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Rhonda V. Magee

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Inviting New Worlds, Tuning to New Voices: A Post-9/11 Meditation on "Where Do We Go From Here?"

By Rhonda V. Magee[1]

I. INTRODUCTION

As ink strikes letters to this page, young Americans—mostly men—lurk in the streets of towns with names like Mosul and Fallujah in a place called Iraq, guns nervously poised to deliver death. Five years ago, neither the young coalition soldiers scanning the apartments and school buildings in desert fatigues, nor the "insurgents" who would do them harm, could have imagined themselves simultaneously on both ends of an automatic weapon. And yet, there, at this moment, they are.

Thousands of miles and a cell phone call away, an unusually attractive newsreader on CNN announces the killing of two additional "American soldiers"—young men who only hours before had names, hangnails, and e-mails to return—bringing the total to more than fifteen hundred killed,[2] with over eleven thousand seriously wounded.[3] It is hard to determine the numbers of wounded and killed on the Iraqi and insurgent side since the war began, but estimates exceeding one hundred thousand men, women, and children have not been convincingly disputed.[4]

The United States is engaged in a war against a people who have done us no harm, for reasons a great number of Americans either do not understand or do not support. It is our most recent contribution to the ongoing human cycle of war and violence, violence and war. This is, in part, what the West's engagement with the Muslim world since 9/11 looks like to me on this day. Yet, this is a time for reflection rather than despair. As explored in the following few pages, the West's contemporary encounter with the

fundamentalist Islamic world may well have an important role to play in the liberation of oppressed people here and abroad.

The purpose of this essay is twofold. The first purpose is theoretical: in an effort to advance the development of alternative critical jurisprudential approaches—with a view toward incorporating a dimension of progressive spirituality—I will compare, contrast, and explore the connections between liberation theology and my own recently proposed, post-subordinationist[5] jurisprudential doctrine, "humanity consciousness."[6] The second purpose is to use these alternative theoretical lenses to evaluate the United States' military response to the threat posed by Middle Eastern Islamic terrorists.

In this article, I consider the utility of liberation theology and humanity consciousness as alternative sources of jurisprudence. I present a preliminary application of these concepts in a critical reconsideration of the basic question of whether our policies toward Iraq, and the many others deemed our enemies in the perpetual war on terror, are just. Liberation theology and humanity consciousness bring to the critique of law and foreign policy what other alternative jurisprudential theories such as critical legal studies,[7] critical race theory,[8] and Latino Critical Theory (LatCrit)[9] do not: a specific appeal to spirituality as a progressive force of social change, which—when linked with critically informed advocacy—can result in deeply meaningful transformations within individuals that lead to meaningful changes within the law. Liberation theology and humanity consciousness approach the problem of human suffering from the point of view of the full human being and its immanently spiritual core; hence, they offer alternatives to more traditional critical approaches—alternatives that are more likely to inspire profound systematic change.

Section II lays a foundation for the discussion of these complex ideas with a brief discussion of their intellectual history. Section III applies the principles of humanity consciousness and liberation theology to evaluate U.S. policy governing Iraq's "postwar" reconstruction. Section IV introduces the phrase "liberation jurisprudence" to capture the

jurisprudential aspect of the humanity consciousness approach. The section concludes with a call to each of us to continue the work suggested herein and to use liberation theology, humanity consciousness, liberation jurisprudence, or other sources of inspiration to incorporate spiritually informed progressive philosophies into teaching, practice, and advocacy.

II. A BIT OF INTELLECTUAL HISTORY

In this section, I briefly discuss my development of the "humanity consciousness" doctrine through engagement with the approaches to critical legal theory that were dominant in the late 1990s. I then discuss the similarities between humanity consciousness and approaches that are more specifically grounded in theology. Along the way, I hope to answer the question with which even I have struggled: "What is a traditionally trained law professor like me doing with a topic like this?"

Perhaps as important as anything I might offer below is what my willingness to consider liberation theology as a possible jurisprudential guide says about the limitations of traditional liberal legal discourse and practice, and also of "traditional" critical discourses. To date, critical legal approaches have failed to capture adequately what I take to be the core issues and injuries at the heart of systematized oppression—based on race, gender, disability, sexual orientation, class, and/or a host of other factors—in the United States and the world. These approaches have failed because, by and large, they have not taken seriously the implications of the spirituality of the human being.

The ideas that we originate or accept as true are generally those that resonate with our personal experience, and my ideas are certainly no exception. As a child of the black Christian South, I have long been convinced that the nonmaterial (or spiritual) component of our humanity is essential to human existence. On the other hand, like many people who are deeply concerned about both the obvious and the subtle oppressions of our time, I am imbued with what I consider to be an essential skepticism of

organized religion, as well as a keen awareness of its ever-present potential to be harnessed to political programs that infringe upon civil liberties and suppress human freedoms. Any discussion of religion as a force for positive transformation in the world must reckon deeply with its simultaneously counter-revolutionary potential and its historical operation in service of oppression. Skepticism of religion—and its use in the service of the power of the law—has been a key component of Western intellectual inquiry at least since the Enlightenment, and I do not propose to forsake such skepticism now. And I agree with Cornel West—not only a leading philosopher but also a self-professed Christian—that "all forms of prophetic religion must be linked in some sense with a set of analytical tools."[10]

My skepticism of organized religion has not led me to write off religious or spiritually informed understandings of human experience and moral imperatives as potentially important sources of guidance toward a jurisprudence of social justice. My skepticism has not led me to doubt the basic spiritual aspects of the human condition, those aspects through which we experience ourselves—even if only occasionally—and identify with one another in ways that transcend race, sex, and other forms of social differentiation and identification. To the contrary, in analyzing the law and its consequences, I have consistently emphasized the human capacity for immanent (i.e., spiritual) mutual recognition and communion as the central aspect of human existence. And accepting and seeking better to understand our spiritual natures is central to any quest for a better fit between the law, conditions of oppression, and justice.

My experience of Southern Christian religion and its place in the poor black community in which I was raised suggests the value of reflecting on the role of religion in shaping our moral universe.[11] I was born in Kinston, North Carolina, among the working poor in a segregated industrial town. I spent many of my earliest years at the knee of my maternal grandmother, Nan Suggs. GranNan was a full-time housekeeper for a white family. She was also a minister in the Holiness sect of the Christian fundamentalist

tradition. She had been called to the ministry and had begun preaching with no formal training. She never had a church of her own and only rarely presided over services in the community.

The most important religious lessons that I learned from GranNan were also the most basic: that despite a life and death characterized by oppression, Christ loved all and saw all as part of one family; that Christ recognized and spoke out against injustice, but forgave all; and that we must live our lives as Christ would have—doing unto others as we would have them do unto us, and tending to the needs of the poor, sick, and oppressed amongst us. She would say that all the people of the world were one family despite apparent differences in skin color, station, and the like. Although I early on rejected the institutions of religion and church—as man-made artifices between our deepest souls and this higher or universal power—these basic principles, and the model of Christ's loving response on behalf of the oppressed, have formed the basis of my own moral philosophy.[12] Indeed, simple homilies such as those repeated by my GranNan contain the seeds of a moral philosophy upon which we might base a jurisprudence of social justice, not unlike those demonstrated by Gandhi[13] and Martin Luther King Jr.[14]

Still, and even though I came to the study of law with an interdisciplinary sensibility, looking explicitly to theology to help broaden the critique of law is something I could not have imagined when I began my work in legal academia. I quickly became disillusioned, and at times outraged, at the relatively closed approaches to the study of law encouraged by the usual class discussions. At the law school that I attended, located in the southern United States, I was confounded by the lack of engagement with the history and contemporary implications of structured, legally sanctioned exploitation that included state-sponsored slavery and Jim Crow laws. Fortunately, through my own research, I discovered critical race theory (CRT) and began to apply it to my emerging critique of the law.[15]

My first scholarly publication—an early exploration of the jurisprudential basis for African American reparations—was an effort to encourage what I believe will be a necessary and critical reckoning with the lingering implications of slavery in mainstream legal doctrine, in legal scholarship, and in the transfer of power through legal education.[16] Over the years since my embrace of CRT, notwithstanding its centrality in my development and survival as a law student, I have grown somewhat disillusioned with the limited vision of even CRT's expansive theoretical and practical reformist project. CRT and its fabulous offspring[17] have succeeded in creating oppositional discursive space within mainstream law schools and legal journals, and they have helped to identify and elucidate interlocking systems of oppression. CRT's value is not to be underappreciated. And yet, CRT and related discourses, it seems, have ultimately failed to articulate a specific method for getting to the heart and roots of systematized injustice in this country and the world. CRT has failed to elaborate on the full consequences of systemized injustice for the whole human being, to dismantle the material and structural systems that support this systemized injustice, and to articulate a guide for where we need to go.

Indeed, Francisco Valdes, one of the founders of the LatCrit movement,[18] alludes to the dilemma of which I speak in his essay titled *Outsider Scholars, Legal Theory & OutCrit Perspectivity: Post-Subordination Vision as Jurisprudential Method*.[19] He calls on scholars in the critical traditions to focus more attention on a positive vision for a post-subordinationist world and to articulate that vision as a jurisprudence that might guide the development of a broader theory of social justice.[20] Professor Valdes all but concedes the limitations of the traditional critical approaches as guides for the future. This suggests an awareness, even within the critical legal community, of the importance of the effort in which I continue to be engaged to this day—an effort to articulate a vision that brings together what we have learned from a thorough study of the social histories of the

variously racialized groups in America and their intersections with the law and build from these insights a vision of justice for all humankind.

The central postulates of my alternative jurisprudential project are (1) that those in power have used different methods to exploit consistently and economically various racial and other subordinated groups;[21] and (2) that these practices, in various ways legitimated by the law, fundamentally contradict our country's ultimate pre-Constitutional commitment to a government designed to protect the dignity of human beings.[22] Indeed, these practices have been emblematic of an approach to the human being as subject and object of law, which in its main philosophical underpinnings and doctrinal applications substantially ignores human spirituality.

In the interest of developing a clear postracist, and ultimately, post-subordinationist vision for U.S. law—one that takes into account our fundamentally spiritual natures—I took a closer look at the provision in the Constitution that holds the most promise in leading the way: the Fourteenth Amendment. I studied the perspectives fueling the dominant competing interpretations of the Fourteenth Amendment and noted the flaws in both race-conscious and colorblind approaches to the Fourteenth Amendment.[23] I also sought to develop an alternative approach that might bridge the divide.

The effort to bridge the divide between colorblind and race-conscious approaches to law and social justice policy is fundamentally a call to a deeper struggle between the complexities of racial identity, racial and cultural hegemony, and the ultimate nature of human existence. It is a call upon us to develop the capacity, available to all human beings, to hold dual or multiple views about the nature of "who we really are." In response to that call, I began to articulate a jurisprudence based on a post-subordinationist vision that prioritizes human dignity towards all, and I christened this jurisprudence "humanity consciousness."[24] As a means of moving away from the race-conscious versus colorblind stalemate in which we have so often found ourselves trapped, I called for a dual race- and

humanity-consciousness approach to racial remedies law.[25] This dual approach asks that we explicitly endeavor to hold two realities in our heads as we think about the direction in which the law should move to achieve racial justice: (1) the reality of *particular* forms and experiences of present-day racism and cultural chauvinism and their historical legacies, and (2) the reality of our *universal and transcendent* common humanity.

Noting the connection between these nascent ideas and spiritually informed existentialist philosophies, I began to incorporate insights from these discourses as well into the humanity consciousness doctrine.[26] I discovered the recent work of former critical legal scholars such as Peter Gabel, which affirmed and deepened my sense of the spiritual vacuum at the heart of most progressive critiques today.[27] It is against this background of a developing body of spiritually informed, existentially grounded alternative jurisprudential work that I consider the potential for liberation theology (discussed more fully below)[28] to assist in divining concrete new approaches to thinking about and doing social justice work.

In short, I situate my consideration of liberation theology within a larger project, the goal of which is to infuse mainstream and critical legal discourse with a deeper appreciation for (1) human dignity,[29] (2) the larger arc of the development of humanity consciousness and its implications for legal doctrine,[30] and (3) nonmarket values (love, compassion, etc.)[31] reflective of the reality and aspirations of the full human being, including its spiritual dimension. I approach the intersection of law and liberation theology with a skeptical and paradoxical curiosity: I am simultaneously committed to *both* the liberal legal principle of the separation of church and state *and* a reconstructed notion of the human being qua legal subject that utterly rejects the false dichotomy between something called "church" and something called "state," in real-life human experience. A consideration of liberation theology is useful, therefore, as part of a larger project of answering the central question underlying nearly all of my work: What vision—of humanity, of human injury, of human freedom, of law—would

best guide the development of jurisprudence in the post-subordinationist world we are seeking to create?

III. HUMANITY CONSCIOUSNESS, LIBERATION THEOLOGY, AND THE AFFINITY BETWEEN THE TWO

A. What Is Humanity Consciousness?

Humanity consciousness is a postracist, post-subordinationist jurisprudential perspective and method. Its central point of departure is an awareness of the role of the law in legitimating human suffering. It broadly reconceives of the human being as fundamentally oriented toward love and focuses on the essential existential aspects of the human being—the respect and esteem for which I seek to capture using the phrase "human dignity."[32] Its central and unyielding demand is for U.S. law and public policy to support and affirm the dignitary interests of human beings and their ultimate freedom and development.[33]

As indicated above, my development of humanity consciousness arose out of deep consideration of oppression under U.S. law. The central observation was that centuries of oppression meant that *there were spirit injuries to all parties*—injuries inflicted by slavery, male supremacy, conquest, colonialism, exclusion, and other forms of dehumanizing racial and cultural oppression in the United States. Examining these injuries revealed the comon central violation of human dignity at their root: the denial of the basic human need for recognition and validation and the denial of opportunities for greater human development.

These observations, combined with my study of political sociology, led me to the premise that there is a dialectical historical struggle posed by racial and cultural oppression in Western societies and their colonies around the globe. This is a struggle through which the experience of such oppressions, the various theses of categorical inhumanity, is inevitably leading to the development of the antithesis—a categorical, universal

humanity. As law is the medium through which philosophical perspectives become real in the world, I understood the centrality of American law in the ongoing human freedom and humanity-reconstruction movements and the need, therefore, to develop a philosophical approach to law that would facilitate the work of these movements. Humanity consciousness represents such a philosophical approach.

Humanity consciousness is aimed at generating U.S. law and public policy designed to eradicate, neutralize, or minimize the effects of all of the traditional forms of disadvantage or oppression that contradict the idea of universal humanity. It assumes that the perspective of those who are traditionally disadvantaged is the central starting point, and it demands deep reconsideration of the legal rules that enable ongoing dehumanization. For example, the theory of the human being—the precise notion of the "human" subject of the law and the object of the law's protection—is elaborated upon to include both physical and spiritual components, and it inevitably becomes the foreground under a humanity consciousness approach. The theory of compensable injury is also scrutinized and expanded to include aspects of racial injuries that are not merely economic and psychological, but also spiritual. Once the nature of humanity and the nature of injury are fully seen, the full extent of the harmful effects of unjust law can be appreciated, and ethical evaluation leading to transformative action must result.

Humanity consciousness demands more than a transformed consciousness regarding the nature of race, racial injury, and humankind. Humanity consciousness demands a commitment to take steps aimed at transformation toward liberation. To the extent the conclusions it suggests are at odds with prevailing law and public policy, humanity consciousness takes as its moral obligation the continual stand against such law as intolerably unjust.

Thus, humanity consciousness as a jurisprudential project contemplates the development of both theory and method. The humanity consciousness method embodies four key aspects:

1. A ***perspectival*** aspect, i.e., a commitment to seeing both the oneness of all humankind and the genuine dignity or sacral quality of the human being, and the various ways in which it suffers violation
2. An ***affective*** aspect, i.e., a commitment to open-hearted vulnerability in reckoning with all assaults on genuine, universal dignity, and feeling our way toward a compassionate response
3. An ***ethical*** aspect, i.e., a commitment to making and defending ethical judgments against violations of human dignity and in favor of the promotion of mutual validation and respect
4. A ***conscious-praxis*** aspect, i.e., a commitment to consciousness in action for the purpose of uplifting the world, starting with the concrete communities in our midst[34]

These four aspects are the touchstones of humanity consciousness jurisprudence and methodology.

Humanity consciousness is not, then, a perspective or approach to be arrived at easily or embraced glibly. It is a fundamental personal and philosophical reorientation that originates from a deep consideration of the nature of the human—both human being and human suffering. Humanity consciousness inevitably leads to theoretical and practical elaborations that hold important potential for liberal legal jurisprudence and for the world in which it operates. Through the lens of humanity consciousness, law and public policy may be analyzed and critiqued, and more just and spiritually uplifting results may be pursued.[35]

B. What Is Liberation Theology and What Are the Similarities Between Humanity Consciousness and Liberation Theology?

Liberation theology arose at various points around the globe in the mid- to late twentieth century as a product of direct engagement with the conditions of the oppressed.[36] Although developed as interpretations of religious texts in a much more literal sense, the theologies of liberation approach the relationship between human liberty and social justice work in ways that share much with humanity consciousness. Hence, and especially for those generally comfortable with an institutional religious connection, liberation theology may also serve as inspiration for those working on alternative progressive (but spiritually informed) jurisprudence.[37] It similarly merits close examination by those seeking to achieve social justice through law.

Although there are many different schools of thought within what has been called liberation theology,[38] the key theme is that of liberating the human being. "The common point of departure of all the various tendencies with the one theology of liberation is ethical indignation at the misery of social reality, and the demand for a process of liberation that will overcome this contradiction."[39] Liberation refers both to freedom from oppression and to freedom to become, that is, "liberation *from* all the forms of bondage," and "liberation *for* progressive growth in being."[40] The method of liberation theology has been described as follows:

1. Seeing (analysis of reality)
2. Judging (judgment in the light of faith)
3. Acting (determination of routes of pastoral action)[41]

The objective of "liberation" includes not only religious aspects but also, and quite importantly for social justice theorists, socioeconomic and cultural dimensions.[42] Thus, much of the work has focused on undoing patterns of class-based oppression. In terms of epistemology, perhaps most significantly, liberation theology takes as its starting point the experience and expressions of the oppressed people themselves and sees them as the

primary agents of change; it is therefore committed to participating with the oppressed in doing social change work.[43] As Cornel West observed, "liberation theology at its best is a world theology—a theology that not only opens our eyes to the social misery of the world, but also teaches us better to understand and transform it."[44]

In the United States, the most dominant strain of liberation theology is black liberation theology.[45] The approach has its roots in the work of Martin Luther King Jr. and James Cone, a preeminent black theologian and scholar.[46] Cone emphasized the importance of the experience of the oppressed in our society as a source for the theology of the oppressed.[47] And West's philosophic approach of prophetic pragmatism—based in part on the teachings of Cone—embraces a black Christian tradition as a defense against the nihilistic tendencies inherent in contemporary human life. This tradition is a fortification in the struggle against the forces of evil in the world with which pragmatism and other liberal philosophies contend.[48]

As suggested by the reference to King, black liberation theology is not merely the subject of academic dispensation among Christocentric black intellectuals, though the disconnect between churches and scholars in this area has not escaped comment.[49] To the contrary, black liberation theology has become associated with the approaches of some of the most progressive active theologians in America today.[50] The Reverend Cecil Williams, pastor of the Glide Memorial United Methodist church in San Francisco, is one of the more well-known and progressive examples. An activist and leader in the civil rights movement in San Francisco since 1964,[51] Cecil (the name he prefers to be called by all) sometimes explicitly uses the language of liberation theology to describe the social justice movement propelled by his powerhouse church in San Francisco's most depressed neighborhood, the Tenderloin.[52] The professed church policy is one of complete acceptance and unconditional love—as a matter of fact, everyone is always welcome.[53] Glide exemplifies a diverse community of people from all walks of life committed to caring for those in greatest need.[54] Cecil has

done all of this while embracing a particular interpretation of liberation theology.[55]

What is the essence of the Glide version of liberation theology? Unconditional love, active compassion in response to the suffering of all kind, and a commitment to social justice—meeting people's most basic needs in concrete ways. For example, in a 2004 sermon, Cecil recounted that when asked if he was a Christian, he responded, "I love everybody!" and "I fight for justice anywhere I find injustice, and for anyone!"[56] That is Cecil's liberation theology and its activist orientation. He has built a social institution that for forty years has served to redress the basic needs of the poor and dispossessed of all races, ethnicities, and religions in San Francisco.[57] In short, as exemplified by the work at Glide, liberation theology's central mission includes engagement with the poor and oppressed, commitment to understanding the needs and circumstances of the oppressed from their perspective, and resolve to free both the oppressed and the oppressor from bondage to allow for their mutual development into full humanity.[58]

The similarities between humanity consciousness and the core principles of liberation theology are apparent. Liberation theology and humanity consciousness share an existential grounding in the full range of the human experience of oppression, including its spiritual aspects. Both perspectives see the interconnectedness of all human beings, and certainly the interconnectedness between those who would be considered "oppressed" and those who would seek to assist them. Both perspectives encourage an unflinching reckoning with the reality presented by the sociohistorical circumstances in which we find ourselves. Both perspectives call upon us to evaluate what needs to be done when we find injustice, and to take action. And both perspectives aim to reach out to people directly, whoever and wherever they are, in the communities and institutions in which we live.

Perhaps the main difference between the two approaches is the most obvious: humanity consciousness does not purport to espouse or speak from

any particular religious tradition. Instead, it rests on a view of the human community as capable of making personal and uniquely human commitments to seeing the interconnected common humanity we all share, and to recognizing our deep kinship across time and geographic space. Humanity consciousness involves a commitment to acting in ways consistent with this vision, regardless of religion, culture, geography, gender, or other affiliations that might otherwise suggest divisions among us. And it has already specifically taken up the challenge of reinterpreting liberal legal jurisprudence in light of these humanity-centered aims.

C. How Might Humanity Consciousness and Liberation Theology Serve as Guides Toward a Post-Subordinationist Jurisprudence?

As suggested above, liberation theology and humanity consciousness should be directly involved in the analysis of legal doctrine and public policy, both domestically and internationally. We can appeal to the principles of these doctrines when evaluating the justice of legal and political authority at every level. We can use these notions to infuse our civic, political, and legal institutions with a greater respect for humanity, a critical economic consciousness, and a commitment to support the creation of global democratic principles and practices that give traditionally marginalized populations a voice in global affairs.

The United States' policy toward Iraq in the post-9/11 era is a case in point. The war in Iraq signals the the United States' adherence to a wholly outdated set of foreign policies, conflict strategies, and militaristic approaches to the challenges presented by cultural, religious, economic, and racial conflict in a wildly diverse—and yet more and more obviously interconnected—world. It represents a violent return to the imperialist and colonizing practices of an era that we once hoped had gone by. As voices from the oppressed sectors of the world's population have argued for centuries—Frederick Douglass, Sojourner Truth, W. E. B. Du Bois, Frantz Fanon, Paulo Freire, C. L. R. James, and on and on[59]—we must make a

radical break from the multiple hegemonies of the past, those that have now led directly to the unseemly surrealism of American boots in Baghdad. We must intensify this work of forging commitments to new ways of seeing and being in the world and in the law—recognizing that more progressive approaches to jurisprudence have central roles to play.

Professor Robert Cover argued that the interpretation and creation of law and legal meaning depends, in significant part, on commitment.[60] Cover argued that the sources of our commitments are our *nomos*—our normative universes—and that legal meaning is created "when someone accepts the demands of interpretation and, through personal acts of commitment, affirms the position taken."[61] Cover invited us to "stop circumscribing" normative universes, and to "invite new worlds."[62] Many people in the critical legal studies and critical race theory community were inspired by Cover's invocation. This is owed, in part, to that community's embrace of narrative as an epistemological and phenomenological force that has tremendous potential to integrate legal scholarship and rule making with the everyday lives of people who are most affected.[63]

Our dominant law and policy have not adopted these perspectives. For example, as a leading participant in the international human rights community, the United States has been rather infamously reluctant to invite new worlds—and new worldviews—to the table upon which legal norms, rules, and meanings are put forth and negotiated into reality.[64] Indeed, the West's present violent engagement with the Islamic world may be viewed as a response to an unwanted visitation of a new worldview in our midst. The 9/11 attack by Al Qaeda and the Iraq war, allegedly waged in response thereto, have led us all to become somewhat more familiar with the Islamic world in general and with the fundamentalist views of some Muslims in particular. A world once relegated to the margins of U.S. concern has suddenly become central. In that sense, violence has achieved what a deeper human engagement with the people of that region of the world had not. And yet, to this day, we still know appallingly little about the people

of Iraq, the hearts and minds of whom our own Generation Y'ers are failing, from behind their M16s, to win.

The time has come to apply a new set of principles to evaluations of our foreign policy and the law legitimizing it. We must see the war in Iraq as part of the larger dialectical struggle between the oppressed and the oppressive forces, a struggle aimed at reasserting the priority of human freedom. Thus, the West's contemporary encounter with the fundamentalist Islamic world has a role to play in the liberation of the oppressed here and abroad. Both liberation theology and humanity consciousness provide much needed philosophical guidance to a better understanding of that role.

From the perspective of liberation theology, the West's encounter with the Muslim world in the post-9/11 era is a challenge to the West to invite new worlds and, in particular, to engage in deeper conversations with our brothers and sisters in the Middle East. It is a call to listen more closely to the testimonies of people in the Middle East concerning the failures of international human rights law and norms. It is a call upon us to see and understand those failures from the perspective of oppressed people themselves, as a prerequisite for evaluating or judging the ethical or moral positions in tension, and taking responsive action. And it is a call for alternatives to violence as a means of resolving the difficult challenges of intercultural interaction and its inevitable conflicts.

IV. A PRELIMINARY APPLICATION: RECONSIDERING OUR COMMITMENT TO HUMANITY, STARTING AT HOME

Liberation theology demands engagement with the oppressed—whether in our own communities, across town, across the country, or on the other side of the globe. Such engagement dictates the course of action to hasten complete liberation. Similarly, humanity consciousness involves dialogical community-centered engagement with oppressed people to discern their needs. We must identify with the oppressed, feeling our way to a compassionate response and ethical judgments against violations of human

dignity, and act for the purpose of uplifting the world. Considered thoughtfully, either liberation theology or humanity consciousness counsel a reversal of course in our policies toward Iraq, moving away from violence and war and toward dialogue and peace.

A. Curing the Deaf Ear of the United Sates: Hearing the Oppressed of the Middle East

In recent years, the United States government has generally been reluctant to hear and see oppressed people both at home and abroad, especially with regard to basic human rights and the protection of universal human dignity. This reluctance was dramatically demonstrated to the world at the World Conference Against Racism in Durban, South Africa, in September 2001. Held the week before the 9/11 terrorist attacks, the conference was intended to bring together the leaders of the world in an effort to address the problems of racism, xenophobia, and ethnocentrism—problems common to nations across the globe.[65] The United States might have used this event to demonstrate a commitment to the eradication of the vestiges of racism and xenophobia, an objective to which this country has ostensibly been committed since at least the civil rights legislation of the 1960s. Instead, the United States chose to resist participation in the conference because the Palestinian and Arab delegations had the temerity to hold to their deeply held conviction that the Israeli occupation of Palestinian territory, and its treatment of Palestinians, effectively amounted to racism.[66] It is hard to convey adequately the sense of unspoken contempt with which conference participants from around the world gazed upon Americans present at the conference in the wake of that deeply counterproductive, disengaging, dismissive, and disrespectful conduct—demonstrated by the official representatives of the United States for all the world to see.[67]

The United States' isolationist attitude toward the community of nations—which provides the basis for international law—was also evident in the run-up to the war in Iraq. Many in the world community believe,

with good reason, that the U.S.-initiated war violated international law.[68] It should go without saying that our policy toward Iraq should be guided by applicable international laws—old and new agreements among the people of the world for application in times of war and humanitarian crises. It should likewise go without saying that in the application of international laws, the perspectives of those most affected should be closely considered. These perspectives lend philosophic support to the calls around the world for the creation of more effective transnational or supranational structures of government, for the establishment of either true world democracy or new forms of democracy within our present systems and structures.[69]

As a result of these issues, particularly the West's encounter with the people of the Middle East and Iraq, we are called upon to listen more deeply to the claims of injustice of the people of the Middle East. Underlying the Middle Easterners' dissatisfaction with the West (particularly the United States) is a sense that the United States has treated these rightly proud and historically distinguished people with disrespect for too long.[70] Indeed, documents confirm that from as far back as World War II, Middle Easterners were derided by official representatives of the West as "sand niggers" not worthy of the respect that typically would be accorded whites or Europeans.[71] This should not be surprising, given the extent to which structural racism in the West—that is, an institutionalized hierarchy of the value and worth of human life—continues to privilege whiteness and Western culture vis-a-vis others.[72] In light of these long-standing tendencies to discount Middle Eastern people, the value of their lives, and their political concerns, should we not be particularly concerned about the justice of our policies regarding Iraq?

Using liberation theology and humanity conciousness to analyze the Iraq war and the postwar reconstruction provides important and invaluable insights. As the following two sections indicate, the available evidence indicates fairly conclusively that the voices of the people of Iraq largely have not been considered in the formulation of policies governing the war

and the failure of international diplomacy and legal order that it arguably represents.

1. Listening to the Bottom: Filtered Iraqi Voices

In September 2004, an essentially right-leaning, mainstream organization, the Center for Strategic and International Studies (CSIS), issued a report regarding a study that it had conducted of Iraqi views on the postwar reconstruction.[73] In this resport, which was commissioned by the Bush Administration, the CSIS noted the failure to listen to the bottom and to take the perspective of the people of Iraq into greater account: "The Iraqi voice has been a key missing ingredient in most discussions and assessments of Iraq's reconstruction."[74] Based on interviews with close to four hundred Iraqis over the past six months,[75] the authors of the CSIS report conclude the following:

- "Security concerns continue to be the dominant issue," and that "Iraqis have little confidence in U.S. and other international forces."[76]
- Iraqis' views about governance and civic participation in postwar Iraq are "largely a negative picture."[77]
- "Iraqis currently have a negative view of job availability, and those who choose to work for foreign companies or in Iraq's security forces face serious security risks."[78]
- Iraqis remain unhappy with the level of government services they are receiving. Most notably, there is insufficient electric power, even in the major cities of Fallujah and Mosul, and "[s]ewage systems are worse than they were under Saddam, causing spillover health and environmental problems."[79]
- Although there was an initial positive response to educational and health care initiatives, Iraqis are presently frustrated with the apparent "lack of longer-term, sustainable efforts in the education sector. . . . Iraqi children continue to drop out of school at high

> rates in order to work and help supplement family income." Health care has suffered "due to Iraq's security problems and inadequate basic services," and "the lack of a functioning sewage system has led to an increase in water-borne diseases."[80]

The report further concludes that "Iraq will not be a 'success' for a long time,"[81] and that there is a "gap between U.S. descriptions of successes in Iraq and Iraqis' perceptions."[82] The report goes on to state the following:

> With the possible exception of the Kurds, Iraqis generally dislike the continued presence of the U.S.-led military forces in their country; many consider the occupation to be ongoing despite the June 28 handover of sovereignty. The sentiment is caused by the mere fact of occupation, rather than by the particular qualities and experiences of this occupation—such as atrocities at Abu Ghraib prison, civilian deaths, or cultural insensitivity—although those factors certainly exacerbate it. As such, the United States should expect continuing resentment and disaffection even if the U.S.-led reconstruction efforts seems to be making positive, incremental improvements to the country. . . .[83]

The report continues:

> Put simply, Iraqi pride in national sovereignty is a more deeply-rooted sentiment than the United States anticipated. . . . It is highly likely that the single unifying theme espoused by Iraq's politicians will be to invite the United States to leave Iraq once there is an elected Iraqi government in place.[84]

2. Listening to the Bottom: Unfiltered Iraqi Voices

While the CSIS study discussed above provides a summary of some Iraqi voices, liberation theology and humanity consciousness require us to push beyond summaries and to engage directly with the oppressed people. The best method for doing this would be to spend time in the Iraqi communities affected by the war talking with, but especially listening to, the people. In lieu of such direct engagement, what follows are a few of the unedited voices of Iraqis themselves. These quotes provide rare indications of the

point of view of the oppressed in Iraq—those bearing the brunt of the consequences of the U.S.-led war and reconstruction.

I don't feel safe at home because of constant explosions and random attacks. And on the streets, I feel an explosive will go off at any moment.

– 20-year-old woman, Baghdad

This country will never be stable. I wish we could return to the 1960s when I could walk in the middle of the night along the Tigris in the middle of the city.

– 60-year-old male, Al-Kut

It may seem okay in Kurdistan right now, but deep down, we don't feel secure.

– 26-year-old-male-university student, Erbil

The sewage system has gone to the dogs, even in the most prestigious areas in Mosul, including some main streets near the university.

– 37-year-old shop owner, Mosul

Other testimonials are found in the reports of reputable journalists. For example, consider the following reports of Pulitzer Prize-winning *Washington Post* reporter Anthony Shadid:

> [T]hey waited for the bombs. "It's terrible," the mother said, as the minutes passed. "We really suffer, and I don't know why we should live like this." Her daughter nodded. "I get so scared, I shake," she said. "I'm afraid the house is going to collapse on my head.". . . "We're in a dark tunnel, and we don't see the light at the end of it," the daughter-in-law said.

And despite the generally reported successes of the January 2005 elections, fear continues to plague members of the population, especially the minority Sunnis:

> "I'm afraid to go outside, I'm afraid to drive in my car. I'm afraid of the American army. They shoot randomly. I'm afraid of the Iraqi army. They shoot randomly, too….The police insult the people, and they don't show us any respect."[85]

Dealing as they do with physical security, the most basic level of human need, these quotes attest to the level of trauma still being experienced by Iraqis in the wake of the war and reconstruction efforts to date. The fact that such indigenous perspectives have been largely ignored should be troubling to those of us committed to social justice for all.

The Bush administration has masterfully used language such as "freedom" and "liberation" as rhetorical devices to garner domestic support for the war effort. But there are many different meanings that we might attach to these concepts, each of which would have very different consequences. What sort of freedom or liberation is really being pursued by our present policies and interpretations of applicable law? Both liberation theology and humanity consciousness insist upon a deeper engagement with the Iraqi people's perspectives before determining the ethical course of action to take in support of their supposed liberation. And the definitions of liberation employed by liberation theologists focus on the work of raising human consciousness for the purpose of transforming the socio-economic conditions that lead to the alienation and sense of unlovedness experienced by much of humankind. Thus, we must become politically engaged around a reexamination of the meanings of freedom and liberation under the Bush administration's policies. The alternative traditions discussed herein should assist us in that work.

Again, liberation theology and humanity consciousness are not the only alternative approaches to law that understand how critical it is to ascertain and respect the perspectives of Iraqis, and to demand practical engagement,

or praxis, aimed at true liberation. Unlike other progressive critical theories, however, these two perspectives advocate an unambiguous commitment to a moral struggle on behalf of the oppressed and insist on the imperative of such a struggle in both material and spiritual terms. Liberation theology and humanity consciousness share a relentless commitment to the whole being of oppressed people, a commitment to respectful engagement with troubled communities working toward that freedom, and an embrace of the spirituo-existential aspects of the human condition as being essential to the freedom agenda. Both approaches resonate with the black Christian tradition that brought Martin Luther King Jr. and his followers into engagement with the people's struggles.[86] History shows that these approaches have the potential to involve people in the struggle for change in ways that morally ambivalent rhetoric cannot. The inspiration of these messages of injustice against the universal love of humankind, and the method of direct engagement with the people most directly affected, should be brought to bear on the concrete liberation work to be done in Iraq as well.

B. The Need for a Broader Commitment to Human Rights

The brief summary above of Iraqi views on the postwar reconstruction underscores the centrality of several key elements that Iraqis see as indicia of freedom:

1. Personal physical security in their communities
2. Sovereignty over their affairs
3. Availability of basic services (sewage, clean water, health care)[87]

These basic necessities, in addition to others, are critical in order for Iraqis to feel a sense of well-being and freedom right now. Unfortunately, the recent survey data indicates that at present, they are largely deprived of these elements. Thus, to this extent, the Iraqi people are not free. Add to this the number of Iraqi civilians killed in the process of this essentially

unjustified war and the atrocities that continue to occur in places such as Abu Ghraib and Guantanamo Bay,[88] and we cannot but be convinced that our policies in Iraq lack a basic commitment to fundamental human rights. We cannot but be concerned that the most salient commitment appears to be to the purchase and the sale of Iraq in the service of the larger global capitalist agenda.[89]

As indicated above, liberation theology emphasizes the need for a critical analytical response to the suffering of others. As with critical legal theory generally, progressive economic critiques—including Marxist critiques—are often identified with the tradition.[90] Thus, a liberation-focused response to the U.S. policy in Iraq must seriously analyze the global economics of the war and its aftermath, and seek to intervene in ways that disrupt economically based oppression, subjugation, and exploitation at their roots.

Professor Cover noted the centrality of commitment to the process by which law is made and by which law is given legal and social meaning in real people's lives.[91] The preliminary data in this article suggests that our policy in Iraq lacks a commitment to basic human rights. The ready resort to war, the imperilment of the Iraqi people, the destruction of their country, the incidents at Abu Ghraib, and the torturous interrogation tactics employed in pursuit of the war on terror all point to the same conclusion.

This is simply an internationalization of our basic lack of commitment to human rights—and to the full and universal respect for the human being—here at home. Professor Charles Black states a similar view in his final, and perhaps most important, work.[92] Professor Black notes that "law is reasoning from commitment."[93] He presents a persuasive argument that the U.S. Constitution—as interpreted to date—provides inadequate support for, or commitment to, basic human rights.[94] Professor Black ties that failure to the law's development during a period of official commitment to white supremacy and economic exploitation, focusing on slavery as the culprit.[95] And while slavery is incredibly important in this, the law's commitment to white supremacy—in service of a racialized economic hegemony—plays

out through racist policies toward all peoples of color. Historically, these racist policies have included the genocidal policies toward Native Americans; the conquest of Mexican Americans; the colonial—or territorial—oppression of Puerto Ricans and Filipinos; the deep commitment to law, policies, and practices of exclusion toward Asian Americans; and so on.

Any careful consideration of American legal history—and especially, any consideration of the intersection of law and the variously racialized minority groups in America—confirms that a deep American tradition of cultural chauvinism and white supremacy in the service of an economic agenda helps explain our country's failure to embrace more fully universal principles of human rights that many other countries have found increasingly central in the post-World War II era.[96] It explains why the first response to the violence of the 9/11 coordinated suicide attack was more and more violence. The principles of universal respect for human rights and human dignity that have found their way into the normative universe and interpretive rationales of the constitutional discourses in countries such as Germany and Canada[97] have failed to have much sway here at home. The war-centric policies of our present administration are but one illustration of this.

C. Developing Liberation Jurisprudence

To address our human rights failures abroad effectively, we must begin at home. We need to surface the broad commitment to human dignity that underpins our constitutional promises, promises that date back to the post-Civil War Reconstruction Amendments and the pre-Constitutional commitments to human freedom expressed in the Declaration of Independence. These commitments to human freedom and development are echoed in the Preamble of the Constitution in the enduring call to a government formed by and for that ever-widening group embodied by the powerful phrase "We, the People." We must insist on a more salient

embrace of the principles of human dignity and guarantees of basic human rights in our Constitution.

Such a commitment to fundamental human rights would provide greater constitutional support for our efforts to push the multiracial, fully anti-subordinationist agenda that we might call either the "reconstruction agenda" (after the approach of Martin Luther King Jr., who talked about the ongoing need to reconstruct all of society in the wake of centuries of slavery and colonialism),[98] or, perhaps in some ways more inclusively, the "liberation agenda."

There is a great desire among progressive scholars and activists to talk more about how to take action to address the ways that law contributes to the conditions that continue to plague people around the block and around the globe, and to reexamine and redress how the law "hurts people and ruins children."[99] Liberation theology has long offered a religious model for doing that kind of work. Humanity consciousness offers a nonreligious approach grounded in the universal human spirit, one that is poised to go where liberation theology could not. But for the confusion that might flow from adopting a name which so closely resembles liberation theology, the jurisprudential aspect of the humanity consciousness approach might more aptly be named "liberation jurisprudence."

We live in an epic moment that challenges the future development of human consciousness. The war in Iraq and the broader war on terrorism present clarion calls to each of us to shore up our individual commitments to humankind and to universal human rights, and to practice unconditional, politically coordinated love. Doing this domestically is the first and critical step toward a greater commitment to human rights abroad. A liberation agenda, supported by humanity consciousness and a liberation jurisprudence, should be our guide. Let us work together on elaborating each.

V. CONCLUSION

In 1967, the year of my birth and the year before his death, Martin Luther King Jr. gave his final, and some have said most radical, presentation at the annual meeting of the Southern Christian Leadership Conference.[100] The theme of the conference, which King took as the theme of his address, was "Where Do We Go From Here?" After settling on that phrase as part of the subtitle for this paper, I came across King's address. The prophetic nature of his words and their relevance to the thesis of this work could not be more obvious.

King's first prescription in that address is the one at the center of the project described in this article: "First, we must massively assert our dignity and worth."[101] King went on to describe the connection between racism, economic exploitation, and war, all of which he viewed as assaults on the dignity of the human being.[102] Like Gandhi before him, he ultimately gave his life for the cause of uplifting all humankind, here and abroad, and for the cause of finding a better way through law.

The time has come for us to commit to the universal uplift of humankind and to listen to silenced narratives. It is time not only to invite new worlds, but to commit to doing the work necessary to make them real in this one. We must find creative and mundane ways to enlist the rhetoric and power of the law in the service of this quiet revolution. We must discover the courage to do this with an unmovable love. Let liberation theology or humanity consciousness be your guide. Let your heart, the moon, the look on the face of a child, or nothing at all be a guide. Only see, feel, judge, and *act* to bring about domestic and international law and policy reflective of a true jurisprudence of human liberation. Now.

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[1] Formerly Rhonda V. Magee Andrews, Professor of Law, University of San Francisco. Professor Magee received her B.A., M.A., and J.D. from the University of Virginia. A draft of this paper was presented at the Second National People of Color Legal Scholarship Conference, Liberation Theology Panel, at George Washington University School of Law on October 9, 2004. The panelists were generally asked to address the following:

> Since September 11, 2001, the United States has increased its military, humanitarian and diplomatic presence in the Muslim world, particularly in Africa and the Middle East. It has also bolstered security at home. Some might claim that the increased presence and security are the work of evil and some might claim that they are the work of good. This panel of ministers, academicians and theologians will respond to the question: 'How does liberation theology describe God's efforts to liberate the poor and oppressed through the recent engagement of the West (United States) with the Muslim world?'

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[2] As of March 16, 2005, 1519 members of the U.S. military had been killed in Iraq. Iraq Coalition Casualty Count, *at* http://icasualties.org/oif/ (last visited Mar. 17, 2005).

[3] GlobalSecurity.Org, U.S. Casualties in Iraq, *at* http://www.globalsecurity.org/military/ops/iraq_casualties.htm (last visited Mar. 17, 2005).

[4] *See* Les Roberts et al., *Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey*, LANCET, Oct. 29, 2004, at 1857, *available at* http://www.topsy.org/mortalityIraq.pdf (last visited Mar. 17, 2004) ("Making conservative assumptions, we think that about 100,000 excess deaths or more have happened since the 2003 invasion of Iraq."). The Lancet figure is admittedly an estimate, based on a "cluster sample survey." *Id.* As of March 17, 2005, sources tracking confirmed Iraqi civilian deaths put the number between 17,053 and 19,422. Iraq Body Count, *at* http://www.iraqbodycount.net/ (last visited Mar. 17, 2005). In April 2004, 600 civilians were killed in the city of Fallujah alone. John Sloboda & Hamit Dardagan, *No Longer Unknowable: Falluja's April Civilian Toll is 600*, Iraq Body Count (Oct. 26, 2004), *at* http://www.iraqbodycount.net/press/index.php#pr9 (last visited Mar. 17, 2004).

[5] The term "post-subordinationist" refers to the point of view that assumes, as its point of departure, a world in which all forms of subordinating ideologies and practices (racism, sexism, the antigay movement, etc.) have been widely identified, analyzed, and subjected to deconstructive critique. The assumption is not that these subordinating schemas have been or even may be eradicated, but that they are capable of being neutralized or effectively managed by thoughtfully engaged human beings. *See* Francisco Valdes, *Outsider Scholars, Legal Theory & Outcrit Perspectivity: Post-Subordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000) [hereinafter Valdes, *Outsider Scholars*] (describing "post-subordination vision" as "grounded in substantive security that conjures a time and place wherein people of color, women, sexual minorities, and other traditionally subordinated groups are no longer the targets of social distain, hate crime, and backlash democracy. It imagines a society wherein these traditionally marginalized populations are well represented in popular culture, Congress, and the corridors of the corporate world. It describes a nation of peaceably and multiply diverse playgrounds, schools, workplaces, neighborhoods and governments. It demands the restructuring of social, legal, and economic conditions to eradicate the systematic imposition of poverty, violence, and exploitation based on

racism, sexism, xenophobia, and similar ideologies of prejudice and repression."). *Id.* at 832.

[6] *See* Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race-Consciousness and Colorblindness in Post-Slavery America*, 54 ALA. L. REV. 483 (2003) [hereinafter Magee Andrews, *The Third Reconstruction*].

[7] Critical Legal Studies began in 1977, in Madison, Wisconsin, with a conference conceived of by Duncan Kennedy and Dave Trubek "to explore the possibility of an alliance between 'law and society' scholars and a younger group of more assertively leftist legal academics and soon-to-be academics." DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY 203–04 (2004). The essential period of this leftist, progressive movement is considered to have lasted about fifteen years. Today, it is largely considered passé. *See id.* at 202–221; *see also* Duncan Kennedy & Karl E. Klare, *A Bibliography of Critical Legal Studies*, 94 YALE L.J. 461 (1984); THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 641–61 (David Kairys ed., 3d ed. 1998).

[8] Critical Race Theory has been described "as a gasp of emanicipatory [sic] hope that law can serve liberation rather than domination." CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, at xii (Kimberlé Crenshaw et al. eds., 1995) [hereinafter KEY CRT WRITINGS]. It is a movement of scholarship and political action that originated in the legal academy in 1989 among African American, Latino, and Asian American law teachers, and has been described as being "unified by two common interests. The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and in particular, to examine the relationship between that social structure and professed ideals such as 'the rule of law' and 'equal protection.' The second is a desire not merely to understand the vexed bond between law and racial power, but to *change* it." *Id.* at xiii. (emphasis in original). *See also* CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); KENNEDY, *supra* note 7, at 219 (describing the origins of Critical Race Theory "at a meeting in Madison [Wisconsin] in 1989"). I find one of the most compelling insights of the early critical race work, stated most compellingly by CRT co-founder Professor Mari Matsuda, was that the perspectives of those "at the bottom" should be taken into close consideration in formulating jurisprudence and remedial law. *See* Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) ("This article, then, suggests a new epistemological source for critical scholars: the actual experience, history, culture, and intellectual tradition of people of color in America. Looking to the bottom for ideas about law will tap a valuable source previously overlooked by legal philosophers."). *Id.* at 325–326.

[9] *See* Francisco Valdes, Afterword, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudence–Race Crits, QueerCrits, and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) [hereinafter Valdes, Afterword] (summarizing LatCrit theory); Ediberto Roman, Afterword, *Latcrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 FLA. L. REV. 583 (2003).

> The LatCrit movement is an experiment of outsider scholarship that seeks to unmask the modalities of modernity, which has in turn led to the systematic

> institutional subordination of Latinas/os and other marginalized groups. Self-reflection of the Latina/o condition and examination of identity politics has been a hallmark of the undertaking from its inception. The movement's central aspirations are to develop coalitions of like-minded progressives, enhance theoretical discourse, and conceive of and engage in antisubordination praxis. . . . While, by its very name, LatCrit was intended to focus on the plight of Latinas/os without the limiting factor of constructed borders of the nation-state, the primary inquiry of the scholarly undertakings has . . . examined the effect of racism within the United States.

Id. at 584–85.

[10] CORNEL WEST, THE CORNEL WEST READER 297–98 (1999) (describing liberation theology as "push[ing] religious thinkers beyond their usual parochial concerns and challeng[ing] churches to become more enlightened participants in the great political and economic issues of our time."). *Id.* at 394. Indeed, it should be noted that one of the most famous proponents of liberation theology, Leonardo Boff, was twice officially silenced for one year by Pope John Paul II in retaliation against Boff's theological teachings. *See Cover Story: Theological Disputes–The List*, National Catholic Reporter, NCR Online (Feb. 25, 2005), *at* http://natcath.org/NCR_Online/archives2/2005a/022505/022505h.php (last visited Apr. 21, 2005). Boff left the Franciscan order and the priesthood in 1992. *Id. See also* Leonardo Boff, *John Paul II, The Great Restorer*, EL MUNDO DE INTERPRESS SERVICE (Apr. 4, 2005), *at* http://www.cta-usa.org/Leonardoboff.html (last visited Apr. 21, 2005) (arguing that Pope John Paul II had a "short and simplistic vision" of liberation theology "interpreted . . . through the logic of its detractors," and "convinced himself that Marxism [with liberation theology as its Trojan Horse] was the danger in Latin America, when the true danger has always been the savage and colonialist capitalism with its unpopular and reactionary elites.").

[11] *See* Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) ("We inhabit a nomos—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void."). *Id.* at 4.

[12] Compare this philosophical orientation with that of Cornel West, who describes his similarly inspired view as an example of what he calls prophetic pragmatism:

> I vowed to write a book on pragmatism that injected a sense of the tragic in this most indigenous of American philosophical traditions, and *The American Evasion of Philosophy* was the result. My own conception of prophetic pragmatism is what emerged when I dipped this tradition into the furnace of black suffering and resistance in America. Yet prophetic pragmatism is not my philosophy or particular vision of the world. Rather, it is a fecund discursive space in which I can put forward many voices and viewpoints. It is the philosophical space occupied by my Chekhovian Christian perspective.

WEST, *supra* note 10, at 141.

[13] *See* GLYN RICHARDS, THE PHILOSOPHY OF GANDHI (1991).

[14] *See* MARTIN LUTHER KING, JR., I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD (James M. Washington ed., 1992) [hereinafter KING'S WRITINGS].

[15] *See* Rhonda V. Magee, *The Master's Tools, From the Bottom Up: Responses to African-American Reparations in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993).
[16] *See id.*
[17] As discussed above, Critical Race Theory is the acknowledged progenitor of a number of critical traditions, including Latino Critical Theory. *See* Valdes, Afterword, *supra* note 9; KENNEDY, *supra* note 7.
[18] *See* Valdes, Afterword, *supra* note 9.
[19] *See* Valdes, *Outsider Scholars*, *supra* note 5, at 838–40.
[20] *See id*.
[21] For examples, see generally JUAN PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2000). Race scholars from Du Bois to King, from Fanon to Farley have observed this as well. *See* Gil Gott, *Critical Race Globalism?: Global Poltical Economy, and the Intersections of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000). *See also* W.E.B. Du Bois, *The Concept of Race*, *in* WRITINGS: DUSK OF DAWN 649 (1986).
[22] For an elaboration of the idea of human dignity as a pre-Constitutional commitment, see Rhonda V. Magee, *The Evolution of Human Dignity Under American Law* (work-in-progress, on file with author).
[23] Magee Andrews, *The Third Reconstruction*, *supra* note 6, at 544. This approach is resonant with the philosophy of race and religion of Cornel West, who has taught for many years that when we talk about race we are talking about "what it means to be human." *Id.* at 539.
[24] *See id.* at 489, 544.
[25] *See id.* at 489.
[26] *See generally* Rhonda V. Magee Andrews, *Racial Suffering as Human Suffering: An Existentially-Grounded Humanity Consciousness as a Guide to a Fourteenth Amendment Reborn*, 13 TEMP. POL. & CIV. RTS. L. REV. 899 (2004) [hereinafter Magee Andrews, *Racial Suffering*] (discussing implications of existentialism for a humanity consciousness approach).
[27] *See id.* at 913. *See also* Peter Gabel, *A Critique of Rights: The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX L. REV. 1563 (1984); PETER GABEL, THE BANK TELLER AND OTHER ESSAYS ON THE POLITICS OF MEANING (2000).
[28] For a discussion of the basic premises of liberation theology, see *infra* notes 36–58 and accompanying text.
[29] *See* Magee Andrews, *The Third Reconstruction*, *supra* note 6, at 533–36; Magee Andrews, *Racial Suffering*, *supra* note 26, at 894 n.15.
[30] *See*, *e.g.*, KEN WILBER, THE SPECTRUM OF CONSCIOUSNESS (2d ed. 1993); *see also* Magee Andrews, *Racial Suffering*, *supra* note 26, at 906.
[31] Cornel West often refers to the decline in nonmarket values and a corresponding rise in "the market mentality," and "the market ethos." *E.g.*, WEST, *supra* note 10, at 295. He describes nonmarket values as, for example, "commitment in relationships, solidarity, community, care, sacrifice, risk and struggle." *Id.*

[32] I often use the qualifiers postracial or post-subordinationist before the phrase human dignity, to underscore the reconstruction of the traditional notion "human dignity" embodied by this project. *See* Magee Andrews, *The Third Reconstruction*, *supra* note 6, at 487–89.
[33] *See id*.
[34] Magee Andrews, *Racial Suffering*, *supra* note 26, at 894.
[35] *See id.* at 919–23.
[36] *See*, *e.g.*, ARTHUR F. MCGOVERN, LIBERATION THEOLOGY AND ITS CRITICS: TOWARD AN ASSESSMENT, at x (1989) (discussing the emergence of liberation theology in the latter twentieth century as a generation of Catholic clergy and laity became aware of mass poverty and committed to radical change to address it); *see also* RUFUS BURROW, JR., JAMES H. CONE AND BLACK LIBERATION THEOLOGY (1994) (discussing emergence of Black Liberation Theology in the United States during the civil rights and black power movements).
[37] Indeed, a generation ago, Professor Robert E. Rodes Jr. sought to develop the notion of a "jurisprudence of liberation" based on the observed affinity between liberation theology and the principles of freedom so central to "the work and rhetoric of law." ROBERT E. RODES, JR., LAW AND LIBERATION 2 (1986) [hereinafter LAW AND LIBERATION]. He continued this work in subsequent scholarship. *See*, *e.g.*, Robert E. Rodes, Jr., *Social Justice and Liberation*, 71 NOTRE DAME L. REV. 619 (1996); ROBERT E. RODES, JR., PILGRIM LAW (1998) (applying liberation theology as a compliment to prevailing jurisprudence). This article compliments Professor Rodes's laudable work by suggesting humanity consciousness as a somewhat more secularly turned alternative to liberation theology as such, with quite similar ultimate ends.
[38] *See*, *e.g.*, ALFRED T. HENNELLY, LIBERATION THEOLOGY: THE GLOBAL PURSUIT OF JUSTICE 5 (1995) (providing the following general outline of what is meant by the theologies of liberation: "1) Latin American liberation theology; 2) the feminist theology of liberation; 3) the black theology of liberation in the United States; 4) Hispanic-American liberation theology; 5) African liberation theology; 6) Asian theologies of liberation; 7) liberation theology in the first world; 8) an ecotheology of liberation for the whole world; and 9) a liberation theology of the world religions."). *See also* REBECCA S. CHOPP, THE PRAXIS OF SUFFERING 4 (1986) (identifying Latin American liberation theology and German political theology as "two distinct voices within the paradigm of liberation theology").
[39] LEONARDO & CLODOVIS BOFF, SALVATION AND LIBERATION 25 (Robert R. Barr trans., Orbis Books 1984) (1979). The Boffs' characterization seems to have been derived from a consideration of Latin American Liberation Theology, but is equally applicable to all types. *See* HENNELLY, *supra* note 38, at 7 ("[T]he liberation theologians comprise one far-flung global brotherhood and sisterhood, with an unquenchable hunger and thirst after justice for all.").
[40] BOFF, *supra* note 39, at 38.
[41] *Id.* at 36 (focusing on Latin American liberation theology). *See also* HENNELLY, *supra* note 38, at 96 (summarizing the methodology of black liberation theology suggested by James Cone).
[42] *See id.* at 31.

[43] *See id.* at 28.
[44] WEST, *supra* note 10, at 398.
[45] *See* HENNELLY, *supra* note 38, at 90 (suggesting that women liberation theology may be equally strong).
[46] *Id.* (identifying Martin Luther King Jr. as the founder of black liberation theology), and BURROW, JR., *supra* note 36, at xiii (describing Cone as "the godfather of the development of black liberation theology in its systematic form.").
[47] *See* JAMES H. CONE, A BLACK THEOLOGY OF LIBERATION, at v–vi (Orbis Books 1990) (1970) ("[I]t is the task of the Christian theologian to do theology in the light of the concreteness of human oppression as expressed in color, and to interpret for the oppressed the meaning of God's liberation in their community."); JAMES H. CONE, GOD OF THE OPPRESSED 6–7 (rev. ed. 1997) (1975). *See also* BURROW, JR., *supra* note 36, at 26 ("In [Cone's *A Black Theology of Liberation*] he defines theology as 'a *rational study* of the being of God in the world in light of the existential situation of an oppressed community, relating the forces of liberation to the essence of the Gospel, which is Jesus Christ.' Theology is not Christian theology unless it emerges out of the community of the oppressed, thereby identifying itself with the oppressed and their condition.").
[48] *See*, *e.g.*, WEST, *supra* note 10, at 393–400. West laments that "*the high moment of liberation theology has passed*." *Id.* at 394 (emphasis in original).
[49] *See* BURROW, JR., *supra* note 36, at xiii; *see also* 2 BLACK THEOLOGY: A DOCUMENTARY HISTORY, 1980–1992, at 79–174 (James H. Cone & Gayraud S. Wilmore eds., 1993).
[50] *See* BURROW, JR., *supra* note 36, at xiii.
[51] *See* Jenny Strasburg, *At A Crossroads: Assuming Cecil Williams Can Let Go, What Will Become of Glide Memorial?*, S.F. CHRON., Oct. 17, 2004, *available at* http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/10/17/CMG2L8RUQS1.DTL (last visited Apr. 5, 2005).
[52] *See* Kenneth Miller, *A Church for the Twenty-First Century: Glide Memorial United Methodist Church, San Francisco*, LIFE MAG., Apr. 1997, at 52.
[53] Personal observation of author. *See also* Strasburg, *supra* note 51 (quoting a Glide member: "At Glide, whatever religion you belong to, you're included. That's crucial to me, because as a child, I wasn't included. . . . Racism, classism, you don't feel it here.").
[54] *See* Miller, *supra* note 52, at 42, and Strasburg, *supra* note 51.
[55] *See* Inner Eye Newsletter, *Janice Mirikitani and Reverend Cecil Williams to Speak at Commencement*, California Institute of Integral Studies, May 4, 2000, *at* http://www.ciis.edu/news/innereye/iemay4.html (last visited Apr. 6, 2005).
[56] Sermon notes taken by author, Glide Memorial Church, Spring 2004.
[57] *See* Miller, *supra* note 52, at 42, and Strasburg, *supra* note 51.
[58] *See* LAW AND LIBERATION, *supra* note 37, at 3.
[59] *See*, *e.g.*, W.E.B. Du Bois, *Revolution*, *in* WRITINGS: DUSK OF DAWN (1986) (discussing the failure of liberalism to "realize the fundamental change brought about by the world-wide organization of work and trade and commerce," and to link the struggle for racial justice with a fight against "the tyranny which now dominated industrial life" and his realization after founding and working on legal reform through the N.A.A.C.P.

that "in a world where economic dislocation had become so great as in ours, a mere appeal based on the old liberalism, a mere appeal . . . to justice and further effort at legal decision, was missing the essential need. . . . [S]o far as their race prejudice was built . . . on the basis of the income which they enjoyed and their anti-Negro bias consciously or unconsciously formulated in order to protect their wealth and power, in so far our whole program must be changed."). *Id.* at 765–66, 770; FRANTZ FANON, THE WRETCHED OF THE EARTH (Constance Farrington trans., 1963); PAULO FRIERE, PEDAGOGY OF THE OPPRESSED 26 (Myra Bergman Ramos trans., 2d ed. 1993) ("This, then, is the great humanistic and historical task of the oppressed: to liberate themselves and their oppressors as well."); THE C.L.R. JAMES READER 1 (Anna Grimshaw ed., 1992) (describing James's view of the "crisis" facing "modern humanity . . . as the need for the free and full development of the human personality within new, expanded conceptions of social life came up against enhanced powers of rule from above, embodied in centralized, bureaucratic structures which confined and fragmented human capacity at every level."). As another example, Cornel West has noted the centrality of the critique of capitalism and its excesses among Black intellectuals:

> Among our intellectuals, there has been, as we know, a long tradition of critiquing capitalism. In fact, most of our major intellectuals, from W.E.B. Du Bois to Amiri Baraka to C.L.R. James, have all been part of the socialist tradition. They have not in any way been highly influential in the mainstream of Black America, but they've been exemplary critics of American capitalist civilization. The problem is that any critic of capitalism in the United States is marginalized, and therefore it's very difficult for them to speak a language that is intelligible to large numbers of people. That is the major challenge.

BELL HOOKS & CORNEL WEST, BREAKING BREAD: INSURGENT BLACK INTELLECTUAL LIFE 44 (1991).

[60] *See* Cover, *supra* note 11, at 45–46.

[61] *Id.* at 45.

[62] *Id*. at 67.

[63] *See* KEY CRT WRITINGS, *supra* note 8, at xi (referring to the "pioneering works of the late, visionary legal scholar Robert Cover" as among "prophetic" precursors to Critical Race Theory.).

[64] The U.S.'s refusal to join the Kyoto treaty on global warming, the movement for an International Criminal Court, and diffidence at the World Conference Against Racism (discussed *infra*, section IV.A) are examples.

[65] Mark Steven Selby, *The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR): Another U.N. Sponsored Carnival?*, 2002, at 1, *available at* http://www.unac.org/en/link_learn/monitoring/wcarpdf.pdf (last visited Apr. 6, 2005) (describing the intent of organizers to "force the issue of the importance of tackling racism, xenophobia and related intolerance to the top of the international political agenda.").

[66] The United States officially objected to the characterization of Zionism in Israel as racist and genocidal, and were concerned, as well, about calls for reparations from African nations and African Americans, and the related issue of the designation of slavery as a crime against humanity. *See*, *e.g.*, *ACLU Criticizes U.S. Withdrawal from*

Anti-Racism Conference; Says America Has Responsibility to Speak Out in South Africa, American Civil Liberties Union (Sept. 4, 2001), *at* http://www.aclu.org/International/International.cfm?ID=9738&c=36 (last visited Apr. 6, 2005). Though the U.S. decided to send a delegation of State Department functionaries, even that group withdrew on September 3rd, declaring that

> they had been unable to reach compromise with Arab countries and Palestine. . . . Human Rights Watch maintains that any dialogue up to that moment ended abruptly: 'The administration warned NGOs [non-governmental organizations] and governments that the conference should not lead to any new programs to combat racism, any new legal standards, any additional money to fund anti-racism efforts, or any follow-up. It warned the conference not to call for reparations for slavery and the trans-Atlantic slave trade or adopt language specifically criticizing Israel.'

Selby, *supra* note 65, at 8.

[67] Author's own recollections as conference attendee.

[68] The Global Policy Forum, a non-profit, tax-exempt organization, with consultative status at the UN founded in 1993, summarizes the illegality of the Iraq war as follows:

> Shortly before the outbreak of hostilities, UN Secretary General stated that the use of force without Council endorsement would 'not be in conformity with the Charter' and many legal experts now describe the US-UK attack as an act of aggression, violating international law. Experts also point to illegalities in the US conduct of the war and violations of the Geneva Conventions by the US-UK of their responsibilities as an occupying power.

Global Policy Forum, International Law Aspects of the Iraq War and Occupation, *at* http://www.globalpolicy.org/security/issues/iraq/attack/lawindex.htm (last visited Apr. 15, 2005). The GPF further characterizes the U.S.'s broader policy of unilateralism, and its implications for international law as follows:

> The Bush administration has embarked on a strategy of hard line unilateralism, disregarding the UN and international law. The Bush doctrine of preemption defies the UN Charter by allowing the US to use illegal force against other states. Furthermore, Washington ignores, blocks, violates or even unsigns international treaties. The administration rejected the Kyoto protocol and the comprehensive test ban treaty on nuclear disarmament. It repealed the Anti Ballistic Missile treaty and blocked efforts to strengthen the biological weapons convention. The government continues to violate the Geneva Conventions by refusing the rights of the prisoners held at Guantanamo Bay in Cuba. In May 2002, the White House announced that it would unsign the Rome treaty establishing the International Criminal Court, stating that the Court would subject US nationals to a politically motivated international justice.

Global Policy Forum, US, UN, and International Law, *at* http://www.globalpolicy.org/empire/un/unindex.htm (last visited Apr. 15, 2005).

[69] *See*, *e.g.*, International Forum on Globalization, *Alternatives to Economic Globalization*, *in* GLOBAL BACKLASH: CITIZEN INITIATIVES FOR A JUST WORLD ECONOMY 43 (Robin Broad ed. 2002) [hereinafter BACKLASH] ("We advocate a shift

from governments serving corporations to governments serving people and communities, a process which is easier at the local level but vital at all levels of government."); Kofi Annan, *Address to WTO Ministerial Meeting*, *in* BACKLASH, *supra*, at 28 ("While economics is global, politics remain obstinately local. It is for this reason, I believe, that so many people, even in the industrialized world, feel vulnerable and helpless."); Anthony Giddens and Will Hutton, *Anthony Giddens and Will Hutton in Conversation*, *in* GLOBAL CAPITALISM 23 (Anthony Giddens & Will Hutton eds., 2000) ("[W]e should be working to build up a global civil society and a framework of law, and we should be thinking about possible forms of transnational democracy.").

[70] New York Times columnist Thomas Friedman has discussed feelings of many young Arabs amounting to a "poverty of dignity." Thomas Friedman, *The Democracy Thing*, N.Y. TIMES, Oct. 30, 2002, at A27. Quoting one young Arab journalist about the roots of 9/11:

> There is a vacuum. . . . You empty a person, you fill him with money, you fill him with material things, but that does not fulfill his aspirations as a human being. He has some objectives. He has feelings. He is not fulfilled. And all of a sudden someone comes and tells him that the cause of all that is this global power America, which has insulated us, which continues to look at us as a bunch of nothings, who are basically eating and sleeping and going after women. And all of a sudden he directs his anger at what he thinks is the reason and why he doesn't have all he wants—his sense of being a true human able to express himself and having influence on his own society and being respected locally and internationally. This lack of respect as a dignified person has resulted in a bin Laden phenomenon.

Id.

[71] *See* Noam Chomsky, *Anti-Semitism, Zionism, and The Palestinians*, VARIANT, Winter 2002, at 12–13, *available at* http://www.variant.randomstate.org/pdfs/issue16/Chomsky.pdf (last visited Apr. 6, 2005).

> [In] 1932, the distinguished British statesman Lloyd George wrote in his diary: 'We have to reserve the right to bomb niggers . . . .' He was referring to the fact Britain had just succeeded in undermining an international disarmament conference which was attempting to put restrictions on the use of air power to attack civilians . . . . 'We have to reserve the right to bomb niggers.' That's a fundamental principle of European civilisation, and basic principles like that have a long life . . . carried out oppressive, brutal often murderous policies—mainly the usual imperial techniques: humiliation, degradation, making sure that what are called the 'Arabushi' (Hebrew slang for 'niggers') don't raise their heads and, if they do, they get beaten down—meanwhile taking the land and resources, with US aid. It's a US-Israeli operation which continues until today. All of that was fine. It's only when the Arabushi did raise their heads and the niggers started bombing us, that it becomes a horrifying atrocity.

Id.

[72] *See*, *e.g.*, Nikhil Aziz, *Rac[e]ing Abroad: Exploring Racism in/and U.S. Foreign Policy*, PUB. EYE, Spring 2003, at 1, *aviailable at*

http://www.publiceye.org/magazine/v17n1/v17n1/css/v17n1_1.htm (last visited Apr. 6, 2005) (arguing that the Iraqi war is "essentially about saving the 'American way of life,'" i.e. the American-led free market system, even though it has long depended upon "[taking] the lives of people of color in the Third World."). *Id.* Palestinian writer Ghada Karmi argues that the war against Iraq exemplifies racism toward Arabs generally:

> [T]here is an anti-Arab theme running through the debate over Iraq. A deep and unconscious racism imbues every aspect of western conduct towards Iraq—and by extension the Arabs in general. . . . [I]t is difficult for Arabs to see it as anything other than a perpetuation of western colonialism in their region. This had at its basis a racist disregard for the wishes of native peoples, who were there to be exploited or manipulated at will. Their lives were considered worthless and their cultures inferior.

Ghada Karmi, *An Attack On Us All*, GUARDIAN (UK), Dec. 28, 2002, *available at* http://www.guardian.co.uk/comment/story/0,,865826,00.html (last visited Apr. 6, 2005).

[73] Progress or Peril?: Measuring Iraq's Reconstruction, The CSIS Post-Conflict Reconstruction Project, Sept. 2004, at iii, *at* http://www.csis.org/isp/pcr/0409_progressperil.pdf (last visited Apr. 6, 2005).

[74] *Id*. at ii. The report concludes, incidentally, that Iraqis have not yet reached a "'tipping point,' modestly defined, from the perspective of the Iraqi citizen, in terms of achievable goals . . . . The idea being that once those goals are reached, Iraq is likely headed in a clear direction toward self-sustainability and further progress." *Id.* at iii.

[75] *Id.*

[76] *Id.* at vii.

[77] *Id.*

[78] *Id.* at viii.

[79] *Id.*

[80] *Id*.

[81] *Id.* at x.

[82] *Id.*

[83] *Id*. at x–xi.

[84] *Id*. at xi. The referenced elections took place as scheduled on January 30, 2005. *See* John F. Burns, *For a Battered Populace, A Day of Civic Passion*, N. Y. TIMES, Jan. 31, 2005, at A1. As of this writing, 150,000 U.S. troops remain in Iraq. *See* Dexter Filkins, *Power Check: Verdict is Split*, N. Y. TIMES, Feb. 14, 2005, at A1.

[85] Anthony Shadid, *A Sealed, Silent City Awaits Voting Day With Hope and Fear; Mood in Baghdad Splits Along Religious Lines*, WASH. POST, Jan. 30, 2005, at A16.

[86] *See*, *e.g.*, *Letter from a Birmingham Jail*, *in* KING'S WRITINGS, *supra* note 16, at 83.

[87] *See supra* section III.A.i–ii.

[88] *See*, *e.g.*, Kate Zernike, *High Ranking Officers May Face Prosecution in Iraqi Prisoner Abuse, Military Officials Say*, N.Y. TIMES, Jan. 17, 2005, at A8.

[89] *See* Naomi Klein, *Bomb Before You Buy: The Economics of War*, 2 SEATTLE J. SOC. JUST. 331 (2004).

[90] *See* KENNEDY, *supra* note 7, at 203 (discussing the study of Marx by left legal students and scholars who would later form the Critical Legal Studies movement); RODES, JR., *supra* note 37, at 3 (discussing the importance of the "empirical fact" of

class struggle to a liberation theology and a jurisprudence of liberation, whether analyzed in a "Marxist" fashion, or not).

[91] *See supra* notes 58–60 and accompanying text.

[92] CHARLES BLACK, A NEW BIRTH OF FREEDOM: HUMAN RIGHTS, NAMED AND UNNAMED (1997).

[93] *Id.* at 5.

[94] *Id.* at 3.

[95] *Id.* at 141–52 (arguing that the basic commitments that might have been relied upon in the development of a stronger Constitutional law of human rights—the Declaration of Independence, the Ninth Amendment and the Privileges and Immunities Clause of the Fourteenth Amendment—have been left "unnourished" for reasons Black strongly feels had to do with slavery).

[96] *See generally* PEREA ET AL., *supra* note 21 (excerpting legal opinions and scholarship examining the intersection between race and law from the perspective of the dominant racialized subgroups in America). *See also* Dierk Ullrich, *Concurring Visions: Human Dignity in the Canadian Charter of Rights and Freedoms and the Basic Law of the Federal Republic of Germany*, 3 GLOBAL JURIST FRONTIERS 1 (2003), *available at* http://www.bepress.com/gj/frontiers/vol3/iss1/art1/ (last visited Apr. 8, 2005) ("One of the principles underlying the Canadian Charter of Rights and Freedoms and the Basic Law of the Federal Republic of Germany , if not the most fundamental one, is the concept of human dignity, shared as a common value by most western democracies."). *Id.* A full exploration of the reasons for this lack of respect for human being under U.S. law, despite our glowing rhetoric and mythology to the contrary, is beyond the scope of this essay, but will be explored in my subsequent work, *The Evolution of Human Dignity Under the Constitution/As Constitutional Principle* (work-in-progress, on file with author). However, it should be plain that a prior commitment to "free-market" capitalism with little restraints is a significant source of the problem.

[97] *See* Ullrich, *supra* note 96, at 1.

[98] *See Where Do We Go From Here?*, *in* KING'S WRITINGS, *supra* note 14, at 176–77.

> I want to say to you as I move to my conclusion, as we talk about "Where do we go from here," that we honestly face the fact that the movement must address itself to the question of restructuring the whole of American society. There are forty million poor people here. And one day we must ask the question, "Why are there forty million poor people in America?" And when you begin to ask that question, you are raising questions about the economic system, about a broader distribution of wealth. When you ask that question, you begin to question the capitalistic economy. And I'm simply saying that more and more, we've got to begin to ask questions about the whole society. We are called upon to help the discouraged beggars in life's marketplace. But one day we must come to see that an edifice which produces beggars needs restructuring . . . . [W]hen I say question the whole society, it means ultimately coming to see that the problem of racism, the problem of economic exploitation, and the problem of war are all tied together. These are triple evils that are interrelated.

Id.

[99] Author's personal notes and observations of Professor Mitchell F. Crusto, participant and audience member, at the Second National People Of Color Legal Scholarship Conference, Panel Presentation, Critical Race Theory at the Crossroads, Washington, D.C., Oct. 7–9, 2004.
[100] *See Where Do We Go From Here?*, *in* KING'S WRITINGS, *supra* note 14, at 170.
[101] *Id.*
[102] *See id.*