS. He formulated a kind of "critical integrationism" by applying critical methodology to analyze the law's failure to realize integrationist norms.\textsuperscript{55} Duncan Kennedy, Mary Jo Frug, and this author helped constitute another CLS faction embracing the kind of critical identity projects that the emerging CRT left, led by Crenshaw and others, was articulating.\textsuperscript{56} But a significant cohort of crits either did not engage with the race discourse at all, or reacted negatively. As critics saw it, by using race as a structure for analysis, the emerging racecrits were engaged in racialism, which the crits equated both with white supremacists and Black nationalists of the sixties and seventies whom they had similarly dismissed.\textsuperscript{57} While this early criticism from some within CLS initially

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\textsuperscript{52} Crenshaw, supra note 1, at 1308.

\textsuperscript{53} Id.

\textsuperscript{54} See, e.g., Mark Tushnet, An Essay on Rights, 62 TEX. L. REV. 1363, 1371 (1984) ("[T]he language of rights is so open and indeterminate that opposing parties can use the same language to express their positions. Because rights-talk is indeterminate, it can provide only momentary advantages in ongoing political struggles.").

\textsuperscript{55} See supra note 45.


\textsuperscript{57} This account of methodological and ideological disagreement does not capture the occasionally vehement discourse that some in this crit faction used to reject the emerging race discourse. See, e.g., Mark Tushnet, The Degradation of Constitutional Discourse, 81 GEO. L. REV. 251 (1992).
seemed to be rooted in an uncritical, liberal take on race, it eventually
developed into the purportedly postmodern critique of anti-essentialism
that I discuss below.

At this point, it is possible to identify the particular intervention that
eyear early CRT work played in terms of the theoretical structure of race
discourse, the subject of the following section of this Commentary Article.

VI. BURNING DOWN THE (MASTER’S) HOUSE

There was two kind of slaves. There was the house negro
and the field negro. The house negros, they lived in the
house, with master. They dressed pretty good. They ate
good, cause they ate his food, what he left. They lived in the
attic or the basement, but still they lived near their master,
and they loved their master, more than their master
loved himself. They would give their life to save their
master’s house quicker than their master would. . . .

. . . If the master’s house caught on fire, the house
genro would fight harder to put the blaze out than the master
would. If the master got sick, the house negro would say
“What’s the matter, boss, we sick?”

We sick! He identified himself with his master, more
than the master identified with himself. . . . And if you came
to the house negro and said, “Let’s run away, Let’s escape,
Let’s separate,” the house negro would look at you and say,
“Man, you crazy. What you mean, separate? Where is there
a better house than this? Where can I wear better clothes
than this? Where can I eat better food than this?”

. . . .

On that same plantation, there was the field negro. The
field negros, those were the masses. There was always more
negros in the field as there were negros in the house. The
negro in the field caught hell. He ate leftovers. In the house,
they ate high up on the hog. . . .

The field negro was beaten, from morning til night. He
lived in a shack, in a hut. He wore old, cast-off clothes. He
hated his master. I say, he hated his master. . . . When the
house caught on fire, he didn’t try to put it out, that field
negro prayed for a wind. For a breeze. When the master got

speculated on the psycho-social context of this vehemence in Gary Peller, The Discourse of
sick, the field negro prayed that he'd died. If someone come to the field negro and said, “Let's separate, let's run.” He didn’t say “Where we going?” he said “Any place is better than here.”

--Malcolm X (1964)58

I intend the above grid to be particularly useful in a political analysis of competing race approaches by focusing attention on the extent to which each might tend either to legitimate or challenge status quo social practices and mainstream accounts of racial power. I believe that the focus on the difference between liberal and critical accounts of race is important because of the tendency of liberal discourse not only to be reformist—working to remove racial biases in social practices—but also to be apologetic—tending to legitimate as fair and just social practices once the biases of racism and other distortions are supposedly removed. In the race context, for example, one can question whether “merit” is something acultural and aracial, a neutral way to distribute social benefits, or whether it is itself a political, contestable concept. Are “merit,” “reason,” and “neutrality” part of what Malcolm X refers to as the “master’s house,” or are they the transcendence of social power that they purport to be?

Part of the compelling appeal of Malcolm X was the clarity and the confidence with which he spoke, and particularly the unabashed way in which he categorized the world in terms of Blacks and whites in the face of a dominant American discourse about race that insisted that his race consciousness was indistinguishable from that of white supremacists. His description of “house negros” and “field negros” embodies key elements of the historicist Black nationalist position that I associate with the most “critical” of nationalist approaches. In addition to finding the roots of contemporary Black culture in the slave history of African Americans, rather than in an imagined origin of African purity, Malcolm X also historicized the culture and social practices into which Blacks were seeking integration as those of whites—“the master’s house.” His articulation reflected the traditional suspicion that the Black working class has had toward the integrationist aspirations of the middle class while clearly setting forth the critique that integration did not mean the achievement of civic and social equality, but rather the assimilation into white cultural norms. His invocation of the over-determined identification of the house negro with dominant social practices of the master (“We sick! He identified with his master more than the master identified with himself. . . .”) captures a traditional nationalist critique of the manner in which members of the Black middle class seeking to “integrate” lacked

critical distance about the claims of what the nationalists call white culture. For my methodological purposes, the very structure of his class/cultural differentiation of African Americans suggests a critical rather than racialist perspective: rather than depict the African American community in unitary, static terms, Malcolm X describes tension and conflict within the community, and frames the context in historical (albeit purposefully simplistic) terms.

In my view, the distinguishing and historic contribution of CRT has been to bring the kind of critical nationalist analysis of race that had been articulated in the 1960s and 1970s by Malcolm X, the Black Panthers, and others, to the world of scholarship and theory.

As Crenshaw frames it, critical nationalists arrived in mainstream law schools in the 1970s and 1980s (often out of African American and Ethnic Studies programs) just as the law schools began seriously to pursue racial integration of their student bodies and their faculties.\(^{59}\) If they were politically radical and interested in developing a critique of the manner in which legal ideology falsely represents social power as the mere application of reason, students of color were attracted to CLS. But they found that the white left at the time had virtually no analysis of race at all, and the analysis of the indeterminacy of rules and principles seemed to leave no room for a racial analysis. The only available discourse focused on race was the traditional civil rights ideology of integrationism, which rejected the race consciousness and the critical, rather than liberal, stance to which the students of color were committed.\(^ {60}\)

While Bell’s work may have shattered the first obstacle by dramatically introducing race consciousness into constitutional analysis, it did not necessarily represent the introduction of a critical nationalist perspective. Bell’s analysis could be regarded instead as predominantly “racialist” in that it took the existence of racial communities as a given, rather than as collectivities whose culture and dynamics were contestable and contingent. Bell’s early work was nationalist, and thus more critical, in my terms, than any integrationist approach in that it was not oriented to finding and perfecting neutrality and objective rules for social relations. Bell emphasized that institutions into which Blacks would be integrated were not racially neutral but rather bore the marks of white cultural

\(^ {59}\) Crenshaw, supra note 1, at 1263.
\(^ {60}\) Gary Peller, Race Consciousness, supra note 8, at 760 (“[M]ainstream race reform discourse reflects . . . a tacit, enlightened consensus that integrationism—understood as the replacement of prejudice and discrimination with reason and neutrality—is the proper way to conceive of racial justice, and that the price of the national commitment to suppress white supremacists would be the rejection of race consciousness among African Americans.”).
But, for the most part, Bell did not problematize the communities whose interests his race theory deployed.

The grid that I have described clarifies, I hope, the kind of structural discursive contestation that forged the particular and unique discourse that became CRT. Crenshaw’s generation faced a discourse “misalignment” with both the liberal integrationism of the civil rights tradition—which, even though it focused on race issues, had no place to contain the race consciousness of their nationalism—and with the critical left—who had developed a critique of liberal claims to neutrality generally but had, like virtually all progressive whites, embraced an integrationist view of racial justice.

The “intersectionality” idea is one significant face of this turn toward a critical rather than racialist nationalism. Crenshaw’s “intersectionality” intervention in race and gender discourses simultaneously embraced the nationalism that Bell had courageously articulated while rejecting the racialism that Bell’s work arguably embraced. One dramatic way to historicize as partial the social practices into which Blacks would integrate was to introduce gender power as a racially contestable issue. In other words, from a critical nationalist perspective, the integrationist movement did not simply mean the assimilation of Blacks to white culture but more specifically meant the integration of Black men into the world of white men, so that Black men could enjoy the same gender power that white men enjoy. Not only did such an analysis tend to call into question the overall neutrality of the culture at the base of the integrationist position, but it also made a historicist point with respect to racial integration itself—to the extent that gender relations in the Black community were not the same as those in the white community, integration would not only proceed on male terms, but specifically on the gender terms of the white community.

The “intersectionality” idea, highlighting the socially articulated, contingent quality of community characteristics, not only historicized the practices that integrationists expected Blacks to integrate into, but also

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Rist... followed... a group of young Black children bused to an upper class, mainly white school. The principal’s policy was to “treat all the kids just alike.” This evenhanded policy meant—in practice—that the handful of Black children from the ghetto were expected to perform and behave no differently than did the white children from comfortable suburbs in this mainly white school where the curriculum, texts, and teaching approaches were designed for the middle-class white kids. As you can imagine, the results of this evenhanded integration were disastrous.

Id.


63 See id.
historicized the Black community itself. Crenshaw showed that the interests of the Black community tended to be articulated in terms of the interests of Black men, and thus took as normal, rather than contingent, patriarchy as a defining feature of the Black community. The racialism commonly associated with the nationalist tradition takes the Black community, more or less, as a historical given rather than a socially constructed and contingent entity whose terms of construction present political questions. Crenshaw’s utilization of “intersectionality” focuses attention on the manner in which the identity of any identity-based community is in flux and contestable. The same historicism that applies to the liberal categories of merit and reason is applied to the racial terms of critique itself.

VII. RACIAL IDENTITY AND ESSENTIALISM

Difference discourse does precisely the opposite: in reacting against the punishment of difference, it reinforces the insistence that racial differences are intrinsic and real.

This is more than the recognition of group identification born as a collective response to social prejudice. It is the production of identity as a lifestyle, a way of being. . . . [a]n easy solidarity, a V.I.P. pass to belonging. . . .

The necessary correlative to this unearned solidarity is an unwarranted presumption about the entailments of group membership. . . . This political correctness requires and duly produces opprobrium for people who miss their cue: we encounter “Oreos”—blacks on the outside who don’t “act black” and therefore presumably aren’t black on the inside . . . . These figures of scorn imply that there is a particular type of behavior that is appropriate to a given race, and thereby censure deviation from it. . . .

. . . .

This message not only provides ready justification for continued bigotry . . . it also encourages group members themselves to emphasize their difference from outsiders . . . .

The idea that minorities should hew to “their” cultural traditions is just as hegemonic as the idea that they should

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64 See id. at 1251–52.
65 id. at 1245.
assimilate to a mythical white-bread mainstream.\textsuperscript{67}


I hope that recognizing the particular theoretical achievement that I am associating with Crenshaw and others on the left wing of CRT—the dialectical articulation of Black nationalist and critical positions—will help put in relief the “essentialism” critique that has been made by some against the project.

Liberals object to the manner in which posing any identity to a community such as, say, “African American” is racist in that it irrationally attributes characteristics on the “arbitrary” basis of skin color. For liberals, identity-based approaches render race essential rather than recognizing it as arbitrary. Because identity frames such as race and gender present the possibility of bias, they are to be avoided as irrational ways to perceive and represent the social world. Early on, liberals reacted to the identity-based starting points of CRT work with this kind of critique.\textsuperscript{68}

A similar critique has been made by those who claim to have transcended the limits of liberalism in favor of “post-modern” sophistication. They contend that race is socially constructed and therefore not a determinate basis for social analysis. Race is simply a social “performance,”\textsuperscript{69} not an objective or necessary characteristic of people.

In the remainder of this Commentary Article, I analyze the essentialist critique of CRT. I utilize Richard Ford’s recent critique of “racial culture” as exemplary of both liberal and non-liberal responses; his discourse contains both, or perhaps shows one collapsing into the other. Ford basically contends that, because there is no essence to race, nothing “real and intrinsic” beyond “group identification born as a collective response to social prejudice,” nationalist assertions of racial identity are “hegemonic” and oppressive.

Ford’s criticism provides another way to illustrate the unique theoretical ground that the left faction of CRT seeks to traverse. The critical nationalist theoretical project faces a fundamental tension that may be easier to see when nationalism is recast as an identity project. The problem, stated abstractly, is this: What can “identity” mean to a critical practice that denies the possibility of social practices transcending time and space? If an identity like “African American” is socially constructed from moment to moment in its various performances and if it has no objective reality (no “essence”) separate from those performances, then what does it

\textsuperscript{67} Id. at 39–41.
\textsuperscript{69} \textit{FORD, RACIAL CULTURE}, supra note 66, at 61–64 (citing \textit{JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY} (1990)).
mean to talk of an *identity* at all? After all, identity *means* being the same over two points in time and/or space, and, if there is no *essence* to identity, there can be nothing to mark what is the same over time, nothing to *recognize* as the same from moment to moment and context to context as (so-called) "identity" groups are constructed and articulated.

As I see it, Ford has taken an anti-essentialist critique that might apply to the fundamentalist wing of nationalism and applied it to "difference discourse" generally. Ford's mistake is that he fails to recognize the differences in methodology and analysis among identity or nationalist approaches. His critique accordingly ignores the historicist stance that distinguishes critical nationalists such as Malcolm X, the Black Panthers, and the left wing of CRT from racialism as articulated by groups such as Nation of Islam.

The theoretical project for many in CRT is precisely to conceive of an identity like "the Black community" in a postmodern/historicist way, one that honors "its" contingent, socially constructed, nonessentialist, and performative status while nevertheless asserting identity as meaningful, as presenting in fact no determinate, stable meaning but rather a surplus of meanings and multiple tracks of coherence—a "postmodern nationalism," one could say, or more generally, a "social subjectivity."

I think that some leftist critics of nationalism—as Richard Ford presents himself—mistake the significance of the postmodern critique of identity. The adherents to this current of "liberal postmodernism" comprehend groups like "African Americans" as not "real" because their identity is socially, historically created and contingent. What "African American" means has no necessary content and could be vastly different in the future, or in a different place. Ford, for example, spends major parts of two books showing that particular assertions of cultural identity are not essential, but contingent, and therefore cannot be objectively demonstrated to be a part of any essential cultural identity—e.g., a white woman can wear cornrows. But he rejects the possibility that identity may be no less meaningful even if it is historical, contingent, hybrid, and dialectic, rather than "intrinsic and real."

The tendency of this strand of self-professed postmodernism is to revert to liberal individualism, say, to colorblindness about race, on the ground that racial culture cannot be objectively identified. The embrace of

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72 FORD, RACIAL CULTURE, supra note 66, at 35.

postmodern terminology is significant because it signifies that the critique purports also to reject liberal individualism in favor of more radical epistemological premises. Despite the theoretical veneer, though, this stance posits a traditional modernist subject anterior to identity who chooses identity like a commodity—"a V.I.P. pass"—and who is then subject to opprobrium when the social discipline of the group is imposed.74

The whole sense of wrong that Ford wants to assert depends on the sense that an individual is being made the object of collective power, that is, the very center of liberal, not postmodern, sensibilities. The critique of such an ahistorical, free-standing subject who chooses between social structures has been the focus of much postmodernism work already.75

Ford fails to account for the fact that the content of the group’s identity is one of the terms of struggle within groups, between traditionalists and fundamentalists who assert a stable, ahistoric, essential group identity, and the historicists and revolutionaries who understand that the terms of group identity are never fixed and always up for grabs, being constantly copied, reproduced, and necessarily changed in every iteration, articulation, and performance.

Ford’s objection to the policing of identity by “censure”76 is really an objection to the policing function of any culture, of any language, of any social system for conferring meaning whatsoever. He posits a radically free (liberal) subject on whom the disciplinary apparatus of group identity is imposed after he chooses to align with one or another group.77 But such a being is an ideal, or, more literally, a monad. He does not exist. People’s very existence entails being defined (and defining others) in terms of social languages external to themselves, but which depend on them for any continued life, on the exercise of “social subjectivity.”78

Ultimately, I think, Ford’s work on race is an attempt to rationalize as normal the alienation that members of a group may feel once they no longer can see themselves in the group, so that they no longer experience “its” identity as a social subjectivity. Instead, like the workers’ products in the Marxist version of alienation, group identities become reified,79 so that

74 Id. at 39.
76 FORD, RACIAL CULTURE, supra note 66, at 39–40 ("These figures of scorn imply that there is a particular type of behavior that is appropriate to a given race, and thereby censure deviation from it.").
77 See id. at 59–61.
79 See generally KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY (Frederick Engels, ed. 1906) (Samuel Moore & Edward Aveling, trans.); Georg Lukács, Reification in the Consciousness of the Proletariat, in HISTORY AND CLASS CONSCIOUSNESS (Rodney Livingstone trans., 1968).
"African American culture" assumes a "phantom objectivity"—a fixed essence separate from what any group member might do or not do. But Ford's evocation of the power of opprobrium and censure to police the identity group's borders treats the disciplinary apparatus as if it had a life separate from its performance by the group's members, and therefore not subject to struggle and contestation from the inside. In short, he describes being alienated from a form of social power because, as he describes it, African American culture exists separate and independent from him and thus might be chosen or be imposed on him. He does not see himself as part of a community identity and he does not conceive that he could affect its future. He posits a subject, somehow constituted independent of all such social identities, who is censured by an external group that he has lost any hope of influencing, and who is "discriminated against" because he is perceived as raced even when he wants to play other roles.81

This kind of "postmodern" account not only naturalizes the structure of Black identity, but also treats social space in general as aracial once the demands of the "difference discourse" have been rejected. He ignores the traditional African American critique of integration as assimilation by assuming away the possibility that it is not just the Black community that is curtailing his liberty, but white culture as well, with its restrictions and disciplines. Like the traditional position of integration minded members of the Black middle-class, he is invested in translating assimilation as liberty by ignoring the possibility that the space into which he seeks access without having to suffer opprobrium is white space, a terrain where culturally specific performances of "standards" and "merit" have been staged by whites to justify the exclusion of others.

The anti-essentialist rejection of identity discourse posed by Ford and others, though clothed in the trappings of postmodernism, constitutes a rejection of postmodern critique. The anti-essentialists attack racial categories with deconstructionist vigor to expose their lack of fixed, stable meaning and their historically-contingent character. That the categories lack essential characteristics leads the anti-essentialist to conclude that they are, at best, invalid, and, at worst, an illegitimate imposition on members of the race. If race cannot be defined (or confined) objectively as something other than a historically-contingent product of otherness, as a space with policed boundaries and a center from which one is not to stray too far, the anti-essentialists posit, then it cannot exist at all. Ford insists on a deterministic, structuralist conception of race as a regime of rules and norms that exists above and beyond and before the subjects it describes, rather than as a discursive formation, perpetually in flux, constantly shaped and reshaped by the performances of the subjects themselves, which are its

80 Lukács, supra note 79, at 135.
81 See id. at 116.
only constitutive elements. Individuals do not wear a pre-fabricated, inherited racial identity, but instead race itself is defined by those performing within it.

I do not read Crenshaw and others in the CRT genre to contend that the Black community has a stable, essential identity over time or across space; instead, what it means to be Black in America is constantly articulated and rearticulated through every performance that constitutes that community, from the inside and from the outside. But that just does not mean there is no such social group. A multiplicity of meaning is not the same thing as a lack of meaning. In fact, this understanding of "identity" is arguably the "true" post-modern position, not the reversion to liberal individualism that Ford and other postmodern critics of the "essentialism" of CRT and other identity based projects perform.

The African American community exists as a group and can be followed through time and space even if the group can never be objectively and definitively defined; even if its borders are continuously contested; even if its meaning is multiple and indeterminate. It is true that the group’s existence is partly constituted by performances, in which the group is produced by being articulated and rearticulated. It is true that the group may be constituted very differently in the future, or maybe not "exist" in the future at all. But that contingency does not make the group less real.

In existential terms, then, I would say that Ford and others are making the converse mistake of traditional metaphysics. Rather than assert that there are essences that precede existence, and of which existence was a deteriorated version of the ideal, they treat the lack of an essence to social groups as if that meant that they have no existence, either. The picture of "the Black community" I am trying to evoke sides with the existentialist tradition that it is coherent to assert the existence of African Americans without positing an essence to the group.82

VIII. CONCLUSION

I have tried to provide a grid for cataloguing and understanding the theoretical and political structure of race discourses generally, and the place of CRT in particular, in order to amplify Crenshaw’s description of the discursive situation from which CRT emerged. In this account, the central theoretical project of CRT emerged as the need simultaneously to reject the liberalism of traditional civil rights discourse, from which an alignment with critical discourses was and continues to be helpful, and yet to reject the denial of the possibility of identity that the critical practices

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82 The idea that "existence precedes essence" is a central tenet of existentialist philosophy. The slogan was coined by Jean-Paul Sartre. JEAN-PAUL SARTRE, L'EXISTENTIALISME EST UN HUMANISME [EXISTENTIALISM IS A HUMANISM] (Carol Macomber trans., 2007) (1946).
suggest. As I see it, the left wing of CRT, represented by Crenshaw and others, has developed a "critical nationalism" that represents a structural advance over the false universalism of liberal race discourses and over the fundamentalist essentialism of many traditional nationalist manifestations (in fact, of many identity-based approaches generally). This is an historic achievement in the history of social theory.