

It was also suggested that an attempt had been made to "kill the father." Insofar as the comment was meant to evoke Freud, I will charitably let it pass. There is, however, a sense in which the speaker was right. I do think that the time has come to say goodbye to bwana, the Great White Father. However, I, for one, have no taste for blood. The smart ruler, upon sensing that an aroused populace has taken to the streets in the direction of the palace, will dash to the front of the crowd, baton in hand, and proclaim the whole thing a victory parade. Far from wanting to kill the father, I want the person inside that role to take his rightful place as my brother. Older brother, perhaps, in the ways of

the world we would envision together if not in the ways of the one we presently inhabit—wiser even. But brother, nonetheless.

BEYOND CRITICAL LEGAL STUDIES: THE  
RECONSTRUCTIVE THEOLOGY OF DR.  
MARTIN LUTHER KING, JR.

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IN recent years, criticism of the Critical Legal Studies movement by minority legal scholars has intensified the controversy surrounding this body of nontraditional scholarship. Although initially inspired by the zeal with which CLS's adherents questioned the legitimacy and exposed the oppressiveness of legal ideology, some minority scholars are troubled by CLS's reluctance to acknowledge the unique relationship between law and the history of American racism. These scholars assert that CLS's critique of the liberal state, and this critique's implicit constructive vision, fail to appreciate the role the state can play in neutralizing and eradicating ubiquitous racial oppression. Furthermore, minority scholars have criticized the failure of the CLS movement to acquaint itself with the history and perspective of those who have, in different contexts, endured the problems of most concern to CLS—problems associated with hierarchy, powerlessness, and legitimating ideologies.

Given this context, this article has two goals. First, by focusing on the African-American church and its role in the struggle for African-American liberation, I hope to foster a greater knowledge of, and appreciation for, the concrete experiences of the powerless and oppressed. I contend that such knowledge and appreciation is indispensable to CLS's primary project of deconstruction. Second, I wish to point out the particular relevance of the critical theology of Dr. Martin Luther King, Jr., for the increasing numbers of legal scholars who have begun to look to religion as a potential source for alternative conceptions of community. As the towering organic intellectual of twentieth-century American life, King integrated theory, experience, and transformative struggle to create a rich and effective form of critical activity.

In his attempt to reconcile the contradictions of various theological perspectives, King undertook a project similar to that of CLS—to under-

stand the hegemony of repressive ideologies and to deconstruct the limits they appear to set on the possibilities of change. Moreover, King was deeply committed to the reconstruction of a social reality based on a radically different assessment of human potential, a vision he often referred to as the "Beloved Community." As a result, a closer examination of King's intellectual odyssey may provide valuable insight to those CLS scholars interested in not merely explicating an unjust social order, but in reconstructing a just community. . . .

I. THE LIMITS OF THE CLS PROJECT

*A. The Project and the Problem*

. . . CLS has unabashedly challenged the accepted values of classical liberalism by undermining the interpretations of private property, individual rights, equality of opportunity, meritocracy, and governmental power which have sustained and reproduced oppressive hierarchies of wealth and power. Although liberalism purports to effect a neutral reconciliation between individual freedom and the collective constraints needed to preserve that freedom, CLS suggests that such neutrality is inherently illusory. Through structured argumentation based on manipulable legal categories, the legal system legitimates a status quo characterized by vast inequalities of wealth and power.

. . . One of the goals of the CLS project is to understand why people acquiesce in the social systems that oppress them. CLS asks how the backdrop values, which are in fact indeterminate, find their way into mass consciousness as conventional wisdom, thereby limiting the range of acceptable—or even conceivable—social arrangements. CLS scholars purport to show that our social-political world, from which law is inseparable, is of our own making. . . . We can choose to structure our institutions in hierarchy and dominance, and limit our understanding of others and ourselves to the distorted roles and images generated by social rules and laws, or we can choose to alleviate the alienation and loneliness that stifle our societal needs and impulses, by restructuring those institutions and practices which distance us from others and

cause us to perceive others with trepidation and suspicion. None of what we now experience and blindly accept is carved in stone. If we despair over our present social order—and CLS believes that many of us do, whether we realize it or not—we can “hew out of the mountain of despair a stone of hope.”<sup>1</sup>

But how do we begin this reconstructive enterprise? What use do we make of our newfound liberation? If we are free to define collectively our existence and to transcend our present context, are we any better equipped to act than before? How do we know that the community to which we aspire is better than the social order we transcend? How do we know that a world of love, understanding, and mutual trust awaits us, rather than a world of greater oppression and alienation, filled with the uncertainties born of the knowledge that all that separates civility from brutality is our faith in the goodness of humankind? In short, what values and concerns will guide us in this reconstructive moment?

The failure to address these important questions constitutes the most significant shortcoming of the CLS project, which is in part explained by the fact that the “answers” can only develop, tentatively and in fits and starts, through the concrete experiences of struggle and survival. Yet CLS consistently deemphasizes the individual and institutional experiences of those who are subjugated. Thus CLS’s theoretical deconstruction of liberalism fails to explain—or even ask—why subordinated individuals, those most disadvantaged by hierarchies of wealth and power, place such faith in the liberal state.

There are at least three possible explanations for this faith on the part of subordinated peoples. The first possibility is false consciousness: the rhetoric of liberalism has duped those at the bottom of the social and economic hierarchy. Liberalism’s protestations of equality, fairness, and neutrality have convinced them that their disadvantages are somehow just, perhaps because other results have given them advantages in the past or may do so in the future. The second possibility is denial: people want to believe that the system is working as it claims,

although they know it is not. Continued faith in the disproven values of neutrality and objectivity may allow us to avoid the onerous reality that life is what we make of it—no more and no less. Finally, individuals may suffer from neither false consciousness nor denial, but may simply be ostracized or marginalized, limited by the existential constraints of enslavement, apartheid, intimidation, or poverty, which make meaningful social struggle difficult if not impossible.<sup>2</sup>

The kind of deconstruction to which CLS is methodologically committed—what I characterize as “theoretical deconstruction with a limited experiential deconstruction”—may indeed liberate the first grouping, people duped by the rhetoric of liberalism. Such individuals have not perceived the contradictions of their belief systems and have not confronted the harsh realities of their existence. Thoughtful discussion and examination may liberate them from the mental constructs that limit their self-actualization.

People in the second grouping do not suffer from false consciousness. Although theoretical deconstruction can serve as a catalyst to generate a sense of empowerment, these people are most in need of constructive goals of social struggle and practical strategies of mobilization. They lack a sense of community with those who share their feelings and who are willing to engage in various forms of collective social struggle to transform existing conditions. The knowledge that they are not alone in their pain and isolation is often enough to shake these people from the stupor of their self-denial and encourage them both to formulate the goals of social struggle and to adopt viable strategies for securing those goals.

People in the third grouping suffer neither from false consciousness nor self-denial; rather, the dominant powers’ use of various methods of coercion and social control simply does not provide much space for substantive struggle. Critical activity must focus here on alleviating these existential constraints as well as on exposing the role of ideology in maintaining them.

Theorists in search of alternative foundations

for human community, those seeking to replace one kind of faith with another, must embrace a form of critical activity that deals with the problems of those suffering from false consciousness, denial, and existential subjugation. By themselves, theoretical deconstruction and an experiential deconstruction preoccupied with the oppression of liberalism cannot achieve this objective. Although theoretical deconstruction is important, the ultimate goal of critical theory should be the reconstruction of community from the debris of theoretical deconstruction, a project capable of reaching each of the groupings outlined above. I suggest . . . that the prophetic Christianity of Dr. Martin Luther King, Jr., as well as the most enabling assumptions of liberal theory provide sturdy ground for this reconstructive endeavor. . . .

### B. Critical Legal Studies and Reconstructive Vision

. . . In this section, I examine the relationship between a limited conception of deconstruction and the deficient reconstructive project found in the CLS critique.

#### I. CRITICAL LEGAL STUDIES: A SUMMARY

What happens is people start translating their political feelings into unconscionability arguments or right-to-privacy arguments without realizing that there is a weird dissociation taking place. . . . Without even knowing it, they start talking as if “we” were rights-bearing citizens who are “allowed” to do this or that by something called “the state,” which is a passivizing illusion—actually a hallucination that establishes the presumptive political legitimacy of the status quo.<sup>3</sup>

Many CLS scholars see the liberal conception of community as heavily dependent on the faith that the state can and does set community-defining boundaries that establish the limits of collective action through the neutral application of objective and determinate principles. Although sovereignty is theoretically vested in “the people,” the specific nature and conditions of that sovereignty are the subject of a “legal” text and subject to the interpretation of a “judicial aristocracy” of federal judges. CLS asks,

“On what grounds can the people be legitimately robbed of this sovereignty?” One response is that the courts must enforce the boundaries articulated by the Constitution that define the spheres of privacy within which the collective cannot intrude. This enforcement requires a delicate balance between individual rights and duties. The apparatus of liberal rights mediates the relationship between ourselves and others whose cooperation both threatens, and is indispensable to, our survival. Under liberal theory, the process of mediation requires the establishment of private spheres of autonomy into which others are not permitted to intrude. A liberal discourse of abstract rights and duties purports to map out the borders of these private spheres of autonomy and to set the conditions under which they may justifiably be disregarded.

The most troubling aspect of this story of neutrality and dispassionate adjudication is that those in power draw the line between public and private so as to preserve the distributions of wealth and power which limit transformative change and preserve hierarchies directly or indirectly benefiting them. How does CLS respond to this problem? One way is by showing the inherent indeterminacy of line-drawing. . . . Another way is by offering an alternative vision of community, a new way of drawing the lines between rights and duties. CLS has not done very much of this, although its negative critique implies such a vision, and its analysis occasionally supports such alternatives.

The alternative vision begins with a different conception of the self. Because liberal theory is thought to legitimize its social order by deducing it from specific conceptions of human nature, some have thought it necessary to posit a different conception of human nature in order to deduce a different conception of community, one that transcends the limitations of liberalism. This alternative conception of human nature rejects the conceptions offered by classical and contemporary liberal theory. It implies that liberal theory has mistaken the symptoms of the individual’s condition for its causes. That is, what Thomas Hobbes and John Locke describe as “natural” merely reflects the individual’s alienation from his true nature.

The individual is not, by nature, an autonomous and acquisitive being who desires to dominate others and appropriate property. Rather, her alienation and loneliness are socially produced. Individuals long for a genuine connection with others, a mutual acknowledgment of their humanity and need for empowerment. However, socially imposed roles temper their desires for connection with fears of rejection. The regime of liberal rights establishes many of these roles through the distribution of abstract rights and duties that distance us from ourselves and from others whom we long to experience in more meaningful ways than our present social existence permits.

We are lonely because our relationships with each other are distorted by these abstractions, and thus the potential for genuine connection is always limited by the socially contrived roles we adopt. Landlord/tenant, employer/laborer, professor/student, bank teller/customer, and judge/lawyer are all roles that distance us, diminish our intersubjectivity, and decrease the likelihood of a sustained sense of community. The liberal state, however, provides us with an alternative community that really is no community at all: to mediate the threat posed by others to ourselves, the state fosters an illusion of a community consisting of rights-bearing citizens said to be equal before the law and thus members of a community of equals.

This is problematic because at one level we perceive others as the bearers of rights, as equals in a community of equals, while at a different level—that of the market for instance—we perceive others as a threat, something to be dominated or neutralized in the acquisitive world of “dog eat dog.” The day-to-day realities of our private loneliness and alienation belie the image of our communitarian existence as equal political citizens.

The illusory liberal community is held together by the manipulation of political symbols by elites through their access to the mass media, and by our utter need to believe in community, even when it is utterly absent. That is, we long for community so desperately that a chief executive’s invasion of a small island, bombing of an African country, and general rhetoric of

American patriotism shape our conception of community and fill the emptiness we experience daily.

Given the pervasive sense of alienation which characterizes individuals’ interactions with others, then, they place great faith in the capacity of the state to define the nature of community. Part of that definition consists of the state’s ability to articulate and enforce neutral boundaries defining the liberal equality of individuals—their equal freedom within private spheres of autonomy protecting them from the arbitrary incursion of private and collective forces.

When a careful “trashing” of legal doctrine reveals, however, that all things are infused with both public and private qualities, there no longer exists any supposed objective criterion by which to logically characterize all things as either public or private. Under the weight of this analysis, the private / public dichotomy collapses and with it the artificial limitations imposed upon the possibilities of collective action needed to create alternative forms of community. We need not maintain faith in a state . . . proven incapable of objectively mediating the contradiction between public and private life.

The prescription of some, therefore, is to eliminate the state as we know it and, along with it, the artificially generated social roles that limit the possibilities of our communitarian impulses. In short, some call for a type of decentralized socialism . . .

where one need not hide behind the private for either protection or self-aggrandizement. Communities where relationships might be just “us, you and me, and the rest of us,” deciding for ourselves what we want, without the alienating third of the state. In that setting . . . we might even make group decisions about reproduction, replacing our pervasive alienation and fear of one another with something more like mutual trust, or love.<sup>4</sup>

. . . The implications for social struggle are clear. Activist lawyers must recognize that every time they “bring a case and win a right, that right is integrated within an ideological framework that has as its ultimate aim the maintenance of collective passivity. That doesn’t mean

you don’t bring the case—it means you keep your eye on power and not on rights.” By focusing on the role of law as power, critics constantly remind us that the liberal discourse of rights is “just one among many systems of meaning that people construct in order to deal with one of the most threatening aspects of social existence: the danger posed by other people, whose cooperation is indispensable to us.”<sup>5</sup>

Therefore, nothing about law or our present social order is sacrosanct or compelled by forces independent of our own capacities to envision and construct alternative forms of community. Deconstruction that demonstrates the indeterminacy both of legal doctrine and of the political assumptions undergirding legal doctrine emphasizes that the kind of community in which we live remains a matter of choice—the important question being who will make those choices.

#### 2. CRITICAL LEGAL STUDIES: A CRITIQUE

The CLS emphasis on the legitimating role of liberalism and the dynamics of power is accurate but dangerously incomplete. It is incomplete for several reasons. First, theoretical deconstruction does not tell the complete story: we need to know the full range of conditions that lead people to believe, or act as if they believe, that authority is legitimate. . . .

Second, . . . we must realize that there are some liberating as well as legitimating aspects of the line-drawing or boundary-setting enterprise that we critique. Democratic socialism, the American Revolution, the African-American civil rights movement, and other social movements were based, in part, on the liberating dimensions of liberal theory. Failing to recognize this, some scholars unwittingly fall into an overly simplistic analysis of the problem and its possible solutions. When we appreciate the liberating dimension of ideology, revealed by experiential deconstruction, we might conclude that there are many dimensions of the present system that are good and quite enabling.

Thus, although I share critical methods, I question the conclusions of CLS. The CLS critique rightly points out that we need not accept oppressive institutions and practices as

unalterable expressions of truth, because the premises on which they are based are contradictory and indeterminate at best. The critique suggests, therefore, that we are free to envision and construct alternative forms of community which represent a more accurate or at least more plausible conception of human nature—one believed to be fundamentally good, which may replace “our pervasive alienation and fear of one another with something more like mutual trust.”<sup>6</sup> . . . From this optimistic view, one might envision a quite oppressive community emerging—one in which groups, behind the guise of love and mutual dependency, legitimate behavior that is [even] more oppressive. . . . Thus, when CLS proponents argue that liberalism’s public/private dichotomy undermines a society’s transformative potential, we should also ask, “How and when does it advance those efforts?” Indeed, if CLS’s primary concern is one of legitimation and power, it is important to ask under what conditions the liberal discourse of rights may be strategically delegitimizing and substantively empowering.

The third problem with the CLS critique is that it threatens to conflate the unique histories of the various forms of alienation and oppression engendered by the subconscious acceptance and assimilation of liberal ideology. The experiences of racism and sexism—to name but two—are certainly related to the way individuals experience liberalism as oppressive but cannot be reduced to that experience. Therefore, exploration of the various histories of oppression, often ignored by CLS’s . . . account, . . . can provide an essential basis for any reconstructed community.

Finally, deconstruction should ultimately lead to a reconstructive vision, which will involve some line-drawing and boundary-setting. CLS should not only explain why liberalism’s boundary-setting is problematic; it must also suggest how to redraw those boundaries to satisfy other goals.

. . . I believe CLS too often falls victim to a myopic preoccupation with the limited role of theoretical deconstruction and a too narrowly tailored experiential deconstruction that focuses exclusively on how individuals experience liber-

alism. Hegemonic ideologies are never maintained by logical consistency alone; knowledge of how people experience oppression, or knowledge of the full range of conditions under which they remain oppressed, exposes new problems and possibilities. When one begins to contemplate how alternative visions of community might look and be implemented, one must consider carefully the view from the bottom<sup>7</sup>—not simply what oppressors say but how the oppressed respond to what they say. . . . The view from the bottom may offer insights into why individuals accept their subordinate status in society despite the illogic and inconsistency of the dominant ideology.

It may also provide the basis and catalyst for transformative social change. This is the case with African-American prophetic religion. . . .

## II. KING'S CRITICAL THEOLOGY

THE difference between the writings and works of Martin Luther King, Jr., and much CLS thought can be seen in King's understanding of the possibilities and limitations of theoretical deconstruction, his use of experiential deconstruction, his articulation of an alternative vision of community, and his development of strategies to realize that vision. King's demonstration of the theoretical indeterminacy of political and religious theories reinforcing oppression drew on a knowledge of the specific histories and experiences of oppression. This engagement with history guided his theoretical project and informed his struggles to reform American society. With the benefit of both theoretical and experiential deconstruction, he committed his life to mobilizing people of conscience into organizations and movements capable of transforming the theories, institutions, and practices of oppression that his critiques exposed as incoherent, historically situated, and indeterminate. This project required a normative vision of community encapsulated in his conception of the "Beloved Community."

### A. King as an Organic Intellectual

Because King appreciated the dialectic of theory and the broad-based confrontational strate-

gies of socially transformative action, King stands as the paradigmatic organic intellectual of twentieth-century American life. His method and practice offer direction to progressive scholars concerned about the exclusionary, repressive, and noncommunal dimensions of American life.

Gramsci's conception of the organic intellectual provides a useful framework for understanding the thought of King and what it has to offer CLS. The organic intellectual brings philosophy to the masses, not for the merely instrumental purposes of unifying them, "but precisely in order to construct an intellectual-moral bloc which can make politically possible the intellectual progress of the mass and not only of small intellectual groups."<sup>8</sup> Gramsci's organic intellectual struggles to transform those who are oppressed as a means of transforming the conditions under which they are oppressed. Gramsci understands domination in terms of both coercion and consent, the latter constituting what he refers to as "hegemony." Under his formulation, hegemony consists, then, of "[t]he 'spontaneous' consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group."<sup>9</sup> Gramsci argues that "this consent is 'historically' caused by the prestige (and consequent confidence) which the dominant group enjoys because of its position and function in the world of production." Thus, oppression is not only physical and psychological but also cultural.

King, like Gramsci's organic intellectual, empowered his community through a practical effort to bridge the gap between theory and lived experience. . . . First, he used theoretical deconstruction to free the mind to envision alternative conceptions of community. Second, he employed experiential deconstruction to understand the liberating dimensions of legitimating ideologies such as liberalism and Christianity, dimensions easily ignored by the abstract, ahistorical, and potentially misleading critiques that rely exclusively on theoretical deconstruction. Third, he used the insights gleaned from the first two activities to postulate an alternative social vision intended to transform the condi-

tions of oppression under which people struggle. Drawing from the best of liberalism and the best of Christianity, King forged a vision of community that transcended the limitations of each and built upon the accomplishments of both. Finally, he created and implemented strategies to mobilize people to secure that alternative vision. I refer to this multidimensional critical activity as "philosophical praxis." . . .

King filtered his theoretical deconstruction of hegemonic theories through his knowledge of the history and experience of oppression, and thereby made that theoretical deconstruction richer, more contextual, and ready to engage the existential realities of oppression. The interplay between King's theoretical and experiential deconstruction is best illustrated by reference to the African-American church—the institution providing the organic link between philosophy and the masses, theory and praxis. . . .

### B. The Role of the African-American Church in the American Slave Experience

African-American religion was vital to the community-building enterprise necessitated by the social disintegration and chaos of the American slavery experience. Confronted by practices of social control that suppressed their West African heritage, language, and traditions, Africans were expected to conform to a community created by their slavemasters. Slavemasters attempted to refashion the African's identity through the eradication of collective memory. In the void created by the socially imposed atomization of the African community, the African-American church served both to legitimate and delegitimate the moral authority of a slaveowning society.

#### I. THE ROLE OF RELIGION IN THE LEGITIMATION OF AUTHORITY

Slavemasters believed Christianity had a stabilizing and disciplining influence on the slave's disposition, and they thought it would foster consent by Africans to the legal and extralegal devices of slavery. The conservative evangelicalism<sup>10</sup> of slave society was premised on five basic assumptions. The first was the fallen nature of human beings, the pervasiveness of human

depravity and sin. The second was contrition, a period of mourning characterized by feelings of personal guilt and sorrow for sins. The third was conversion, an intensely personal experience with God in which the burdens of sin are lifted and the soul cleansed and made fit for the Kingdom of God. The fourth was the separation of believers, the sometimes physical but most times psychological separation of the community of believers from sinful worldly concerns and pursuits. And the last was the separation of church and state, the extreme deference to the existing social order and dependence on the state for the laws and rules necessary to constrain the sinful nature of earthly beings.

These features of conservative evangelicalism were considered rooted in an infallible scripture representing the untainted word of God; they legitimated slavemasters' authority in several ways. Southern evangelicals elaborated the scriptural justifications for slavery and invoked the will of God to reconcile slaves to their subordinate status. Slavery could not be sin, they reasoned, because God sanctioned it in His infallible Word. Evangelicals frequently cited the Old Testament story of Noah's son, Ham, whose progeny God supposedly condemned to a legacy of servitude for his indiscretion. These and other scriptural evidences were, to the evangelicals, conclusive proof of God's authorization of the enslavement of Africans.

Having provided the moral justification for slavery through scripture, evangelicals constructed an argument designed so as to avert any effort by the Church to transform the institution. Because the scripture supported slavery, and secular authority established and protected it under state law, the Church, mindful of its commitment to the separation of church and state, could not condemn slavery. Because slavery did not constitute sin, God's law did not contradict the civil law: slavery fell under the latter, and the scriptures dictated obedience to secular authority.

Moreover, conservative evangelicalism dictated that because God would deal with the evil of Southern slavery and apartheid in His own way and time, the eradication of those institutions should await His divine deliverance as

evidenced by the changed hearts and minds of women and men. Thus, patience and the implicit acceptance of one's subordinate status were exalted as the highest of Christian virtues. . . .

## 2. THE ROLE OF RELIGION IN THE DELEGITIMATION OF AUTHORITY

Although the use of religion as an instrument of social control often necessitated oversight by white masters, strict enforcement was not maintained, and slaves often met separately for religious services, including weekly and Sunday-evening services. It was within the freedom provided for religious worship that Africans began to assert some control over how the void created by the disintegration of their historical identity and community would be filled. In this small space of freedom, an alternative conception of community was defined and the history of a new American people began to emerge. African-American religion and its primary vehicle of expression, the African-American church, supplied the needed catalyst for the reconstruction of community destroyed by slavery.

To the surprise and fear of many whites, slaves transformed an ideology intended to reconcile them to a subordinate status into a manifesto of their God-given equality. This deconstruction was both revolutionary and pragmatic in nature. The Africans' appropriation of conservative evangelicalism as a bulwark against the degradation and countless microaggressions of slavery proved that there were alternate interpretations of the text that supposedly justified their subjugation. Slaves demonstrated that scripture was subject to an alternative interpretation that called for the eradication of the very social structure evangelicals sought to legitimate. In short, slaves deconstructed ideology through their struggles against oppression.

Although slavemasters and evangelicals attempted to limit the transmission of counter-hegemonic interpretations of scripture, their efforts met with limited success. African gospel preachers and slaves who learned to read against their masters' wishes (and, many times, against state law as well) were determined to read the Bible in light of their own experiences. Many

slaves realized that the message of submission, docility, and absolute obedience to the master was a distorted picture of the Bible's eternal truths.

Many slaves found in Christianity, and particularly in Jesus, a call to revolutionary action. They read of a Jesus who proclaimed that God had anointed him to "preach the gospel to the poor; . . . to preach deliverance to the captives, and . . . to set at liberty them that are bruised"; who commanded those who would follow him to care for "the least of these": the hungry, naked, sick, and those in prison; who entered Jerusalem to the revolutionary cry of Hosannah; and who defiantly asserted "[t]hink not that I am come to send peace on earth: I came not to send peace, but a sword." Denmark Vessey and Nat Turner, for example, recognized the revolutionary potential of Christianity: "since God is on our side, we strike for freedom, confident in his protection."<sup>11</sup> The Reverend Henry Highland Garnet contended: "To such degradation [as slavery] it is sinful in the extreme for you to make voluntary submission. . . . Brethren arise, arise! Strike for your lives and liberties. Now is the day and the hour. . . . Rather die freemen than live to be slaves."<sup>12</sup>

Those unwilling to act on the revolutionary impulses of the Bible found scriptural support for a more patient and pragmatic opposition to slavery which still fostered and preserved a healthy sense of self-worth. Conservative evangelicalism taught that slavery was a divinely ordained practice instituted by the master race for the benefit of morally deficient Africans; but slaves read of Moses, the Hebrew children, and God's mighty deliverance from the hardships of Egyptian slavery. The story provided proof of God's intolerance of American slavery and His intention someday to divide the Red Sea of Southern oppression and lead His people out of Pharaoh's land.

Against the formidable oppression of slavery, segregation, and contemporary forms of subjugation, this deconstructed, pragmatic evangelicalism provided the means by which African-Americans could survive their daily travails. Its emphasis on personal faith nurtured a forward-looking people who could sing with

conviction the words "I'm so glad, that trouble won't last always."<sup>13</sup> Its emphasis on love bolstered a sense of self-esteem diminished by the debilitating and degrading practices of a culture that relegated them to the status of objects. It nurtured an inward-looking people who could sing with reassurance the words "The trumpet sounds within my soul. I know I ain't got long to stay here."<sup>14</sup> . . .

The disparity between what slaves read and heard from their own preachers, on the one hand, and the practices of whites in the slave system, on the other, had two important consequences. First, it preserved and enhanced the self-esteem of the slaves; the realization that some whites were not faithful to the Word provided them with a sense of moral superiority: even in slavery, slaves could be the light unto the sinner's path. Second, it provided a standard against which they could measure whites individually, rather than collectively by their social status as master race. It provided a framework for understanding the differences between cruel white overseers and whites who worked on the underground railroad to freedom. Even when the institutions of oppression seemed most intractable, understanding their oppression as the sin of unfaithful whites maintained for the Africans a sense of sanity and hope tempered only by the revolutionary focus on power and immediate liberation. In short, the appropriation of Christian ideology by the African-Americans provided the basis for their survival through slavery's many brutalities and indignities.

Although this appropriation helped to restore the dignity of the African slave, it also had paradoxical effects. Pragmatic evangelicalism admirably served the cause of survival but its eschatological and inward orientation simultaneously served the function of social control. It saved black Christians from a debilitating hatred that, if permitted to fester, would have created a pervasive sense of despair and hopelessness that would have substantially impaired the moral will to survive. However, it also promoted as virtues patience and tolerance of the social institutions of oppression. Viewing morality in terms of individual character thus undermined the possibilities of a sustained

Christian radicalism against what was perhaps the most debilitating and sustained system of subordination known to the modern world—American slavery.

## 3. THE ROLE OF RELIGION IN THE SHAPING OF ALTERNATIVE CONCEPTIONS OF COMMUNITY

The revolutionary and pragmatic faith drawn from conservative evangelicalism represented the beginnings of what Cornel West has called "prophetic Christianity."<sup>15</sup> It drew heavily on the interplay between the individualist orientation of pragmatic Christianity and the collectivist orientation of revolutionary Christianity, encouraging an intensely personal relationship with God while nurturing the possibilities of collective defiance and transformation.

The African-American church rejected white Christianity's claim that the law and order of an oppressive secular authority were necessary to constrain the evil proclivities of human nature. Many slaves never accepted the view that slavery was justified because the human nature of Africans necessitated African enslavement and white superiority. For these slaves, the spiritual freedom and sense of equality that accompanied the conversion of the soul threw into question the morality of the social order in which they lived. One student of this period writes:

Contradicting a system that valued him like a beast for his labor, conversion experientially confirmed the slave's value as a human person, indeed attested to his ultimate worth as one of the chosen of God.

. . . [M]eetings encouraged participants to include references to individual misfortunes and problems in their prayers and songs, so that they might be shared by all. This type of consolation . . . [was] the answer to the crucial need of individuals for community.<sup>16</sup>

The religious experience of conversion was central to the belief system of slaves. The process of conversion in African-American religion involved a period of sustained mourning in which the contrite sinner would assemble with worshipers in prayer for as many successive meetings as required to "bring the sinner through"—a phrase used to express the sinner's completion of a rite of passage from the alienated existence of sinner to the bonds of Christian fellowship

and community. The process of conversion often resulted in a cataclysmic seizure of the person by the Holy Spirit which catapulted all into a rapture of ecstatic joy and praise. The experience was collectively cathartic. In the slave community, uninhibited shouting and praise temporarily obliterated secular distinctions in status between the slaves. It was a process in which personalities disintegrated by the social chaos of oppression found meaning and commonality by fusing with others in a collective act of self-affirmation and even defiance.

The prophetic Christianity that resulted from this synthesis between revolutionary and pragmatic Christianity offered the alternative conception of community which would inspire King to develop his notion of a "Beloved Community" and struggle to transform American society. King's objective to rebuild community from the social death of slavery and segregation paralleled the conversion experience in slavery. A sense of individual self-worth was essential to any social struggle; segregation laws and impoverished conditions that diminished self-worth had to be challenged and abolished. Although the ideal was to break down the barriers of hatred and misunderstanding which prevented individuals from seeing and respecting the God-given humanity of all, King knew that only collective action and organized defiance could achieve the destruction of such barriers. Redistribution of wealth and power through the collectively cathartic experience of social conversion was a necessary part of this conception of community. Law and the power of the state would have to assist in the obliteration and amelioration of many of the secular distinctions founded on race, class, and gender which were created and reinforced by public and private forces.

### C. King and Theoretical Deconstruction

#### I. DECONSTRUCTING FIRST PRINCIPLES: THE INCOHERENCY CRITIQUE

During the Birmingham demonstrations of 1963, the white clergy criticized King for the breach of law and order precipitated by his

"untimely," nonviolent direct action protests to desegregate the city. In his famous "Letter from Birmingham City Jail,"<sup>17</sup> King responded that he had

almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizen's Council or the Ku Klux Klanner, but the white moderate who is more devoted to "order" than to justice; . . . who paternalistically feels that he can set the timetable for another man's freedom. . . . I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice, and that when they fail to do this they become dangerously structured dams that block the flow of social progress.<sup>18</sup>

King examined and exposed the mutual dependence of order and freedom. He understood that the primary difference between the two was that a belief in the primacy of order assumed that human nature was fundamentally evil and in need of restraint, while a belief in the primacy of freedom assumed that it was fundamentally good and capable of autonomy. The privileging of order over freedom assumed that the latter was only possible within the constraints imposed by sovereign authority; otherwise, civil society would degenerate into a Hobbesian war of all against all. . . . The white clergy of Birmingham privileged the conception of human nature as fundamentally evil over the conception of human nature as fundamentally good. Thus, the ordinances and injunctions prohibiting demonstrations in the city were necessary restraints on freedom needed to maintain order in the face of the human capacity for evil.

King's incoherency critique exposed the white clergy's preference of order over freedom and evil over good, and it demonstrated that this preference lacked an objective foundation. The hierarchy could easily be inverted. If freedom presupposes order, as the white clergy contended, it is no less true that order presupposes freedom: for if humans are not also capable of substantial good, no social order is possible, because individuals would by definition be ungovernable. In this way, the social order sup-

posedly necessitated by human evil presupposes the freedom and human goodness it denies.

#### 2. DECONSTRUCTING FIRST PRINCIPLES: THE UNIVERSALITY CRITIQUE

Even if the privileging of order over freedom and the conception of human nature as fundamentally evil over its opposite conception were not seen as incoherent, King realized that these privileged conceptions need not be accepted as universally valid. They might be viewed as historically contingent and conditioned, and thus subject to change if individuals are willing to engage in transformative struggles to alter the conditions under which these conceptions appear coherent.

The evangelicalism of Dr. George Washington Davis, King's professor of theology at Crozer Seminary, and the social gospel of Walter Rauschenbusch<sup>19</sup> gave King the theological perspectives to challenge conservative evangelicalism's conception of human nature and its debilitating dichotomy between the spiritual and the secular, as well as between order and freedom. Evangelical liberalism turned conservative evangelicalism's conception of human nature on its head and called into question the universality of that theology's assumptions. Evangelical liberalism posited the goodness of human nature, as reflected in and resulting from human moral reasoning, and it conjectured that evil institutions had limited people's efforts to pursue the ideal of the Kingdom of Value, what King would later call the "Beloved Community."

Evangelical liberalism, from its theory of human nature, deduced a new role for the Church and for Christians. Given intrinsic human goodness, social institutions could and should be transformed to reflect more accurately the ideals of universal kinship and cooperation. An infallible scripture reflecting the static will of God could not justify social institutions like slavery and segregation. In addition, oppressive institutions could no longer seek justification by invoking the need to restrain the evil nature of persons; such institutions were themselves the source of evil and thus in need of reform.

A second important source of King's universality critique is the social gospel of Walter Rauschenbusch. Consistent with evangelical liberalism, Rauschenbusch saw humans as intrinsically good. Evil, he argued, was the product of an evil society; in America's case, the greed and selfish individualism of a spawning industrialism trampled the Christian values of kinship and love, created gross inequities of wealth, and relegated thousands to abject poverty. Rauschenbusch called for the abandonment of capitalism and the creation of a new social order that would socialize economic resources and allow people to inhabit a sinless Christian commonwealth based on love, cooperation, and solidarity.

By closing the chasm between the individual and the society, between religion and ethics, and between spirituality and everyday existence, Rauschenbusch avoided the limitations of conservative evangelicalism. Social justice constituted the telos of the Christian faith in his view, and he evaluated Christian discipleship in terms of its commitment to this moral end. Thus, unlike the dichotomy of conservative evangelicalism, there was a necessary relationship between the sacred and the secular, the Church and social issues. Evidence of a person's love for God, he contended, must be the fruits of love for suffering humanity. Such love necessitated the conversion of all social institutions and practices that maintain and reproduce poverty, racial oppression, and other social ills. The social gospel turned Christian attention from the glories of the kingdom to come to the injustices of the kingdom at hand. It premised individual salvation on the transformation of the world's evil social institutions.

Evangelical liberalism and the social gospel repudiated the traditional conception of human nature; they replaced that traditional conception with an antithetical view and reached a different conclusion about the relationships between church and state as well as between Christians and the evil world in which they lived. King used these two strands of theology to challenge the view of human nature which counseled

African-Americans to be patient in the face of oppression.

### 3. DECONSTRUCTING FIRST PRINCIPLES: THE INDETERMINACY CRITIQUE

In addition to challenging conservative evangelicalism by positing an alternative conception of human nature, King argued that even if conservative evangelicalism's conception of human nature were valid, that conception would not necessitate any one vision of community. For example, when white ministers claimed that the civil rights protests resulted in a loss of law and order in Birmingham, and that King was primarily responsible for the tension and deteriorated relations that then pervaded the community, King responded with an indeterminacy critique. Conservative evangelicalism assumed that scripture required the Church's deference to the authority of the state ordained by God; but King pointed out that order must serve the end of justice. Even assuming that we each must defer to the state, King maintained, we must respect the law of God:

A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law . . . not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority, and the segregated a false sense of inferiority. . . . So segregation is not only politically, economically and sociologically unsound, but it is morally wrong and sinful.

King held that disobeying human law, even unjust law, must be done out of love and with a willingness to suffer the penalty for its breach. Through this unjust suffering, the transgressor evidences the highest respect for law and order while remaining true to his higher Christian duty.

King realized that even when first principles were accepted, they did not mechanically determine specific visions of community: how we live in community remains a matter of choice that implicated a host of competing values. What,

then, could be deduced from the presupposition that human nature is fundamentally evil and deference to the laws of social order essential? Segregationists deduced that King should cease all protests because they were illegal activities, and that he should accept African-American subjugation as the best of all possible worlds. Moderates deduced that King should cease all protests and pursue more peaceful and orderly avenues for desegregating the city—a goal surely to be achieved in due time. For King, it meant respecting the law and the need for social order through a willingness to suffer the penalty for breaching unjust laws. Each deduction is logical, although none are compelled. What one finds persuasive largely depends on other values related to human potential and social relations, power, and community.

### 4. SYNTHESIZING FIRST PRINCIPLES

The incoherency, universality, and indeterminacy critiques gave King the intellectual freedom to posit a radically different conception of human nature, one that focused more on reconstructive struggle than theoretical deconstruction. Although initially he rejected conservative evangelicalism and its pessimistic view of human nature, King later realized that the optimistic view of human nature upon which evangelical liberalism and the social gospel constructed their utopias posed significant dangers. The indeterminacy critique suggested, and historical experience made clear, that evil and oppression could follow as easily from an optimistic faith in human nature as from a more orthodox conception of human depravity.

Evangelical liberalism stressed the power of human reason to discern the moral good of life, and it possessed an inexorable optimism concerning human capacity for goodness. However, the more King "observed the tragedies of history and man's shameful inclination to choose the low road," the more he came to see the "depths and strength of sin." His experiences convinced him that evangelical "liberalism had been all too sentimental concerning human nature and that it leaned toward a false idealism"—one that failed to see that "reason is darkened by sin" and "is little more than an

instrument to justify man's defensive ways of thinking."

At the other extreme from evangelical liberalism was the neo-orthodoxy of Karl Barth, which emphasized the intractable nature of sin and evil and the relative futility of utopian aspirations.<sup>20</sup> Barth maintained that many of the social injustices of the world were necessary evils which could only be rectified by the apocalyptic return of the Kingdom of God. Although he recognized the insights of neo-orthodoxy, King could not fully accept this view—it cast too dark a shadow upon the possibilities of social change.

King searched for a philosophical middle ground that saw human nature as a struggle between good and evil, a philosophy that conceded humanity's finiteness yet acted on the faith that God could use finite creatures to establish a Beloved Community based on love and justice. He found this philosophical common ground in a Christian existentialism influenced by his study of Søren Kierkegaard, Friedrich Nietzsche, Karl Jaspers, Martin Heidegger, and Jean-Paul Sartre.

Like the existentialists, King believed that liberalism failed to give serious consideration to humanity's finite freedom—our existential estrangement in an evil world from our essential nature of goodness as creatures of God. King described as "perilous" the assumption by some liberal theologians that sin was but a mere "lag of nature that can be progressively eliminated as man climbs the evolutionary ladder." For King, the estrangement from perfection was fundamental: the individual was always in the process of becoming and could never fully realize the ideal of the Beloved Community in history. Nevertheless, he believed that the struggle to actualize the ideal in history could transform social relations. Only the struggle to achieve the Beloved Community allows us to experience our essential nature and to change our limited knowledge and understanding of the world.

King's use of theory to deconstruct oppressive and hegemonic theologies was guided by the historic mission of the African-American church to rebuild community from the socially imposed amnesia and atomization of slavery

and segregation. Seeing the individual as incorrigibly evil would make societal reform impossible. Similarly, viewing the individual as purely good would make coerced societal reform unnecessary because reasoned deliberation could simply usher in the Beloved Community. Instead, King understood that individuals were both good and evil, and that mind must be met with mind and power with power.

### D. King and Experiential Deconstruction

The incoherency, universality, and indeterminacy critiques illustrate the open-ended character of organizing principles. Such critiques supply the intellectual courage to think differently. They demystify theories of their natural law-like image and free the mind to envision new conceptions of community. But this alone is insufficient; because these critiques are abstract and ahistorical they do not provide the rich historical contextuality essential to an understanding of the actual operation of power. . . . They may miss conditions of great importance that explain legitimacy in ways that logic and reason cannot. Furthermore, experiential deconstruction may provide insights into the ways in which marginalized groups transform powerless conditions into powerful possibilities, thereby informing a broader reconstructive vision than previously existed.

. . . King realized that very few African-Americans probably ever believed that the assumptions of conservative evangelicalism logically compelled their submission to authority. Their submission was not based on consent to a social order they believed to be legitimate; rather, coercion and its constant threat of death, injury, humiliation, or impoverishment compelled their submission. Individuals may have fully agreed with King's incoherency, universality, and indeterminacy critiques, and yet been constrained by existential limitations that made collective struggle to attain alternative conceptions of community difficult if not impossible. King eloquently describes these existential limitations through experiential deconstruction:

[W]hen you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-



filled policemen curse, kick, brutalize and even kill your black brothers and sisters with impunity; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; . . . when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger" and your middle name becomes "boy" (however old you are) and your last name becomes "John," and when your wife and mother are never given the respected title "Mrs.," when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance never quite knowing what to expect next, and plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"; then you will understand why we find it difficult to wait.

King saw the world and evaluated the theories marshaled in support of it through the lens of these experiences of oppression. These experiences necessitated his eclectic appropriation of various theologies and philosophies, which he constantly revised in light of his growing understanding of the problems of American life. King drew inspiration and instruction from the history of African-American religion and the Church for dealing with these existential limitations. The history and experiences of African-Americans under oppression taught King several valuable lessons. First, submission to illegitimate authority did not derive exclusively from a hegemonic ideology like conservative evangelicalism or political liberalism; public and private brute force and coercion played a significant role in maintaining submission. Second, far from being duped by the political and religious ideologies intended to oppress them, African-Americans had often successfully turned those ideologies on their heads and used them as instruments of survival and liberation. Third, within the space created by the interplay of coercion and hegemony, African-Americans articulated and implemented conceptions of community important to broader visions of a reconstructed society.

King's Christian existentialism was significantly informed by experiential deconstruction, the past and present experiences of Afri-

can-American people. The tension between pragmatic and revolutionary evangelicalism suggested a profoundly personal relationship between the individual and God, with implications for the community as a whole. King maintained that although God was indeed working to change the sinful hearts and minds of white oppressors, collective organization through nonviolent direct action would be His instrument of salvation. King saw this as an empowering synthesis of the Old Testament's concern for justice and the New Testament's emphasis on love. "Greater love has no man than this, that a man lay down his life for his friends."<sup>21</sup> Justice and love were inseparable: it was a necessary expression of one's love for God, then, to lead souls blinded by the darkness of sin to the light, to raise consciousness, and to challenge the injustice anywhere that threatened justice everywhere.

King's synthesis of pragmatic and revolutionary evangelicalism was most powerfully expressed in his "Letter from Birmingham City Jail." Conservative evangelicalism's dichotomy between the spiritual and the secular caused many religious leaders, as it had in the days of slavery, to continue to oppose any interpretation of Christianity demanding that equality before God in the spiritual realm also be embodied in the legal and social relations defining the secular realm. These leaders still offered patience as a panacea for the pain of persecution and the joys of an afterlife as an answer for the sufferings of this life. If integration was the will of God, He and not humans would change people's hearts in His own way and time. Be patient, they urged, and wait on the Lord.<sup>22</sup> King discerned the hegemonic role of this theology and boldly challenged the injustice to which it gave rise wherever he encountered it. To those who urged that nonviolent, direct action was "unwise and untimely," King sharply retorted:

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have never yet engaged in a direct action movement that was "well-timed," according to the timetable of those who have not suffered unduly from the disease of segregation. For years now I have heard the words "Wait!" It rings in the ear of every Negro with a piercing familiarity. This "Wait"

has almost always meant "Never." . . . We must come to see with the distinguished jurist of yesterday, that "justice too long delayed is justice denied."<sup>23</sup>

King expressed his great disappointment with this otherworldly orientation of the white Church:

In the midst of blatant injustices inflicted upon the Negro, I have watched white churches stand on the sideline and merely mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our nation of racial and economic injustice, I have heard so many ministers say, "Those are social issues with which the gospel has no real concern," and I have watched so many churches commit themselves to a completely otherworldly religion which made a strange distinction between body and soul, the sacred and the secular.<sup>24</sup>

Thus, King spent his life leading African-Americans into direct confrontation with oppressive institutions and practices. Through direct action the African-American community exposed the contradictions and violence endemic to American society. In this way, the civil rights movement King led was itself a powerful form of experiential deconstruction, one that provided fertile ground for a new vision of community in America.

#### *E. King and the Reconstructive Vision of Community*

King's reconstructive vision emanated from the interplay of theory and experience, and from the synthesis of rights and duties. Rights represent the pragmatic, individualist orientation focusing on formal equality before the law in the political context; duties represent the collectivist, revolutionary orientation focusing on justified coercion by the collective to implement alternative conceptions of community. . . . King's reconstructive vision of the Beloved Community synthesizes both dimensions of this traditional dichotomy. . . . King used the insights of theoretical and experiential deconstruction . . . to posit a reconstructive vision in which rights limited duties in a socially conscious and egalitarian manner rather than in a manner that preserved a status quo permeated with hierarchy and inequality.

#### I. PRAGMATIC RIGHTS AND REVOLUTIONARY DUTY

Many of the communal and cooperative dimensions of King's theory of the state depended on the optimistic view of human nature posited by evangelical liberalism and the social gospel. Individuals could harness the powers of the state to usher in a Beloved Community here on earth. Conversely, King understood the limitations and dangers of this optimism—that the reality of sin and evil must never be forgotten. This awareness was captured in his commitment to a Christian existentialism that posited a human nature fragmented by an alienated and anxiety-filled existence which severely circumscribed one's ability to know, much less change, the world. Under this existentialist view, individual rights represent a hedge against our imperfect attempts to reconcile our existential and essential selves, and they extend far beyond the traditional litany of liberties and rights against the state espoused by classical and contemporary liberalism. These rights were "inherent rights that are God-given and not simply privileges extended by the state."<sup>25</sup> For King, the rights of life, liberty, and the pursuit of happiness meant that "all individuals everywhere should have 'three meals a day for their bodies, education and culture for their minds, and dignity, equality and freedom for their spirits.'"<sup>26</sup> This required that the state affirmatively create the institutions necessary to realize these natural rights.

Unlike some CLS scholars, King understood the importance of a system of individual rights. CLS proponents have urged that rights are incoherent and indeterminate reifications of concrete experiences—reifications, moreover, that obfuscate, through the manipulation of abstract categories, disempowering social relations. King, on the other hand, understood that the oppressed could make rights determinate in practice: although "law tends to declare rights—it does not deliver them. A catalyst is needed to breathe life experience into a judicial decision."<sup>27</sup> For King, the catalyst was persistent social struggle to transform the oppressiveness of one's existential condition into ever-closer approximations of the ideal. The hierarchies of race, gender, and class define those conditions,



and the struggle for substantive rights closes the gap between the latter and the ideal of the Beloved Community. Under the pressures of social struggle, the oppressed can alter rights to better reflect the exigencies of social reality—a reality itself more fully understood by those engaged in transformative struggle.

King's Beloved Community accepted and expanded the liberal tradition of rights. King realized that the liberal vision, notwithstanding its limits, contained important insights into the human condition. For those deprived of basic freedoms and subjected to arbitrary acts of state authority, the enforcement of formal rights was revolutionary. African-Americans understood the importance of formal liberal rights, and they demanded the full enforcement of such rights in order to challenge and rectify historical practices that had objectified and subsumed their existence.

Although conservatives contended that the emphasis on rights disrupted the gradual moral evolution that would ultimately change white sentiment, King contended that "[j]udicial decrees may not change the heart, but they can restrain the heartless."<sup>28</sup> On the other hand, although radicals contended that such rights were mere tokens that created a false sense of security masking continued violence, King understood that the strict enforcement of the rule of law was essential to any struggle for social justice, whether that struggle was moderate or radical in its sentiment and goals. Freedom of dissent and protest; freedom from arbitrary searches, seizures, and detention; and freedom to organize and associate with those of common purpose were necessary rights that no movement for social reconstruction could take for granted.

Furthermore, King saw the initial emphasis on civil rights, . . . as a necessary struggle for the collective self-respect and dignity of a people whose subordination was, in part, maintained by laws reproducing and reinforcing feelings of inadequacy and inferiority. The civil rights struggle attempted to lift the veil of shame and degradation from the eyes of a people who could then glimpse the possibilities of their personhood and achieve that potential through varied forms of social struggle. King's

richer conception of rights provided limitations on collective action while broadening the scope of personal duty to permit movement toward a more socially conscious community.

King's conception of duty complemented his conception of rights; it called for individual action, but action consistent with a more humane and contextual rule of law. Although clearly inspired by the revolutionary tradition, King's conception was not as consuming as that of the revolutionary Christians. The orientation toward duty of revolutionary Christianity required individuals to see themselves as part of some larger and similarly situated community. Each had a personal duty that ran to the community at large, thereby subordinating personal welfare to the welfare of the community. One's duty to God could only be understood by reference to one's duty to others, and one's duty to others obligated the individual to be his brother's and sister's keeper, to meet power with power in the struggle for justice.

King, too, called for the immediate transformation of American institutions and practices, but he rejected the use of violence in this transformative struggle. He refused to place the goal of a reconstructed community above the means used to achieve it. Moreover, he believed that nonviolent direct action and mass civil disobedience could secure the revolutionary end of dismantling Jim Crow and winning the war against poverty. Through nonviolent direct action, one could be both moral and revolutionary. It provided oppressors the opportunity to redeem themselves voluntarily from a sinful past while providing the coercive dimension of a disruptive and crisis-packed boycott, march, or protest to urge them along.

In this way, King balanced pragmatic and revolutionary Christianity as well as rights and duties. King's prophetic Christianity recognized the importance of both rights and duty as a practical matter. Rights were prerequisites to survival; nonviolent civil disobedience was the heart of duty. Duty was consistent with rights because, through civil disobedience, one could simultaneously demonstrate respect for the rule of law in preserving social order while opposing laws supportive of unjust social orders. Thus, King envisioned a rule of law rooted in experi-

ence and responsive to the conditions of oppression that denied the humanity of so many.

### III. SUMMARY AND CONCLUSION

In conclusion, I believe the postmodern preoccupation with deconstruction is but a precursor to serious reflection on how we should live in community. Critics—scholars, activists, organizers, and citizens—must turn their attention and energies to reconstructive theorizing and struggle. Although theoretical deconstruction provides some with the intellectual freedom to think and act, the more contextual experiential deconstruction discussed in this article illustrates that what we see as plausible solutions to our oppressed existence will largely depend on what we perceive as the problem. In this regard, our assessment of the problems can be no better than the lenses through which we examine those problems. I have argued that those lenses must reflect the different histories and experiences that constitute our community. The process must be deliberative, participatory, and respectful of difference and diversity.

Experiential deconstruction tells us that we should pay more attention to the specific kind of community we envision with reference to the specific experiences of oppression which characterize our histories. We must question how that alternative community will better protect African-Americans and others from the subjugation of racism, bigotry, sexism, and grave inequalities of wealth and power. This can only be achieved through the detailed examination of American institutions and the systematic development of alternative institutions designed to rectify present oppression and injustice.

In this regard, King was ahead of his time, and although there is much we can learn from a study of his life and thought, his assassination in 1968 prevented him from fully developing his alternative vision of community. That task is ours. It is often said that the hottest places in hell are reserved for those who in times of moral crisis remain neutral. Let us not fall victim to the paralysis of neutral analysis. Instead, we must meet and talk together, appreciating our respective histories and experiences of alienation and oppression. We must talk specifically about

the kind of community we would fashion and how the rules, laws, and rituals defining the roles we adopt can be mutually empowering and facilitative of a community of equals. We must talk specifically about how we should organize, protest, agitate, and struggle to achieve our objectives, realizing that we are perennially engaged in a dialectic in which the program shapes our practices, which in turn refine and redefine our program. With such mutual respect and openness to each others' pain, suffering, and faith, we must work out more fully and struggle toward King's ideal of the Beloved Community and thereby hew from our mountain of despair a stone of hope.

### NOTES

1. "I Have a Dream," address by Dr. Martin Luther King, Jr., at the march on Washington, D.C. for civil rights (Aug. 28, 1963), reprinted in *A Testament of Hope: The Essential Writings of Martin Luther King, Jr.*, 217, 219 (1986).

2. These "possibilities" are not mutually exclusive groupings of the oppressed. This is a fluid typology, with individuals sometimes moving in and out of each grouping, and often occupying more than one at a time. My point is that critical activity must account for all three possibilities and the different problems associated with each.

3. Gabel and Kennedy, "Roll Over Beethoven," 36 *Stan. L. Rev.*, 1, 26 (1984).

4. Freeman and Mensch, "The Public Private Distinction in American Law and Life," 36 *Buffalo L. Rev.*, 237, 256-57 (1987) (footnote omitted).

5. Robert Gordon, for example, suggests that an ideal means of scrutinizing "belief-structures" is to demonstrate their historical contingency. See Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW* (D. Kairys ed. 1982) at 281, 289. Gordon's demonstration of contingency is a response to the problem of "reification," the process of allowing the structures we ourselves have built to mediate relations among us so as to make us see ourselves as performing abstract roles in a play that is produced by no human agency. . . . It is a way people have of manufacturing necessity: they build structures, then act as if (and genuinely come to believe that) the structures they have built are determined by history, human nature, economic law. *Id.* at 289.

6. *Id.* at 257.

7. See Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations," 22 *Harv. C.R.-C.L. L. Rev.*, 323 (1987).

8. Q. Hoare and G. Smith, eds. *Selections from the Prison Notebooks of Antonio Gramsci*, 332-33 (1971).

9. *Id.* at 12.

10. I understand conservative evangelicalism to be an eclectic blend of Calvinist dogma and the spiritualism of the eighteenth-century Great Awakening. Historians of Christian evangelicalism have noted its emphasis on individualism, an emphasis traced to the sixteenth-century Protestant Reformation and vividly seen in the rebellion of Martin Luther against the hierarchy of the Roman Catholic Church and in the universalization of the Lutheran faith by John Calvin. See, for example, L. Gasper, *The Fundamentalist Movement*, 126 (1963) (arguing that "fundamentalism must not be regarded as an aberration in Protestantism," and that "the kind of individualism which the Reformation encouraged, and revivalism [the Great Awakening] in America solidified, is one of the main characteristics of fundamentalism"). It should be noted that Gasper is characterizing the early history and Calvinist underpinnings of fundamentalism, described above as conservative evangelicalism.

The antihierarchical and individualist tendencies of Protestantism prefigured the secular individualism that characterized the liberalism of Hobbes and Locke much later. By the eighteenth-century Great Awakening, Calvinism had adapted to the demands of the modern world and stood ready to provide the theological vehicle for American slave religion. Gasper describes the influence of Calvinism as follows: "Calvin's ideals for all Christians were 'thrift, industry and sobriety,' which permitted men to prosper economically without fear of being regarded as tainted by the sin of avarice," *id.* at 4. But see M. Novak, *The Spirit of Democratic Capitalism* (1982) (arguing that the theological foundations of capitalism are fundamentally democratic).

11. Raboteau, "The Black Experience in American Evangelicalism: The Meaning of Slavery," in L. Sweet, ed., *The Evangelical Tradition in America*, 181, 190 (1984).

12. *Id.* (emphasis in original, footnote omitted), quoting Garnet, "An Address to the Slaves of the United States of America" (1843), reprinted in S. Stuckey, *The Ideological Origins of Black Nationalism*, 165, 168-72 (1972).

13. "Hush, Hush, Somebody's Calling My Name," in *Songs of Zion*, 125 (1981).

14. "Steel Away to Jesus," *Id.* at 180.

15. See C. West, *Prophecy Deliverance!*, 15 (1982). West, an African-American philosopher, describes prophetic Christianity as having a "transcendent God before whom all persons are equal[,] thus endow[ing] the well-being and ultimate salvation of each with equal value and significance"; *id.* at 16. He calls "this radical egalitarian idea the Christian principle of the self-realization of individuality within community"; *id.* (emphasis in original).

16. Raboteau, *supra* note 11, at 193-94 (emphasis in original).

17. King referred to Birmingham as America's most segregated city. It was certainly among the most visibly violent against African-Americans in the country. Police dogs, waterhoses, cattleprods, and unmerciful brutality were used against demonstrators, and many, including King, were jailed over the long period of protest. In his "Letter from

Birmingham City Jail," King responded to an open letter from a group of eight "liberal" white clergymen which chastised King for fomenting the widely publicized "direct campaigns" in the city rather than relying exclusively on legal remedies through the courts. [ . . . ]

18. King, "Letter from Birmingham City Jail" (1963), reprinted in *A Testament of Hope*, *supra* note 1, at 295.

19. The major theological assumption that inspired the Social Gospel movement was that "salvation had a social and individual dimension and that social institutions had to be 'saved.'" [ . . . ] The Church had to concern itself, not only with individual morality, but also with social justice and social structures. [ . . . ]

20. See, e.g., K. Barth, *The Epistle to the Romans*, 187, trans. E. Hoskyns, (1933). Barth argues that the reality of death is the "supreme law" of the temporal world, and that the inhabitants of this "world of death" are necessarily "men of sin." Barth further argues that "[s]in is that by which man as we know him is defined, for we know nothing of sinless men. Sin is power—sovereign power. By it men are controlled"; *id.* For a brief summary of how Barth fits into larger trends in modern religious thought, see F. Baumer, *Modern European Thought: Continuity and Change in Ideas 1600-1950*, at 444-45 (1977).

21. John 15:13 (King James Version).

22. One white clergyman admonished King for his "untimely" Birmingham demonstrations by pointing out that "[a]ll Christians know that the colored people will receive equal rights eventually, but it is possible that you are in too great of a religious hurry. It has raken Christianity almost two thousand years to accomplish what it has. The teachings of Christ take time to come to earth."

23. King, "Letter From Birmingham City Jail" (1963), reprinted in *A Testament of Hope*, *supra* note 1, at 292 (emphasis added).

24. *Id.* at 299.

25. K. Smith and I. Zepp, *Search for the Beloved Community: The Thinking of Martin Luther King, Jr.* (1986) at 127.

26. *Id.*, quoting King, "Nobel Prize Acceptance Speech," reprinted in *Negro Hist. Bull.*, May 1968, at 21. [ . . . ]

27. M. King, "The Time for Freedom Has Come" (1961), reprinted in *A Testament of Hope*, *supra* note 1 at 160, 165.

28. M. King, "The Ethical Demands for Integration" (1963), reprinted in *A Testament of Hope*, *supra* note 1, at 117, 124; see also M. King, "The American Dream" (1961), reprinted in *A Testament of Hope*, *supra* note 1, at 208, 213 ("It may be true that the law can't make a man love me, but it can keep him from lynching me, and I think that's pretty important also.").

## RACE, REFORM, AND RETRENCHMENT: TRANSFORMATION AND LEGITIMATION IN ANTIDISCRIMINATION LAW

Kimberlé Williams Crenshaw

### I. INTRODUCTION

IN 1984, President Ronald Reagan signed a bill that created the Martin Luther King, Jr. Federal Holiday Commission.<sup>1</sup> The commission was charged with the responsibility of issuing guidelines for states and localities to follow in preparing their observances of King's birthday. The commission's task would not be easy. Although King's birthday had come to symbolize the massive social movement that grew out of African-Americans' efforts to end the long history of racial oppression in America,<sup>2</sup> the first official observance of the holiday would take place in the face of at least two disturbing obstacles: first, a constant, if not increasing, socioeconomic disparity between the races,<sup>3</sup> and second, a hostile administration devoted to changing the path of civil rights reforms which many believe responsible for most of the movement's progress.<sup>4</sup>

The commission, though, was presented with a more essential difficulty: a focus on the continuing disparities between blacks and whites might call not for celebration but for strident criticism of America's failure to make good on its promise of racial equality. Yet such criticism would overlook the progress that has been made, progress that the holiday itself represents. The commission apparently resolved this dilemma by calling for a celebration of progress toward racial equality while urging continued commitment to this ideal. This effort to reconcile the celebration of an ideal with conditions that bespeak its continuing denial was given the ironic, but altogether appropriate title "Living the Dream."<sup>5</sup> The "Living the Dream" directive aptly illustrates Derrick Bell's observation that "[m]ost Americans, black and white, view the civil rights crusade as a long, slow, but always upward pull that must, given the basic precepts of the country and the commitment of its people to equality and liberty, eventually end in the full enjoyment by blacks of all rights

and privileges of citizenship enjoyed by whites."<sup>6</sup>

Commentators on both the right and the left, however, have begun to cast doubt upon the continuing vitality of this shopworn theme. The position of the New Right, articulated by members of the Reagan administration and by neo-conservative scholars such as Thomas Sowell, is that the goal of the civil rights movement—the extension of formal equality to all Americans regardless of color—has already been achieved, hence the vision of a continuing struggle under the banner of civil rights is inappropriate. The position of the new left, presented in the work of scholars associated with the conference on Critical Legal Studies, also challenges the perception that the civil rights struggle represents a long, steady march toward social transformation. CLS scholars do not significantly disagree with the goal of racial equality, but assert only the basic counterproductivity of seeking that objective through the use of legal rights. Indeed, CLS scholars claim that even engaging in rights discourse is incompatible with a broader strategy of social change. They view the extension of rights, although perhaps energizing political struggle or producing apparent victories in the short run, as ultimately legitimating the very racial inequality and oppression that such extension purports to remedy. This article challenges both the New Left and New Right critiques of the civil rights movement. . . .

### II. THE NEW RIGHT ATTACKS: CIVIL RIGHTS AS "POLITICS"

#### A. The Neoconservative Offensive

The Reagan administration arrived in Washington in 1981 with an agenda that was profoundly hostile to the civil rights policies of the previous two decades. The principal basis of its hostility was a formalistic, color-blind view of civil rights that had developed in the neoconservative "think tanks" during the seventies. Neo-conservative doctrine singles out race-specific civil rights policies as one of the most significant threats to the democratic political system. Emphasizing the need for strictly color-blind policies, this view calls for the repeal of affirmative action and other race-specific remedial

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