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ABSTRACT

In philosophy, essentialism involves the claim that everything that exists has a fundamental character or core set of features that makes it what it is. Although this idea developed out of Platonic notions of ideal forms, it has spread beyond philosophy into the social sciences and hard scientific disciplines like mathematics and biology. Since the advent of postmodernism, discussions around essentialism have become controversial. Adherents of postmodern theory argue that social categories, such as gender, race, and sexuality are socially constructed and that essentialist notions of identity, which suggest that identity is static, natural, and unchanging, are theoretically wrong. This postmodern perspective has engendered a significant and often contentious debate on the value of essentialist thought in contemporary identity movements focused on gender, sexuality, and race.

In the context of these debates, essentialism has taken on a pejorative character and a negative moral connotation, especially among progressives and left-leaning social activists. The consequences of this moral condemnation are far-reaching. It makes it difficult for identity groups to organize around any social category deemed to be essentialist. This morally-grounded prohibition is especially problematic for Black nationalists and African-centered activists.

In this Article, I examine the anti-essentialism critique that has developed in Critical Race and LatCrit legal theory. I argue that the anti-

essentialism critique offered by critical theorists is misguided insofar as it claims that the assertion of a conscious racial identity is morally wrong. In reaching this conclusion, I first point out some contradictions and failings in the reasoning underlying the critique. Next, I detail some of the difficulties that adherence to anti-essentialism creates for Black communities and activists. Finally, I link normative approaches to essentialism to culture and worldview. I argue that anti-essentialism is Eurocentric and its claim to a universal moral prohibition against race-consciousness is false.

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"In other words, to say that I am an African, that I can participate in a *society* as an African, I don't have to become – I don't have to adopt European values, European esthetics, European ways of doing things in order to live in the world."

—August Wilson[1]

"BaKongo think of every human being as a vessel for an empowering soul or spirit . . . *Minkisi* are constituted in the same way, although the containers are not human bodies but figurines, clay pots,

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1. Interview by Bill Moyers with August Wilson, Pulitzer Prize-Winning Playwright, in Minneapolis, Minn. (Oct. 20, 1988), http://billmoyers.com/content/august-wilson/ [https://perma.unl.edu/JJ8L-9T5W].

gourds, or bundles, among others. The empowering spirits of *minkisi* come from the land of the dead . . . ."

<div align="right">—Wyatt MacGaffey[2]</div>

"Eventually, the fetish came to stand as a category of thought, belief and practice against which the West understood itself. At a time when the Western Enlightenment proclaimed the necessity of reason and rationality, the fetish stood as an example of the horrors of superstition and bestial irrationality, 'the very image of the truth of unenlightenment.' The fetish was all the West was not."

<div align="right">—Jason R. Young[3]</div>

I.   INTRODUCTION

Generally speaking, "essentialism" is the idea that all things have a fundamental character—an "essence"—that is permanent and unalterable.[4] Applying essentialist thought to groups results in the belief that group members share essential qualities that confer group membership.[5] They may also possess unessential or accidental qualities that are not needed to affirm group membership, but do not preclude membership either.[6] For example, as an African-American I could assert that my phenotypic appearance is an essential part of my Blackness,[7] but the fact that I am a lawyer is not.

When it comes to social categories, such as gender, race, sexuality, or identity, essentialism is highly controversial.[8] Adherents of

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2. WYATT MACGAFFEY, KONGO POLITICAL CULTURE: THE CONCEPTUAL CHALLENGE OF THE PARTICULAR 78–79 (2000).

3. JASON R. YOUNG, RITUALS OF RESISTANCE: AFRICAN ATLANTIC RELIGION IN KONGO AND THE LOW COUNTRY SOUTH IN THE ERA OF SLAVERY 105 (2007).

4. *See* Andrew Sayer, *Essentialism, Social Constructionism and Beyond*, 45 SOC. REV. 453, 456 (1997).

5. *Id.* at 457.

6. *Id.* at 458–59.

7. A note on terminology: I use "Black" and "African-American" interchangeably throughout this Article to refer to persons residing in the United States who are of African descent. "Black" denotes racial, ethnic, and cultural identity rather than mere physical appearance and is therefore capitalized. *See* Kenneth B. Nunn*, Rights Held Hostage: Race, Ideology and the Peremptory Challenge*, 28 HARV. C.R.-C.L. L. REV. 63, 64 n.7 (1993) [hereinafter Nunn, *Rights Held Hostage: Race, Ideology and the Peremptory Challenge*]. Moreover, I use the word "African" to refer to all persons of African descent, including members of the African diaspora, regardless of where they may reside. *See* Kenneth B. Nunn, *The Black Nationalist Cure to Disproportionate Minority Contact*, *in* JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 135, 138 (Nancy J. Dowd ed., 2011).

8. *See* Sayer, *supra* note 4, at 454 (arguing that "essentialism is . . . a philosophical concept . . . whose definition and critique quickly gets us into arguments as old as philosophy itself").

postmodern theory argue that social categories are socially constructed and that essentialist notions of identity, which suggest that identity is static, natural, and unchanging, are theoretically wrong and suggestive of biological determinism.[9]

Consequently, "essentialism" is a bad thing. It is an epithet, a pejorative and derogatory adjective. This is especially true in newer versions of critical theory,[10] postmodernism itself,[11] and among social groups that identify themselves as politically "progressive."[12] In these circles, essentialist thinking is decidedly looked down upon and an indication that the proponent of the idea is in need of correction.[13] As one writer summarizes it, essentialism is "a term of abuse which silences or short-circuits arguments, being irredeemably tainted by association with racism and sexism."[14]

As a Black nationalist and an African-centered scholar,[15] I am particularly interested in the essentialism debate. Black nationalism is a broad and diffuse ideology that centers on the importance of creating

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9. *See infra* note 53 and accompanying text.

10. By "newer versions of critical theory," I mean postmodern critical theory and other takes on critical theory developed after the Frankfurt School. *See* Jean Stefancic & Richard Delgado, *Outsider Jurisprudence and the Electronic Revolution: Will Technology Help or Hinder the Cause of Law Reform?*, 52 OHIO ST. L.J. 847 (1991) (using the term "outsider jurisprudence" to describe jurisprudence derived from critical theory).

11. *See* Sayer, *supra* note 4, at 454 (describing post-structuralist forms of anti-essentialism).

12. The term "progressive" is not well defined, but generally it is applied to left-leaning political groups. *See* Steven G. Gey, *Why Rubbish Matters: The Neoconservative Underpinnings of Social Constructionist Theory*, 83 MINN. L. REV. 1707, 1723 (1999) ("A 'progressive' political or legal theory therefore seeks to broaden access to political power for traditionally excluded individuals . . . ."); Alex Gourevitch, *The Contradictions of Progressive Constitutionalism*, 72 OHIO ST. L.J. 1159, 1162 (2011) (describing "progressive" as a "familiar set of left-liberal policies" including affirmative action, gay rights, and gun control).

13. *See* DIANA FUSS, ESSENTIALLY SPEAKING: FEMINISM, NATURE AND DIFFERENCE xi (1989) (describing essentialism as "an expression of disapprobation and disparagement" that is "predictably summoned as a term of infallible critique"); Sayer, *supra* note 4, at 453 (describing view of essentialism as "overwhelmingly derogatory").

14. Sayer, *supra* note 4, at 453.

15. African-centered scholarship is scholarship grounded in African cultural realities that challenges "the presently fashioned disciplines of history, psychology, sociology, political science, linguistics, archeology, anthropology, and philosophy as parochial Europe-centered discourses inundated with a presumption of universality that none of them warrant or demonstrate." ERROL ANTHONY HENDERSON, AFROCENTRISM AND WORLD POLITICS: TOWARDS A NEW PARADIGM xi (1995); *see generally* Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, 15 LAW & INEQ. J. 323, 328–38, 328–30 nn.18–24 (1997) (discussing key African-centered scholars and their ideas).

and maintaining Black political, economic, and cultural unity.[16] For the Black nationalist project to be viable, it is necessary for African-descendant peoples to organize and act collectively.[17] And it is important for African-descendant peoples to defend this collective association politically, ethically, and morally. In this regard, the position that Black nationalists occupy vis-à-vis essentialism is similar in some respects to that occupied by feminists who seek to organize themselves as women.[18] Consequently, there is a rich literature about essentialism in feminist circles, as well as a contentious debate about its applicability, that can be instructive for African-centered scholars.[19]

Debates over essentialism have been a part of legal analysis since the foundation of the critical legal studies movement in the late 1970s and have only intensified since then.[20] The origin of Critical Race Theory (CRT) can be traced to differences over race essentialism or "racialism" within the critical legal studies movement[21] and staking out a non-essentialist position vis-à-vis race has been an important goal for both critical race scholars[22] and scholars in the related area of Latina/Latino critical studies (LatCrit).[23] Virtually all of this radical legal scholarship takes a negative view of race essentialism and thus

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16. *See* Gary Peller, *Race Consciousness*, 1990 Duke L.J. 758, 783–86 (describing various Black nationalist movements).

17. *See infra* Part III.

18. *See, e.g.*, Susan Bordo, *Feminism, Postmodernism and Gender Skepticism*, *in* Feminism/Postmodernism 133, 135 (Linda J. Nicholson ed., 1990).

19. *See, e.g.*, Seyla Benhabib, *Epistemologies of Postmodernism: A Rejoinder to Jean-François Lyotard*, *in* Feminism/Postmodernism, *supra* note 18, at 107; Fuss, *supra* note 13; Janet Ransom, *Feminism, Difference and Discourse: The Limits of Discursive Analysis for Feminism*, *in* Up Against Foucault: Explorations of Some Tensions Between Foucault and Feminism 123 (Caroline Ramazanoğlu ed., 1993); Kate Soper, *Productive Contradictions*, *in* Up Against Foucault: Explorations of Some Tensions Between Foucault and Feminism *supra*, at 29; Christine Di Stefano, *Dilemmas of Difference*, *in* Feminism/Postmodernism, *supra* note 18, at 63.

20. *See* Sharyn L. Roach Anleu, Law and Social Change 64 (2000); James Boyle, Critical Legal Studies xiv (1994); John Henry Schlegel, *Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies*, 36 Stan. L. Rev. 391 (1984); Mark V. Tushnet, *Critical Legal Studies: A Political History*, 100 Yale L.J. 1515, 1516 (1991); Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 Harv. L. Rev. 561, 564 (1983).

21. *See* Kimberle Crenshaw et al., Critical Race Theory: The Key Writings That Formed the Movement xxiii–xxvi (Kimberle Crenshaw et al. eds., 1995) [hereinafter Crenshaw et al., Key Writings] (describing ideological differences between CLS and race crits that emerged during 1986 and 1987 Critical Legal Studies Conferences); *see also* Kimberle Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 Conn. L. Rev. 1253, 1294 (2011) (describing CLS "critique of some of the work as essentialist, and that the emergence of narrative in the growing canon were flights of racial fantasy").

22. *See infra* notes 58–62 and accompanying text.

23. *See infra* notes 63–67 and accompanying text.

disfavors efforts to organize African-Americans along the lines of race or analyze their condition using racial categories.[24]

Within this condemnation of essentialism is a normative claim. The anti-essentialist argument is not simply an objection that essentialism does not comport with postmodern theory. Anti-essentialists also contend that essentialism infringes a prescriptive code of conduct that makes essentialism immoral.[25] The moral claim raised here assumes that to conceive of a person or group of persons in essentialist terms is hurtful. It is hurtful because to make an essentialist claim about a person is to deprive the person of agency in selecting the aspects of their identity that are important to them and that they desire to perform or foreground at any given moment.[26]

Under this reasoning, to assert that a thing, individual, or collective has an essential characteristic is wrong both factually (there are no essential qualities) and ethically. If we are talking, then, about the conscious choice to express racial identity, to organize politically around this identity, and to use this identity as an intellectual and ideological foundation for interpreting the world—if this is "essentialist," it is morally wrong. Anti-essentialism, then, presents a stark barrier to African-centered thought. As I explain in this Article, African-centeredness celebrates the conscious choice of racial identity and uses African identity as a wellspring for political organizing and ideological theorizing.[27]

Essentialism concerns are often offered as a reason why Africans should not organize collectively or why they should be cautious doing

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24. *See infra* notes 90–93 and accompanying text.

25. This moral claim is implicit. Although anti-essentialism is deployed in ways that show the disfavored status of essentialist reasoning, see *supra* notes 8–14 and accompanying text, the normative basis for this practice is rarely discussed. *See* Jared Sacks*, Against Essentialism? Going Deeper* . . . , COLUM. L. SCH.: NIETZSCHE 13/13 SEMINAR (Apr. 12, 2017), http://blogs.law.columbia.edu/nietzsche1313/jared-sacks-against-essentialism-going-deeper [https://perma.unl.edu/SP4T-K6NJ] (arguing that "[l]ike racism, the term essentialism is imbued with a pejorative connotation" but that "[t]his normative judgement is rarely interrogated: to call one's thinking essentialist tends to be seen as nothing more than an insult"). For my part, I have been unable to find any scholarship focused on the normative aspects of the anti-essentialist argument.

26. *See* Audre Lorde, *Age, Race, Class, and Sex: Women Redefining Difference*, *in* SISTER OUTSIDER 114, 120 (1984) ("As a Black lesbian feminist . . . I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of self."); *see also* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588–89 (1990) ("[I]n an essentialist world, black women's experience will always be forcibly fragmented before being subjected to analysis, as those who are 'only interested in race' and those who are 'only interested in gender' take their separate slices . . . .").

27. *See infra* section III.C.

so.[28] Black nationalistic political arguments are seen as particularly problematic in critical legal scholarship, even within the confines of CRT.[29] This is true because, to anti-essentialists, Black nationalist arguments reinforce nineteenth century racial categorizations in an invidious way.[30] Moreover, Black nationalism establishes a definition of Blackness that can be policed at its boundaries, enforcing a kind of conformity that many postmodernists find unattractive.[31] Finally, the idea of Black nationalism, or political organization along the lines of race, runs counter to the postmodern idea of an identity that is shifting and contingent.[32]

This normative position is problematic for activists who are interested in organizing African and African-descendant communities. If asserting a racial identity is immoral, then the only form of political involvement and organizing available to Africans is integration into collectives that are multiracial and therefore not essentialist. The anti-essentialist position, like post-racialism,[33] suggests that there are no common problems and issues that Black people face as a community and need to address collectively and independently.[34] It suggests, as a matter of ethics, that the slogan "All Lives Matter" represents a better moral position than the slogan "Black Lives Matter."[35]

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28. *See infra* notes 90–93 and accompanying text.

29. *See infra* notes 90–93 and accompanying text.

30. *See* Neil Gotanda, *A Critique of "Our Constitution in Color-Blind"*, 44 STAN. L. REV. 1, 36 (1991) (showing relationship of essentialist concepts of race and nineteenth century ideas of racial hierarchy and "pure racial types"); Peller, *supra* note 16, at 790 (discussing similarities between Black nationalism and white supremacy); E. Frances White, *Africa on My Mind: Gender, Counterdiscourse, and African American Nationalism*, *in* WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 504, 512 (Beverley Guy-Sheftall ed., 1995) (critiquing Black nationalist thought as replicating errors of nineteenth century racists).

31. *See* Gary Peller, *Notes Toward a Postmodern Nationalism*, 1992 U. ILL. L. REV. 1095, 1099 (describing Black nationalists of the 1960s–70s as "highly authoritarian in their emphasis on 'authenticity'").

32. *See* Harris, *supra* note 26, at 584 (endorsing postmodern view of self as composed of multiple identities that are never fixed); Gary Peller, *History, Identity, and Alienation*, 43 CONN. L. REV. 1479, 1500 (2011) (discussing anti-essentialist view that racial categories lack fixed, stable meaning and are historically-contingent).

33. Sumi Cho defines "post-racialism" as "a twenty-first-century ideology that reflects a belief that due to the significant racial progress that has been made, the state need not engage in race-based decision-making or adopt race-based remedies, and that civil society should eschew race as a central organizing principle of social action." Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1594 (2009).

34. *See id.* at 1593 ("[P]ost-racialism denigrates collective Black political organization.").

35. In the months following the death of Florida youth Trayvon Martin, "Black Lives Matter" became a Twitter hashtag, political slogan, and social movement. J. Clara Chan, *What Is 'All Lives Matter'? A Short Explainer*, WRAP (July 13, 2016), http://www.thewrap.com/what-is-all-lives-matter-a-short-explainer/ [https://per

A moral claim, however, is one that is based upon values and not facts.[36] Indeed, a moral claim cannot be evaluated outside of a system of values or axiology.[37] It is the values that underlie postmodernism and critical theory that lead to the moral assessment that essentialism, including race essentialism, is wrong.[38] But the values of anti-essentialism are not universal. The style of anti-essentialism that concerns us here, and that I critique, derives from deconstructionism, critical theory, and postmodernism. While these philosophies arose as critiques of positivism and Enlightenment thinking generally, they are still part of a continuum of Eurocentric thinking and thus embrace the epistemology, ontology, and axiology of the West.[39]

This genealogy is important because it explains why anti-essentialism is so particularist, with a narrow focus on individuality over collectivity. It also explains why the postmodern view of the self, in which anti-essentialist values are grounded, is so fragmented and alienated.[40] And it explains why, in the critical race literature, anti-essentialism is deployed as a barrier to Black political organizing but not to prevent the organizing of other oppressed groups.[41]

When centered in different values—values grounded in the African tradition—not only does the anti-essentialist moral claim lose its force, but the logic of the anti-essentialist position evaporates as well.[42] African values are not Western values. African values are communal values wherein the self is imagined as part of an extended network of interconnected beings.[43] This interconnectedness leads to different ethical concerns than articulated in postmodern and critical

ma.unl.edu/K822-B7SN]. Later, the phrase was countered by the catchphrase "All Lives Matter," which was ostensibly offered as a more universal slogan that did not focus solely on the lives of Blacks. *Id.* However, in the social context where "All Lives Matter" arose as a rejoinder to "Black Lives Matter," it operated as racial backlash and its purported universalism left the special claim of the importance of Black lives silent. *See* Tyler Huckabee, *The Problem with Saying "All Lives Matter,"* RELEVANT (July 6, 2016), http://www.relevantmagazine.com/current/nation/problem-saying-all-lives-matter [https://perma.unl.edu/K6N3-9CQN].

36. Aaron Rappaport, *The Logic of Legal Theory: Reflections on the Purpose and Methodology of Jurisprudence*, 73 MISS. L.J. 559, 572 (2004) (providing that "[n]ormative statements are claims about how we are obligated to act" and should be distinguished from empirical statements).

37. *Id.*

38. *See infra* section IV.A.

39. *See infra* notes 207–309 and accompanying text.

40. *See* john a. powell, *The Multiple Self: Exploring Between and Beyond Modernity and Postmodernity*, 81 MINN. L. REV. 1481, 1483–84 (1996) (noting that many feminists and postmodernists have asserted that "the self is by its very nature fragmented: an illusory notion constructed as static and unitary, but in reality completely fluid").

41. *See infra* notes 66–68 and accompanying text.

42. *See infra* notes 217–241 and accompanying text.

43. *See infra* notes 231–240 and accompanying text.

theories.[44] Limitations on the agency or free will of the self are not remarkable in African-centered contexts because the self is already constrained by its communal commitments.[45] Consequently, normative arguments against essentialism are simply not germane.

This is not to say that there are not important political questions raised by anti-essentialists. There are indeed. At the very least, these include the questions of how to determine commonality and difference, as well as the problem of asserting a false universalism. At some point, a choice must be made about how a group should be defined and who should be included. But it must be understood that these problems are political in nature and must be resolved on the political battlefield through the process of articulation and struggle.[46] They cannot be resolved by appeal to abstract theories. To attempt to do so simply evades the problem.

In the way anti-essentialism has been deployed within legal scholarship, there is a moral prohibition against Black nationalist political organizing. Because Black nationalism has been defined as essentialist, organizing on that basis is declared unethical and problematic from the outset.[47] The real pressing questions regarding the political definition and future of Black people thus are never confronted. How can one theorize about Black people if the effort to do so is shut down at the start as ethically wrong?

In this Article, I conclude that a morally-grounded critique of essentialism is misplaced. I do not believe that there is anything about essentialism *qua* essentialism that makes it ethically suspect.[48] In particular, I do not think that the effort to block Black nationalist identity formations, or to manage and to control them so that they are only provisionally essentialist,[49] can be justified. In Part I, I examine the anti-essentialism critique as it has been deployed in critical race and LatCrit scholarship. In Part II, I "critique the critique" and point out how it is both theoretically inconsistent and reductionist. In Part III, I specifically focus on the impact of the anti-essentialist position

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44. *See infra* notes 231–240 and accompanying text.

45. *See infra* notes 231–240 and accompanying text.

46. *See* Stuart Hall, *The Rediscovery of "Ideology": The Return of the Repressed in Media Studies*, *in* CULTURE, SOCIETY AND THE MEDIA 70 (Michael Gurevitch et al. eds., 1982) (describing a semiotic process of meaning making where competing groups struggle to assert their interpretations of reality); *see also* Stuart Hall, *Notes on Deconstructing "The Popular"*, *in* PEOPLE'S HISTORY AND SOCIALIST THEORY 227, 232–33 (Raphael Samuel ed., 1981) (discussing how meaning results from "the dialectic of cultural struggle").

47. *See* Peller, *supra* note 16 (discussing disfavored and essentialist aspects of Black nationalist movements).

48. In this respect, I agree with Diana Fuss's claim that "essentialism is neither good nor bad, progressive or reactionary, beneficial or dangerous." FUSS, *supra* note 13. What matters about essentialism is "[w]here, how and why is it invoked[.]" *Id.*

49. *See infra* note 94 and accompanying text.

on the African community. I argue that it impedes African political organization and leaves African communities vulnerable to oppression. In Part IV, I look at the Eurocentric values that underlie anti-essentialism and contrast those with African-centered values. I conclude that anti-essentialism does not represent a universal ethical prohibition against collective Black organizing and that as a theory it is not relevant to African-centered thought.

II.   THE ANTI-ESSENTIALISM CRITIQUE IN CRITICAL RACE AND LATCRIT SCHOLARSHIP

Essentialism has a particularly bad reputation when it comes to racial analyses because it is associated with openly racist ideology. The founding ideologues of European scientific racism, men such as Blumenbach[50] and De Gobineau,[51] were racial essentialists.[52] They argued that the differences between the races were fundamental and unchanging. In their view, there was a natural hierarchy of the races, with the white race at the top and Africans at the bottom. This point of view became popularized and was widely held in the West for most of the nineteenth and twentieth centuries.[53]

In white supremacist thought, Africans, for instance, were supposed to be naturally inferior to whites. Carolus Linnaeus, the father of taxonomy, described Blacks thusly in his *Systema Natura*, "Africanus: black, phlegmatic, relaxed; hair black, frizzled; skin silky; nose flat; lips tumid; women without shame, they lactate profusely; crafty, indolent, negligent; anoints himself with grease; governed by caprice."[54] Notice how Linnaeus confuses traits of character and behavior with physiological traits, embracing what we now call biological determinism.[55]

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50. Johann Blumenbach was perhaps the most important of the race cataloguers and his influence extended well into the twentieth century. Bruce Baum, The Rise and Fall of the Caucasian Race: A Political History of Racial Identity 95, 101, 177, 187 (2006). Blumenbach divided humanity into five races: *Mongolian*, *American*, *Caucasian*, *Malay*, and *Ethiopian*. *Id.* at 76.

51. *Id.* at 7. De Gobineau was the author of the racist tract, *The Inequality of the Human Races. Id.* at 128.

52. Francisco Bethencourt, Racisms: From the Crusades to the Twentieth Century 332 (2013) (discussing the essentialism of scientific racism).

53. *Id.* at 1.

54. Winthrop D. Jordan, White Over Black: American Attitudes Toward the Negro, 1550–1812, at 220–21 (1968). Europeans, on the other hand, were described as "White, sanguine, muscular. *Hair*: flowing, long; *Eyes*: blue. *Gentle*, acute, inventive. *Covered* with close[-fitting] vestments. *Governed* by laws." Baum, *supra* note 50, at 66.

55. *See* W. Carson Byrd & Matthew W. Hughey, *Biological Determinism and Racial Essentialism: The Ideological Double Helix of Racial Inequality*, 661 Annals Am. Acad. Pol. & Soc. Sci. 8, 10 (2015) (defining "biological determinism" as "the

When it comes to race, anti-essentialism is offered as a way to avoid the objectification and denigration of people of color and to counter racial stereotyping with the "affirmation of multiple black identities"[56] and "a varied black experience."[57] This negative view of essentialism is a hallmark of poststructuralist and postmodern thought. According to Stuart Hall and David Bailey:

> Poststructuralist thinking opposes the notion that a person is born with a fixed identity - that all black people, for example, have an essential underlying black identity which is the same and unchanging. It suggests instead that identities are floating, that meaning is not fixed and universally true at all times for all people, and that the subject is constructed through the unconscious in desire, fantasy and memory.[58]

CRT adopts this postmodern anti-essentialist perspective as well. One of the earliest discussions of essentialism in law occurs in Angela Harris's Black feminist critique of essentialism in feminist legal literature. Harris echoes the postmodern perspective and claims the essentialism of white feminist authors imposes a "monolithic 'women's experience'" that silences the particular experiences of women of color, sexual minorities, and the poor.[59] As a postmodernist, Harris disavows the existence of a unified self, and instead promotes the idea of multiple selves or a "multiple consciousness." According to Harris:

> [W]e are not born with a "self," but rather are composed of a welter of partial, sometimes contradictory, or even antithetical "selves." A unified identity, if such can ever exist, is a product of will, not a common destiny or natural birthright. Thus, consciousness is "never fixed, never attained once and for all"; it is not a final outcome or a biological given, but a process, a constant contradictory state of becoming . . . .[60]

While first generation CRT scholars such as Derrick Bell and Richard Delgado raised structuralist critiques of U.S. law and society, second generation CRT scholars took what has been described as a "postmodern turn," and adopted many of the precepts and concepts of the postmodernists/poststructuralists.[61] As a result, the essentialism/anti-essentialism debate, which had prior to this time been more of a concern in feminist scholarship, began appearing with greater frequency in the CRT literature. For example, in the introduction to their

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belief that race is anchored in a person's genes and, thus, racial inequality is largely the result of biological predispositions").

56. BELL HOOKS, YEARNING: RACE, GENDER AND CULTURAL POLITICS 28 (1990).

57. *Id.*

58. David A. Bailey & Stuart Hall, *The Vertigo of Displacement: Shifts Within Black Documentary Practices*, *in* 2 TEN 8 PHOTO PAPERBACK No. 3, 9–24 (1992).

59. Harris, *supra* note 26, at 588.

60. *Id.*

61. *See* Sumi Cho & Robert Westley, *Historicizing Critical Race Theory's Cutting Edge: Key Movements That Performed the Theory*, *in* CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 32, 52 (Francisco Valdes, Jerome McCristal Culp & Angela Harris eds., 2002) [hereinafter CROSSROADS] (relating adoption of postmodernism and anti-essentialism by CRT scholars).

canonical anthology on CRT, Crenshaw, Peller, Gotanda, and Thomas state:

> [O]ne of the chief problems with the racialist account of social power and struggle lies in the tendency to "essentialize" the racial communities with which it represents the social world. In black racialist circles the felt necessity to articulate the stable vision of group identity and interest has underwritten a "representational politics" in which the experience of one segment of black America is taken as the representative of the black experience *tout court* [in totality]. As a result, Black racialism yields a flat, fixed image of racial identity, experience and interest which fails to capture the complex and changing realities of racial domination in the contemporary US.[62]

This language expresses the authors' concern with essentialism as such, stating that "racialists" focused on the experience of one segment of the Black community (without identifying what segment that was) and they thus failed to capture the "changing realities of racial domination" (without describing what these changing realities were). But actual criticism of Black activist politics does not seem to be the authors' intent here. What the authors appear to be doing is simply rendering a critique that acknowledges and embraces the postmodern conception of the nature of things as inherently unstable and changing. But this ideological congruency comes at a price. The postmodern perspective that Crenshaw et al., advocate here rejects any analysis that looks for underlying or core causes of oppression (these are "flat" and reductionist) and political strategies that seek to construct Black unity around common endogenous political understandings or goals (these would be a form of forbidden "representational politics"). This of course is a direct critique of the civil rights movement, which forged a political struggle out of disparate strands, and of any call for Black unity, such as Black nationalism or Pan-Africanism.

In the CRT literature, however, we can recognize critiques of different styles of essentialism. Crenshaw, Peller, Gotanda, and Thomas distinguish between a weak essentialism, consisting of a discursive view of race that recognizes race as real, albeit socially constructed (which they accept) and a strong version of essentialism that leans toward biological determinism (which they reject).[63]

Peller also takes this approach in a recent article where, seeking to defend Kimberlé Crenshaw from charges of race essentialism in her work, he attempts to distinguish weak essentialist language in her writing from the strong essentialism expressed in the work of the late Derrick Bell, the founder of CRT.[64] "Bell's analysis," Peller claims,

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62. CRENSHAW ET AL., KEY WRITINGS, *supra* note 21, at xxxi.
63. *See id.* at xxvi (decrying "vulgar anti-essentialism" and describing the CRT project as "an effort to construct a race-conscious [but] anti-essentialist account of the processes by which law participates in true 'rac-ing' of American society").
64. *See* Peller, *supra* note 32, at 1501 (arguing Crenshaw does not contend "Black community has a stable, essential identity").

"ESSENTIALLY BLACK" "could be regarded as predominantly 'racialist' [essentialist] in that it took the existence of racial commonalities as a given, rather than as collectivities whose culture and dynamics were contested and contingent."[65] Peller continues on to assert that the greatest flaw in Bell's work was that "for the most part Bell did not problematize the communities whose interests his race theory deployed."[66]

However, some Critical Race Theorists reject any version of race-based identity at all. This can be seen in the writing of Francisco Valdes,[67] one of the founders of LatCrit Theory. According to Valdes: "Critical Race Theory is sometimes experienced and described as both androcentric and Afrocentric, as well as heterocentric. Thus, . . . Critical Race Theory . . . has found itself confounded with the objection that it has replayed the omissions and the oversights of the majoritarian status quo."[68] Consequently, LatCrit (according to Valdes) sought to shift to alliances "built on shared substantive commitments, . . . rather than on traditional fault lines like ethnicity or race"[69] and this "entails rejection of automatic or essentialist commonalities in the construction of coalitions . . . ."[70]

The radical character of the LatCrit version of anti-essentialism can be seen in Stephanie Phillips's contribution to a 1999 LatCrit symposium in the Miami Law Review. In the essay, Phillips responds to a proposal to develop a "BlackCrit" as an additional critical race perspective alongside LatCrit (which for all intents and purposes has subsumed CRT). Phillips writes:

> The principal reason why I would hesitate to endorse a separate BlackCrit organization is . . . [that] [h]istorically and presently, there are many examples of regressive black nationalism that, for instance, deny that there is sexism in the black community, attempt to legitimate homophobia, and deny that blacks can be 'racist' in relation to other people of color or whites. I think that . . . without the discipline that would be provided by working with people who come from other subject positions, there would be a substantial danger that a black nationalist formation would degenerate into the regressive type. Sadly, there also may be too few blacks in legal academia who endorse a dis-

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65. *Id.* at 1494.

66. *Id.* at 1495. In other words, Bell is subject to Peller's criticism because he focused on the Black communities' commonalities and not their differences.

67. *See, e.g.*, Margaret E. Montoya & Francisco Valdes, *"Latinas/os" and the Politics of Knowledge Production: LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L.J. 1197, 2002–04 (2008); Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices To Possibilities*, 9 LA RAZA L.J. 1 (1996); Francisco Valdes, *Race, Ethnicity, and Hispanismo in a Triangular Perspective: The "Essential Latina/o" and LatCrit Theory*, 48 UCLA L. REV. 305 (2000).

68. Valdes, *supra* note 67, at 5.

69. *Id.* at 27.

70. *Id.*; *see also* Keith Aoki & Kevin R. Johnson, *An Assessment of LatCrit Theory Ten Years After*, 83 IND. L.J. 1151, 1157 (2008) (arguing anti-essentialism is one of the foundational principles of LatCrit).

tinctively progressive black nationalism for a new organizational form to be warranted.[71]

Thus, for Phillips, African descendants lack the legitimacy to organize politically and intellectually to address social and political concerns as they interpret them for themselves. To do so would be "essentialist." Their legitimacy to organize must be granted by others outside of their collective, whose interests trump those of the Black community, and who can then exercise a form of censorship to make sure that the resulting ideology is truly "progressive."

Charles Santiago[72] also attacks "essentialist social constructions"[73] in his LatCrit symposium article comparing and contrasting Samuel Huntington's white nationalism and Gloria Anzaldúa's Chicano nationalism. Santiago concedes that these nationalisms have different political orientations—Huntington's nationalism is conservative and white supremacist;[74] Anzaldúa's is in opposition to cultural and colonialist oppression.[75] Yet, Santiago argues that both are problematic due to their embrace of racial essentialism and a reliance on a "similar set of myths and rhetorical claims."[76] When it comes to essentialism, clearly the political ends do not justify the means in the eyes of LatCrit scholars like Santiago. Essentialism is always wrong because, according to Santiago, "it is possible to demonstrate how nationalist narratives reproduce undesirable forms of exploitation, subjugation, subordination, and oppression."[77]

Nowhere in his article, however, does Santiago demonstrate that Anzaldúa employs any language that would "reproduce undesirable forms of exploitation, subjugation, subordination and oppression," although he does demonstrate this with Huntington. Anzaldúa's error is simply deploying an essentialist argument. To Santiago, it is essentialism itself that causes "exploitation, subjugation, subordination and oppression."[78]

In their introduction to the edited collection *Crossroads, Directions, and a New Critical Race Theory*,[79] Valdes, Culp, and Harris claim "we are all antiessentialists now."[80] They note, "[I]t now has become almost de rigeur for feminists, critical race theorists, and queer

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71. Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247, 1255 (1999).

72. Charles R. Venator Santiago, *Huntington's White Patriotism and Anzaldúa's Brown Nationalism*, 4 FIU L. REV. 33 (2008).

73. *Id.* at 42.

74. *See id.* at 36–40.

75. *See id.* at 34.

76. *Id.* at 42.

77. *Id.* at 44.

78. *Id.*

79. CROSSROADS, *supra* note 61.

80. *Id.* at 2.

theorists to use antiessentialism to argue that the traditional categories of race, class, and sexuality, and the identity warriors within those categories, are defined in ways that exclude or subordinate the voices of the non-privileged . . . .[81]

Yet, Valdes, Culp, and Harris collectively assert a more complex and somewhat muted anti-essentialism in comparison to Valdes's solo writings under the banner of LatCrit Theory. While they trace anti-essentialism to its postmodern origins, Valdes, Culp, and Harris admit that there is nothing inherently progressive about anti-essentialist arguments and concede that they can be used by the right as readily as they can be used by the left.[82] Indeed, Valdes, Culp, and Harris caution that anti-essentialism, if not properly tempered, can block goals of transformative justice. "Antiessentialism," they state, "can be, and perhaps has become, a way of not only co-opting CRT externally but also of distracting us internally from the bottom line: antisubordinationist social transformation."[83] Rather than jettison the anti-essentialist critique, however, Valdes, Culp, and Harris argue that CRT should "forge a potent theory *and* praxis through a critical and self-critical melding of identity-conscious analysis, anti-essentialist politics, and anti-subordination principles."[84]

Cho and Westley[85] also embrace a weak anti-essentialism that offers several critiques of stronger forms of anti-essentialism. These authors note that anti-essentialism is potentially destabilizing and that it lends itself to the right's attack on race-consciousness.[86] Race consciousness is also placed under pressure by postmodernism itself.[87] According to Cho and Westley, "one of the main dangers . . . of antiessentialism is its potential to promote an abstract and endless expedition into the celebration of individual particularity."[88] Thus, like Valdes, Culp, and Harris, they note anti-essentialism needs a limiting principle to avoid this tendency to dissolution.[89]

Cho and Westley argue that the limiting principle to anti-essentialism should be the commitment of an essentialist formation to "activist struggle within and among communities of color for social

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81. *Id.*
82. *Id.* at 2–3 (noting conservative claim that forces opposing appointment of Justice Thomas to the Supreme Court had an "essentialist agenda" and characterizing attacks on racial diversity as anti-essentialist).
83. *Id.* at 3.
84. *Id.*
85. Cho & Westley, *supra* note 61, at 54.
86. *Id.*
87. *See id.* (arguing postmodern turn put race and group identity "under pressure, even erasure").
88. *Id.*
89. *Id.*

justice."[90] With this limiting principle in place, Cho and Westley assert their commitment to a weak form of anti-essentialism. Consequently, they distinguish between "*conscientiously* essentialist political groupings"[91] that formed as a result of anti-essentialist critiques of larger groups and "*crudely* essentialist political groupings whose narrow nationalisms or (hetero)sexisms subverted progressive political formations."[92]

The problem with Cho and Westley's distinction between "conscientious" and "crude" essentialism is that it really does not provide a limiting principle at all. One can imagine that a conscientiously essentialist political grouping could spawn a smaller conscientiously essentialist political grouping, which split off because of its own anti-essentialist critique of the first group, and so on *ad infinitum*.[93] For a limiting principle to work, it must prevent the continual splintering of a political group so that the achievement of its goals is possible.

Cho and Westley do offer a true limiting principle of sorts, but one must read between the lines to make it out. While they support "conscientiously essentialist political groupings," they do not support political groupings "whose narrow nationalisms or (hetero)sexisms subverted progressive political formations."[94] The key terms in this explanation are "*narrow nationalisms*," "*(hetero)sexisms*," and "*progressive*." While Cho and Westley do not seek to define these terms further, it is clear they are political in character. Cho and Westley's limiting principle, then, is to distinguish between essentialist political groupings worthy of support and those that are not, by reference to how valuable their *politics* are. It is likely that groupings organized around Black nationalism would be viewed by Cho and Westley as "crudely essentialist," and groups organized around non-traditional genders and sexualities would be "conscientiously essentialist." Cho and Westley, however, make an important theoretical contribution here by demonstrating that decisions on how much essentialism a given group should tolerate is fundamentally a political decision that may vary depending on the political context.[95]

As indicated by the preceding discussion, some CRT theorists, including several associated with LatCrit, are committed to a strong

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90. *Id.*
91. *Id.* at 55.
92. *Id.*
93. In fact, this is what usually happens in the real world. For example, feminism arose as anti-essentialist critique of male dominated groupings. Women of color raised an anti-essentialist critique of feminism, yet feminists of color groups may be open to critiques based on able-ism, heterosexism, classism, etc. *See id.* at 54 (cautioning against "an abstract and endless expedition into the celebration of individual particularity").
94. *Id.* at 55.
95. *Id.*

anti-essentialism that rejects the formation of identity and in particular Black identity, around race.[96] Other CRT theorists offer a weak anti-essentialism that permits the formation of a contingent, socially constructed Black identity that, nonetheless, should be differentiated from other race-conscious conceptualizations of Blackness, such as Black nationalism, "Afrocentrism," and the racial ideology of the Nation of Islam.[97] It should be clear that both of these accepted forms of critical race anti-essentialism are *integrationist* in their approach. They assume that the goal of political organizing for Black people must be to integrate further into white systems. Thus, the only acceptable political strategy for Blacks is coalition building within the white system with either the white majority or with various minority groupings.[98] Consequently, any Black organizational formation can only be "provisional" and "tentative," lasting only long enough to serve as a platform for coalitional politics.[99]

Both the strong and the weak critiques of essentialism described in the CRT literature are normative in character. They both assume that the assertion of an essential racial identity, and particularly a Black racial identity, is wrong and should be avoided, if at all possible. In the remainder of this Article, I put this assumption to the test, first by examining the theoretical coherence of postmodern anti-essentialist claims in their own right, then by considering them through the alternative axiology found in the African cultural context.

III.   "CRITIQUING THE CRITIQUE": SOME THEORETICAL PROBLEMS WITH THE CRITICAL RACE ANTI-ESSENTIALISM ARGUMENT

The attractiveness of anti-essentialism is linked to the adoption of postmodern concepts and arguments by a significant cadre of second generation CRT theorists.[100] Thus, CRT critiques of race essentialism can be evaluated through a critical assessment of the postmodern principles on which they are based. In this section, I first discuss some doctrinal and ideological concerns posed by postmodernism that problematize the anti-essentialist argument as it is deployed in CRT.

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96. *See, e.g.*, *supra* notes 66–68 and accompanying text; Phillips, *supra* note 71.

97. *See, e.g.*, Cho & Westley, *supra* note 61; *see also* CRENSHAW ET AL., KEY WRITINGS, *supra* note 21, at xxxi (criticizing the "crude essentialism" of Black racialist politics, such as the Nation of Islam's Million Man March).

98. *See, e.g.*, Cho & Westley, *supra* note 61, at 54 (arguing for a limited essentialism to promote progressive political formations).

99. *Id.*

100. *See id.*; *see also* John Hayakawa Török, *The Story of "Towards Asian American Jurisprudence" and Its Implications for Latinas/os in American Law Schools*, 13 BERKELEY LA RAZA L.J. 271, 291 (2002) (arguing second-generation critical race scholars are exemplified by an "over-emphasis on postmodern narratives and their denigration of activism").

Next, I critique aspects of the anti-essentialist argument that are not necessarily dependent upon postmodernism, but which raise independent concerns. Finally, I describe the ways that the essentialism critique fails to advance the theoretical commitments of CRT.

A. Missing the "Postmodern Turn"

European philosophical essentialism can be traced to Platonic concepts about ideal forms. Plato believed that our perceptions of reality were ephemeral and fleeting. What we perceived with our senses were simply reflections of pure abstracted ideals he called "Forms."[101] Forms are the eternal, fixed, pure, and transcendent source of the properties of all objects.[102] For example, we can see and observe a black cat, but that cat is made up of at least two ideal forms, that of "blackness" and that of "catness." "Blackness" and "catness" are never changing, abstract ideals that exist in a world apart from the one we access with our senses.[103] Thus, Platonists would argue Forms have an independent existence. Forms then are the true essence of all objects as they provide the answer to the question, "what is x?"[104] The independent existence of Forms also explains why our minds can conceive of permanent and stable things in a world that is constantly changing.

This view of essence became the standard philosophical outlook of the Mediterranean world,[105] and what later came to be known as Western civilization, for over two thousand years until it was challenged by the emergence of empiricism and positivism in the post-Enlightenment era.[106] Yet, even in the twentieth century some remnants of essentialist thinking remained in the form of the grand narratives of modernist thinking, or what the postmodernists came to criticize as "totalizing" or "structuralist" thought.[107] Grand narratives or

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101. ENCYCLOPEDIA OF CLASSICAL PHILOSOPHY 398 (Donald J. Zeyl et al. eds., 1997).
102. ROBERT WILLIAM JORDAN, PLATO'S ARGUMENTS FOR FORMS 5 (1983).
103. *See* ENCYCLOPEDIA OF CLASSICAL PHILOSOPHY, *supra* note 101.
104. *Id.*
105. *See* Bertrand Russell, A History of Western Philosophy, pt. II, ch. XVI–XX *passim* (1945).
106. *See id.* at pt. II, ch. XIII *passim*.
107. *See* Jason E. Whitehead, *From Criticism to Critique: Preserving the Radical Potential of Critical Legal Studies Through a Reexamination of Frankfurt School Critical Theory*, 26 FLA. ST. U. L. REV. 701, 716 (1999) ("[P]ost-modern theories merely posit that no such social totalities, such as capitalism and liberalism, exist."). Foucault described the postmodern rejection of totality thusly:

> [M]y aim is most decidedly not to use the categories of cultural totalities . . . in order to impose on history, despite itself, the forms of structural analysis. The series described, the limits fixed, the comparisons and correlations made are based not on the old philosophies of history, but are intended to question theologies and totalizations.

MICHEL FOUCAULT, THE ARCHAEOLOGY OF KNOWLEDGE 15–16 (1972).

"metanarratives" invoke essentialism because they embrace a narrative schema that appeals to universal knowledge or truth.[108] According to John Stephens, "a metanarrative is a global or totalizing cultural narrative schema which orders and explains knowledge and experience."[109] Everything has its place in the overarching schema and this explains what it is. These perspectives are thus "totalizing."[110] They invoke a totality because there is no place outside of the narrative schema from which alternative points of view can be created.[111]

CRT theorists borrow this anti-structuralist skepticism of the essentialism inherent in metanarratives. According to Sumi Cho and Robert Westley, "CRT stands opposed to powerfully entrenched systems of totalizing knowledge that function through selection and exclusion of data."[112] Yet by throwing their lot in with the poststructuralist crowd, CRT theorists also inherit a range of ideological contradictions that are not generally recognized in the CRT literature. First, while CRT purports to be interested in the local, as opposed to the global or universal, the indeterminacy of postmodernist approaches to knowledge actually prevents understanding in specific local contexts. Second, postmodernism embraces a reductive empiricism that, like the positivism abhorred by CRT, reduces phenomenon to only that which the observer experiences. Third, CRT cannot recognize the operation of non-material forces—whether these be historical, cultural, metaphysical, or spiritual—as postmodernism rejects these as totalizing abstractions or manifestations of essence. Finally, postmodernism leads to moral and empirical relativism as it rejects the existence of any standard through which comparisons of value could be made. I address each of these below.

CRT embraces postmodern claims of indeterminacy to the extent that it concurs that "all texts and social structures were unstable, in-

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108. *See* M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 Va. L. Rev. 153, 201–02 (1993) ("For postmoderns, liberalism and communitarianism are both essentialisms . . . . Each is the imposition of a hegemony or totality: each one claims to be a completed truth, a totality . . . .").

109. John Stephens & Robyn McCallum, Retelling Stories, Framing Culture: Traditional Story and Metanarratives in Children's Literature 6 (1998).

110. Paul Babie, *The Spatial: A Forgotten Dimension of Property*, 50 San Diego L. Rev. 323, 332–33 (2013) (quoting Edward W. Soja, Thirdspace 71 (1996)) (defining "totalizing" as thinking that proceeds in privileged binary terms so that other perspectives are silenced).

111. *See id.*

112. Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements That Performed the Theory*, 33 U.C. Davis L. Rev. 1377, 1408–09 (2000); *see also* Darren Lenard Hutchinson, *Critical Race Histories: In and Out*, 53 Am. U. L. Rev. 1187, 1193 (2004) ("The desire to integrate postmodern skepticism toward the law within a modern framework of law and reason . . . became a central theme in critical race scholarship.").

determinate, and largely rooted in the contexts of societies and the language societies use to speak about the world."[113] But this acceptance of the postmodern indeterminacy critique creates a paradox: the postmodern preference for local and particular realities can never be realized. This is because the local must be linked to the global in order to be distinguished from everything else. Otherwise, the local is merely a transient experience devoid of meaning; it is the linkage/opposition of the local to the global that makes the local "local."[114]

Accepting the postmodern claim of indeterminacy suggests we can never be certain about the meanings or contours of social phenomena. Indeed, it is uncertainty, or difference, that is celebrated as the core of the postmodern condition. Yet, if one insists that facts are indeterminate, one cannot isolate particular facts, or facts relevant to particular events, with any confidence. All facts are the same.[115] As Malik argues, this leads to ahistoric explanations of social phenomena.[116] According to Malik, to understand the local, its relationship to the global—that is, the broader social setting—must be traced.[117] "Repudiating such certainty, and celebrating ambivalence, denies us the ability to grasp social phenomena in their specificity."[118] Without defining the essence of a social fact or phenomenon, "[w]e would be unable to understand, for instance, what is specific about the modern concept of race, and would instead be forced into the kind of ahistoric explanation in which race becomes an eternal feature of human societies."[119]

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113. Tommy J. Curry, *Shut Your Mouth When You're Talking to Me: Silencing the Idealist School of Critical Race Theory Through a Culturalogical Turn in Jurisprudence*, 3 GEO. J.L. & MOD. CRITICAL RACE PERSP. 1, 7 (2011).

114. *See* Kenan Malik, *Universalism and Difference: Race and the Postmodernists*, 37 RACE & CLASS 1, 5 (1996) ("In order to be historically or socially specific, one must understand the determinations of any social fact and its relationship to the totality in which it appears.").

115. As Catharine MacKinnon puts it: "According to postmodernism, there are no facts; everything is a reading, so there can be no lies. Apparently it cannot be known whether the Holocaust is a hoax, whether women love to be raped, whether Black people are genetically intellectually inferior to white people, whether homosexuals are child molesters." Catharine A. MacKinnon, *Points Against Postmodernism*, 75 CHI.-KENT L. REV. 687, 703 (2000).

116. Malik, *supra* note 114, at 5.

117. *Id.* at 6. Fran Amery makes a similar argument, pointing out that Foucault's deployment of "genealogy" to demonstrate the social construction of ideas would not be possible unless linkages could be made between social facts and the related ideas that preceded them. *See* Fran Amery, *Allowing the Other to Speak: The Relevance of Postmodernism to Political Analysis*, 1 REINVENTION: J. UNDERGRADUATE RES., (2008), http://www2.warwick.ac.uk/fac/cross_fac/iatl/reinvention/issues/volume1issue2/amery/ [https://perma.unl.edu/6ET9-Z625].

118. Malik, *supra* note 114, at 5.

119. *Id.* at 6. Malik points out this result would, ironically, put postmodernists in the same category as nineteenth century racists. *Id.*

Another paradoxical feature of CRT's postmodern turn is its assumption that experiential facts are the only facts that matter.[120] In this regard, postmodernism resembles the positivism that it sets itself in opposition to.[121] Postmodernists frequently critique positivism for its reliance on empiricism, that is, an epistemology based on sense experience.[122] Positivists claim that there is an objective reality that can be accessed independently of philosophical and theoretical ideations.[123] Yet, by asserting that "theory can have no recourse to determinants beyond empirically given phenomena,"[124] anti-essentialists also implicitly acknowledge the existence of a reality that can be empirically determined. This eliminates the operation of a natural essence or a totalizing structure in social relations, but it also produces a constricted view of social relations that may obscure motives, causes, and justifications beyond those of the observer.[125] Postmodernists are really concerned with rejecting the positivist claim that natural essences underlie social phenomena, but they take this argument much further than necessary and reject all essences entirely.[126]

One consequence of this blanket rejection of essences is that postmodernism limits the range of potential causes that can explain phenomena in the natural world. Consequently, anti-essentialists deny the operation of nonmaterial forces, whether these be historical, metaphysical, or spiritual.[127] Moreover, the rejection of essences and the denial of structuralism means, if we are ideologically pure, there can be no overarching constructs that replicate and exert influence over time—no racism, no white supremacy, no sexism, and no patriarchy.[128] In other words, embracing anti-essentialism seems incompatible with much of what CRT concerns itself.[129]

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120. *See, e.g.*, Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1285–86 (1993) (suggesting narrative is desirable under post-structuralist reasoning because, in the absence of an external standard of legitimation, narratives "can provide compelling accounts of how things are in society").

121. Malik, *supra* note 114, at 6.

122. *Id.*

123. *Id.*

124. *Id.* at 6.

125. This, of course, is the point of the postmodern critique of positivism. Postmodernists argue that ideology matters and that facts are never "just facts." *See* MacKinnon, *supra* note 115, at 703 (arguing that "there are no facts" for postmodernists).

126. Malik, *supra* note 114, at 6.

127. *Id.* (claiming that to anti-essentialists, "[e]ssences and forces, whether natural or metaphysical, spiritual or historical, are fictitious").

128. *See id.* at 5–6 (discussing anti-essentialists' inability to recognize capitalism).

129. *See* Devon W. Carbado & Daria Roithmayr, *Critical Race Theory Meets Social Science*, 10 ANN. REV. L. & SOC. SCI. 149, 151 (2014) (listing CRT commitments including opposing classism, racism, homophobia, and anti-immigrant sentiments).

The critique that postmodernism leads to moral and political relativism has been made many times,[130] and I do not wish to go over that well-traveled ground here. I do want to make two points, however. First, the moral relativism of postmodernism makes it difficult to maintain that essentialism is morally suspect. If essentialism is error because postmodernism requires it be so, it is contradictory to simultaneously maintain a normative opposition to essentialism when postmodernism does not acknowledge normative claims.[131] Second, the relativism of postmodernism seems problematic for critical race theorists in particular because, unlike some permeations of postmodern thought, CRT has a particular political slant.[132] Again, it

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130. *See, e.g.*, Eric Blumenson, *Mapping the Limits of Skepticism in Law and Morals*, 74 Tex. L. Rev. 523, 534 (1996) ("[C]ultural relativism's theory of 'local' truth cannot be applied without making the kind of objective, transcultural claims that the theory rejects."); Michael C. Dorf, *After Bureaucracy*, 71 U. Chi. L. Rev. 1245, 1246 (2004) ("[A]s a consequence of the proximity of postmodernism to moral relativism, postmodernists lack a normative vocabulary with which to advance the values they hold."); Scott Fruehwald, *The Emperor Has No Clothes: Postmodern Legal Thought and Cognitive Science*, 23 Ga. St. U. L. Rev. 375, 377 (2006) (describing postmodern legal thought as "radically antifoundational, antitheoretical, and, thus, morally relativistic"); *id.* at 388–95 (discussing several problems posed by moral relativism in postmodern legal thought); Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 Law & Soc'y Rev. 697, 698 (1992) ("A major criticism of postmodern politics is that deconstruction amounts to relativism or radical indeterminacy, which, at best, results in passive, status quo politics and, at worst, fails to defend against fascism and terrorism."); MacKinnon, *supra* note 115, at 710 (describing postmodern collapse into relativism as opposed to "any attempt to grasp a real social world"); Christopher Norris, *Right You Are (If You Think So): Stanley Fish and the Rhetoric of Assent*, *in* What's Wrong with Postmodernism 77 (1990) (reviewing Stanley Fish, Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies (1989) and critiquing postmodern pragmatist relativism in science and other areas); Peter C. Schanck, *Understanding Postmodern Thought and Its Implications for Statutory Interpretation*, 65 S. Cal. L. Rev. 2505, 2510 (1992) (discussing "the charge that postmodernists are relativists"); Brian Z. Tamanaha, Law as a Means to an End: Threat to the Rule of Law 236 (2006) (arguing "Legal Realism and postmodernism" pose a threat to the rule of law that "cannot be overstated").

131. Even if a less radical version of postmodernism that allowed for normative claims was adopted, the normative critique of essentialism would still be contradictory. As Diana Fuss points out, "[t]o insist that essentialism is always and everywhere reactionary is . . . to buy into essentialism in the very act of making the charge; *it is to act as if essentialism has an essence*." Fuss, *supra* note 13, at 21.

132. According to Matsuda, Lawrence, Delgado and Crenshaw, CRT is organized around six principles:

(1) [CRT] recognizes that racism is endemic to American life. Thus, the question . . . is not . . . how racial discrimination can be eliminated while maintaining the integrity of other interests implicated in the status quo . . . . Instead we ask how these traditional interests and values serve as vessels of racial subordination. (2) [CRT] expresses skepticism toward dominant legal claims of neutrality, objectivity, color blindness, and meritocracy. (3) [CRT] challenges ahistoricism and insists on a contex-

is contradictory for CRT theorists to critique essentialism pursuant to postmodernist principles, yet seek to promote distinct political aims and goals that would be unrecognizable to postmodernism.

B. The Limits of Anti-Essentialism

Other problems posed by anti-essentialism do not necessarily arise from anti-essentialism's reliance on postmodernism but from flaws in the anti-essentialist argument itself. These internal flaws can be characterized, first, as contradictions caused by essentialism's epistemological necessity and, second, as problems related to the overbroad claims of anti-essentialists.

Anti-essentialists face an epistemological conundrum: if there are no essential qualities, there can be no categories or classes of things; if there are no categories of things, there can be no difference;[133] if there is no difference, there can be no comparison, no analysis. In other words, some form of essentialism seems necessary for knowledge.[134] Essentialist thinking provides a framework for understanding what "any given thing really [is]."[135] Consequently, "[i]f one could reduce any given object to its essential categories, one could find all other objects that were like it and distinguish them from all those objects that were not."[136]

The utility of essentialist thinking means that opposition to essentialism is not opposition to essentialism per se, but opposition to the

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tual/ historical analysis of the law. (4) [CRT] insists on recognition of the experiential knowledge of people of color and our communities of origin in analyzing law and society. (5) [CRT] is interdisciplinary and eclectic. (6) [CRT] works toward the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression.

MARI MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 6 (1993).

133. Anti-essentialists often assert that essentialism obscures difference. But this is not universally true. Indeed, "Since the whole point of attempting to categorise is to specify what, if anything, is common in the midst of diversity, the search for common properties, including essences, *presupposes* diversity." Sayer, *supra* note 4, at 456.

134. *See* Pauline E. Peters, *Another Bridge to Cross: Between "Outside" and "Inside,"* 47 CASE W. RES. L. REV. 481, 482 (1997) (arguing that "some degree of essentialism—as typification—is inherent in all conceptual practice"); *see also* Alan C. Love, *Typology Reconfigured: From the Metaphysics of Essentialism to the Epistemology of Representation*, 57 ACTA BIOTHEORETICA, 51, 55–58 (2009) (pointing out the necessity of categorization in the biological sciences for explanatory purposes and suggesting a move from a metaphysical focus on essentialism to the practical concerns of epistemology).

135. Rainier Elias, *Identity, Law, and Essentialism: What's Love Got to Do with Same Sex Marriage?*, 6 CRIT 1, 5 (2012).

136. *Id.*

particular ways essentialism is deployed.[137] As one scholar puts it, "some degree of essentialism is simply unavoidable. The disputes are usually over what essences we should accept as important, not whether essences can be dispensed with."[138] Accordingly, what the anti-essentialist advocates rightly point out is that essentialism involves making decisions "over what essences we should accept as important"[139] and, more critically, who wields the power to make these decisions.[140] Thus, the anti-essentialism critique serves left-leaning critical interests "by drawing attention to how supposedly universal and inclusive concepts actually extrapolate from a particular social location, suppressing difference and marginalizing others."[141] This, however, is a political critique and not a metaphysical one.[142]

Anti-essentialists also undermine their theoretical position through exaggerated and unnecessarily strident claims.[143] Strong versions of anti-essentialism—and critical race and LatCrit theorists seem to fall in this camp—take an extreme, all-or-nothing approach to essences.[144] Their position is that essences do not exist and that essentialism is always in error.[145] But such an extreme position is neither justified nor necessary. It is certainly possible to conclude that some things have essences and some do not.[146] Andrew Sayer suggests that "we need to get beyond the stark alternatives of essentialism and anti-essentialism and work with a richer ontology."[147] Sayer would describe a more workable theory of essentialism as one that focuses on "whether a specific property is essential or necessary for

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137. Diana Fuss recognizes this when she argues that the goal of critical inquiry into essentialism should be "to investigate what purpose or function essentialism might play in a particular set of discourses." FUSS, *supra* note 13, at xii.

138. Gregor McLennan, *Post-Marxism and the 'Four Sins' of Modernist Theorizing*, 21 NEW LEFT REV. 53, 67 (1996).

139. Sayer, *supra* note 4, at 465.

140. *Id.* at 461 (arguing anti-essentialism critique "opens up questions of who has the power to define and categorise").

141. *Id.*

142. Cho and Westley also lean toward a politically focused critique of essentialism. *See supra* note 95 and accompanying text.

143. *See* Sayer, *supra* note 4, at 460–62 (arguing that rejection of essentialism in general, rather than rejection of specific types of essentialism, creates a range of unnecessary epistemological and ontological problems).

144. *See supra* Part I.

145. Sayer characterizes this strong anti-essentialism as absurd: "It is dogmatic and illogical to insist that because examples of context-dependent and positional phenomena such as gender and identity are impressive that we must insist on a restrictive ontology which makes everything of this kind and refuse claims that some things do have essences." Sayer, *supra* note 4, at 462.

146. Sayer takes this more moderate position, arguing that some objects and categories have essences, such as water or capitalism, whereas others, like gender and ethnicity, do not. *Id.* at 455, 462.

147. *Id.* at 455.

some specific behavior or outcome,"[148] rather than an overarching rejection of essence as such.[149]

Under Sayer's analysis, essentialists "might refer to what is essential about them belonging to particular social groups, or to what is human about them, or to the essential properties of the body."[150] But these different ideations of essence could have different properties, different durations, and different strengths.[151] Some essences may be used conceptually to determine what properties of an object are indispensable for it to be what it is (these would be its generative properties).[152] Essence can also be used in the sense of identifying the features of an object that distinguish it from other kinds of objects (these would be its distinguishing properties).[153] And simply because an object has some feature that is essential for a particular purpose does not mean an essence cannot change.[154] For example, Sayer points out that while the ability to communicate may be considered an essential part of being human, the ability to communicate is acquired and develops over time.[155]

C. Aligning CRT Theory and Praxis

For critical race theorists, CRT is an intellectual movement with a distinct ideological purpose.[156] It is distinguished from mainstream legal analysis by its left-leaning political agenda and from critical legal studies by its race-consciousness.[157] Crenshaw et al., describe CRT as "a movement of left scholars . . . whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and . . . society."[158] According to Crenshaw et al., CRT goes beyond intellectualizing to pursue activism. CRT scholars desire not only to study racial hierarchies but to change

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148. *Id.* at 457.

149. *Id.*

150. *Id.*

151. *See generally id.* at 456–60.

152. *Id.* at 458.

153. *Id.*

154. *Id.* at 462.

155. *Id.*

156. *See* DOROTHY A. BROWN, CRITICAL RACE THEORY: CASES, MATERIALS AND PROBLEMS 1 (3d ed. 2014) ("[CRT] seeks to use the law as an affirmative tool to improve the lives of people of color."); Roy L. Brooks, *Critical Race Theory: A Proposed Structure and Application to Federal Pleading*, 11 HARV. BLACKLETTER L.J. 85 (1994), *as reprinted in* BROWN, *supra*, at 2–3 ("[M]ost crits agree that the basic objective of CRT is to use the law to effectuate racial equality.").

157. *See* CRENSHAW ET AL., KEY WRITINGS, *supra* note 21, at xiii–xiv (describing differences and similarities between cls and CRT).

158. *Id.* at xiii.

them.[159] Moreover, CRT scholars believe knowledge is political and thus reject scholarly claims of neutrality and objectivity.[160] Clearly then, CRT has adopted an explicit political program.[161] But how does this political program fit with CRT's theoretical arguments?

There is no inherent value in theorizing. The value of theory can only be determined by how well it comports with reality or with the pragmatic goals the theory is used to attain.[162] That is to say, the theoretical approaches of CRT are only worthwhile to the extent they advance the purposes of CRT. As we have seen, anti-essentialism does not necessarily advance leftist political goals.[163] Indeed, anti-essentialism itself seems politically neutral in a way that conflicts with the CRT rejection of neutrality. In particular, the CRT commitment to race-consciousness seems difficult to accomplish in an environment where race-essentialism is frowned upon. To the extent that postmodernism results in a view of the world that is nihilistic, ahistoric, and relativistic, it cannot serve as a viable theoretical construct to permit the attainment of CRT's goals.[164] Thus, it would seem postmodern anti-essentialism is a theory with limited value to critical race theorists.

Yet, anti-essentialism has become an accepted part of the CRT canon. As detailed above, several critical race theorists have struggled to reconcile anti-essentialism's contradictions with the professed purposes of CRT.[165] However, the efforts of scholars like Valdez, Culp, Harris, Cho, and Westley to tame the more destructive aspects of postmodern anti-essentialism seem strained. Through adoption of some sort of limiting principle, it is possible that anti-essentialism can be shoehorned into CRT, but why? What doctrinal benefits can be

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159. *See id.* (arguing that the purpose of CRT is "not merely to understand the vexed bond between law and racial power but to *change* it").

160. *See id.* (claiming CRT "rejects the prevailing orthodoxy that scholarship should be or could be 'neutral' and 'objective'").

161. *See supra* note 130.

162. Indeed, "unity of theory and practice was a basic tenet of Marxist thought." JOEL SPRING, PEDAGOGIES OF GLOBALIZATION 89 (2006). Mao illustrates this point in a 1937 tract:

> Marxists consider that only the social practice of people can be the true criterion of human knowledge of the world surrounding us. The practical situation is such that only in the process of social practice (in the process of material production, class struggle, scientific experiments) can human knowledge be confirmed by obtaining the results expected from it.

MAO TSE-TUNG, CONCERNING PRACTICE 2–3 (Trinity Trust 1951); *see also* AMILCAR CABRAL, UNITY AND STRUGGLE 45 (Michael Wolfers trans., 1979) ("[A]nyone who leads a national liberation struggle must . . . weigh up and make plans which respect reality and not what he has in his head.").

163. *See supra* notes 80–81 and accompanying text.

164. Malik makes this same point in respect to postmodernism generally. *See* Malik, *supra* note 114.

165. *See supra* Part I.

gained, or what intellectual commitments must be served that make these intellectual gymnastics worth the effort? Clearly, these are not benefits or commitments that advance the expressed interests of CRT, nor are they benefits or commitments that advance the interests of communities of color.[166] For anti-essentialism to work for Black communities, it must allow them to pursue their collective interests. Otherwise it is simply dogmatism.[167]

IV. ANTI-ESSENTIALISM AND THE DESTRUCTION OF BLACK COMMUNITY

A. A Practical Problem: Anti-Essentialism and Urban Realities

In the 1970s, Washington, D.C. was known as "Chocolate City."[168] This was because, at the time, the city's demographics were predominantly Black and D.C. was host to a vibrant and established Black culture.[169] But the demographics of the District have changed radically. The District, which was once chocolate, is now "cappuccino,"[170] and may soon be café au lait,[171] as white millennials have entered the city and Black residents have been forced out.[172] The Shaw/U Street neighborhood, the location of the world-famous Ben's Chili Bowl,[173] is a case in point. Once ninety percent Black, the neighborhood is now

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166. Indeed, Paul Tiyambe Zeleza talks about the inutility of postmodern theorizing in the contemporary African context:

> [S]ome of the best scholarship in Africa, indeed, elsewhere in the world, has often been inspired by . . . a burning desire to change the world, to address the pressing issues of the time. . . . [T]hat is why African scholars, surrounded by material poverty and political tyranny, by underdevelopment, to use a once popular term, are [more] preoccupied with questions of development and democracy than about gazing at their sexuality that seems to titillate the intellectual imaginations of some of our colleagues in "postmodern" societies.

PAUL T. ZELEZA, RETHINKING AFRICA'S 'GLOBALIZATION' 394 (2003).

167. By "dogmatism," I mean the theory itself is reified. It is no longer a means to an end but an end unto itself.

168. CHRIS MYERS ASCH & GEORGE DEREK MUSGROVE, CHOCOLATE CITY: A HISTORY OF RACE AND DEMOCRACY IN THE NATION'S CAPITAL 381 (2017); see also Parliament, Chocolate City (Casablanca Records 1975) (describing Washington, D.C. as a "chocolate city" along with its "vanilla suburbs").

169. ASCH & MUSGROVE, supra note 168.

170. DEREK S. HYRA, RACE, CLASS, AND POLITICS IN THE CAPPUCCINO CITY 20 (2017).

171. Or as filmmaker D.J. Franzia put it on Twitter, "Almond Soy Latte Lactose Free Imitation Cacao Substitute City." D.J. Franzia (@hawillisdc), TWITTER (Mar. 6, 2018, 8:00 AM), https://twitter.com/hawillisdc/status/971007547841933312 [https://perma.unl.edu/Y5Y8-RMCR].

172. HYRA, supra note 170.

173. See Ben's Chili Bowl, WIKIPEDIA, https://en.wikipedia.org/wiki/Ben%27s_Chili_Bowl [https://perma.unl.edu/4D4K-E8CZ] (last updated June 11, 2018).

occupied mainly by young white professionals.[174] Now that Shaw/U Street is majority white, the area receives government attention and services that were once lacking.[175] Although the quality of life has improved in many ways, historic residents find the area unfamiliar and uninviting.[176] Black resident Ernest Peterson describes the sense of alienation he now feels in an area that has been his home for over forty years:

> "I go outside, and these people who been here for 15 minutes look at me like, 'Why you here?' That's that sense of privilege they bring wherever they go," he said in his front yard on a sunny Saturday in November. "I been here since '78. They been here six months or a year, and they question my purpose for being here.[177]

The transformation of Shaw/U Street has been aided by what Michelle Boyd and other urban planners call "Black-branding."[178] Black-branding occurs when "neighborhood-based organizations, real estate developers, restaurant owners and urban planners commodify and appropriate aspects of Blackness to promote tourism, homeownership, and community development" in historically African-American neighborhoods.[179] Because Shaw/U Street was promoted as a Black area, with a particular history and culture, it became a hip and trendy place for whites to live.[180] The influx of whites, attracted by marketing that featured the "edgy" and exotic character of the area,[181] led to higher rents and higher taxes that ultimately drove most of the existing Black residents out.[182]

It would be wrong to see the gentrification of Shaw/U Street in purely economic or in purely racial terms. There were many factors that led to the population shift in Shaw/U Street as the area was redeveloped.[183] However, race played a significant role in this transformation.[184] Shaw/U Street was a crime-ridden and neglected area

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174. HYRA, *supra* note 170, at 58–59, 77. Over a forty-year period, the Black population in Shaw/U Street has been reduced to thirty percent. *Id.*

175. *See id.* at 129 (citing both research that supports and questions the proposition that low-income communities receive more benefits as more middle-income residents move into the communities).

176. *See id.* at 130–44.

177. Sam Gringlas, *Old Confronts New in a Gentrifying D.C. Neighborhood*, NPR (Jan. 16, 2017), https://www.npr.org/2017/01/16/505606317/d-c-s-gentrifying-neighborhoods-a-careful-mix-of-newcomers-and-old-timers.

178. HYRA, *supra* note 170, at 75.

179. *Id.* at 75–76.

180. *Id.* at 89.

181. *Id.*

182. *Id.* at 75; Gringlas, *supra* note 177.

183. *See* HYRA, *supra* note 170, at 124 ("[T]he Shaw/U Street findings suggest that gentrification processes can be fully understood only through assessing multiple social categories.").

184. *Id.* at 106.

with limited municipal services when it was occupied by Blacks.[185] Once the area became attractive to whites, Blacks were forced out and the area became the beneficiary of investment interest, tax expenditures, policing, and other municipal services.[186]

How could, or should, the Black residents of the Shaw/U Street neighborhood fight to retain the character of their neighborhood and their place in it? According to anti-essentialists, they could organize themselves economically, geographically, or chronologically. But to organize themselves as Black residents, with Black interests, would be unethical.[187] To do that would push them into the ranks of the essentialists, and it would be politically disfavored and morally suspect. Paradoxically then, the Black residents could lose their place in Shaw/U Street because the very Black culture and history that they developed there was co-opted and exploited by others to attract whites, but they could not organize around that same culture to protect themselves from white displacement.

This of course is an example of the uselessness of anti-essentialist arguments for Black communities. Anti-essentialism is not a neutral theory for Black people. Anti-essentialism harms Black communities by preventing them from identifying their common interests and protecting those interests through collective activity. This is true for the Shaw/U Street area in D.C. and it is true for any Black collectivity, whether it is a neighborhood, an organization, a tribe, or a nation.

B. Anti-Essentialism, a New Form of Colorblindness?

Although marketed as a progressive ideology, anti-essentialism does similar ideological work as do the conservative dogmas of colorblindness and post-racialism.[188] The first of these two, colorblindness, is subject to three main critiques. First, by definition, colorblindness cannot recognize, let alone correct, racial disparities and inequities.[189] Second, colorblindness's insistence on objective standards and universal procedures provides a smokescreen for racism and racial injustice and thus acts as a "defensive shield for conscious and unconscious racists."[190] Finally, colorblindness enforces white political, social, and

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185. *Id.* at 6–8.

186. *Id.*

187. *See supra* notes 93–96 and accompanying text.

188. Critical race scholar Sumi Cho claims that colorblindness and post-racialism are related but are different ideological positions. Cho, *supra* note 33, at 1597. In her view, post-racialism is distinguishable from colorblindness because post-racialism "signals a racially transcendent event," appeals to a younger generation, and is not burdened by the reactionary political baggage that colorblindness acquired during the culture wars of the '80s and '90s. *Id.* at 1597–98.

189. Nunn, *Rights Held Hostage: Race, Ideology and the Peremptory Challenge*, *supra* note 7, at 76–77.

190. *Id.* at 79–80.

cultural hegemony by "maintain[ing] institutional arrangements which embody the residual results of past overt racism."[191]

Sumi Cho claims that post-racialism has four distinctive ideological features: (1) a celebratory assertion of racial progress;[192] (2) an embrace of race-neutral universalism;[193] (3) moral condemnation of any race consciousness or race-based decisionmaking;[194] and (4) a "distancing move" that "highlights the purported distinctiveness and sophistication of post-racialism."[195] There are two aspects of Cho's critique that are particularly relevant here. One is post-racialism's rejection of the legitimacy of group identity. According to Cho, "Post-racialism rejects the centrality of race as an organizing feature in American society and holds that policymakers formulate social and legal remedies best without any consideration of group identity, especially racial identity."[196] Moreover, in Cho's view, "post-racialism denigrates collective Black political organization."[197] Under post-racialism, "[n]ot only are racial remedies and racial discourse off the table, but so are acts of collective political organization and resistance by racialized individuals."[198]

Each of these critiques applies just as readily to anti-essentialism. Anti-essentialism also rejects the legitimacy of race as a social category and denigrates collective Black political organization. One could argue that anti-essentialism is simply a "highfalutin," leftist-intellectual rebranding of post-racialism and colorblindness that shares many of the same faults. Colorblindness, post-racialism, and anti-essentialism are all intellectual positions that work to retard Black political organization and social development and consequently maintain white power.

C. Black Consciousness and African-Centered Thought as an Intellectual Counter to Anti-Essentialism

Although anti-essentialism disfavors Black organization around ethnic or racial lines, there are African thinkers and scholars who vigorously contest these claims and provide an ideological alternative to anti-essentialism's politics and morality. They argue that attending to the precepts of anti-essentialism would make African people vulnerable to exploitation and prevent them from becoming autonomous actors in national politics or on the world stage. I detail the substance of

191. *Id.* at 80–81.
192. Cho, *supra* note 33, at 1601.
193. *Id.* at 1601–02.
194. *Id.* at 1603.
195. *Id.* at 1603–04.
196. *Id.* at 1603.
197. *Id.* at 1593.
198. *Id.* at 1596.

the African-centered argument below. I argue this ideology contests
the moral framework adopted by anti-essentialists by introducing the
imperative of cultural survival and a teleological stance based on the
goal of African liberation.

Throughout history, the divide and conquer strategy has been used
by the powerful to subjugate the powerless, whether for colonization,
slavery, national oppression, or the domination of minority groups by
majorities within nations.[199] The divide and conquer strategy is
widely used because it is effective.[200] A disunified people—lacking or-
ganization and a concept of a collective self—can offer no opposition
and no resistance. Thus, divide and conquer is used as a strategy of
control in a wide variety of political situations, whether arising in in-
ternational relations, in the office setting, or on the playground.[201] Af-
rican-centered scholar and educator Asa Hilliard contends that the
ultimate goal of any oppressor is the cultural surrender of his or her
victim. Hilliard writes:

> Jordan Ngubane correctly pointed out that the primary goal during colonial
> oppression in Africa and in other parts of the world was much broader than
> the simple physical control of indigenous populations by outside colonizers.
> The final victory and ultimate aim for the outside colonizer was to change the
> colonized people by forcing an alienation between group members and their
> cultural and historical traditions. This alienation promotes destruction of in-
> dividual and group identity, thus disabling them politically as well.[202]

Black nationalists and African-centered scholars have consistently
identified cultural dispersion and disunity as one of the key causes of
Black powerlessness.[203] This aspect of Black nationalism was identi-
fied by the Nigerian scholar E.U. Essien-Udom in his 1962 study of
the Nation of Islam.[204] "The [Black] nationalist leaders," wrote Es-
sien-Udom, "contend that the Negroes must become consciously aware
of their identity as a group in America; they must realize their degra-
dation and strive by individual and collective effort to redeem their
communities and regain their human dignity."[205] Even before the ad-

199. *See* Ilia Xypolia, Divide et Impera: *Vertical and Horizontal Dimensions of British Imperialism*, 44 CRITIQUE 221 (2016); *see also* Ruth Gordon, *Growing Constitutions*, 1 U. PA. J. CONST. L. 528, 546 (1999) ("During the colonial era, ethnic identities were bolstered and then manipulated as part of a divide and rule strategy.").
200. *See* Xypolia, *supra* note 199.
201. *See id.*
202. Asa G. Hilliard, III, *Conceptual Confusion and the Persistence of Group Oppression Through Education*, *in* THE MAROON WITHIN US 142, 147–48 (Asa G. Hilliard, III ed., 1995).
203. *See* ASA G. HILLIARD, III, AFRICAN POWER: AFFIRMING AFRICAN INDIGENOUS SOCIALIZATION IN THE FACE OF THE CULTURE WARS 3 (2002) (describing "lack of unity" as one of the greatest obstacles to African success).
204. E. U. ESSIEN-UDOM, BLACK NATIONALISM: A SEARCH FOR IDENTITY IN AMERICA (1962).
205. *Id.* at 3.

vent of 1960s Black nationalism, the Garvey Movement promoted Black unity, Black consciousness, and Black pride on a worldwide scale.[206] Garvey fiercely advocated a "race-first" political program, and racial unity and self-reliance were the chief components of his ideological thrust.[207] Garvey felt Black independence was a necessity for continued Black survival.[208] This belief led to his focus on economics and his efforts to establish independent Black business ventures. In Garvey's mind, "[s]uccessful political action could only be founded on an independent economic base."[209] Garvey heaped invective on Blacks who advocated against racial unity:

> The illiterate and shallow-minded Negro who can see no farther than his nose is now the greatest stumbling block in the way of the race. He tells us that we must be satisfied with our condition; that we must not think of building up a nation of our own, we must depend on the good feeling of the other fellow for the solution of the problem that now confronts us. This is a dangerous policy and it is my duty to warn . . . the Negros of the world against this kind of leadership . . . .[210]

Malcolm X also highlighted the critical importance of Black unity in his public statements and especially in his speeches to Black audiences.[211] In one of his last speeches before his departure from the Nation of Islam, Malcolm spent several minutes focusing on unity in his own uncompromising style:

> What you and I need to do is learn to forget our differences. When we come together, we don't come together as Baptists or Methodists. You don't catch hell because you're a Baptist, and you don't catch hell because you're a Methodist . . . . You catch hell because you're a black man. You catch hell, all of us catch hell for the same reason . . . . We have a common oppressor, a common exploiter, and a common discriminator. But once we all realize that we have a common enemy, then we unite—on the basis of what we have in common.[212]

Following in the footsteps of Black nationalists like Marcus Garvey and Malcolm X, African-centered scholars have advocated a political program that focuses on unity, political independence, and cultural

206. TONY MARTIN, RACE FIRST: THE IDEOLOGICAL AND ORGANIZATIONAL STRUGGLES OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION 12–13 (1976).

207. *Id.* at 32.

208. *Id.* at 33.

209. *Id.*

210. 1 PHILOSOPHY AND OPINIONS OF MARCUS GARVEY 64 (Amy Jacques-Garvey, ed., Miguel Lorne Publishers & Frontline Books 2015) (1923).

211. *See* Charles Lewis Nier, III, *Guilty As Charged: Malcolm X and His Vision of Racial Justice for African Americans Through Utilization of the United Nations International Human Rights Provisions and Institutions*, 16 DICK. J. INT'L L. 149, 152 (1997) (describing unity as one of the solutions to Black problems frequently stressed by Malcolm X).

212. MALCOLM X, *Message to the Grass Roots* (Nov. 10, 1963), *in* MALCOLM X SPEAKS 3, 4–5 (George Breitman, ed., 1965).

autonomy.[213] The restoration of African culture takes on a key significance in African-centered thought.[214] Indeed, the establishment of an independent autonomous African culture is both the means and end of the Black liberation struggle.[215] Culture, or what Amos Wilson calls "historical and cultural re-armament," is one of the "primary tools used by Black [or Afrikan] [sic] nationalists in breaking the mental chains of [the] subordination of Afrikan peoples."[216] But an autonomous African culture, preferably expressed in the form of an autonomous nation-state, is the ultimate goal of African-centered politics. Again, according to Wilson:

> Black or Afrikan nationalism is . . . premised on the precept that Blacks as people should not be the subjects of another people nor should they subject other peoples; that Black people and nations should exercise their full rights to develop and utilize their material, human and spiritual resources primarily for their own benefit and well-being and for the benefit and well-being of others as they see fit to do.[217]

The Nigerian writer Chinweizu can also be described as an African-centered scholar.[218] Like Garvey, Chinweizu contends that "*Africa First* ought to be our constant motto, not Liberation First, not Internationalism First, not Western Approval First, not Nonalign-

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213. *See, e.g.*, JOHN HENRIK CLARKE, AFRICANS AT THE CROSSROADS 3–25 (1991) (calling for a world-wide African political, cultural, and spiritual revolution); ERROL ANTHONY HENDERSON, AFROCENTRISM AND WORLD POLITICS 119–44 (1995) (suggesting a reworking of traditional Pan-Africanism to provide a common unit of analysis mechanism for change and consistent justification); AMOS N. WILSON, BLUEPRINT FOR BLACK POWER 857 (1998) (advocating for a black-nationalist political party for the purpose of furthering "the vital interests of the community and protecting its physical, socioeconomic and sociopsychological integrity").

214. *See* Asa G. Hilliard, III, *To Be African*, *in* TO BE AFRIKAN 17–21 (Burnett Kwadwo Gallman et al. eds., 2003) (explaining the key importance of culture for African identity); Kenneth B. Nunn, *The Black Nationalist Cure to Disproportionate Minority Contact*, *in* JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM, *supra* note 7, at 135, 151–52 (explaining cultural nationalist insistence that African people maintain autonomous cultural institutions).

215. *See* AMILCAR CABRAL, *National Liberation and Culture*, *in* RETURN TO THE SOURCE: SELECTED SPEECHES OF AMILCAR CABRAL 39, 41 (Afr. Info. Serv. ed., 1973) ("Culture is simultaneously a fruit of a people's history and a determinant of history . . . ."). This is why Cabral argued famously for liberation fighters to effectuate a "return to the source." *See* AMILCAR CABRAL, *Identity and Dignity in the Context of the National Liberation Struggle*, *in* RETURN TO THE SOURCE: SELECTED SPEECHES OF AMILCAR CABRAL, *supra*, at 57, 63 (explaining the "return to the source" as a form of cultural renaissance). For Cabral, culture had a preternatural resilience: "Repressed, persecuted, humiliated, betrayed by certain social groups who have compromised with the foreign power, culture took refuge in the villages, in the forests, and in the spirit of the victims of domination. Culture survives all these challenges and through the struggle for liberation blossoms forth again." *Id.* at 61.

216. WILSON, *supra* note 213, at 851.

217. *Id.* at 850.

218. Henderson labels him as an "Afrocentric political scientist." HENDERSON, *supra* note 213, at 129.

ment First."[219] Chinweizu's theory can be understood as an example of the use of the Akan concept of *Sankofa*[220] (history) as the central organizing principle for African political action.[221] *Sankofa* provides a "reference point" for what has been lost, what remains to be done, and where African people should go.[222] According to Chinweizu: "In any serious attempt at African renaissance it would be necessary to dig through that debris, down to the cultural bedrock of pre-European Africa, and there inspect our cultural foundations so we can connect with suitable strands of our cultural trajectory."[223]

Marimba Ani is one of the leading African-centered theorists. She discusses the political nature of culture and group identity in her path-breaking work *Yurugu*[224] and concludes, like Wilson, that group identity is a prerequisite to political action and community defense.[225] As she states:

> Political behavior is simply behavior that issues from an awareness of group definition as distinct from other groups. We think politically when we assess our group interest in relation to the interests of other groups and determine whether those interests are compatible with or in opposition to ours. We act politically when our behavior and strategies reflect those assessments. Cultural identification and ideological commitment are bases for political consciousness.[226]

If Ani's assessment is correct and group identity is the originator of political consciousness, then the desire of the exploiters of African communities to promote post-racialism and colorblindness makes perfect sense. Ani's hypothesis also suggests that the proponents of anti-essentialism are either misguided or that they too wish for the cultural and political impotence of African people. This conclusion can be taken from the cavalier way that anti-essentialism treats African identity. Strict anti-essentialism does not recognize the legitimacy of African identity at all,[227] and weak anti-essentialism (discussed

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219. CHINWEIZU, THE WEST AND THE REST OF US: WHITE PREDATORS, BLACK SLAVERS, AND THE AFRICAN ELITE 497 (1975).

220. *Sankofa* is a symbol in the Akan *Adinkra* system that resembles a bird reaching to touch its tail feathers. It literally means "reach back and fetch it" or "go back and fetch it" and can be taken to illustrate the process of cultural recovery and historical memory. Marimba Ani, *To Be Afrikan: Toward the Healing, Rebirth and Reconstruction of* AFRIKAN CIVILIZATION: THE MAAT/MAAFA/SANKOFA PARADIGM, *in* STATE OF THE RACE: CREATING THE 21ST CENTURY: WHERE DO WE GO FROM HERE? 137, 141–43 (Jemadari Kamara & Tony Menelik Van Der Meer eds., 2004) (discussing *Sankofa*).

221. *See* HENDERSON, *supra* note 213, at 128–29 (discussing Chinweizu's theory as an application of *Sankofa*).

222. *Id.*

223. CHINWEIZU, *supra* note 219, at 188.

224. MARIMBA ANI, YURUGU: AN AFRICAN-CENTERED CRITIQUE OF EUROPEAN CULTURAL THOUGHT AND BEHAVIOR (1994).

225. *Id.* at 5–6.

226. *Id.* at 6.

227. *See supra* notes 90–94 and accompanying text.

above)[228] only legitimates African group identity to the extent it can be expressed in "collectivities whose culture and dynamics were contested and contingent."[229] But a "contested and contingent" collectivity is not one that can exercise power or throw off the shackles of an entrenched white supremacy.[230] Anti-essentialism's concern, however, is not with African liberation.[231] It is chiefly concerned with ideological consistency within Eurocentric thought and with political relations in the United States and other European and European-derived countries.[232] Thus, the values of anti-essentialism are clearly incompatible with African-centered thought, as are its politics and morals.

V. WORLDVIEW AND THE PERCEPTION OF ESSENCE

A. Axiological Position and the Question of Values

In this Part of the Article, I want to deal specifically with the normative question raised by the anti-essentialist critique. The critique presents essentialism as something that is wrong and to be avoided for reasons beyond the simple fact that it is believed to be theoretically incorrect. For critical race theorists, essentialism is ethically incorrect as well. As I have described in the Introduction, this moral component of the anti-essentialism critique takes a decidedly pejorative slant.[233]

Ethics arise from values—an individual's or community's perception of the good.[234] Anti-essentialist values derive from postmodernism's rejection of foundationalism and its skeptical stance toward

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228. *See id.*

229. *See* Peller, *supra* note 32, at 1494.

230. This is true for the reasons Ani states, *see supra* note 224 and accompanying text, and because political advocacy requires a *cohesive* culture. *See* ANI, *supra* note 224, at 5 (suggesting relationship between ideology and group cohesion).

231. See *supra* notes 107–108 and accompanying text for a discussion of how CRT theorists "throw[ ] their lot in with the poststructuralist crowd."

232. *Id.*

233. *See supra* notes 8–14 and accompanying text. In a similar vein, MacKinnon notes that in some quarters essentialism is treated like "a contagious disease that you have to . . . avoid catching." Catharine A. MacKinnon, *Keeping It Real: On Anti-"Essentialism," in* CROSSROADS, *supra* note 61, at 75.

234. According to Steven Salbu, "The ethical basis of a particular decision may be a perceived universal truth, a socially constructed system of values and priorities, a theoretically objective analysis of good and bad effects, religious imperatives, inner promptings that compel a highly personalized set of beliefs, or a combination of many such factors." Steven R. Salbu, *Law and Conformity, Ethics and Conflict: The Trouble with Law-Based Conceptions of Ethics*, 68 IND. L.J. 101 (1992). Anthony Cook describes ethics as "the nomos of conduct, the rationally derived normative structures that permit us to distinguish good from bad behavior." Anthony E. Cook, *Forward: Towards A Postmodern Ethics of Service,* 81 GEO. L.J. 2457 (1993).

reason, objectivity, realism, and nature.[235] Postmodernism thus privileges freedom, independence, fluidity, and fragmentation and disfavors tradition, order, and stability.[236] These interests of postmodernism result in a greater emphasis on individuality and individual freedom than on group interests and collective identity.[237] Catharine MacKinnon argues that "[a]nti-'essentialism,' as practiced, . . . corrodes group identification and solidarity and leaves us with one-at-a-time personhood: liberal individualism."[238] Thus, at the axiological level, anti-essentialists share the same individualistic values as the liberal structuralists they seek to critique.[239]

Obviously the discourses that have led to the postmodern moment could only be based upon those that have come before.[240] The genealo-

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235. *See* Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741, 748–50 (1994) (asserting that critical race theorists have adopted the "profound doubt and skepticism" of postmodernism).

236. *See* Reza Dibadj, *Postmodernism, Representation, Law*, 29 U. HAW. L. REV. 377, 383 (2007) (arguing that postmodernism rejects the Enlightenment meta-narratives of reason, history, science, self, knowledge, power, gender, and the inherent superiority of Western culture); Andrew M. Jacobs, *God Save This Postmodern Court: The Death of Necessity and the Transformation of the Supreme Court's Overruling Rhetoric*, 63 U. CIN. L. REV. 1119, 1144 (1995) ("Postmodern culture is diffuse, pluralistic, fragmented, and constantly changing.").

237. *See* Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251, 270 (2002) ("[P]ostmodernism, with its indictment of universal norms and essentialist analyses, has been criticized as a return to individualism."); Peller, *supra* note 32, at 1498 (describing Richard Ford's postmodern anti-essentialism as having a "tendency . . . to revert to liberal individualism").

238. MacKinnon, *supra* note 233. In MacKinnon's view, the focus on individual identity or "identities" over collective characteristics and interests leads to an isolating separateness and political powerlessness. "With the inability to assert a group reality," she writes, "an ability that only the subordinated need—comes the shift away from realities of power in the world and toward the search for . . . 'identities.'" *Id.*

239. Many postmodernists would reject the claim that postmodernism leads to greater emphasis on individuality. A central postmodernist assertion is that there is no unitary self and that this leaves no possibility for individuality. Fredric Jameson declared that "individualism and personal identity is a thing of the past" and that "the old individual or individualist subject is 'dead.'" Fredric Jameson, *Postmodernism and Consumer Society, in* POSTMODERNISM AND ITS DISCONTENTS: THEORIES, PRACTICES 13, 17 (E. Ann Kaplan ed., 1988); *see also* powell, *supra* note 40, at 1490–99 (positing a postmodern fragmented view of self that is opposed to the individualism found in mainstream Western notions of the self); Ruthann Robson, *The Specter of a Lesbian Supreme Court Justice: Problems of Identity in Lesbian Legal Theorizing*, 5 ST. THOMAS L. REV. 433, 440 (1993) (describing the "death of the subject" as a consequence of the postmodern critique of identity). My own view is that the attempt to link modernism, but not postmodernism, with individualism is theoretically incoherent.

240. *See* Kenneth B. Nunn, *Illegal Aliens: Extraterrestrials and White Fear*, 48 FLA. L. REV. 397, 401 (1996) ("[M]eaning is constructed from concepts that already exist within the social reservoir of ideas.").

gies that have produced postmodernism must be linked to the modern and pre-modern moments that have preceded it.[241] Postmodern thought is not universal (it cannot be by its own precepts).[242] It arose in a specific place and time in a particular cultural context.[243] This cultural context must have influenced the form, content, and ultimate meaning of postmodernism. Since postmodernism arose out of the crucible of European philosophy and shaped itself by the dictates of European culture, the interests, issues, and concerns to which postmodernism responds are those that are salient and meaningful within European culture.[244]

African-centered scholars such as Marimba Ani, Wade Nobles, Asa Hilliard, and Na'im Akbar have raised an intense cultural critique of Western civilization.[245] These African-centered scholars take a constructivist view of culture and social institutions.[246] From the African-

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241. Fish argues as much when he describes "interpretive communities" as collectivities that place a prior constraint on interpretation. *See* STANLEY FISH, IS THERE A TEXT IN THIS CLASS? 13–14 (1980) (arguing shared strategies for interpretation "determine the shape of what is read"). As one legal scholar describes this process of thought structuring:

> No interpreter ever stands prior to or outside of interpretive practices, which always and necessarily limit one's interpretation of any text, including the Constitution. In short, the practices of an interpretive community simultaneously enable and limit textual understanding: An interpretive community organizes the world for its members by relating phenomena "to the interests and goals that make the community what it is."

Stephen M. Feldman, *The Return of the Self, or Whatever Happened to Postmodern Jurisprudence?*, 9 WASH. U. JURIS. REV. 267, 273 (2017).

242. *See supra* note 112 and accompanying text.

243. As Nigerian scholar Adeshina Afolayan points out in discussing Zeleza's views concerning the cultural limitations of postmodern theory, postmodernism "is conditioned by certain intellectual, institutional and ideological contexts and struggles" in European societies "that eventually led to the chasm between 'academy and civics', especially the waning attention in 'transformative theories of society—what postmodernism calls grand narratives . . . .'" Adeshina Afolayan, *We Are All Postmodernists Now! African Philosophy and the Postmodern Agenda*, 5(2) HEKMAT VA FALSAFEH (WISDOM AND PHILOSOPHY) 53, 61 (2009) (citing Paul T. Zeleza, *Historicizing the Posts: The View from African Studies*, *in* POSTMODERNISM, POSTCOLONIALITY AND AFRICAN STUDIES 2 (Zine Magubane ed., 2005)).

244. *See id.*

245. Nunn, *supra* note 15, at 328–38.

246. *Id.* at 330 n.24. Wade Nobles's thought in this regard has been influential among African-centered scholars. He advocates a broad definition of culture, suggesting that culture be understood as "a construct representing the vast structural processes of language, behavior, customs, knowledge, symbols, ideas and values which provide people with a general design for living and patterns for interpreting reality . . . ." Wade W. Nobles, *Mass Communications and Mythic Consciousness: The Role of Language and Culture in International Development*, *in* SEEKING THE SAKHU: FOUNDATIONAL WRITINGS FOR AN AFRICAN PSYCHOLOGY 221, 223 (2006). Nobles argues that culture should be conceptualized in three levels. The "deep structure of culture" consists of a people's ontology, cosmology, and

centered perspective, "racism, sexism, etc., flow from the world-view and conceptual system that is at the core of European culture."[247] The world-view and conceptual system of European and European-derived cultures is "grounded in materialism"[248] and displays "an epistemology, aesthetics and ethos based on material values."[249] As I have argued elsewhere, certain key components of European culture grow out of the European materialist perspective.[250] These include a dichotomous reasoning style, hierarchical ordering, analytic thought, objectification, abstraction, extreme rationalism, and a rejection of spiritual or sacred forces (desacralization).[251] I have used the term "Eurocentricity" to summarize these core cultural components.[252]

The point to be made here is that these Eurocentric values are "baked into" postmodern philosophy and the anti-essentialist critique. This is because "the materialistic paradigm of Eurocentric societies produces certain cultural determinants, which shape and direct all social productions within the culture."[253] As I have described it, this influence is pervasive: "In this way, Eurocentricity reaches out to delineate and direct everything the Eurocentric society produces, within the realm of art, science, economics and social life. All social and cultural productions—even the society's concept of the law—will reflect the materialism, aggression and individualism that Eurocentricity generates."[254]

Marimba Ani describes the intimate connection of individualism to the driving engine of European culture, what she refers to as the *asili*.[255] The *asili* in European societies necessitates a drive for power.[256] This "necessitates the splitting of the self from other."[257] According to Ani:

> What results is the concept of the individual ("not divisible"); the smallest unit of the social group. This atom of the human universe is invented by the European as the seat of rational thought, the seat of moral action, [and] the locus of power . . . . Clearly the concept of the "individual" is uniquely European, as is

axiology; a second intermediate level consists of "its emergent aspects, ethos, ideology and worldview"; and a third surface level consists of "its manifestations, customs, beliefs, behavior, language, etc." *Id.* at 223–24.

247. Nunn, *supra* note 15, at 330–31.

248. *Id.*

249. *Id.*

250. *Id.* at 338.

251. *Id.* at 334–38.

252. *Id.* at 331.

253. *Id.* at 333.

254. *Id.* at 338.

255. In Ani's conception, the *asili* is the ideological thrust or core of a culture. ANI, *supra* note 224, at xxv.

256. Nunn, *supra* note 15, at 350.

257. *Id.*

> the resultant ideology of individualism and the economic system of capitalism that accompanies it.[258]

As we see, Ani argues that the European societies have consequently produced a particular brand of individualism that differs from the world's other cultures. She notes that this Eurocentric view of the individual is "radically different from world majority ontological systems."[259] African people, in contrast, have no counterpart to the European view of the "individual" in their indigenous systems.[260]

According to Gyekye, while African societies recognize individual needs, the overall emphasis is on communalistic values.[261] The African belief is that "social relationships are essential for every human person, for no one is self-sufficient and therefore no one can, in isolation, function adequately in the social context."[262] African communalism is considered a natural state and a fundamental part of the African concept of society.[263] It is the well-being of the overall community that sets the basis for individual happiness and thriving. In contrast to the individualistic values of Western societies described above, such as freedom, independence, etc., African societies promote communal values such as "sharing, mutual aid, caring for others, interdependence, solidarity, reciprocal obligation, and social har-

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258. *Id.*
259. *Id.*
260. *Id.* at 351. That is not to say that Africans do not respect individuality. Africans value individuality in much the same way as other majority cultures (that is to say, nonwhites) do—in the context of the broader community in which the individual lives. Ani argues this infuses the concept of individuality with greater meaning:

> Among the Hopi, Lee found that "[e]very individual, young and old, is charged with responsibility for the welfare of the social unit." This supports Diamond, who says that in traditional society the average individual participates to a greater extent than does the ordinary individual in European society. The result of this is that the person has a significance that she lacks in European culture. Her importance is qualitatively different. There is not just a verbal commitment to "valuing the individual." She means more to the group; her value is given content.

Id. at 350.
261. Kwame Gyekye, a professor of philosophy at the University of Ghana, describes the delicate balance between communal and individualistic values in the African context:

> The fact the African people express appreciation for both communal and individualistic values means that for them these two seemingly opposed concepts can co-exist, however precariously. In all this, there is a clear attempt and desire on the part of the African people to come to terms with their assumptions about the natural sociality of the human person. Their idea is that the individual cannot develop outside of the framework of the community, but the welfare of the community as a whole cannot dispense with the talents and initiatives of its individual members either.

KWAME GYEKYE, AFRICAN CULTURAL VALUES: AN INTRODUCTION 50 (1996).
262. *Id.* at 36.
263. *Id.*

mony."264 These values are inherent in the proverbs found in many parts of Africa. One such proverb reads, "If you don't let your friend get nine, you won't get ten."265 This proverb suggests that one cannot obtain one's goals independently. One must work collectively to be successful.266 Another Akan proverb holds, "Solitariness . . . is a pitiable condition."267 These proverbs express an African concept of morality and virtue. What is morally good in Africa is that which "promotes social welfare, solidarity and harmony in human relationships."268

Traditionally, African cultures have been able to reinforce indigenous communalistic values in their societies and resist the lure of individualism. But individualism is an outgrowth of a particular way of life and not a racial trait. As African societies have modernized, they have shifted toward the individualistic behavior so prevalent in the West.269 But communalism is not only truer to African roots, it is a way of moral behavior that better serves the interests of African people. As Gyekye puts it:

> [A]ppropriate attention will have to be given to [whether] communal values . . . are worth maintaining. Ultimately, it is a matter of moral evaluation and choice. In my opinion, the African people and their cultures should resist the path of extreme individualism, which will lead to the rise of lonely crowds in their societies and the fragmentation of values and, in consequence, undermine the whole meaning and essence of a human society.270

To the extent that essentialism is a perspective that encourages one to seek out commonalities and connections between individuals and within groups, essentialism is a framework that embraces the values of African people. There is thus no moral reason to reject essentialism per se. Whether an essentialist position can be described as morally correct or not must be determined on some factor other than the tendency of essentialist thought to privilege groups over individuals. Certainly, the context in which essentialism is deployed makes all the difference and this recognition makes the issue of whether essentialist concepts or behavior is appropriate or not a political question, not a moral one.271

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264. *Id.* at 35. The relationship between individual and community is not one-way. Among the baKongo, the community undertakes a responsibility for each and every child. *See* SIMON BOCKIE, DEATH AND THE INVISIBLE POWERS: THE WORLD OF KONGO BELIEF 31 (1993) ("In contrast to Western attitudes, the individual in Manianga philosophy is viewed as both a community creation and a community responsibility.").

265. *The 50 Most Important Akan Proverbs*, ADINKRA SYMBOLS, http://www.adinkra symbols.org/the-50-most-important-akan-proverbs/ [https://perma.unl.edu/U6RE-SLYP].

266. *Id.*

267. GYEKYE, *supra* note 261, at 38.

268. *Id.* at 57.

269. *Id.* at 51.

270. *Id.*

271. *See supra* note 48 and accompanying text.

B. Ontological Position and the Question of "Truth"

African people do not only embrace different ethics and values than European people, their characteristic axiology derives from a distinctive view of the nature of reality and thus the nature of truth.[272] Africans believe in a reality that is fundamentally spiritual in nature and that the material world we see and operate in, while not an illusion, is merely the surface manifestation of a deeper spiritual realm.[273] Thinkers in the ancient Kongo kingdom described this foundational spiritual world as *ku mpèmba*.[274] *Ku mpèmba* was the abode of spirits and ancestors and the place of creation.[275] All things began in *ku mpèmba* and then entered the material world, *ku nseke*, for a cycle of birth, growth, fulfillment, and death before returning to the primordial *Ku mpèmba*.[276] The Yoruba[277] and the Igbo[278] peoples of southern Nigeria perceived the universe in similar terms.

This African ontology means that the true character of a thing is not described by its material manifestation but by its intangible, spiritual essence.[279] In the African construct, all material things have an

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272. Elsewhere I have described how different cultures produce different value systems through their differing views of reality. The material focus of European societies produces their unique axiology (values). "The materialistic paradigm of Eurocentric societies produces certain cultural determinates, which shape and direct all social productions within the culture. These cultural determinates manifest themselves mainly in the areas of thought structuring and processing and include epistemological values and logic." Nunn, *supra* note 15, at 333. Ani discusses how culture, through shared experiences of reality, produces the culture's axiology. She states that "[t]o its members, culture *re*-presents values (which they themselves have created together out of shared experiences) as a systemic set of ideas and a single coherent statement." ANI, *supra* note 224, at 5.

273. *See* BOCKIE, *supra* note 264, at 1 (demonstrating how the African "community itself is viewed as the embodiment of spiritual reality, a reality present everywhere, at all times").

274. KIMBWANDÈNDE KIA BUNSEKI FU-KIAU, SELF-HEALING POWER AND THERAPY: OLD TEACHINGS FROM AFRICA 8 (1980).

275. *Id.*

276. *Id.* at 8–9; *see* BARBARO MARTINEZ-RUIZ, KONGO GRAPHIC WRITING AND OTHER NARRATIVES OF THE SIGN 68–72 (2013) (describing the cyclical journey around the Kongo cosmogram and its mythical meaning).

277. *See* Babatunde Lawal, Ayél'ojà; Òrunn'ilé: *Imagining and Performing Yoruba Cosmology*, *in* AFRICAN COSMOS: STELLAR ARTS 217–28 (2012) (describing "*Igba Ìwà*, 'the Calabash of Existence'").

278. *See* SIMEON ONYEWUEKE EBOH, AN AFRICAN CONCEPT OF LAW AND ORDER: A CASE STUDY OF IGBO TRADITIONAL SOCIETY 29–53 (2003) (describing a cyclic process of becoming between visible and invisible worlds).

279. *See* KWAME GYEKYE, AFRICAN PHILOSOPHICAL THOUGHT: THE AKAN CONCEPTUAL SCHEME 69 (Temple Univ. Press rev. ed. 1995) (1987) ("What is primarily real is spiritual."). There are similar perspectives in Western thought, chiefly of a religious character. *See, e.g.*, Charlene P.E. Burns, *Cognitive Science & Christian Theology*, *in* SOUL, PSYCHE, BRAIN: NEW DIRECTIONS IN THE STUDY OF BRAIN-MIND SCIENCE 181–85 (reviewing Christian debates on the nature of the soul and "claim that the essence of the person . . . resides or rests with Christ"); EN-

essence.[280] Thus, "essentialism" of a type is indispensable in the African worldview.[281] To Africans, humans, plants, animals, material items, and the various elements of the natural world (fire, water, earth, wind, sun, moon, etc.) are manifestations of spirit.[282] Each of them is a symbolic representation of reality that carries esoteric meaning and allows access to truth.[283]

One such item of particular significance in Kongo thought is the *nkisi* (plural *minkisi*).[284] *Minkisi* are power objects that may be used for healing, protection, or to bless or curse.[285] Although they are found in physical form, they are understood by the Bakongo to be spirits.[286] One particular form of *nkisi*, relevant to discussions of law, is the *nkondi* (plural *minkondi*).[287] A *nkondi* is a human shaped figure, carved from wood, that is usually depicted holding a spear aloft as if to

COUNTERS OF BODY AND SOUL IN CONTEMPORARY RELIGIOUS PRACTICES x–xxvii (Anna Fedele & Ruy Llera Blanes eds., 2011) (describing challenges to "the classic binarism between 'body' and 'soul'"). However, these are disfavored in modern philosophy and wholly rejected by postmodernists. But whatever position postmodernists have on this, it must be understood that it is based on debates and developments that are specific to Europeans and cannot necessarily be universalized to the rest of the world. *See supra* notes 229–30 and accompanying text.

280. For example, Gyekye writes, "The Akan universe, essentially spiritual, is endowed or charged with varying degrees of force or power. This force or power is *sunsum*, usually translated as 'spirit . . . .'" GYEKYE, *supra* note 279, at 72.

281. *Id.*; *see also* JOHN MBITI, AFRICAN RELIGIONS AND PHILOSOPHY 257 (1970) ("African people know that the universe has a power, force or whatever else one may call it, in addition to [physical objects].").

282. Again, according to Gyekye, the word *sunsum* "is used to refer to the mystical powers believed to exist in the world. These powers are believed to constitute the inner essences or intrinsic properties of natural objects, and are believed to be contained in those objects." GYEKE, *supra* note 279, at 73.

283. *See* JANHEINZ JAHN, MUNTU: AFRICAN CULTURE AND THE WESTERN WORLD 156–84 (Marjorie Grene trans., 1990) (describing the character of "things" (*kintu*) and denoting how such things take on a symbolic function through what Jahn calls a process of "designation").

284. CHRISTOPHER C. FENNELL, CROSSROADS AND COSMOLOGIES: DIASPORAS AND ETHNOGENESIS IN THE NEW WORLD 56 (Paul A. Shackel ed., 2007).

285. MARTINEZ-RUIZ, *supra* note 276, at 150.

286. *Id.* at 149; *see also* MACGAFFEY, *supra* note 2, at 78–79 (describing the spiritual character of minkisi and relating that "[t]he Kongo term nkisi relates etymologically to other Central African words often translated as 'spirit.'"). Conceding that the concept of the *nkisi* is complex, MacGaffey nevertheless states:

> Ultimately, the *nkisi* is an invisible personality, with a certain specific identity, which has chosen, or been induced, to invest itself in these objects and persons, through whom the powers attributed to it become effective. "The *nkisi*-object is a mechanism and a manner of domesticating, imprisoning, capturing *simbi* spirits in a material object which both represents and re-doubles them."

Id. at 80 (citations omitted).

287. ALISA LAGAMMA, *Kongo: Power and Majesty*, *in* KONGO: POWER AND MAJESTY 37 (2015).

strike an enemy.[288] A cavity is carved inside the *nkondi* where items such as herbs, bones, etc. are deposited in order to empower the *nkondi*.[289] Frequently, this cavity is covered with a mirror, shells, bones, or metal.[290] A *nkondi* is an enforcer of contracts.[291] A *nkondi* is covered with nails or metal spikes. Each nail represents an agreement of some sort.[292] The nail is hammered in by the parties to demonstrate their undertaking of the agreement represented by the nail.[293] Should the parties fail to uphold the promise secured by the *nkondi*, then it is believed that the *nkondi*'s spirit will track them down and harm them.[294] Although a *nkondi* looks like a wooden statue covered in nails, in the Kongo worldview it is in fact a powerful spirit that is worthy of fear and respect.[295] This powerful *nkondi* spirit is its essence.

Similarly, in African cultures, the human personality itself is believed to have an essence.[296] In Kongo belief, the human body is simply a shell. In addition to the physical body (or *nitu*), a person consists of a *kini* and a *mwela*.[297] The *kini* "is the member that dictates a man's behavior."[298] If anything is the "essence," as that term is under-

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288. FENNELL, *supra* note 284, at 61.

289. *Id.*

290. *Id.*

291. *See id.* at 60 (asserting the *nkondi* "was often used for public ceremonies of oath taking and for consecrating political and social arrangements"); MARTINEZ-RUIZ, *supra* note 276, at 166 (describing a *nkondi* as a type of "sculpture in which pieces of iron are often hammered in for the swearing of oaths and concluding of alliances").

292. *Id.*

293. LaGAMMA, *supra* note 287.

294. *Id.* at 37–38. Indeed, the term *nkondi* means "hunter." *Id.* at 37. LaGamma describes how *nkondi* were used to deter antisocial behavior, to attack foes, or to ensure peace. *Id.* at 39.

295. *See* FENNELL, *supra* note 284, at 61 (reporting *nkondi* "were often viewed as hunter minkisis, which continued manifestations of a powerful simbi spirit that could track down, bind, and vanquish malevolent spirits and other forces . . . ."). MacGaffey describes how these *nkondi nkisi* spirits could be violent and dangerous, not only to other spirits but to men, indeed entire villages. *See* MACGAFFEY, *supra* note 2, at 101–04 (detailing dangers thought to come from *nkondi*).

296. *See, e.g.*, GYEKYE, *supra* note 279, at 85 (describing the *ôkra* in Akan philosophy as "that which constitutes the innermost self, the essence, of the individual person"). Tempels makes this point in attempting to clarify the definition of the Bantu word "*muntu*," which is often translated as "human."

> In Tempels's view: It seems to me incorrect to translate this word "muntu" by "the man". The "muntu" certainly possesses a visible body, but this body *is not* the "muntu". A Bantu one day explained to one of my colleagues that the "muntu" is rather what you call in English the "person" and not what you connote by "the man". "Muntu" signifies, then, vital force, endowed with intelligence and will.

PLACIDE TEMPELS, BANTU PHILOSOPHY 55 (1959).

297. BOCKIE, *supra* note 264, at 129.

298. *Id.*

stood in Western philosophy, the *kini* would be it. The *kini* "exerts
control over this world's visible [body, the] nitu, [the] nitu has no in-
fluence over it."[299] The *mwela* equates to the soul in Western religious
thought.[300] It "gives life" to both the *nitu* and the *kini*.[301] According to
Bockie:

> At death, when the visible nitu dies, kini and mwela exit from it to start their
> journey to the other world. Together they form the life-body, that which con-
> tinues alive, as opposed to the death-body [the nitu], which has been discarded
> and left behind.[302]

The Kemetic, or Ancient Egyptian view is similar. The Ancient Egyp-
tians also believed a person had a body, an essence, and a soul.[303] The
corporal body was called the *khat*;[304] the animating spirit or essence,
the *ka*;[305] and the soul, the *ba*.[306]

One could argue that these African ontological beliefs in the exis-
tence of essence are simply wrong; that they represent, at best, "primi-
tive" misunderstandings of the nature of reality.[307] But such a

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299. *Id.*

300. *Id.*

301. *Id.* at 130.

302. *Id.* at 129.

303. *See* ADOLPH ERMAN, LIFE IN ANCIENT EGYPT 307 (H.M. Tirard trans., Dover ed.,
      1971) (1894) (asserting Egyptians conceptualized the human personality as con-
      sisting of "the body, the soul and . . . [the] ka").

304. JOHN ANTHONY WEST, THE TRAVELER'S KEY TO ANCIENT EGYPT 64–65 (1985).

305. *Id.* at 64. According to West, the *ka* is the "spiritual essence of the deceased." *Id.*
      at 14; *see also* MARGARET BUNSON, A DICTIONARY OF ANCIENT EGYPT 130 (1991)
      (describing *ka* as "the ancient Egyptian term for a spiritual essence, which ex-
      isted alongside human form and yet maintained individuality"); R.T. RUNDLE
      CLARK, MYTH AND SYMBOL IN ANCIENT EGYPT 51 (1959) (describing that for the
      Egyptians "God [is] the spirit who assigns to everything its essence—its *Ka*").

306. WEST, *supra* note 304, at 63. The Ancient Egyptians had a very complex view of
      the person, which was made up of many components in addition to the physical
      body, any of which, in one way or another, could be viewed as making up the
      essence of a person beyond the physical body. These include the *khaibit* (ghost,
      shadow, or "shade"), the *akh* ("light body"), the *sekhem* ("power"), and the *ren*
      (name). *Id.* at 65.

307. The belief that white, Western, and European cultures epitomize the height of
      human achievement is widely held. *See* Paul Butler, *The System Is Working the
      Way It Is Supposed To: The Limits of Criminal Justice Reform,* 104 GEO. L.J.
      1419, 1444 (2016) (quoting Gary Peller for describing the dominant narrative of
      the West as one of inevitable progress "from myth to enlightenment, ignorance to
      knowledge, superstition to reason, primitive culture to civilization, religion to
      secularism, and . . . status to individual liberty"). As Goldberg states about the
      concept of "the primitive":

      > Like *Race* . . . the concept of *The Primitive* proved theoretically adapta-
      > ble, appropriating novel theoretical developments as its own by being
      > appropriable as a concept central and so seemingly necessary to theoreti-
      > cal advance . . . . The Primitive assumed synonymy with the racial
      > Other, a technical nomenclature for a popular category . . . . Formerly,
      > primitive societies were theorized in binary differentiation from a civi-
      > lized order: nomadic rather than settled; sexually promiscuous, polyga-

conclusion would be ethnocentric and racist.[308] More importantly, however, such a conclusion would be beside the point. Whether one is convinced of the ontological truth of African concepts of essence, it is clear that they are pervasively held within African societies and by individuals who are grounded in African culture. Thus, the belief in the non-existence of essences is neither universal nor inevitable. Rather, like most beliefs, it is dependent on the cultural context that the individual is situated in. To the extent that the moral claim that essentialism is wrong is based on an ontological claim about essences (i.e., essences do not exist), such a moral claim is dependent upon being in a Eurocentric cultural space.[309]

VI.   CONCLUSION

In this Article, I have attempted to demonstrate that CRT's anti-essentialism critique is impractical and misguided ideologically. It is impractical because adopting CRT's stance on anti-essentialism would make it impossible to organize the African community or to advance African interests. Strong versions of the critique would prevent recognizing any identity that was formed around race and/or ethnic identity. Weak versions of the critique would allow a contingent Black identity, but it is clear that even this weaker version would take an integrationist tenor and not allow any type of Black nationalist organizing. Any African-only organizing would be viewed as morally suspect.

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mous, and communal in family and property relations rather than monogamous, nuclear, and committed to private property; illogical in mentality and practicing magic rather than rational and scientific. In popular terms, nonwhite primitives have come to be perceived as child-like, intuitive, and spontaneous; they require the iron fist of 'European' governance and paternalistic guidance to control inherent physical [violent tendencies] and sexual drives . . . . [T]he civilized have a history, but the Primitive have none: their histories are frozen.

DAVID T. GOLDBERG, RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING 156–57 (1993), *cited in* Keith Aoki, *"Foreign-Ness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Sterotypes*, 4 ASIAN PAC. AM. L.J. 1, 60 (1996). It is this sense of the "Primitive/Civilized" binary that the opening quote from Jason Young is intended to capture. *See* YOUNG, *supra* note 3 and accompanying text.

308.   *See* Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573, 1602 (1996) ("The idea that certain cultures are more 'advanced' has been discredited as racist for decades by scholars . . . .").

309.   It is unfortunate that CRT debates on essentialism do not, on the whole, consider African philosophy, African intellectual heritage, or the African worldview, generally. *See* the discussion of anti-essentialism in CRT, *supra* Part II. I would hope that scholars of color, in particular, would not engage in this form of Eurocentrism and would at least be aware of their own cultural heritage, even if they did not ultimately agree with it.

Anti-essentialism is also ideologically misguided. The anti-essentialism critique prevalent in CRT derives from the adoption of postmodern theories about the nature of reality and the self. Yet, postmodern indeterminacy, reductionism, and opposition to structuralism make it difficult for CRT to uphold its professed commitments to the needs of the local and the particular. Moreover, it is contradictory for CRT to struggle against social constructs like racism and sexism when, according to postmodern theory, persistent social constructs like these would not even exist.

More importantly, the assumptions of post-modernism are based on an analysis that privileges and universalizes European intellectual history and European values. To the extent that ethics are based on values, the Eurocentric foundation of the CRT anti-essentialism critique makes its ethical position problematic for African people and for other people of color. Non-Europeans do not privilege individualism to the extent that Europeans do and consequently do not see the promotion of group interests as a problem to be overcome. In focusing on the individual over the collective, anti-essentialism promotes a false universal.

Finally, anti-essentialism adopts a view of reality that is alien to the African mind. Although the postmodern claim that there are no essences may seem commonsensical to individuals trained in a European system, to individuals who live in a universe filled with spirit, such a view would seem reductionist and strange. A moral prescription cannot work if it commands belief or behavior that is viewed as impossible or illogical.[310]

An appropriate ethics for African people would promote what is viewed as good in an African-centered cultural context and would fit the African worldview. African people value communalism and collectivity over individualism, and African people believe in the existence of essence. Plainly, anti-essentialism does not fit the bill.

For African activists and scholars, the charge that one is an essentialist is meaningless. One does not need to stop organizational activities to respond to such a charge, nor should one be concerned with shaping one's affiliations or one's thinking so that the charge will not be leveled. Although anti-essentialism asserts itself as a moral prerogative, I conclude that there is no ethical obligation for African-cen-

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310. Thus, a fundamental principle of criminal responsibility is that the accused must have the capacity to follow the commands of the law. *See* H.L.A. HART, PUNISHMENT AND RESPONSIBILITY 181 (1968) ("[A] primary vindication of the principle of responsibility could rest on the simple idea that unless a man has the capacity and a fair opportunity or chance to adjust his behavior [sic] to the law its penalties ought not to be applied to him."); *see also* SUSAN WOLF, FREEDOM WITHIN REASON 117 (1990) (arguing that a person who is incapable of endorsing and acting in conformity with moral values does not deserve blame).

tered activists to avoid essentialism. Rather than honor an ethics that does not honor us, that challenges our very right to exist, Africans "must claim our heritage as our base for solving problems, collectively, [and] not as individuals."[311]

The task that lies before us was described beautifully by the Ghanaian author Ayi Kwei Armah in the conclusion to his novel *Two Thousand Seasons*:

> There is no beauty but in relationships. Nothing cut off by itself is beautiful. Never can things in destructive relationships be beautiful. All beauty is in the creative purpose of our relationships; all ugliness is in the destructive aims of the destroyer's arrangements. The mind that knows this, the destroyers will set traps for it, but the destroyers' traps will never hold that mind. The group that knows this and that works knowing this, such a group itself is a work of beauty, creation's work. Against such a group the destroyers will set traps for the body, traps for the heart, traps to destroy the mind. Such a group none of the destroyers' traps can hold.[312]

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311. Hilliard, *supra* note 214, at 19.
312. Ayi Kwei Armah, Two Thousand Seasons 316–17 (Per Ankh ed., 2000).