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Law as a Eurocentric Enterprise

Kenneth B. Nunn*

Introduction

The white man . . . desires the world and wants it for himself alone. He considers himself predestined to rule the world. He has made it useful to himself. But here are values which do not submit to his rule.

— Frantz Fanon¹

Several schools of legal thought now exist² that, in various forms, acknowledge law's relationship to culture.³ But what is of-

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1. JAHNHEINZ JAHN, MUNTU: AFRICAN CULTURE AND THE WESTERN WORLD 23 (Majorie Grene trans., Grove Weidenfeld 1990) (1958) (exploring the primary assumptions and principles upon which African world-view and culture are based) (quoting FRANTZ FANON, *PEAU NOIRE MASQUES BLANCS* 125 (1952)).

2. Chief among these are legal realism and its various contemporary descendants. See generally FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katharine T. Bartlett & Rosanne Kennedy eds., 1991) (feminist jurisprudence); MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987) (critical legal studies); INTERPRETING LAW AND LITERATURE (Sanford Levinson & Steven Mailloux eds., 1988) (law and literature movement); Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (popular studies and cultural studies); John M. Conley & William M. O'Barr, *Legal Anthropology Comes Home: A Brief History of the Ethnographic Study of Law*, 27 LOY. L.A. L. REV. 41 (1993) (anthropology); Richard Delgado & Jean Stephancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993) (critical race theory); Lawrence M. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763 (1986) (law and society movement); Elizabeth Mensch, *The History of Mainstream Legal Thought*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 18, 26-29 (David Kairys ed., 1982) [hereinafter THE POLITICS OF LAW] (legal realism).

3. See generally CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY 173 (1983) (describing law as a product of a given society and "a distinctive manner of imagining the real"); MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW 8 (1987) (law represents the culture "that helped to shape it and which it in turn helps to shape"); Gunter Bierbrauer,

ten overlooked in the discussion of law's cultural base is that the law is the creation of a particular *type* of culture.⁴ Law, as under-

Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism Between Kurds, Lebanese, and Germans, 28 L. & SOC'Y REV. 243 (1994) ("Law and legal systems are cultural products like language, music, and marriage arrangements."); Robert M. Cover, *Forward: Nomos and Narrative*, 97 HARV. L. REV. 1, 11 (1983) ("[T]he creation of legal meaning . . . takes place through an essentially cultural medium."); Stewart Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 L. & SOC'Y REV. 185 (1987) ("[L]aw is an important part of culture . . . [affecting] everyday life in important ways."); Naomi Mezey, *Legal Radicals in Madonna's Closet: The Influence of Identity Politics, Popular Culture, and a New Generation on Critical Legal Studies*, 46 STAN. L. REV. 1835, 1857 (1994) ("[C]ulture is the medium through which law is intimately inscribed in the practices of everyday life and through which legal meaning is contested and created."); Gary Minda, *One Hundred Years of Modern Legal Thought: From Langdell and Holmes to Posner and Schlag*, 28 IND. L. REV. 353, 370 (1995) (arguing that "a transformative process in jurisprudence" has begun to break down the barriers between law and culture); *Symposium: Reweaving the Seamless Web: Interdisciplinary Perspectives on the Law*, 27 LOY. L.A. L. REV. 9 (1993); *Symposium: Popular Legal Culture*, 98 YALE L.J. 1545 (1989); Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 U. PA. L. REV. 1105, 1222-23 (1989) (describing law as "a purely human creation," "a cognitive construction from . . . lived dimensions of experience"); Barbara Yngvesson, *Inventing Law in Local Settings: Rethinking Popular Legal Culture*, 98 YALE L.J. 1689, 1690 (1989) ("[I]nterpretivists understand the production of law as an ongoing process, dialectically linked to the production of community, which is both a vehicle for and an outcome of the invention of law."). A valuable collection of essays exploring the connections between law and culture may be found in *LAW AND THE ORDER OF CULTURE* (Robert Post ed., 1991).

4. I am using "culture" here in its broad, anthropological sense, as opposed to a more narrowly focused artistic or "humanistic" definition of the term. See generally *CULTURAL STUDIES 4* (Laurence Grossberg et al. eds., 1992) (discussing the distinction between broad and narrow visions of culture). Even so constrained, "culture" is a word susceptible to many meanings. One anthropologist has offered the following helpful definition:

Culture consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts . . .

[C]ulture systems may, on the one hand, be considered as products of action, on the other as conditioning influences upon further action.

CULTURE AND BEHAVIOR: COLLECTED ESSAYS OF CLYDE KLUCKHOHN 73 (Richard Kluckhohn ed., 1962) (quoting A.L. Kroeber & Clyde Kluckhohn, *Culture: A Critical Review of Concepts and Definitions*, in 1 PAPERS OF THE PEABODY MUSEUM OF ARCHAEOLOGY AND ETHNOLOGY (1952)).

Culture may be further described in practical terms. John Frohnmayer, former Chairman of the National Endowment for the Arts, has defined culture in the following way:

[C]ulture, to the anthropologist, the folklorist and the archeologist, is part of the immutable web of what a society is and does. It is the tribal dance, the sacred ground, the strain of rice, the herbal remedy, the architecture, the folk wisdom, the flora and the fauna and the oral tradition. In short, it is the best manifestation of what a society has created, what a society values and what a society believes.

John Frohnmayer, Gianella Lecture, *Should the United States Have a Cultural Policy?*, 38 VILL. L. REV. 195 (1993).

stood in European-derived⁵ societies, is not universal. It is the creation of a particular set of historical and political realities and of a particular mind-set or world-view.

Understandably, the human enterprise can be envisioned and structured in differing ways. It comes as no surprise, then, that Western Europe has developed cultural forms that are distinct.⁶ Compared to the world's other cultural traditions,⁷ Western European culture is highly materialistic, competitive, individualistic, narcissistic and places great emphasis on the consumption of natural resources and material goods.⁸ In addition, European culture

5. I use "Europe" or "European" to refer to the countries of Western Europe and the United States, Canada and Australia. I use the terms "Western" or "European-derived" to refer to those countries that have adopted the values and institutions of European culture, no matter where they may be located geographically. Cf. J.M. BLAUT, *THE COLONIZER'S MODEL OF THE WORLD: GEOGRAPHIC DIFFUSIONISM AND EUROCENTRIC HISTORY* 3 (1993) (referring to "Greater Europe" as the continent of Europe plus the countries of European settlement). This conception, of course, is an oversimplification. It is possible for a country to have adopted some Western values but not others. It is also possible for a country to adopt Western values at some levels, but not at others. For example, while Japan is a Western country at the state level, it retains its own cultural logic at the societal and individual levels.

6. See generally ROBERT S. LOPEZ, *THE BIRTH OF EUROPE* (1967) (asserting that Europe arose from "the creation of a new and lasting cultural unity"); PAUL MONACO, *MODERN EUROPEAN CULTURE AND CONSCIOUSNESS, 1870-1980* 2 (1983) (describing a common "Euro-American culture [that] is becoming increasingly the core of . . . a common global culture"); THE UNITY OF WESTERN CIVILIZATION (F.S. Marvin ed., 3d ed., 1929) (reprinted 1970) (collection of essays arguing the existence of a "great European civilization"); Francois Bourricaud, *Modernity, 'Universal Reference' and the Process of Modernization*, in 1 PATTERNS OF MODERNITY: THE WEST 12-13 (S.N. Eisenhardt ed., 1987) [hereinafter PATTERNS OF MODERNITY] (listing a systemized science, the constitutional state, the rule of law, democracy and capitalist economy as central, defining characteristics of the West). There is also a growing collection of popular works asserting the existence of a Western culture and celebrating its preeminence. Most of these see the Eurocentric orientation of American culture as a positive trait and view calls for the recognition of non-Western cultures and values as threatening. See, e.g., DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF SEX AND RACE ON CAMPUS* (1991); ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA* (1992).

7. See MARIMBA ANI, *YURUGU: AN AFRICAN-CENTERED CRITIQUE OF EUROPEAN CULTURAL THOUGHT AND BEHAVIOR* 82, 98, 195 (1994) (comparing European cultures to African, Native American and Oceanic "majority cultures"); RICHARD KATZ, *THE STRAIGHT PATH: A STORY OF HEALING AND TRANSFORMATION IN FIJI* 16 n.4 (1993) (comparing "Western" with "Indigenous" traditions).

8. See *infra* Part I. The following description of culture in the United States may be taken as representative of European culture generally:

America has inverted . . . [an] historic value structure and prioritized the values of economic advancement, individual acquisition, and immediacy. The United States has, at its base, accepted a relentless pursuit of economic efficiencies and a related glorification of individualism in order to attain and sustain its material wealth. The distortion of values inherent in this single-minded drive for material dominance has been largely ignored or justified by the financial success which these efficiencies have

tends to take aggressive, domineering stances toward world inhabitants.⁹ Consequently, the driving force behind racism, colonialism and group-based oppression is European and European-derived culture.¹⁰

European culture has produced a legal tradition that, while offered as universal,¹¹ is distinctly its own.¹² John Henry Merry-

produced. This distortion has created an America which has embraced a philosophy of result orientation, an evaluation of all actions based on the success of their results—with success being increasingly defined as the attainment of wealth.

Phillip J. Closius, *Rejecting the Fruits of Action: The Regeneration of the Waste Land's Legal System*, 71 NOTRE DAME L. REV. 127 (1995) (citations omitted).

9. See *infra* Part I.

10. While some would wish to site these negative practices in general human failings, others lay the blame squarely on Western policies and attitudes. See JOHN HENRIK CLARKE, *AFRICANS AT THE CROSSROADS: NOTES FOR AN AFRICAN WORLD REVOLUTION* 245-67 (1991) (stating that racism, slavery and the destruction of cultures directly result from white nationalist expansion); HAKI R. MADHUBUTI, *CLAIMING EARTH: RACE, RAGE, REDEMPTION; BLACKS SEEKING A CULTURE OF ENLIGHTENED EMPOWERMENT* 169 (1994) ("Racism . . . is now understood by many people of color worldwide as a European aberration that has wreaked havoc on most cultures."); AMOS N. WILSON, *THE FALSIFICATION OF AFRIKAN CONSCIOUSNESS: EUROCENTRIC HISTORY, PSYCHIATRY AND THE POLITICS OF WHITE SUPREMACY* 3-4 (1993) (arguing that Eurocentric social order produces self-destructive attitudes and behavior in people of African descent). See also CHINWEIZU, *THE WEST AND THE REST OF US: WHITE PREDATORS, BLACK SLAVERS AND THE AFRICAN ELITE* (1975) (demonstrating that European relations with Africans were motivated by white nationalism and racism); JOEL KOVEL, *WHITE RACISM: A PSYCHOHISTORY* (1970) (linking white racism to European historical developments); HAKI R. MADHUBUTI, *ENEMIES: THE CLASH OF RACES* (1978) (describing white oppression of Blacks as an interrelated economic, political, social and psychological attack); WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1974) (linking economic and cultural impoverishment of Africa to Western colonial and post-colonial policies); CHANCELLOR WILLIAMS, *THE DESTRUCTION OF BLACK CIVILIZATION: GREAT ISSUES OF A RACE FROM 4500 B.C. TO 2000 A.D.* (1987) (explaining present low status of Africans world-wide as the result of a centuries-old pattern of white invasion and exploitation).

11. Western law, like Western culture generally, presents a paradox since it claims both universality and uniqueness. For a discussion of the law's false claim to universality, see *infra* Part IV. Western culture purports to be *universal* in the sense that it offers itself as an advanced stage in history. See S.N. Eisenstadt, *Introduction: Historical Traditions, Modernization and Development*, in PATTERNS OF MODERNITY, *supra* note 6, at 2 (discussing the Western perception that "the European (and perhaps also the American) experience constitutes the major paradigm of . . . modern society and civilization"); Mogens Trolle Larsen, *Orientalism and the Ancient Near East*, in THE HUMANITIES BETWEEN ART AND SCIENCE: INTELLECTUAL DEVELOPMENTS 1880-1914, at 183 (Michael Harbsmeier & Mogens Trolle Larsen eds., 1989) [hereinafter BETWEEN ART AND SCIENCE] (describing "a unilinear view of world history which marked out the western civilization as the concluding glory of millennia of development"). Western culture claims to be *unique* since, it is argued, no other culture has successfully reached the modern phase of development. See Eisenstadt, *supra*, at 1-2. Curiously, what may be most unique about Western societies is their predilection for assertions of universality. See Bourricaud, *supra* note 6, at 21 ("Modern societies are characterized less by what they have in common or by their structure . . . than by the fact of their involvement in the issue of

man describes "legal tradition" as "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system and about the way law is or should be made, applied, studied, perfected and taught."¹³ According to Merryman, the civil law, common law and socialist law traditions "are all of European origin."¹⁴ These legal systems, which make up the bulk of what is referred to as "the law,"¹⁵ all "express ideas and embody institutions that have been formed in the European historical and cultural context."¹⁶

This Article argues that law is a Eurocentric enterprise,

universalization.").

Marimba Ani, a professor of anthropology at Hunter College, criticizes the European claims of uniqueness and universality. To Ani, these claims are ideologically manipulative instruments of white supremacy. She points out that if we accept the argument "that European culture merely represents what will be the eventual form of all cultures," then:

there is no possibility for a viable critique of what Europeans have created, because there is no other ("non-European") perspective. Other ideologies become impotent, because to identify "Europeanness" as an inevitable stage in "non-European" development is to say that they ("non-Europeans") do not exist—certainly not as directives, as influences, or as agents of change.

ANI, *supra* note 7, at 21.

12. See JOHN H. BARTON ET AL., *LAW IN RADICALLY DIFFERENT CULTURES* 7 (1983) ("We assume that Western law is an integral expression or part of Western culture and that it differs from law outside the West.").

13. JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 2 (1969).

14. *Id.* at 5. See also HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 539 (1983):

All Western legal systems—the English, the French, the German, the Italian, the Polish, the Hungarian, and others (including since the nineteenth century, the Russian)—have common historical roots, from which they derive not only a common terminology and common techniques but also common concepts, common principles, and common values.

15. To speak of "the law" in this way is to exclude other legal traditions that can be easily dismissed as mere "cauldron[s] of custom and [religious] . . . influences." MERRYMAN, *supra* note 13, at 9. This is not meant to suggest that Merryman believes European legal traditions are superior to all others. Elsewhere, in fact, he asserts the opposite: "While it is comforting to think . . . that one's own legal system is advanced and others are backward or primitive, an alternative possibility is that they are merely different." BARTON ET AL., *supra* note 12, at 7. A substantial majority of Western jurists, however, *do* believe that "the law" is the distinct province of the European mind. See, e.g., RENÉ DAVID & JOHN E.C. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* 548-76 (1985) (unfavorably comparing African "custom" with European "law"). See also A.N. ALLOTT, *NEW ESSAYS IN AFRICAN LAW* 148 (1970) (arguing that the study of African legal concepts more properly the subject of anthropology than law); MAX GLUCKMAN, *POLITICS, LAW AND RITUAL IN TRIBAL SOCIETY* xxii, 112 (1965) (same). This dichotomy has an ideological slant. See *infra* notes 140-42 and accompanying text (discussing the hierarchical relationship of "law" to "custom").

16. MERRYMAN, *supra* note 13, at 7.

meaning that law is part of a broader cultural endeavor that attempts to promote European values and interests at the expense of all others.¹⁷ Law carries out a Eurocentric program as it organizes and directs culture. Law does this by reinforcing a Eurocentric way of thinking, promoting Eurocentric values and affirming—in deed celebrating—the Eurocentric cultural experience.

In the discussion that follows, this Article adopts the theoretical and philosophical position developed by African-centered scholars in the United States and elsewhere to critique western legal thought.¹⁸ This point of view, sometimes known as Afrocentricity, requires the scholar to interrogate knowledge from a position that is grounded in African values and the African ethos.¹⁹ An African-centered perspective is employed here to reveal the normally hidden relationship between white supremacy and law in the Western cultural context.

This Article will address the Eurocentric nature of law and its use as an instrument of cultural domination. Part I explains the concept of Eurocentricity. Part II explores those attributes of

17. As Professor Peter Manus has argued:

Mainstream U.S. culture, including politics, law, and values, has emerged from eurocentric roots. At its simplest, eurocentric culture is based on the mythological notion that individuals should strive to rise above the status quo and to search for, claim, wrest, and possess the scarce valuables, both material and moral, from a great wasteland. The holy grail stories embody the central theme of this tradition, as do the Christian crusades. Incorporating into the theme of quest and individual valor rising out of a wasteland of sin is the notion that the crusading European is "other," or better, than the non-European races.

Peter M. Manus, *The Owl, the Indian, the Feminist, and the Brother: Environmentalism Encounters the Social Justice Movements*, 23 B.C. ENVTL. AFF. L. REV. 249, 258 (1996).

18. I am drawing upon the work of Na'im Akbar, Molefi Asante, Jacob Carruthers, Cheikh Anta Diop, Asa G. Hilliard, III, Leonard Jeffries, Rosalind Jeffries, Maulana Karenga, Wade Nobles, Theophile Obenga, Frances Cress Welsing, Amos Wilson and others. As Errol Henderson describes it, these African and African American scholars "have attacked 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). I am aware that other, non-Afrocentric scholars have offered culturally based critiques of Western law which, while not African-centered in their analysis, raise similar points. See, e.g., Closius, *supra* note 8 (arguing that Western culture, as depicted in T.S. Eliot's poem "The Waste Land" has produced result-oriented forms of law that promote capitalism, materialism and economic efficiency over religious, communal and familial values); Jennifer Nedelsky, *Law, Boundaries, and the Bounded Self*, in *LAW AND THE ORDER OF CULTURE* 162 (Robert Post ed., 1991) (arguing Western individualism produces a stark and empty vision of civil and political rights).

19. See MOLEFI KETE ASANTE, *KEMET, AFROCENTRICITY, AND KNOWLEDGE* 5 (1990).

the law that mark it as Eurocentric and make it a tool for cultural hegemony. Part III explains how law structures institutions of white dominance while legitimating the use of force to protect those institutions. Part IV discloses how law maintains white cultural hegemony through false universal claims and the privileging of the white historical experience. Part V reveals how legal reasoning works to stifle Black²⁰ creativity and cultural expression. Finally, Part VI addresses the way law and legal structures limit the political program that may be undertaken by African and other cultural activists. This Article concludes that African communities existing within Western societies must envision new strategies and conceptions of the law in order to liberate themselves and transform the oppressive character of Eurocentric culture.

I. The Critique of Eurocentricity

From an African-centered cultural perspective,²¹ racism, sexism, classism and other problems endemic to Western societies are not the product of misguided or venal individuals.²² Nor are they solely the result of material conditions or predictable social processes.²³ These problems result from the fundamental nature of

20. 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 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).

21. See ASANTE, *supra* note 19, at 5 (Afrocentrist "put[s] African ideals and values at the center of inquiry"); MOLEFI KETE ASANTE, *AFROCENTRICITY* 6 (rev. ed. 1988) ("Afrocentricity . . . is [African] history, . . . mythology, . . . creative motif, and . . . ethos exemplifying [African] collective will."). According to Asante, the Afrocentric method is a critical method, grounded in African historical and cultural bases, which takes "the restoration of balance" as its goal. MOLEFI KETE ASANTE, *THE AFROCENTRIC IDEA* 178 (1987).

22. Afrocentrists, or African-centered scholars, hold a range of ideological positions. See HENDERSON, *supra* note 18, at 83-96 (comparing and evaluating different takes on Afrocentricity). However, they generally agree that the problems faced by African people are based in the fundamental structure of European culture and that individualist accounts of these problems are superficial. See, e.g., Mwata Kairi X, *Sakhu Sheti-ists: The Illuminators of the Divine Afrikan Spirit, in TO HEAL A PEOPLE: AFRIKAN SCHOLARS DEFINING A NEW REALITY* 129-30 (Erriel Kofi Addae ed., 1996) (arguing Western culture and not individual attributes forces "us to develop compensatory behavioral styles that are, or have been, antithetical to the proper growth and development of the Afrikan Spirit, and ultimately to humanity"); KOBİ KAZEMBE KALONGI KAMBON, *THE AFRIKAN PERSONALITY IN AMERICA: AN AFRIKAN-CENTERED FRAMEWORK* viii-x (1992) (linking mental disorders, criminality, family problems, etc., to European cosmology or worldview and suggesting these problems cannot be resolved in the absence of the development of an African worldview).

23. See KAMBON, *supra* note 22, at ix-x.

European society and culture.²⁴ That is, racism, sexism, etc., flow

24. LINDA JAMES MYERS, UNDERSTANDING AN AFROCENTRIC WORLD VIEW: AN INTRODUCTION TO AN OPTIMAL PSYCHOLOGY 10 (1988) (arguing that "the depth and pervasiveness of racism/sexism go to the very core of the conceptual system and consequent world view that characterize Western thought and Euro-American culture"). This position was first elaborated by the celebrated African-centered scholar, Cheikh Anta Diop, in his famous "two-cradle" theory. Diop argued that "humanity has from the beginning been divided into two geographically distinct 'cradles' one of which was favourable to the flourishing of matriarchy and the other to that of patriarchy." CHEIKH ANTA DIOP, THE CULTURAL UNITY OF BLACK AFRICA: THE DOMAINS OF PATRIARCHY AND OF MATRIARCHY IN CLASSICAL ANTIQUITY 25 (English trans. 1963, reprinted 1978) [hereinafter CULTURAL UNITY]. According to Diop, the Northern cradle was centered on the Eurasian steppes and was characterized by a nomadic life, patriarchal social organization, high individualism, fire worship and cremation of the dead. *Id.* at 28-33, 72, 144-46. In contrast, the Southern cradle was centered in Africa and was characterized by a sedentary, agricultural way of life, matriarchical social organization, collectivism, ancestor worship and interment of the dead. *Id.* at 28-33, 41-42, 144. Due to the particularities of its environment, Diop teaches that the Northern cradle developed an intrusive totalitarian state, *id.* at 148, a general disrespect for and mistreatment of women, *id.* at 139, individualism and xenophobia, *id.* at 195, as well as an affinity for "war, violence, crime and conquests," *id.* at 195. See also CHEIKH ANTA DIOP, CIVILIZATION OR BARBARISM: AN AUTHENTIC ANTHROPOLOGY 112-13 (Yaa-Lengi Meema Ngemi trans., 1991) [hereinafter CIVILIZATION OR BARBARISM] (summarizing and explaining distinctions between two cradles).

It should be made clear that neither Diop's position, nor the one that I take here, are founded on racial distinctions as such. I do not make the claim and, as far as I am aware of, no Afrocentric scholar makes the claim that the cultural differences that may be observed between Europeans and others are the results of a genetic predisposition or trait. African-centered scholars argue uniformly that Afrocentric culture is the consequence of environmental and historical factors. As Diop puts it, "I do not plead for a petrified African psychological nature; the sense of solidarity so dear to the African could very well give way to an individualistic, egocentric behavior of the Western type, if conditions were modified." *Id.* at 362.

Following Diop, other works by African-centered scholars have explored the contours of the Eurocentric worldview. See ANI, *supra* note 7, at 398, 402 (European culture characterized by "separateness, alienation, hostility, competitiveness," and cultural and economic aggression); S.M.E. BENGU, CHASING GODS NOT OUR OWN 33 (1975) ("European culture cause[s] complexes for both . . . Europeans and . . . Africans."); ASA G. HILLIARD, III, THE MAROON WITHIN US: SELECTED ESSAYS ON AFRICAN AMERICAN COMMUNITY SOCIALIZATION 50-70 (1995) (arguing adoption of "atomistic-objective" cultural style is stultifying and debilitating to African people); KAMBON, *supra* note 22, at 12-13 ("the European worldview is defined by basic values of materialism, control, aggression and linear-ordinal ranking, conflict and opposition"); MYERS, *supra*, at 9-10 (racism and sexism an inherent part of the European view of the world); WADE W. NOBLES, AFRICAN PSYCHOLOGY: TOWARDS ITS RECLAMATION, REASCENSION AND REVITALIZATION 2-14 (1986) (noting differences between African, spiritually-based psychology and European, objective psychology which supported and encouraged racist views of African and non-European behavior); ELLENI TEDLA, SANKOFA: AFRICAN THOUGHT AND EDUCATION 106-07 (1995) (Western culture has led to the development of racist social theories and exploitative economic and development policies); Na'im Akbar, *Africentric Social Sciences for Human Liberation*, 14 J. BLACK STUD. 395, 399-403 (1984) (Eurocentric worldview exemplified by individualism, rationalism, and materialism).

from the world-view and conceptual system that is at the core of European culture.²⁵ It is the core cultural dynamics of Western societies²⁶ that produce social structures in which male traits, material possessions and white racial characteristics are so highly privileged.²⁷

At the center of European culture lies a complex of values that are profoundly materialistic.²⁸ European culture is materialistic in both the ontological sense that the nature of reality is perceived in material terms²⁹ and in the sociological/axiological sense that the acquisition of objects is the primary social goal.³⁰ The term "Eurocentricity" is used in this Article to refer to these core cultural values. Eurocentricity, then, may be briefly defined as a conceptual system or world-view that is grounded in materialism and that exhibits an epistemology, aesthetics and ethos based in material values.³¹ Eurocentricity consists of those values, attrib-

25. MYERS, *supra* note 24, at 10. Na'im Akbar, a clinical psychologist and professor in the Departments of Psychology and Black Studies at Florida State University has observed:

child molestation, rape, bizarre sexual perversions, drug abuse, child abuse, and even racial conflict are virtually unknown occurrences in most parts of the world, but reach epidemic proportions as one approximates the characteristics of the Euro-American model.

Akbar, *supra* note 24, at 403-04.

26. See *infra* notes 28-30 and accompanying text.

27. MYERS, *supra* note 24, at 10.

28. See TEDLA, *supra* note 24, at 81 (1995) (stating that Europeans entertain a mathematical-mechanistic view of the world, wherein nature is separated from God, and mind from matter); Akbar, *supra* note 24, at 402 (observing that the Eurocentric perspective "assume[s] . . . outer characteristics are essential characteristics"); KAMBON, *supra* note 22, at 12 (noting that materialism is one of the basic values of Eurocentricity).

29. MYERS, *supra* note 24, at 10.

30. See *id.* (claiming that the highest value in Eurocentric societies is placed on the acquisition of objects).

31. This definition differs from other uses of the term "Eurocentricity." "Eurocentricity" or "Eurocentrism" may be used to suggest a form of ethnocentrism. See BLAUT, *supra* note 5, at 47 n.8 (suggesting the term originated as contraction of "European ethnocentrism"). Law, in this sense, would be "Eurocentric" to the extent it was a tool of prejudice or bias. "Eurocentrism" may also be used to describe the practice of viewing history, law, science or other human practices, from a European perspective, as if Europe was the point of origin or reference for all human affairs. Blaut takes this position, referring to it as "Eurocentric diffusionism." *Id.* at 1. Under this definition, law can be called "Eurocentric" because it is conceived of as originating in Europe and spreading out to the rest of the world. Asante, on the other hand, views "Eurocentricity" as the adoption of a particular value center. See ASANTE, THE AFROCENTRIC IDEA, *supra* note 21, at 6-11 (comparing Afrocentricity with Eurocentricity). See also Jeffrey Lynn Woodyard, *Locating Asante: Making Use of the Afrocentric Idea*, in MOLEFI KETE ASANTE AND AFROCENTRICITY: IN PRAISE AND CRITICISM 27, 29-32 (Dhyana Ziegler ed., 1995) (describing Asante's Afrocentricity as a perspective from which to view phenomenon). A "Eurocentric" person or enterprise, then, is one that adopts a point of view grounded in European realities. From Asante's position, law is "Eurocentric" be-

utes and modes of behavior that are at the core of European-derived cultures.³² Consequently, Eurocentricity provides the impetus for human interaction and organization both within European-derived cultures³³ and between them and other cultures.³⁴

The Eurocentric world-view produces a culture of acquisition and narcissism. Since the Eurocentric perspective conceives of reality in material terms, the amount of resources available for well-being and survival are perceived to be finite.³⁵ This perception that life is a "zero-sum game" leads to the development of social behaviors that are highly competitive and aggressive.³⁶ Because competition is so critically important to the Eurocentric mind-set, individualism and the accumulation of material things are promoted.³⁷ As Afrocentric scholar Linda James Myers points out:

If we accept the materialist perspective even our very worth as human beings becomes fragile and diminished, for it

cause it structures itself around European concerns and interests and because it is part of a broader European project of world management.

The preceding definitions seem dependent on another: Eurocentrism as an expression of a specific cultural orientation. This is the position I adopt in this article. Law is "Eurocentric" from this perspective because it expresses attributes that are characteristic of European culture. Cf. ANI, *supra* note 7, at 4 (describing anthropology as a Eurocentric discipline since it is "a manifestation of the European ethos"). While law may also be Eurocentric according to the other positions I have outlined above, this may be so only because law is most fundamentally an expression of European culture.

32. These core values are defined by Kambon. He states that "the European worldview is defined by the basic values of materialism, control, aggression and linear-ordinal ranking, conflict and opposition." KAMBON, *supra* note 22, at 12-13.

33. ANI, *supra* note 7, at 375-88. Within Eurocentric cultures, however, the possibilities for fulfilling human relationships are limited. Eurocentric culture is the only culture that provides little or no source of spiritual or emotional well-being for its members. It carries little tradition of insight into the human spirit and virtually no knowledge of the human soul. It is atrophied toward non-human realities. European culture presents the individual it produces with only the alternatives of materialism, scientism, and rationalism, when what she needs is the inner peace that comes with communion . . . with others . . . and emotional identification with other people.

Id. at 381.

34. *Id.* at 473-85.

35. MYERS, *supra* note 24, at 10.

36. *See id.*; *see also* Akbar, *supra* note 24, at 400.

37. Indeed, the cultural logic of Eurocentricity *demand*s a rampant materialism and excessive acquisitiveness, a point the following comment emphasizes:

Individualism, competition, and materialism provide criteria for self-definition [in Eurocentric societies] as a natural consequence of a world view in which a finite and limited focus orients us toward such disorder that we fight one another to sustain an illusion. Even so, regardless of the external criteria that automatically make one *better* than another (in U.S. culture: white skin color and male sex characteristics), the intact suboptimal conceptual system will by its nature, in any culture, lead to forms of societal "isms," or hierarchical valuing of the material.

MYERS, *supra* note 24, at 10.

teaches that one's worth is equal to what one owns, how one looks, the kind of car, house, education one has, and so on.³⁸

Consequently, Eurocentric culture produces a general sense of insecurity, "an incessant need to control, dominate, or *be better than others*."³⁹

The materialistic paradigm of Eurocentric societies produces certain cultural determinates, which shape and direct all social productions within the culture.⁴⁰ These cultural determinates manifest themselves mainly in the areas of thought structuring and processing and include epistemological values and logic.⁴¹ The

38. *Id.* See also Closius, *supra* note 8, at 127-28 ("[In America], a culture has been established which defies the individual and the importance of achievement— who won, what university did you get into, how much money did you earn."). Ultimately these attempts to gain fulfillment through material gain are unsuccessful.

That basic sense of worth, peace, and security all human beings so desperately need cannot be achieved through material, external criteria. What happens is that we can only get some of what we want, and we want more; we get more, and we want more and more, and so on.

MYERS, *supra* note 24, at 10.

39. MYERS, *supra* note 24, at 10. See also KAMBON, *supra* note 22, at 12.

40. Using different terminology, Ani describes this process as the influence of the "*asili*" (the ideological thrust or core of a culture), on the "*utamawazo*" (the cognitive style or "culturally structured thought" exhibited by a culture). See ANI, *supra* note 7, at xxv, 105. Eurocentric societies are governed by an *asili* that is essentially power-seeking. *Id.* at 105. She states that "[t]he [socio-cultural] forms that are created within the European cultural experience can then be understood as mechanisms of control in the pursuit of power." *Id.*

41. Marimba Ani has produced an extremely valuable and detailed study of the cultural processes that have produced Western, Eurocentric thought. In the discussion which follows, I rely significantly on her analysis and categorization of the various components of European culture. Ani lists the following as attributes of the Eurocentric *utamawazo*: (1) dichotomization, (2) oppositional, confrontational, antagonistic relationships, (3) hierarchical segmentation, (4) analytic, nonsynthetic thought, (5) objectification, (6) absolutist-abstractification, (7) rationalism and scientism, (8) authoritative literate mode and (9) desacralization. See ANI, *supra* note 7, at 105-07 (describing the manner in which the *asili* forces self-realization through the cognitive structure of the *utamawazo*).

Hilliard states that European cultures generally display what he calls the "atomistic-objective" or "analytical, obsessive-compulsive" behavioral style. See HILLIARD, *supra* note 24, at 13-49, 160-77 (comparing European and African American cognitive and behavior styles using religion, language, and music). Hilliard identifies the following qualities, among others, as part of the cultural style typically preferred in European-dominated cultural settings: "[r]ules," "[s]tandardization," "[m]emory for specific facts," "[r]igid order," "[e]gocentric," "[c]ognitive," "[l]inear," "[h]ierarchical," and "[t]hing focused." *Id.* at 165.

There is a fairly extensive psychological literature cataloguing differences between African-American and European-Americans in terms of "cognitive" or "cultural" style. See generally BLACK PSYCHOLOGY (Reginald L. Jones ed., 3d ed. 1991) (focusing on areas including personality, education, psychological assessment, and racism); J.E. BLACKWELL, THE BLACK COMMUNITY (1975) (describing unique attributes of African American culture and behavior); CULTURE, STYLE AND THE EDUCATIVE PROCESS (Barbara J. Robinson Shade ed., 1989) (collection of articles describing how "culturally-induced styles influence academic performance");

following European cultural attributes are the most significant for the purposes of this Article.

1. *Dichotomous Reasoning.* Eurocentric culture embraces a reasoning style that is dichotomous.⁴² That is, the world is known and described through the comparison of incompatible opposites.⁴³ Virtually all of reality is split into paired opposites.⁴⁴ According to Marimba Ani, "[t]his begins with the separation of self from 'other,' and is followed by the separation of the self into various dichotomies (reason/emotion, mind/body, intellect/nature)."⁴⁵ Dichotomous reasoning leads to "either/or" conclusions and makes it difficult to process information wholistically.⁴⁶ The dichotomous reasoning found in Eurocentric cultures may be contrasted to the diunital form of reason prevalent in African and other non-European cultures.⁴⁷ Diunital reasoning leads to "both/and" conclusions and permits the consideration of information that is not

VARIATIONS IN BLACK AND WHITE PERCEPTIONS OF THE SOCIAL ENVIRONMENT (Harry C. Triandis ed., 1976) (presenting a means for understanding blacks' and whites' way of thinking); John R. Aiello & Stanley E. Jones, *Field Study of the Proxemic Behavior of Young School Children in Three Subcultural Groups*, 19 J. PERSONALITY & SOC. PSYCHOL. 351 (1971) (discussing the results of a study based on the assertion that lower-income blacks and hispanics are more highly involved during interactions than middle-class white Americans and thus use a closer interaction distance); A. George Gitter, H. Black, et al., *Race and Sex in the Perception of Emotion*, 28 J. SOC. ISSUES 63 (1972) (relating nonverbal communication to perception of emotion); H. A. Witkin & J. Berry, *Psychological Differentiation in Cross-Cultural Perspective*, 6 J. CROSS-CULTURAL PSYCHOL. 4 (1975) (identifying behavioral and cultural phenomena which bear on psychological differentiation).

42. ANI, *supra* note 7, at 33. See also TEDLA, *supra* note 24, at 81 (describing the European world view which separates mind from matter, nature from God and the subjective realm from the objective realm).

43. See ANI, *supra* note 7, at 33-34 (citing Robert Armstrong who describes the European world view as a system of opposing pairs).

44. *Id.* at 105.

45. *Id.*

46. MYERS, *supra* note 24, at 11. Dichotomous reasoning leads to racist/sexist thought and practice. Dichotomous reasoning enables the European mind to create the non-European "other." See ANI, *supra* note 7, at 402-03. The separation of self from the other permits the objectification of the other, and consequently the exercise of power over the other. *Id.* See also EDWARD W. SAID, *ORIENTALISM* 4-9, 22-23, 108-09 (1978) (describing the "othering" process that produced the Western conception of the Orient and describing that conception as one based on "a relationship of power, of domination, [and] of varying degrees of a complex hegemony"); Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1372-76 (1988) (describing how Western thought is characterized by "a structure of polarized categories" and how "the very existence of a clearly subordinated 'other' group is contrasted with the norm in a way that reinforces identification with the dominant group"). Fitzpatrick discusses how "othering" is part of the basic structure of the law. See *infra* note 94 and accompanying text (quoting Fitzpatrick).

47. MYERS, *supra* note 24, at 13. See also ANI, *supra* note 7, at 34, 97-98 (observing that reasoning forms embraced by European culture are non-diunital).

neatly categorized or compartmentalized.⁴⁸

2. *Employment of Hierarchies.* Having submitted the material world to a process of fragmentation, the Eurocentric mind organizes the resulting dichotomies into hierarchies of greater and lesser value.⁴⁹ Within dichotomies, one pole is valued as superior to its opposite.⁵⁰ Thus reason is considered to be superior to its opposite, emotion, "that is, when 'reason' rules 'passion.'"⁵¹ All reality is described in hierarchical terms;⁵² consequently, the Eurocentric mind perceives everything as better or worse than something else.⁵³ In this way, grounds are established for relationships based on power, "for the dominance of the 'superior' form or phenomenon over that which is perceived to be inferior . . ." ⁵⁴

3. *Analytical Thought.* Analytic reasoning is the familiar cognitive style within Eurocentric cultural spheres.⁵⁵ In analytic reasoning, an item or issue under consideration must first be broken down into its constituent parts before each part is then separately examined.⁵⁶ While important information may be gleaned through analytic reasoning, "[t]here are some things that cannot be divided without destroying their integrity."⁵⁷ In Eurocentric societies, analytic reasoning is utilized to the exclusion of, and not in addition to, synthetic reasoning processes.⁵⁸ Thus, interrelation-

48. MYERS, *supra* note 24, at 13. Since categorization is unnecessary when di-unital reasoning is employed, this form of reasoning tends to avoid discriminatory treatments based on the perceived differences of people or things. See ANI, *supra* note 7, at 34-35 (explaining the European tendency to see pairs "in polar opposition and exclusive, rather than as complementary and diunital" basis for the polarizing hierarchy that made European males superior to non-Europeans and females).

49. ANI, *supra* note 7, at 106.

50. On this point, Ani quotes the anthropologist Robert Armstrong, who notes:

We see the world as delicately constituted of both terms in an infinite system of contrasting pairs, and bound together by the tension that exists between them. To be sure one term in each case is, by definition, of greater value than its opposite.

ROBERT PLANT ARMSTRONG, WELLSRING: ON THE MYTH AND SOURCE OF CULTURE 115-16 (1975), *quoted in* ANI, *supra* note 7, at 33-34.

51. ANI, *supra* note 7, at 94.

52. *Id.* at 106.

53. See Crenshaw, *supra* note 46, at 1372-73 (quoting JACQUES DERRIDA, DISSEMINATION viii (Barbara Johnson trans., 1981)).

54. ANI, *supra* note 7, at 106.

55. *Id.*

56. *Id.*

57. *Id.* at 76, 106.

58. *Id.* at 76. The "synthetic" reasoning process is the affective, participatory and intuitive reasoning style that is often associated with the right hemisphere of the brain. *Id.* at 77. Rather than dividing information into separate parts, synthetic reasoning approaches information wholistically and seeks to understand it within its context. See *id.* at 76-78, 81-82.

ships are more difficult to perceive, and the fragmentation and seeming disconnection of reality is encouraged.⁵⁹

4. *Objectification*. In Eurocentric culture, the world beyond the self is viewed as a collection of objects to be controlled.⁶⁰ Indeed, in Eurocentric cultures "[t]he most valued relationship is between person and object."⁶¹ As previously noted, self-worth is often viewed in terms of the objects one has under control.⁶² The Eurocentric mind, given a choice, prefers to interpret the world in subject-object terms rather than subject-subject terms.⁶³

5. *Abstraction*. Closely related to the process of objectification, is a tendency in Eurocentric thought toward abstraction.⁶⁴ Distilled excretions of ideas take precedent over ideas in context. While abstraction can be a valuable tool in any society,⁶⁵ in Eurocentric societies, it is reified to the extent that it becomes separate from and more important than the concrete experiences from which it originates.⁶⁶ Since the abstract is separated from the concrete, its validity cannot be questioned. Thus, abstraction becomes a tool of control. "Its role is to establish epistemological authority and, of course, other kinds of authority can then be derived from and supported by it."⁶⁷ The preference for written forms of communication over oral forms also derives from Eurocentric culture's reification of the abstract.⁶⁸

6. *Extreme Rationalism*. It is a foundational Eurocentric be-

59. *See id.* at 76-78.

60. *Id.* at 106. It should be emphasized that to perceive of something as an object implies control. *See id.* at 37 (explaining that "[t]o think properly about an object, to gain knowledge of (mastery over) an object, *we must control it.*"). When people are placed in the subject-object equation as objects, then oppression and human degradation are the natural consequences. *See id.* at 402-04.

61. MYERS, *supra* note 24, at 10.

62. *See supra* note 38 and accompanying text.

63. Although in recent times objectivism has been challenged as the dominant mode of thought in Western societies by interpretive philosophies and other forms of subjective inquiry, the objective account of reality remains dominant and largely unquestioned. *See generally* RAYMOND A. MORROW, CRITICAL THEORY AND METHODOLOGY 53-60 (1994) (explaining how polarization operates and how critical theory tries to overcome it through ontology, epistemology, theory of action and nature of explanation).

64. *See ANI, supra* note 7, at 70-72.

65. As Ani points out, "the very simple cultural reality [is] that in all societies and cultures people *must* abstract from experience in order to organize themselves, to build and to create and to develop." *Id.* at 71.

66. *Id.*

67. *Id.* at 71-72.

68. *Id.* at 51-56. Ani refers to this preference as the "authoritative literate mode." *Id.* at 107.

lief that the universe can be explained wholly in rational terms.⁶⁹ This means that to the Eurocentric mind everything is connected in an ordered and structured way, organized around the principles of cause and effect.⁷⁰ The extreme rationalism that is found in Eurocentric societies has been described as an "attempt to explain all of reality as though it has been created by the European mind for the purposes of control."⁷¹

7. *Desacralization*. Nature objectified and rationalized leads to the illusion of a despiritualized universe.⁷² In the Eurocentric world-view there is no room for the operation of sacred forces. Nature is reduced to a mere thing, an object that may be manipulated to suit mankind.⁷³ This is a perspective that is almost uniquely European.⁷⁴ Even where God is allowed in Western philosophies, s/he is banished to a separate spiritual realm where s/he can have no effect on quotidian human affairs.⁷⁵

69. See Akbar, *supra* note 24, at 401. Akbar observes, however, that this effort to explain everything in rational terms is both futile and costly. He notes that due to the limitations of the rationalistic framework, "critical aspects of the human social process are often excluded from consideration." *Id.*

70. ANI, *supra* note 7, at 58-59 (describing European codification of reality in terms of linear and sequential relationships).

71. *Id.* at 107. But, Ani notes that in this European epistemology, "the 'logic' that they are taught cannot explain Zen philosophy, African ontology, or existential phenomenal reality." *Id.* at 57. Tedla calls this logical, rationalistic mode of thinking "[Western] liberalism." TEDLA, *supra* note 24, at 80. She observes that "[u]nderlying liberalism is the assumption that people, functioning primarily as individuals can achieve theoretical and practical mastery of nature and human nature." *Id.*

72. ANI, *supra* note 7, at 107.

73. *Id.* at 83-84. Desacralization leads to objectification then to control. *Cf. supra* note 60.

74. Ani comments on the atypicality of the Western concept of nature and the price of the Eurocentric worldview in the following passage:

The African metaphysic, the Native American and Oceanic "majority cultures" (it is safe to generalize here), all presuppose a fundamental unity of reality based on the organic interrelatedness of being; all refuse to objectify nature, and insist on the essential spirituality of a true cosmos. What became known as the "scientific" view was really the European view that assumed a reality precluding psychical or spiritual influences on physical, material being. This view also resulted in the elimination of a true "metaphysical" concept and of an authentic cosmology.

ANI, *supra* note 7, at 82. See also *id.* at 98-99 (comparing and contrasting the Eurocentric world view with "African, Amerindian, and Oceanic majority thought-systems").

75. An observer of the Western condition has pointed out that:

The Creator, separated from nature and humans recedes into the background like an absentee chief mechanic. Society is seen as composed of atomistic individuals bound by no morals, obligations, or duties to others. They simply act based on their own self-interest since "there is no agreement on what is 'moral.'"

TEDLA, *supra* note 24, at 83 (citation omitted).

The attributes listed here grow from and are infused by the Eurocentric materialist perspective. They do not comprise the totality of European culture, nor are they absent in other cultures.⁷⁶ When manifested in a culture that is primarily materialistic, the attributes operate collectively to form a matrix of behavior and belief that is relatively unique.⁷⁷ This is not to say that every individual in European culture thinks and acts according to this paradigm, nor is it implying that members of other cultural traditions do not.⁷⁸ What is presented here is, by necessity, a generalization. Every person who resides within a Eurocentric society, however, will be predisposed to behave and think in Eurocentric ways simply because of the mode of socialization and the reward structure present in the society.⁷⁹ 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.

II. Law and the Eurocentric World-View

Law in Western societies masquerades as universal,⁸⁰ but it is really a product of the society from which it derives.⁸¹ Western law is a product of a Eurocentric culture and as such it reflects the consciousness, logic and values of Eurocentricity.⁸² The cultural

76. See ANI, *supra* note 7, at 6, 20.

77. *Id.* at 20.

78. See MYERS, *supra* note 24, at 11.

79. Ani attributes this characteristic to the "asili." See ANI, *supra* note 7, at 12-14. For a definition of "asili," see *supra* note 40. She states:

The *asili* determines cultural development; then the form that the culture takes acts to maintain the integrity of the *asili*. It acts as a screen, incorporating or rejecting innovations, depending on their compatibility with its own essential nature. It is as though the *asili* were a principle of self-realization.

ANI, *supra* note 7, at 12. Bateson also discusses the process of conformity that operates within cultures:

The culture into which an individual is born stresses certain of his potentialities and suppresses others, and it acts selectively, favoring the individuals who are best endowed with the potentialities preferred in the culture and discriminating against those with alien tendencies. In this way the culture standardises the organisation of the emotions of individuals.

GREGORY BATESON, NAVEN 115 (1958), *quoted in* ANI, *supra* note 7, at 14.

80. See *infra* Part IV.

81. See *supra* notes 11-12 and accompanying text.

82. See *supra* notes 28-39 and accompanying text (noting logic and values of Eurocentricity).

attributes that comprise the core of Eurocentricity⁸³ may be readily discovered in Western jurisprudence. In Eurocentric culture, law is dichotomous, hierarchical, analytical, objective, abstract, rational, complex and secular.⁸⁴ Law not only exhibits these qualities⁸⁵ but also encourages and promotes them as it fosters and is used to foster social relationships within European culture.⁸⁶

A. The Eurocentric View of the Law: Dominant Trends in European Jurisprudence

The Western concept of law is typified by three major jurisprudential positions: natural law, positivism and law-in-context theories.⁸⁷ Natural law doctrine, the oldest of the three, denies law is a human creation.⁸⁸ Instead, law is thought to be part of the natural world.⁸⁹ In the older forms of this theory, law derived from the will of God.⁹⁰ Natural law was divine law.⁹¹ But the coming of the European Enlightenment separated law from divinity.⁹² Law was no longer seen as a celestial commandment, but as a necessary consequence of an ordered and structured universe.⁹³ That is, the laws of mankind became "natural" in the same sense

83. See *supra* notes 42-75 and accompanying text (discussing the cultural attributes that constitute Eurocentricity).

84. Cf. BARTON ET AL., *supra* note 12, at 7-14 (arguing similarly that "what is Western about Western law" is its faith in progress; its concern with legalism, secularism, sovereignty and statism, rights, duties, and individualism; and its adoption of "logical formal rationality" as its mode of analysis).

85. Many would argue that law *must* exhibit these qualities, or else it loses its legitimacy. Wechsler argued that constitutional decisions that were based on policy grounds and not "neutral principles" were suspect. See Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959). Wechsler's argument was simply an extension of traditional Eurocentric notions of rationality and objectivity. See also Gary Peller, *Neutral Principles in the 1950s*, 21 U. MICH. J.L. REFORM 561 (1988) (linking Wechsler's process theory to rationalist and empiricist epistemology).

86. Law is one of many means through which social relationships within a culture can be shaped. See *supra* note 3.

87. COSTAS DOUZINAS ET AL., *POSTMODERN JURISPRUDENCE: THE LAW OF TEXT IN THE TEXTS OF LAW* 19 (1991).

88. See DENNIS LLOYD, *THE IDEA OF LAW* 70-71 (1976) ("Gods and supernatural spirits direct, if they do not actually embody, the powers and forces governing everything in the universe including man and the conduct of his affairs on earth.").

89. *Id.*

90. DOUZINAS ET AL., *supra* note 87, at 4; LLOYD, *supra* note 88, at 83; Joan C. Williams, *Critical Legal Studies: The Death of Transcendence and the Rise of the New Langdells*, 62 N.Y.U. L. REV. 429, 434 (1987).

91. See DOUZINAS ET AL., *supra* note 87, at 19.

92. See Williams, *supra* note 90, at 434-35; DOUZINAS ET AL., *supra* note 87, at 4-12.

93. DOUZINAS ET AL., *supra* note 87, at 19, 75; LLOYD, *supra* note 88, at 82-83.

that the laws of science are perceived to be "natural."⁹⁴ In its post-Enlightenment, modern form, "the basis of natural law becomes psychological and sociological."⁹⁵ Modern natural law consists of those norms that are necessary to regulate the "instincts and desires of human nature."⁹⁶ According to the observation of one state court, natural law is that

which so necessarily agrees with the nature and state of man, that without observing its maxims, the peace and happiness of society can never be preserved . . . Knowledge of [natural laws] may be attained merely by the light of reason, from the facts of their essential agreeableness with the constitution of human nature.⁹⁷

This statement summarizes a distinctly European view of the law. The Eurocentric world-view is revealed in the post-Enlightenment urge to despiritualize and rationalize the law.⁹⁸

Natural law theory, however, has been pushed aside by positivistic interpretations of the law. Positivism is viewed as simply the command of the sovereign.⁹⁹ Under positivist theory, law no longer needs to appeal to any higher authority or morality.¹⁰⁰ Law is objectified and reduced to simply a matter of power.¹⁰¹ Positivism posits an interlocking system of rules, ordered not by naturalism, not by the needs and desires of human beings, but by logic.¹⁰²

94. Williams, *supra* note 90, at 435 (explaining how European philosophy made natural law the product of the rational mind); PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* 51-53 (1992).

95. DOUZINAS ET AL., *supra* note 87, at 4. This story of the transference of the realm of law from God to man is recounted in Williams, *supra* note 90, at 434-37 and Jennifer Lynn Orff, *Demanding Justice Without Truth: The Difficulty of Post-modern Feminist Legal Theory*, 28 *LOJ. L.A. L. REV.* 1197, 1199-2000 (1995).

96. Williams, *supra* note 90, at 435. See also DOUZINAS ET AL., *supra* note 87, at 19.

97. *Borden v. State*, 11 Ark. 519, 527 (1850).

98. Douzinas, Warrington and McVeigh claim that modern natural law is wholly objectified and its denial that law is not a human creation is false:

In its self-presentation as natural, modern law mimics [classical natural law]. Its appeal to nature is the sign and desire for order. But its claims are counterfeit. The nature off which the new law feeds is not a lawful universe, but a reasoned construction, not nature as lawful, but as a simulation.

DOUZINAS ET AL., *supra* note 87, at 19.

99. See JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* 11 (Isaiah Berlin et al. eds., Curwen Press 1954) (1832).

100. See LLOYD, *supra* note 88, at 100.

101. See AUSTIN, *supra* note 99, at 11. See also Philippe Nonet, *What is Positive Law?*, 100 *YALE L.J.* 667, 668-70 (1990) (claiming positive law equates authority with the will to power); Rodolfo Sacco, *Mute Law*, 43 *AM. J. COMP. L.* 455, 456 (1995) (noting legal positivism reached its apex in totalitarian countries).

102. See Kenneth B. Nunn, *The Trial as Text: Allegory, Myth and Symbol in the Adversarial Criminal Process—A Critique of the Role of the Public Defender and a Proposal for Reform*, 32 *AM. CRIM. L. REV.* 743, 753 (1995) (explaining the scien-

Positivism came to dominate European jurisprudence during the nineteenth century,¹⁰³ under the auspices of the highly influential work of theorists like David Hume,¹⁰⁴ Jeremy Bentham¹⁰⁵ and John Austin.¹⁰⁶ Bentham and Austin conceived of law as a science,¹⁰⁷ consisting of concrete principles that could be "ordered and reordered 'scientifically.'"¹⁰⁸ Elizabeth Mensch describes their work as a process of abstraction and an expression of the increasingly rational thought of the times:

The nineteenth century's process of legal rationalization resulted in the abstraction of law from both particularized social relations and substantive moral standards. By the "rule of law" classical jurists meant quite specifically a structure of positivised, objective, formally defined rights.¹⁰⁹

Positivism superseded natural law as the culture of Europe took a more rationalistic, modernist turn.¹¹⁰ The Eurocentric mindset demanded a positive concept of law. It was the European "urge for unity, coherence and closure"¹¹¹ that produced positive law.¹¹²

The results were devastating. Where natural law theory imposed limits on the exercise of power, positive law embraced power.¹¹³ Slavery, colonialism and racial genocide had been justified under natural law as well¹¹⁴ (Europeans believed their con-

tific nature of positivism).

103. See LLOYD, *supra* note 88, at 95-115 (discussing legal positivism, past and present, in relation to physical law—law as it is—and normative law—law as it should be; also discussing the science of law).

104. DAVID HUME, *A TREATISE OF HUMAN NATURE* (J.M. Dent & Sons, Ltd., 1977) (1911).

105. JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* (J.H. Burns & H.L.A. Hart eds., 1970).

106. AUSTIN, *supra* note 99.

107. LLOYD, *supra* note 88, at 100.

108. Nunn, *supra* note 102, at 753.

109. Mensch, *supra* note 2, at 23.

110. According to Habermas:

The project of modernity formulated in the 18th century by the philosophers of the Enlightenment consisted in their efforts to develop objective science, universal morality and law, and autonomous art according to their inner logic.

Jürgen Habermas, *Modernity—An Incomplete Project*, in *THE ANTI-AESTHETIC: ESSAYS ON POSTMODERN CULTURE* 3, 9 (Hal Foster ed., 1985).

111. DOUZINAS ET AL., *supra* note 87, at 24.

112. Cf. Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 *STAN. L. REV.* 787, 807-08 (1989) (arguing that European scholars' quest for reason and order led to the "codifying jurisprudence of the Enlightenment").

113. See DOUZINAS ET AL., *supra* note 87, at 24-28.

114. As one legal scholar has observed, natural law jurisprudence has had a checkered past:

During its long usage in legal and political scholarship, natural law has been widely invoked, including application in favor of and against slavery,

quest and subjugation of other races *was* natural). Still, the avenue remained open to contest the legal system on the grounds of a more enlightened understanding of the natural order. Positivism removed that possibility. Positivism conveyed the message that "actual power relations in the real world are *by definition* legitimate."¹¹⁵ Douzinas, Warrington and McVeigh put the power/law equation this way:

Dominant jurisprudence has always linked its claims to unity with the legitimation of power. Power is legitimate if it follows the law, *nomos*, and if *nomos* follows *logos*, reason Legitimate power is identified exclusively with legally exercised power. Law is the form of power and power should be exercised in the form of law.¹¹⁶

Positivism's affirmation of power has been challenged during the twentieth century by various groups of critics within the European tradition.¹¹⁷ The resulting alternatives to positivism can be grouped under the heading of "law-in-context" theories.¹¹⁸ Law-in-context theories include legal realism,¹¹⁹ sociology of law¹²⁰ and literary and postmodernist interpretations.¹²¹ What this eclectic mix

and to "prove" the inferiority of blacks. Both the 1850 Kentucky Constitution and the 1857 Kansas Constitution declared the right to own slaves "before and higher than any other constitutional sanction."

William Wayne Justice, *The New Awakening: Judicial Activism in a Conservative Age*, 43 SW. L.J. 657, 662 (1989) (citations omitted). See also John Hart Ely, *Forward: On Discovering Fundamental Values*, 92 HARV. L. REV. 5, 28 (1978) (pointing out how in the past natural law "proved" the inferiority of blacks").

115. Mensch, *supra* note 2, at 21 (emphasis added). Following the arrival of positivism, legal concepts could no longer be challenged on the basis of an appeal to morality.

116. DOUZINAS ET AL., *supra* note 87, at 27.

117. See generally Mensch, *supra* note 2, at 26-37; Minda, *supra* note 3, at 353 (giving a historical account of legal modernism).

118. DOUZINAS ET AL., *supra* note 87, at 20.

119. Legal realism asserts judicial decisions were ultimately based on policy decisions and not objectively derived rules. See Edward A. Purcell, Jr., *American Jurisprudence Between the Wars: Legal Realism and the Crisis of Democratic Theory*, in AMERICAN LAW AND THE CONSTITUTIONAL ORDER 359, 361 (Lawrence M. Friedman & Harry N. Scheiber eds., 1988). See also Mensch, *supra* note 2, at 24 ("[T]he realists claimed that . . . [t]here was no such thing as an objective legal methodology behind which judges could hide in order to evade responsibility for the social consequences of legal decision making").

120. The sociology of law treats law's role as a social institution—it examines how law and legal structures affect people and other social institutions. See Alexander Somek, *From Kennedy to Balkin: Introducing Critical Legal Studies from a Continental Perspective*, 42 U. KAN. L. REV. 759, 766 (1994) (sociology of law "explain[s] the role and function of law in modern societies"); Frank Munger, *Sociology of Law for a Postliberal Society*, 27 LOY. L.A. L. REV. 89 (1993) (listing research agenda for a sociology of law).

121. Postmodernist interpretations of the law embrace postmodernist/post-structuralist philosophies and critical/deconstructionist methodologies to shape a jurisprudence that is decentered, contingent, counter-theoretical and anti-

of theories share is the claim that law is a product of society and not something separate and distinct from it.¹²² Law-in-context theories attacked the positivist claim that the course of the law was a matter of internal logic and not a matter of external power relationships.¹²³

Law-in-context theories, however, occupy only a marginal position in European jurisprudence.¹²⁴ Although intellectually persuasive, they have not won the day because they conflict with the dominant cultural impulses in Eurocentric society.¹²⁵ Eurocentric law retains a "mythic"¹²⁶ quality that helps it maintain its "purity and autonomy"¹²⁷ no matter what caliber the intellectual or ideological assault.¹²⁸ Like all myths, Eurocentric law plays a constitutive role in the organization of society,¹²⁹ conferring validity "only

authoritarian. See DOUZINAS ET AL., *supra* note 87, at 28.

122. See *id.* at 20. See also FITZPATRICK, *supra* note 94, at 6-7. Douzinas, Warrington and McVeigh would include law and economics in their list of law-in-context theories on the grounds that it too is concerned with the "claim that legal norms are causally linked with empirically observed phenomena," DOUZINAS ET AL., *supra* note 87, at 20, a position which overlooks the extreme rationalism and abstraction characteristic of law and economic approaches. For like reasons, Douzinas, Warrington and McVeigh would exclude postmodernist interpretations, since these reject the possibility of an objective reality, which are observable through scientific exploration. *Id.* at 20, 28.

123. See Mensch, *supra* note 2, at 23-24.

124. See *id.* at 26 ("[The] basic [positivist] model, although in bankrupt form, is with us still, despite the realist challenge that demolished all its premises."); FITZPATRICK, *supra* note 94, at 3 ("Numerous, seemingly devastating assaults on [legal positivism] have failed fundamentally to alter it").

125. For a good discussion of the way that cultures promote some ideas and reject others, see BLAUT, *supra* note 5, at 31-41 and ANI, *supra* note 7, at 12-14.

Blaut describes how culture works to "validate" certain beliefs. BLAUT, *supra* note 5, at 34-37. Basically, belief systems held within a culture must be compatible, that is, "not cognitively or culturally dissonant." *Id.* at 35. New beliefs must also be compatible with pre-existing notions in order to gain acceptance. "[A] new idea, a candidate belief, tends to be judged more on the basis of the way it fits into the existing belief system than on the basis of its directly apprehended meaning." *Id.* at 37. Thus, culture works to protect beliefs already held in the culture and reproduce those beliefs in subsequent generations of scholarship and intellectual production.

Blaut also points out that the beliefs held in a given society must conform to that culture's shared values: "[T]he dominant belief system for a group must in the long run conform to the value system, and when the two fall out of conformance, one or the other will be forced to change." *Id.* at 38.

Ani describes how a culture's "asili" serves as the organizing principle for the culture's development. ANI, *supra* note 7, at 11-12. The "asili" "acts as a screen, incorporating or rejecting innovations depending on their compatibility with its own essential nature." *Id.* at 12. For a portrayal of the process of cultural standardization brought about by the "asili," see *supra* note 79.

126. FITZPATRICK, *supra* note 94, at 143-45.

127. *Id.*

128. *Id.*

129. See RICHARD SLOTKIN, REGENERATION THROUGH VIOLENCE: THE MY-

on that which comes from the centre."¹³⁰

So far, this discussion has focused on academic approaches to the question "what is the law?" A growing number of legal commentators, however, have recognized the importance of popular conceptions of the law as well.¹³¹ Positivism has impacted not only isolated academic circles, but it has also profoundly colonized popular thought.¹³²

Most ordinary citizens in the United States believe that the law is a "thing" out there, a corpus of rules, with the ability to influence their lives.¹³³ Many first-year law students, with their lay attitudes yet intact, expect their legal education to reveal how to manipulate this self-referential body of rules and are extremely impatient with any suggestion that the rules may be socially constructed or the result of policy choices.¹³⁴ Most laypersons believe that "law" and "morality" are separate concepts, except that there is a general moral obligation to obey the law.¹³⁵ In short, the popular conception of the law very closely approximates that of positivist law.¹³⁶

Taking both lay attitudes and academic approaches to jurisprudence into account, there is a coherent, dominant European perspective on the law. The remaining part of this discussion demonstrates how this mainstream European approach to law exhibits the cultural traits previously identified as Eurocentric.¹³⁷

THOLOGY OF THE AMERICAN FRONTIER, 1600-1860, at 6-14 (1973) ("Myth describes a process . . . [that] provides a scenario or prescription for action, defining and limiting the possibilities for human response to the universe.").

130. FITZPATRICK, *supra* note 94, at 145.

131. See, e.g., Macaulay, *supra* note 3, at 185; *Symposium: Popular Legal Culture*, *supra* note 3.

132. See *infra* note 133 and accompanying text.

133. See Austin Sarat, *Studying American Legal Culture: An Assessment of Survey Evidence*, 11 L. & SOC'Y REV. 427, 452-53 (1976) (claiming most Americans are socialized to view law as a system of rules from an early age); Silas Wasserstrom, *The Empire's New Clothes*, 75 GEO. L.J. 199, 225-27 (1986) (book review) (asserting "positivism takes up the layman's plain fact view of the law").

134. I base this statement on my own personal experience teaching criminal law to first-year law students at the University of Florida.

135. See Sarat, *supra* note 133, at 453, 457 (reporting a complex, mature view of law that distinguishes legal rules from moral principles and general compliance with norm of law abidingness).

136. See John Hasnas, *The Myth of the Rule of Law*, 1995 WIS. L. REV. 199, 200 (observing that people commonly regard "the law as a body of definite, politically neutral rules amenable to an impartial application which all citizens have a moral obligation to obey"); Wasserstrom, *supra* note 133, at 225-27.

137. See *supra* Part I (explaining the concept of Eurocentricity and how it affects the law).

B. *The Eurocentric Character of the Law*

Dichotomous reasoning is a trait of Eurocentricity.¹³⁸ Not only are the usual dichotomies found within the law,¹³⁹ but the law itself is one half of a larger dichotomy. Law is set in opposition to "custom," which is then deemed inferior¹⁴⁰ since it is produced by habit and not reason.¹⁴¹ Although European societies have their customs, they are thought to be superior to non-European societies, which do not have law, at least not in the European sense of the word. The absence of law in non-Western societies implies the absence of reason. While Western "law" is for the civilized, non-Western "custom" is for "savages" and "brutes."¹⁴² Thus, dichotomy is central to the mythology of modern law. To quote Peter Fitzpatrick:

[M]odern law emerges, in a negative exaltation, as universal in opposition to the particular, as unified in opposition to the diverse, as omnicompetent in contrast to the incompetent, and as controlling of what has to be controlled Law is imbued with this negative transcendence in its own myth of origin where it is imperiously set against certain "others" who concentrate the qualities it opposes.¹⁴³

The hierarchical structuring¹⁴⁴ of the law is readily apparent. Hierarchy is inherent in the very notion of positive law, which views law as a command from a superior to its inferiors.¹⁴⁵ But both positive and natural law¹⁴⁶ have order as their first principle.¹⁴⁷ In the Eurocentric mind, *law is equal to order*.¹⁴⁸ Conse-

138. See *supra* notes 42-48 and accompanying text (explaining dichotomous reasoning and its utilization by European culture).

139. These dichotomies include right-wrong, private-public, etc. See Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1685-86 (1976) (describing uses of dichotomies in legal reasoning).

140. See *supra* notes 49-54 and accompanying text (explaining how Eurocentric reasoning applies hierarchical thinking to dichotomies, valuing one thing to the complete exclusion of its opposite).

141. See FITZPATRICK, *supra* note 94, at 60 (describing how customs were historically regarded as brutish during the development of the law).

142. *Id.* "Custom becomes reduced to a peripheral category set in opposition to law through its association with the savage and with those small-scale remnants of a recalcitrant past yet to be transformed in modernity." *Id.*

143. *Id.* at 10.

144. See *supra* notes 49-54 and accompanying text (explaining how Eurocentric thinking employs hierarchical reasoning).

145. See *supra* note 99 and accompanying text (explaining that under positivism, law is considered the command of the sovereign).

146. See *supra* notes 92-93 and accompanying text (explaining natural law as a part of an "ordered and structured universe").

147. See FITZPATRICK, *supra* note 94, at 52 ("[N]ature has laws that are not orders but simply order.").

148. See *id.* at 58 (discussing how equating law with order leads to settling con-

quently, law takes on a transcendent quality—it exists outside of and within the hierarchy it establishes.¹⁴⁹ There can be no order outside of the law, and law's order is imposed from the top down.

Analytic reasoning¹⁵⁰ and extreme rational thought is also a key part of the law. This can be seen in the way in which court decisions are rendered in the form of some seemingly neutral test.¹⁵¹ For example, in *Shaw v. Reno*,¹⁵² the Supreme Court upheld the challenge of a white voter to North Carolina's legislative redistricting plan on the grounds that the plan violated his equal protection rights.¹⁵³ The Court held that the majority Black electoral district was a constitutionally impermissible classification on the basis of race by applying a three-part test.¹⁵⁴ The Court asked whether the state's concentration of a dispersed minority population in a single district disregarded traditional districting principles including: (1) "compactness," (2) "contiguity" and (3) "respect for political subdivisions."¹⁵⁵

In *Shaw*, it was the Court's reference to an abstracted and allegedly neutral test that enabled it to pick its way through the thickets of racial politics and determine that the North Carolina legislature's attempt to increase African American political representation was presumptively unconstitutional. The Court, in an opinion by Justice O'Connor, stated, "We emphasize that these criteria are important not because they are constitutionally required—they are not—but *because they are objective factors* that may serve to defeat a claim that a district has been gerrymandered on racial lines."¹⁵⁶

Here the Court privileges objectivity, *as such*, over subjectivity. The Court, however, fails to establish any connection between

flicts in society through legal prescriptions).

149. *Id.* at 56.

150. See *supra* notes 55-59 and accompanying text (explaining analytic reasoning and showing how it is privileged in Eurocentric thought).

151. The supposed neutrality of the law has been particularly costly in cases dealing with racial disparities, a point strongly made by the "colorblindness critique" of critical race theory. See generally Nunn, *supra* note 20, at 70-81 (discussing colorblindness and the colorblindness critique). Critical race theorists argue that race-neutral or colorblind jurisprudence masks racism and makes it impossible to correct racial injustices. *Id.*

152. 509 U.S. 630 (1993).

153. The plan was submitted under the Voting Rights Act of 1965, which was intended to increase the level of Black and other minority representation in national and state representative bodies. See Scott Gluck, *Congressional Reaction to Judicial Construction of Section 5 of the Voting Rights Act of 1965*, 29 COLUM. J.L. & SOC. PROBS. 337, 344-45 (1996).

154. 509 U.S. at 647.

155. *Id.*

156. *Id.* (emphasis added) (citation omitted).

the objective nature of the factors it has chosen and the capability of those factors to illuminate whether a district has been gerrymandered on racial grounds.¹⁵⁷ It seems the Court would have accomplished more if it had simply asked the central question posed in the case: "What role did race play in the decision to create this district?" But such a straightforward approach would not be recognizable as "legal."

The objectification¹⁵⁸ of the law is evident in the way that it is possible to talk about the law as an active force or separate and autonomous entity in Western societies. This gives rise to the mistaken belief that there is no law in non-Western societies.¹⁵⁹ In fact there is law, it is simply not objectified to the degree one finds in the West. In African societies the law is understood as part of the seamless web that binds the community together.¹⁶⁰ It is inconceivable to think of the law as an object, separate and distinct from custom, culture and morality.¹⁶¹ Eurocentricity, however, insists on "the elevation of 'the objects' in a sense encompassing not just a separate material thing but also a distinct constellation of action, such as law."¹⁶²

157. See Pamela S. Karlan, *Still Hazy After All These Years: Voting Rights in the Post-Shaw Era*, 26 CUMB. L. REV. 287 (1995-96). Professor Karlan notes that "the irregularity of a district's shape may in fact be powerful evidence that racial considerations, while undoubtedly present were subordinated to other values." *Id.* at 288. See also Andrew J. Clarkowski, *Shaw v. Reno and Formal Districting Criteria: A Short History of a Jurisprudence that Failed in Wisconsin*, 1995 WIS. L. REV. 271, 272 (criticizing rigidity and formalism in *Shaw's* districting standards).

158. See *supra* notes 60-63 (explaining objectification as a Eurocentric cultural trait).

159. See Akin Ibidapo-Obe, *The Dilemma of African Criminal Law: Tradition versus Modernity*, 19 S.U. L. REV. 327, 327 (1992) (noting that "spirited attempts have been made by all manner of social, legal, political philosophers and theorists to posit that law . . . is an exclusive preserve of certain cultures, geographical areas, or, (to adopt their hackneyed phraseology) 'civilization' of the world").

160. *Id.* at 352. See also Max Gluckman, *Natural Justice in Africa*, 9 NAT. L.F. 25 (1964), reprinted in *COMPARATIVE LEGAL CULTURES* 173, 179-82 (Csaba Varga ed., 1992) (explaining that seemingly conflicting decisions by traditional African judges are reflective of generally held societal values and not an internally consistent and autonomous body of rules).

161. In traditional African societies, law is not a distinct, separate entity, but "part of religious consciousness" and the culturally-based belief system. Ibidapo-Obe, *supra* note 159, at 352. Africans believe the spiritual world is connected to and can influence the material world. *Id.* at 341. This belief in the influence and power of the ancestors and gods generates respect for, and obedience to, the law. *Id.* at 352.

For other descriptions of traditional African legal concepts, see JAHN, *supra* note 1, at 114-17; DICKSON A. MUNGAZI, *GATHERING UNDER THE MANGO TREE: VALUES IN TRADITIONAL CULTURE IN AFRICA* 106-08 (1996); J. F. Holleman, *Disparities and Uncertainties in African Law and Judicial Authority: A Rhodesian Case Study*, 17 AFR. L. STUD. 1 (1979).

162. FITZPATRICK, *supra* note 94, at 48. See also *id.* at 107 (describing law as

Consequently, to *legalize* is to objectify. From there it is a short step to abstraction.¹⁶³ Human cooperation, for example, is objectified in the law of contract. Once objectified, the legal document—the contract—becomes the reality. The contract takes significance over the social relationships it supposedly represents.¹⁶⁴ It replaces those relationships in the eyes of the court and becomes the sole or primary basis for the disposition of the case.¹⁶⁵ Although there is some room for the “intent of the parties” in contractual interpretation, its influence is limited to mediating between the language on the face of the contract and the underlying rules of contract.¹⁶⁶

Another example of the prevalence of abstraction within the law may be found in the wide-spread use of such concepts as “consideration”¹⁶⁷ in contracts or “reasonable doubt”¹⁶⁸ in criminal law. The common law itself is an abstraction. It results from the restatement of Anglo-Saxon customs in the opinions of English courts. Once so recorded, what was formerly custom is trans-

“unitary universal object”).

163. See Mensch, *supra* note 2, at 23 (describing the nineteenth century movement of objectification to “higher and higher levels of rationalization and generalization”). See also J.C. Smith, *The Unique Nature of the Concepts of Western Law*, 46 CANADIAN B. REV. 191 (1968), reprinted in *COMPARATIVE LEGAL CULTURES*, *supra* note 160, at 3-4 (describing most legal concepts as abstractions or constructs having “no existence in the empirical world”). See *supra* notes 64-68 and accompanying text (discussing abstraction as a Eurocentric cultural trait).

164. See Mensch, *supra* note 2, at 24-25.

165. *Id.*

166. *Id.* As Mensch notes, the actual intent of the parties was further abstracted in the 19th century, through the technique of “implied intent.” *Id.* at 22. She states, “The emphasis on implied intent did not, however, necessarily evidence concern with the actual, subjective intent of individual parties; instead, it represented a fusion of subjective intent with socially imposed duty.” *Id.*

167. “Consideration” is an abstraction. It represents a tangible, economic benefit that must be exchanged before a promise, or contract, may be held to be valid. Peter Gabel & Jay M. Feinman, *Contract Law as Ideology*, in *THE POLITICS OF LAW*, *supra* note 2, at 172, 177. The promise of a gift, since it lacks consideration, is not enforceable at law. *Id.*

168. “Reasonable doubt” is the standard of proof ordinarily required in criminal cases. See *In re Winship*, 397 U.S. 358, 361 (1970). Reasonable doubt represents an idea so abstract that it seemingly resists definition. See *Victor v. Nebraska*, 114 S. Ct. 1239, 1242 (1994) (“Although [the reasonable doubt] standard is an ancient and honored aspect of our criminal justice system, it defies easy explication.”). A common definition of “reasonable doubt” describes it as “that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.” *Id.* at 1244. The vagueness of this definition has led some courts to disdain instruction on reasonable doubt at all. See Nunn, *supra* note 102, at 797 n.285. The problem that bedevils courts in their unsuccessful attempts to define reasonable doubt is that they have stubbornly sought to make an objective concept out of an idea that is, in fact, subjective.

formed into a "transcendent entity"—positive law—"operating and elaborated in officially contained systems which are incompatible with custom, although . . . some custom-like modalities, survive."¹⁶⁹ So, instead of referring directly to custom, common law jurists refer to something derived from it, an abstraction of it.

As law relies on abstraction, it also privileges complexity. Complexity and abstraction go hand in hand.¹⁷⁰ The transformation of English custom into the common law required a new professional class to navigate its complexity.¹⁷¹ Indeed, "[i]t was the extraordinary technicality of the common law that provided lawyers with their claim to expertise and served, by its very artificiality, to distinguish legal reasoning from the "common-sense" reason of the general populace."¹⁷²

Anyone who has ever looked at a law treatise cannot help but be impressed with the complexity of European-centered law. There are sections upon sections in any of the great multi-volumes works, such as Wigmore's *Evidence*.¹⁷³ This complexity is the direct result of the Eurocentric desire to abstract, to rationalize and to objectify.

Finally, Eurocentric law is despiritualized and secular.¹⁷⁴ In fact, European positive law was impossible to conceptualize until God had been banished from the material world.¹⁷⁵ The creation of the Eurocentric concept of law was itself a process of desacralization.¹⁷⁶ God was no longer necessary to legitimate post-Enlightenment law:

Enlightenment replaces God with nature. In terms of the origin myths of modern science, the deific obstacle to humanity's progress in knowledge is eliminated, constraining superstition gives way to incandescent truth, man unaided at last dares to know, and so on.¹⁷⁷

The development of the law followed this general account of the

169. See FITZPATRICK, *supra* note 94, at 61.

170. As a system grows more complex, the need to employ abstractions to make sense of it increases, as well.

171. See Mensch, *supra* note 2, at 21.

172. *Id.*

173. JOHN H. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW (James H. Chadbourn ed., rev. ed. 1974).

174. See *supra* notes 72-75 (explaining "desacralization" and describing it as a trait of the Eurocentric mind-set).

175. See *supra* notes 99-102 and accompanying text (describing how positive law replaced reliance on God with reliance on logic).

176. See *supra* notes 92-95 and accompanying text (describing the process of separating law from the divine).

177. See FITZPATRICK, *supra* note 94, at 51.

growth of European science. Positive law was viewed as a science, as the application of rational "laws" of jurisprudence.¹⁷⁸ In the post-Enlightenment mind, divinity was as subject to these laws as it was to the laws of physics.¹⁷⁹ Thus, God became "captured by 'his' creation"¹⁸⁰ and positive law and reason reigned supreme.¹⁸¹

Consequently, there are no bounds on the Eurocentric rational will. European Man can do what he wants with his law. Within his world, there is no higher authority than that of the law, which is his own creation. With the creation of the law, the European male has become a self-policing entity—one that need answer to no other.¹⁸²

Thus far, this Article has demonstrated that what has come to be known as "the law" in Western societies is really a particular social construction that exhibits cultural attributes peculiar to European and European-derived societies. Law is an artifact of a Eurocentric culture, and as such it reflects the cultural logic, epistemology, axiology, ontology, ethos and aesthetic choice of Eurocentric culture.¹⁸³ The core attributes of Eurocentricity are readily discernible within the law. But law not only reflects the

178. See *supra* notes 107-08 and accompanying text (explaining how "European theorists conceived of the law as a science").

179. See FITZPATRICK, *supra* note 94, at 52.

180. *Id.*

181. Fitzpatrick argues convincingly that the desacralization of the law is not entirely complete. The law, in his view, is quasi-religious, since "the characters of God are preserved within [the] law itself." *Id.* at 62. According to Fitzpatrick, law takes on a mythic character, offering itself as the legitimate successor to God and assimilating God's former power and authority to itself. *Id.* at 54-63. Of course, law cannot totally cut itself off from divinity. To do so would undercut its legitimacy. See David M. Frankford, *The Critical Potential of the Common Law Tradition*, 94 COLUM. L. REV. 1076, 1078 (1994) (book review) (depicting the history of Western jurisprudence as a search for "a unitary and unifying source of constrained political authority to replace theocracy" that would justify obedience to the law).

182. See TEDLA, *supra* note 24, at 83 (noting that as Creator "recedes into the background" in Western liberal thought, individuals are free to "act based on their own self-interest"); MUNGAZI, *supra* note 161, at 106-07 (criticizing law's divorce from morality in the West).

183. In an article arguing for the payment of reparations to African Americans for centuries of slavery and economic exploitation, Professor Verdun shows how Western individualism shapes European notions of the law. Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 600 (1993). She uses tort law as an example:

The law of torts provides an excellent example of how the law evolves to reflect the values of the dominant group. In a typical tort action a tortfeasor commits an act that causes an injury, and the tortfeasor becomes responsible to the injured party. Individualism, the big "I," is pervasive in this scheme of liability. The liability premise is simply stated: If "I" did not do anything wrong, than "I" should not have to pay for the wrong.

Id. at 620.

character of Eurocentricity, it carries out the functions of Eurocentricity as well. Law organizes society, and indeed the world, in ways that make it easier for Eurocentric culture to assert its dominance.

III. Law, Hegemony and Control

Law contributes to Eurocentric hegemony in three concrete ways. First, law "controls the beast" by organizing and directing white institutions and cultural practices. Second, law "polices" white culture. That is, law operates to help determine which ideas and practices are valued in Eurocentric culture and which can be identified as "threats" subject to the use of coercion or force. Third, law works to legitimate white institutions and practices by helping to place the imprimatur of universality on European practices and champion the desirability and inevitability of white dominance. The first two claims, which are fairly straightforward, are discussed in this section. The third claim requires greater explanation and is discussed in Part IV.

A. Law as a Eurocentric System of Control

Law functions as the central nervous system of a vast body of social and economic regulation. It is the command and control¹⁸⁴ mechanism for the modern state and the means through which new enterprises and activities are designed and implemented.¹⁸⁵

184. See Eric W. Orts, *Reflexive Environmental Law*, 89 NW. U. L. REV. 1227, 1235-41 (1995) (discussing the use of the law to effect command and control strategies of environmental regulation).

185. Max Weber and others refer to this aspect of legal functioning as "substantive law." *Id.* at 1254-55. According to the Weberian school of thought, "[s]ubstantive law is used instrumentally for purposive, goal-oriented intervention." *Id.* at 1256 (citation omitted). Substantive law is opposed, in this scheme, to "formal law," which has no specific goal, but merely moderates disputes between private parties. *Id.* at 1255. For my purposes this distinction is meaningless. In both instances, law is being used to create a structure of order, whether private or public, that follows Eurocentric principles.

Professor Margaret Jane Radin puts the matter more succinctly when she states, "[there] is indeed an instrumental conception of the Rule of Law, which could more colloquially be called 'how to do things with rules.'" Margaret Jane Radin, *Reconsidering the Rule of Law*, 69 B.U. L. REV. 781, 786 (1989). Dennis Lloyd calls this penchant for doing things with rules the creative element in the law. LLOYD, *supra* note 88, at 288-93. He points out that the effects of instrumental applications of the law can be sweeping:

A good many fundamental legal concepts are to a large extent legal creations of their own right with a vitality of their own, which may set off a chain of social and economic reactions much more far-reaching than the initial social impulses which have assisted at the birth of those concepts.

Id. at 291. Lloyd points to legal institutions such as the trust and the corporation as examples of this kind of influential legal concept. *Id.* at 291-92.

This instrumental function of the law is often overemphasized,¹⁸⁶ but its importance should not be overlooked in the rush to present new interpretations of law's role in society.¹⁸⁷

What law does in this instrumental function is order the world around us. It gives us the illusion of structure and provides a means of control. Of course, the form of this structure will be determined by the cultural determinates—the *asili*¹⁸⁸—of the society that makes the law. Robert Gordon explains this in a way that is heavily weighted with Eurocentric assumptions:

“Law” is just one among many such 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 . . . but who may kill us or enslave us. It seems essential to have a system to sort out positive interactions . . . from negative ones In the West, legal belief-structures, together with economic and political ones, have been constructed to accomplish this sorting out. The systems, of course, have been built by elites who have . . . tended to define rights in such a way as to reinforce existing hierarchies of wealth and privilege.¹⁸⁹

Law was used at each step in the conquest and enslavement of African and other native peoples.¹⁹⁰ Nothing was done without

186. The critique of instrumentalism in the law has become something of a cottage industry. See ROBERTO M. UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* 3-4 (1986) (“If the criticism of formalism and objectivism is the first characteristic theme of leftist movements in modern legal thought, the purely instrumental use of legal practice and legal doctrine to advance leftist aims is the second.”). For a summary of the weaknesses that have been uncovered in instrumental accounts of the law, see Robert W. Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW*, *supra* note 2, at 284-86.

187. Peter Gabel and Jay Feinman fall into this trap. In an essay on contract law, they reject instrumental analyses “which suggest that particular rules of law or particular results “helped” capitalists by providing a framework for legal enforcement of market activity.” Gabel & Feinman, *supra* note 167, at 181. “The law,” they argue, “does not enforce anything Its purpose is to justify practical norms.” *Id.* In their view: “Social processes like ‘free-market capitalism’ do not get ‘enforced’ by ‘laws.’ Rather, these processes are accepted through social conditioning, through the collective internalization of practical norms that have their foundation in concrete socioeconomic reality.” *Id.*

The viewpoint advocated by Gabel and Feinman is in many ways typical of the view of many adherents of critical and postmodernist schools of thought in the legal academy. See Minda, *supra* note 3, at 353, 367-73, 383 (discussing the post-modern critique of modern legalism). It is, however, a gross oversimplification of the role of law in the service of the state. Law does have an instrumental role, but it also has an ideological role. It is as great an error to neglect the law's instrumental role as it is to neglect its ideological one.

188. See *supra* note 40 for a definition of *asili*.

189. Gordon, *supra* note 186, at 288.

190. Ani notes that the European conquest always proceeded “legally” through edicts, grants, agreements and treaties. She asks, pertinently, why Europeans

the law's guiding hand to regulate, manage and control.¹⁹¹ Whenever the European American majority in the United States desires to ostracize, control or mistreat a group of people perceived as different, it passes a law¹⁹²—be it an immigration law,¹⁹³ a zoning

found it necessary to "legalize" everything, in particular, "their dealings with majority peoples?" ANI, *supra* note 7, at 414. She surmises this kind of legal formality was not only a helpful means of allaying the suspicions of those the Europeans wished to conquer, but that it was a culturally necessary part of "the maintenance and support of the European self-image." *Id.*

191. From the very beginning, the slave trade was organized and structured through the use of the law. Trade in slaves was governed by the *Asiento*, a special contract that is described in the following passage:

The *Asiento* was a contract concluded between the Spanish government on the one hand and a contractor on the other. It farmed out the business of supplying slaves. To the contractor was granted the right to supply slaves to the Spanish Indies. He took up the function of the government to organise the entire business of supplying slaves and maintaining stations in Spain, in Africa and in the Spanish Indies, and was empowered to issue licenses to subcontractors. He was expected to forward license fees to the Spanish crown. Both contractors and subcontractors could transfer slaves directly from Africa to the Spanish Indies and arrange for their convoy and escort where necessary.

VINCENT BAKPETU THOMPSON, *THE MAKING OF THE AFRICAN DIASPORA IN THE AMERICAS 1441-1900*, at 34-35 (1987).

On the role of law in the slave trade, see *id.* at 22-24 (discussing how mercantilism facilitated the slave trade); ROBIN BLACKBURN, *THE OVERTHROW OF COLONIAL SLAVERY 1776-1848*, at 4 (1988) (European countries developed "systems of mercantilist control [which] sought to direct [the slave] trade, and engaged tens of thousands of officials to this end"); BLACKBURN, *supra*, at 35 (slavery sanctioned by "the new doctrines of 'possessive individualism,' since the slave was indeed property, a chattel whom the slave owner had normally acquired through some perfectly legal transaction"); CHINWEIZU, *supra* note 10, at 5. (Spanish and Portuguese "monopoly . . . over European procurement of the silver, gold, spices and labor of the rest of the world . . . 'sanctified' by the papal bull of 1493, and 'legalized' by the . . . treaty of Tordesillas"); COLIN PALMER, *HUMAN CARGOES: THE BRITISH SLAVE TRADE TO SPANISH AMERICA, 1700-1739*, at 4-11 (1981) (describing acts of Parliament to organize and encourage the slave trade); RODNEY, *supra* note 10, at 75-88 (documenting European exploitation of African resources and populations through highly organized commercial networks and trade practices sanctioned by law); Joseph C. Miller, *Some Aspects of the Commercial Organization of Slaving at Luanda, Angola—1760-1830*, in *THE UNCOMMON MARKET: ESSAYS ON THE ECONOMIC HISTORY OF THE ATLANTIC SLAVE TRADE* 77, 86-87 (Henry A. Gemery & Jan S. Hojendorn eds., 1979) (describing effect of Brazilian free trade laws regulating the order that slave ships could depart from Africa).

192. See generally DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (3d ed. 1992) (listing numerous examples of the employment of the laws for oppressive purposes); MARY FRANCES BERRY, *BLACK RESISTANCE, WHITE LAW: A HISTORY OF CONSTITUTIONAL RACISM IN AMERICA 1-4* (Penguin Group 1994) (1971) (describing use of the Constitution and statutes to maintain racial status quo).

193. See Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995) (describing possible racist motives behind California proposition requiring state and local governments to deny social services to undocumented immigrants); Malissia Lennox, *Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy*, 45 STAN. L. REV. 687, 714-23 (1993) (demonstrating historic and continuing presence of ra-

law¹⁹⁴ or a criminal law.¹⁹⁵ The instrumental function of the law, then, is central to ensuring that the world is structured and organized according to Eurocentric principles.¹⁹⁶ It is the "how" that permits the construction of prisons to contain Black bodies,¹⁹⁷ the establishment of giant corporations to exploit Black labor,¹⁹⁸ the

cism in U.S. immigration law and policy); Hiroshi Motomura, *Immigration Law after a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 587-93 (1990) (arguing claimed racial neutrality of American immigration laws is illusory).

194. See BELL, *supra* note 192, at 787-805 (discussing concealment of "exclusionary intentions behind a neutral facade of facially legitimate factors" in application of zoning regulations); Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 750-73 (1993) (relating use of zoning and other land use controls to isolate and deflect Black migration into urban areas from the South); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1870-74 (1994) (describing how exclusionary zoning, while race-neutral, reproduce and entrench racial segregation); Janai S. Nelson, *Residential Zoning Regulations and the Perpetuation of Apartheid*, 43 UCLA L. REV. 1689, 1698 (1996) (asserting zoning laws are "partially rooted in racial exclusion").

195. Many have argued that the nation's drug laws are biased against non-whites. See, e.g., Jerome H. Skolnick, *Perspectives On Drug Policy: Racial Bias Built into the Law*, L.A. TIMES, June 13, 1995, at B7 (Anti-Drug Abuse Act of 1986 imposes one hundred times as great a penalty for possession of crack, which is used more by Blacks, than for powder cocaine, which is used predominately by whites); Cynthia Tucker, *End the Racism in War on Drugs*, S.F. CHRON., Aug. 27, 1993, at A23 (arguing Anti-Drug Abuse Act is racially biased). Professor Dorothy Roberts argues that "[t]here is a profound interchange between the meaning of race and crime in America." Dorothy E. Roberts, *Deviance, Resistance, and Love*, 1994 UTAH L. REV. 179, 181. Race, she asserts, is not only representative of crime in the eyes of white citizens and lawmakers, it is part of the definition of crime:

Not only is race used in identifying criminals, it is also used in defining crime. In other words, race does more than predict a person's propensity for committing neutrally-defined offenses. Race is built into the normative foundation of the criminal law. Race becomes part of society's determination of which conduct to define as criminal. Crime is actually constructed according to race.

Dorothy E. Roberts, *Crime, Race, and Reproduction*, 67 TUL. L. REV. 1945, 1954 (1993) (citation omitted). See also AMOS N. WILSON, *BLACK-ON-BLACK VIOLENCE: THE PSYCHODYNAMICS OF BLACK SELF-ANNIHILATION IN THE SERVICE OF WHITE DOMINATION* 9 (1990) (claiming white Americans define criminality in ways that preserve their racial power).

196. Lloyd's comments about the corporation may be readily applied to almost the entire constructive work of the law:

It may be said almost without any exaggeration that this legal creation has largely brought into being, or at any rate made possible in its existing form, the whole fabric of modern commerce and industry, . . . without which all the developments, for better or worse, of modern capitalism would have been inconceivable.

LLOYD, *supra* note 88, at 292.

197. See CORAMAE RICHEY MANN, *UNEQUAL JUSTICE: A QUESTION OF COLOR* 220-24 (1993) (revealing "warehousing" function of U.S. prison system as it is applied to Blacks and other non-white racial groups).

198. See MELVIN M. LEIMAN, *POLITICAL ECONOMY OF RACISM* 95-112 (1993)

founding of schools to spread white ideology.¹⁹⁹ In this way, Eurocentricity manages itself, guides its activities and accomplishes its goals.²⁰⁰

B. Law, Coercion and the Eurocentric State

However, the law is not merely instrumental, it is also coercive.²⁰¹ In fact, the law's instrumental character is often dependent on the law's ability to command obedience.²⁰² Some scholars

(showing relative wages of Black workers declined from 1975 to 1989 due to structural changes in the economy and Reagan administration policies); VICTOR PERLO, *THE ECONOMICS OF RACISM U.S.A.: ROOTS OF BLACK INEQUALITY* 145-58 (1975) (demonstrating major corporations derive billions of dollars a year in extra profits from direct wage discrimination against Blacks); WILLIAM K. TABB, *THE POLITICAL ECONOMY OF THE BLACK GHETTO* 21-34 (1970) (likening Black community to an "internal colony" subject to increased labor exploitation). See also WILLIAM JULIUS WILSON, *THE DECLINING SIGNIFICANCE OF RACE* 106 (1978) ("[B]ecause of the legions of unemployed black workers [in inner-city areas] . . . wages are kept low and employers are able to replace workers at any time."); Derrick Bell, *Does Discrimination Make Economic Sense?* HUM. RTS. Q., Fall 1988, at 39, 39 (1988) (arguing that "[a] major function of racial discrimination is to facilitate the exploitation of black labor"); Marley S. Weiss, *Risky Business: Age and Race Discrimination in Capital Redeployment Decisions*, 48 MD. L. REV. 901 (1989) (indicating that location decisions of major corporations often driven by race).

199. The great African American educator, Carter G. Woodson, made challenging the ideological slant of American education his life's work. He observed:

The same educational process which inspires and stimulates the oppressor with the thought that he is everything and has accomplished everything worth while, depresses and crushes at the same time the spark of genius in the Negro by making him feel that his race does not amount to much and never will measure up to the standards of other peoples.

CARTER G. WOODSON, *THE MISEDUCATION OF THE NEGRO* xiii (1933). This stifling aspect of American education was, at least at one time, by design. See ROBERT G. SHERER, *SUBORDINATION OR LIBERATION? THE DEVELOPMENT OF CONFLICTING THEORIES OF BLACK EDUCATION IN NINETEENTH CENTURY ALABAMA* 1-5 (1977) (stating one of the primary reasons for adoption of Negro education system in Alabama was the desire to use Black schools as part of a "web of subordination"); DONALD SPIVEY, *SCHOOLING FOR THE NEW SLAVERY: BLACK INDUSTRIAL EDUCATION, 1868-1915*, at 71-101 (1978) (arguing industrial education on the Tuskegee model was a means of subjugation which trained Blacks to be "good, subservient laborers"). For a good collection of recent essays arguing that present day education continues to disserve Black populations and describing the need for and parameters of an African-centered pedagogy, see TOO MUCH SCHOOLING, TOO LITTLE EDUCATION: A PARADOX OF BLACK LIFE IN WHITE SOCIETIES (Mwalimu J. Shujaa ed., 1994).

200. In fact, the effect is broader than that suggested in the preceding sentence. It is not simply that law is used to create institutions that are oppressive, but that law is one of the means of structuring an entire reality that is oppressive. Eurocentrism posits a world and law helps it to create and manage that world. See LLOYD, *supra* note 88, at 293 ("[O]ut of an idea the law makes a world.").

201. Lloyd sees this observation as a virtual truism. He notes that "the hangman, the gaoler, the bailiff, and the policeman are all part of the seemingly familiar apparatus of a legal system." *Id.* at 35.

202. For example, the establishment of a system of traffic control would be meaningless if people refused to obey traffic rules, register their vehicles and obtain drivers licenses.

still argue that in order for a precept to be recognizable as a law, it must be coercive in some way.²⁰³

How does the coercive nature of law play out in the context of a Eurocentric state? If the law is coercive, then breaking the law is a predicate for the legitimate use of force. Consequently, the law can be used instrumentally to determine when force should be applied. Moreover, the boundary that separates law-abiding from law-breaking, where not consciously manipulated, may be set through cultural processes.²⁰⁴ As a result, law in a Eurocentric society determines when certain cultural practices are outside the bounds of the acceptable²⁰⁵ and subject to coercion, either in the form of force, or in the form of social pressure to conform.²⁰⁶ The

203. Both Jacques Derrida and Richard Posner, while on opposite ends of the political spectrum, agree with this proposition. See RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 249 (1988) ("Law is coercion rather than persuasion."); Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority,"* 11 *CARDOZO L. REV.* 920, 925 (1990) ("[T]here is no such thing as law (droit) that doesn't imply in itself . . . the possibility of being 'enforced,' applied by force."). See also Christine A. Desan Husson, *Expanding the Legal Vocabulary: The Challenge Posed by the Deconstruction and Defense of Law,* 95 *YALE L.J.* 969, 982 n.60 (1986) ("Although definitions of law vary as widely as the scholars who have created them, law is generally agreed to include a coercive element.").

John Austin theorized that "every law or rule . . . is a command." AUSTIN, *supra* note 99, at 13. Kelsen's theory that law was a "basic norm" prescribing the application of coercive sanctions, HANS KELSEN, *PURE THEORY OF LAW* 4-15 (Max Knight trans., 1967), follows Austin's positivistic tradition, yet even Weber, who rejected the positivist claim of law's autonomy, believed that "[a]n order will be called . . . law if it is externally guaranteed by . . . physical or psychological coercion . . ." MAX WEBER, *ECONOMY AND SOCIETY* 34 (G. Roth & C. Wittich eds., 1968).

204. See Nunn, *supra* note 102, at 764-65 (explaining that while commission of a crime marks one as an outlaw, the definition of crime itself is contested and produced through a semiotic process of signification).

205. As Gussfield expresses it, "[a]ffirmation through law and government acts expresses the public worth of one subculture's norms relative to those of others, demonstrating which cultures have legitimacy and public domination." Joseph Gussfield, *On Legislating Morals: The Symbolic Process of Designating Deviancy,* 56 *CAL. L. REV.* 54, 58 (1968).

206. The relationship of force and social pressure to conform is explained very well by Stuart Hall and others associated with cultural studies and the culturalist school of mass communication theory. Hall introduces the idea of the "consensus," a modification of Gramsci's well known concept of hegemony, to describe society's prevailing ideology. See Stuart Hall, *The Rediscovery of 'Ideology': The Return of the Repressed in Media Studies,* in *CULTURE, SOCIETY AND THE MEDIA* 56, 63 (Michael Gurevitch et al. eds., 1982). As I explain elsewhere, "[t]he 'consensus' consists of the accepted parameters of social conduct and the established view of the purposes and functions of the institutions of society." Nunn, *supra* note 102, at 761. Hall makes it clear that this consensus is coercive. The consensus, he states, "is the complementary face of domination." STUART HALL ET AL., *POLICING THE CRISIS: MUGGING, THE STATE, AND LAW AND ORDER* 216 (1978). This is because "[c]oercion . . . is the flip side of consent and consent is the flip side of coercion." Nunn, *supra* note 102, at 762.

Consensus allows the state to govern much more efficiently. It allows the

late Amos Wilson described this process succinctly:

[W]hen and if the African American community threatens to move or actually moves beyond its functional invisibility; when it attempts to escape its role definition, acts on its own volition and thereby escapes dominant group controls; when it challenges the legitimacy and relative autonomy of the White American community, that community responds repressively.²⁰⁷

The law, then, sets the boundaries for acceptable forms of resistance to white oppression and dominance.²⁰⁸ Within the bounds of the consensus, Black resistance can go but so far; it cannot infringe on the law of white Eurocentric societies.²⁰⁹ If it does—

state to accomplish goals through “persuasion” and “consent” that would otherwise require domination and force. However, it is important to remember that “if we did not adhere to the consensus of our own volition we could be forced to do so by the operation of the law.” Nunn, *supra* note 102, at 762 n.94.

The consensus is “produced or given meaning by the discourse of those who subscribe to the consensus.” *Id.* This means the consensus cannot be controlled directly by the state. But while the state cannot direct the consensus, it nonetheless benefits greatly from its influence. As I have stated elsewhere:

To the extent consensus works, then, it works in the interests of those with power. Social order calls for “integration within and conformity to the rules of a very definite set of social, economic and political structures.” As Hall emphasizes, the social order “[is] articulated to that which exist[s]: to the given dispositions of class, power and authority: to the established institutions of society.”

Id. at 761 (citations omitted).

207. WILSON, *supra* note 195, at 6.

208. The “acceptable forms of resistance,” in the eyes of Amos Wilson, are not resistance at all, but submission:

Goodness and decency under oppressive regimes are merely two versions of the same attitude—submissiveness. Law abiding goodness and decency within the context of White American/European socioeconomic domination involves the unresisting acceptance and self-abasing obeisance to Eurocentric values, attitudes, rules, and regulations by African Americans even when they are manifestly biased against Afrocentric interests.

Id. at 162.

209. As a pragmatic matter, Black resistance eventually encounters the law’s coercive force in its most violent aspect. This happens either because the resistance movement becomes increasingly militant and reaches the point where it challenges the legitimacy of the white supremacist state, or the state, perceiving a threat, makes its laws more burdensome, leaving the resistance movement less and less space in which to operate freely. The social history of the Black Panthers provides a strong example of this move toward reaction. The Panthers began as a group committed to ending police brutality in the Black community of Oakland, California. To this end, they patrolled neighborhood streets armed with small weapons. When the Panthers began their patrols, the possession of firearms on city streets was legal. However, shortly after the formation of the Panthers, a gun control bill was introduced into the California legislature that aimed to criminalize their armed patrols. After the Panthers demonstrated against the bill “by walking into the assembly chamber carrying ‘pistols, rifles, [and] at least one sawed-off shotgun” the bill easily passed. Clayton E. Cramer, *The Racist Roots of Gun Control*, KAN. J.L. & PUB. POL’Y, Winter 1995, at 17, 21 (citation omitted). For more on the use of gun control laws to regulate Black activism, see Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Re-*

whether the law in question be civil or criminal, public or private—then the resisters will be identified as a legitimate target for coercion.²¹⁰ Law thus polices the society it helps to create.

Law organizes white society; then it helps maintain that society through both physical and ideological coercion. In addition, the law “provides hegemonic services” to the institutions and practices of European and European-derived cultures by granting them a sense of legitimacy and superiority over nonwhite institutions. This aspect of the law is discussed in the following section.

IV. Law and Eurocentric Universalism

The law supports Eurocentricity through its false universalism and its privileging of the European historical experience. Eurocentric law presents itself as rational, transcendent, objective, without ideological content and applicable to all.²¹¹ The law is depicted as a necessity; without it, chaos would reign and civilization would perish. Consider for example the following comments from a leading American legal historian:

The rule of law is one of our culture's most important concepts and one of the great forces in the history of western civilization. . . . The rule of law meant that there existed a body of rules and procedures governing human and governmental behavior that have an autonomy and logic of their own. The rule of law—the rule of rules, if you will—proposed to make all persons equal before a neutral and impartial authority. Its legitimacy derived largely from the possibility of applying it on a reasoned basis free from the whim and caprice of both individuals and government [independent of considerations of] [s]ocial position, governmental office, family of birth, wealth, and race . . .²¹²

consideration, 80 GEO. L.J. 309 (1991).

210. The history of the MOVE group in Philadelphia provides a sharp example of the concentric circles of violence used to control African-centered resistance. MOVE was a radical, environmentally conscious, commune that rejected technology and sought to live according to natural law. HIZKIAS ASSEFA & PAUL WAHRHAFTIG, *EXTREMIST GROUPS AND CONFLICT RESOLUTION: THE MOVE CRISIS IN PHILADELPHIA* 9-17 (1988). MOVE's lifestyle choices brought it into immediate conflict with neighbors, city bureaucrats and the police over sanitation issues, housing code violations, and their refusal to send MOVE children to school. *Id.* 19-37. Ultimately, the escalation of the conflict through several levels of increasing state coercion led to the bombing of the MOVE residence by police officers, and the resulting deaths of six adults, five children and the destruction by fire of over sixty homes. *Id.* at 113. For other accounts of the May 1985 bombing of MOVE, see CHARLES W. BOWSER, *LET THE BUNKER BURN: THE FINAL BATTLE WITH MOVE* (1989) and The Philadelphia Special Investigation Commission, *The Findings, Conclusions and Recommendations of the Philadelphia Special Investigation Commission*, 59 TEMP. L.Q. 339 (1986).

211. “[T]he justificatory language of the law,” states Mensch, “parades as the unquestionable embodiment of Reason and Universal Truth.” Mensch, *supra* note 2, at 18.

212. KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 6 (1989).

Notwithstanding such heady rhetoric, the law's autonomy and universality may be brought into question. The law's claim to universality is merely its thinly disguised cultural chauvinism. This is especially evident in the law's treatment of the doctrine of precedent, or *stare decisis*. *Stare decisis*, or the assumption that the law is best built piece by piece on the decisions of the past, supposedly guides and shapes the development of the law.²¹³ It is assumed that reliance on past precedents gives a greater degree of certainty to legal decisions.²¹⁴ But the doctrine of precedent has an ideological function as well.²¹⁵ This can be seen by considering the origins of legal precedents. In common-law jurisdictions, the precedents come from England. Thus, a link is established between United States jurisprudence and England that gives English law priority and elevates it to a special place of privilege in the decision-making process.²¹⁶ Precedent serves to tie United States jurisprudence to its place of origin.²¹⁷ If law were truly universal, then courts in the United States would cast around and choose their precedents from among the world's best reasoned decisions. By relying solely on English precedents,²¹⁸ United States law makes the ideological assertion that English law—white law—is superior to all others.

Looked at objectively, this reverence for the common law seems bizarre. It is absurd to argue that the historical and cul-

213. See generally Christopher J. Peters, *Foolish Consistency: On Equality, Integrity, and Justice in Stare Decisis*, 105 YALE L.J. 2031 (1996) (arguing that *stare decisis* should not be followed when it does not promote a just decision); Deborah Hellman, *The Importance of Appearing Principled*, 37 ARIZ. L. REV. 1107 (1995) (arguing that the judicial role requires judges to justify their decisions which means giving reasons to others).

214. See Peters, *supra* note 213, at 2039.

215. Cf. David Kairys, *Legal Reasoning*, in *THE POLITICS OF LAW*, *supra* note 2, at 11, 13 (arguing *stare decisis* serves to mask the fact that cases are in fact decided by reference to social and political judgments). The Legal Realists also critiqued the doctrine of *stare decisis*, which they viewed as "internally incoherent and politically conservative." Morton J. Horwitz, *The Supreme Court, 1992 Term—Foreword: The Constitution of Change: Legal Fundamentality Without Fundamentalism*, 107 HARV. L. REV. 30, 53 n.99 (1993).

216. The common law of the mother country as modified by positive enactments, together with the statute laws which are in force at the time of the emigration of the colonists, becomes in fact the common law . . . to be applied by American courts In substance, [it has] been received . . . as "part of our judicial heritage," and should be interpreted and applied as such. *Manoukian v. Tomasian*, 237 F.2d 211, 215 (D.C. Cir. 1956) (citations omitted). Cf. *Ford v. Wainwright*, 477 U.S. 399 (1996) (discussing whether our English common law tradition permitted execution of the insane).

217. This makes legal precedents an example of what Blaut calls "Eurocentric diffusionism." See *supra* note 31.

218. And occasionally those of other white Commonwealth jurisdictions.

tural developments of English landholders and peasants are so universal, and so transcendent that they can be called upon to resolve problems and settle disputes in Nigeria, Ghana or Singapore.²¹⁹ This state of affairs is acceptable only if the culture of England is accepted as a paradigm for all other cultures, everywhere. And English culture can only be accepted as paradigmatic if it is believed in some way to be superior or "better" than others. In this way, the law becomes an instrument of cultural hegemony. It celebrates the superiority of European culture in an allegedly multicultural world.

This problem is replicated in any attempt to address law as a discipline, whether one is in a common law or a civil law jurisdiction. To speak of law, one must pay homage to all the great white thinkers who laid its foundation, or added to its reach: Cicero, Holmes, Pound, Hand, Austin, Rawls, to name but a few. No matter how illustrious the career of a nonwhite jurist or how well-developed the legal philosophy of non-Western cultures, they are not so acknowledged.

To understand why, one need only consider the essentially racist character of Eurocentric thought. Racism, Fitzpatrick shows, is the consequence of Eurocentricity's hunger for dichotomy:²²⁰ "With the creation of modern European identity . . . the world was reduced to European terms and those terms were equated with universality. That which stood outside of the absolutely universal could only be absolutely different to it."²²¹

Difference, however, can only be tolerated in European culture if it is subsumed in hierarchy.²²² That is what Eurocentricity does with those it perceives as "other." This is done through the elevation of European standards to the level of the universal. As European standards are elevated, non-European standards are lowered,²²³ a process in which the law plays a central role. Again, to quote Fitzpatrick:

'True' nationalism . . . resides with the nations of the West. It sets norms of performance which other 'newer' nations can

219. Yet this is exactly what colonialist jurists attempted to do. For a discussion of conflicts which arose from the imposition of Western legal concepts on African cultures, see Holleman, *supra* note 161, at 6; MUNGAZI, *supra* note 161, at 112-26.

220. See *supra* notes 42-48 and accompanying text (discussing dichotomy in Eurocentric thought).

221. FITZPATRICK, *supra* note 94, at 65.

222. See *supra* notes 49-54 and accompanying text (discussing the employment of hierarchy in Eurocentric thought).

223. See ANI, *supra* note 7, at 281 (describing process through which European standards are equated with civilization while non-European standards are denoted "savage" or "primitive").

seek to achieve but to which they only, so far and in varying degrees, approximate. These norms exemplified by the West are transcendent and universal yet also specifically national. So, the use of 'objective' criteria, the achievement of a rational and 'industrial' culture, 'the establishment of an anonymous, impersonal society,' institutional differentiation and the de-personalization of power are all values and achievements which can both typify the West yet be universal because of their ultimate constitution in the negation of what is local and personal, status-ridden, traditional, irrational, undifferentiated, agricultural, and so on.²²⁴

Over the course of their history, and even to this day, European and European-dominated countries have shown no hesitancy in imposing their laws and customs on other peoples, usually on the grounds that indigenous law was inferior. In 1900, President McKinley gave instructions to the Philippine Commission established to revise the laws of the Philippines, then a colony of the United States.²²⁵ He stated:

[T]he Commission should bear in mind, and the people of the Islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system, . . . and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar.²²⁶

Thus, law in European and European-derived countries was considered to be part of a grand, transcendent tradition. Although it was different and considered superior to the legal concepts found in the rest of the world, it was also considered universal. And so there was little reason not to export this "gift," often through force of arms, to the majority peoples of the world.

Although the European was liberal with his law, he was parsimonious with his rights, and this is especially true in regard to the right of self-determination.²²⁷ This potent combination is a constant feature of European contact with other cultures and thus merits further attention.

European colonizers dominated the majority peoples of the

224. FITZPATRICK, *supra* note 94, at 113-14 (citations omitted).

225. The instructions were drafted by Elihu Root, Secretary of War and a leader in the American Bar. *Green v. United States*, 355 U.S. 184, 209 (1957) (Frankfurter, J., dissenting).

226. 1 Public Laws of the Philippine Commission, p. LXVI, *cited in Green v. U.S.*, 355 U.S. at 209-10 (Frankfurter, J., dissenting).

227. See FITZPATRICK, *supra* note 94, at 109 ("[T]he imperial 'Saxon race' extended 'the rights of man' to 'no other races.'") (citation omitted).

world, took their land, and destroyed or corrupted their cultures.²²⁸ Yet these colonizers always proceeded “legally” through treaties or the dictates of international law.²²⁹ Ani argues convincingly that the European preoccupation with “legalizing” their conquests served the double purpose of disarming their victims and bolstering the European self-image.²³⁰ A key part of the European belief system is faith in the linear notion of “progress,”²³¹ the belief that later historical developments are superior to preceding ones and that the course of human history flows from worse to better. This, in combination with the European conviction that white culture was superior to the world’s other cultures made European conquest a matter of pride and self-esteem.²³² Their conquests needed to be “legal” in order to provide the full psychological benefits.

In addition, the export of European law was deemed as synonymous with the export of European “civilization” and thus synonymous with progress:

The concept of “codified law” is a definite ingredient of that of civilization; for with civilization, according to European ideology, comes order and legality assures “lasting order”—not moral conduct but consistent and predictable conduct. So that the “civilized” way—the European way—is to bring laws, however forcibly, and the structures of European culture (“civilization”) to those whom one treats immorally and for whom one has no respect.²³³

From a pragmatic perspective, then, the law cannot be viewed as a positive force for change. The law must be viewed for what it is, a necessary component for the extension of white power around the globe. Although the introduction of law into indigenous societies brought order, it did not—it could not—bring peace. Instead “law was in the vanguard of what its own proponents saw as a ‘belligerent civilization,’ bringing ‘grim presents’ with its penal regulation and, in the process, inflicting an immense violence.”²³⁴

Consequently, the best choice for people of color who choose to resist white dominance is to reject the law, to become “out/laws,” since “[b]y refusing to relate to Western order, these individuals

228. See generally CHINWEIZU, *supra* note 10 (describing European aggression toward non-Europeans).

229. ANI, *supra* note 7, at 414.

230. *Id.*

231. *Id.*

232. See *id.*

233. *Id.*

234. FITZPATRICK, *supra* note 94, at 108 (citation omitted).

. . . succeed in robbing [Europeans] of a potent tool for psychological and ideological enslavement."²³⁵

V. Law and Cultural Oppression

Law is used by Eurocentric culture to infiltrate and subjugate other cultural spheres. Law's role in this process is to legitimate European domination through its rulings and judgments.²³⁶ But law advances white cultural hegemony through its *processes*, as well as through its results.²³⁷ The very form that legal reasoning and legal analysis takes affirms white Eurocentric culture.²³⁸ Legal analysis proceeds on the assumption that it is possible to logically extract a concrete legal conclusion from objective legal principles. This requires those who would use the legal system to adopt the modalities of Eurocentric thought.²³⁹ An argument is simply not cognizable in legal terms unless it is objectified, rationalized and abstracted.²⁴⁰ This has two negative consequences. First it gives the impression that "arational,"²⁴¹ or subjective thought, is inferior, or at least nonfunctional. Second, problems that are not reducible to abstract formulations go unaddressed and unresolved.

Law's disfavoring of arational, subjective, intuitive thought is problematic from an African-centered perspective because these are the thought patterns which predominate in African, Oceanic and Native American cultures.²⁴² Not only must members of these cultures leave their cultural world behind to shape, advocate and contest legal arguments, but they must also endure the denigration of their cultures and their world-views that is part of Eurocentric law's non-recognition of other cultural forms.

Moreover, there are some issues and concerns that the law cannot address. For example, most people of color intuitively un-

235. ANI, *supra* note 7, at 415. Some might argue that such a course of conduct would result in chaos. But this is only true if one accepts the Eurocentric dichotomy that European law and European administration of the law are the only viable forms of social organization.

236. See *supra* notes 225-32 and accompanying text.

237. See *supra* notes 184-200 and accompanying text.

238. See Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51, 105-09 (1995) (arguing that a clipped, analytic style of legal analysis and writing is culturally biased).

239. See Part I *supra* (discussing characteristics of Eurocentric thought).

240. See *supra* notes 150-71 (describing how legal problems are not cognizable unless abstracted, objectified and rationalized).

241. See Akbar, *supra* note 24, at 401 (suggesting use of term "arational" as a nonpejorative alternative to "irrational").

242. See ANI, *supra* note 7, at 45, 59-60, 98-99; HILLIARD, *supra* note 24, at 13-23.

derstand that their experience in United States society is typified by constant and pervasive levels of racism and cultural oppression.²⁴³ Yet, United States law cannot even begin to address this fundamental problem. It can only process bits and pieces of it—those isolated parts of the problem that can be conceptualized in abstract form.²⁴⁴ So United States law addresses itself to questions of “hate-speech,” “job discrimination,” “equal protection,” “school desegregation,” etc., without ever reaching a satisfactory solution because the real problem—cultural hegemony and racial domination—is never confronted.

In this way, law provides protective services to white supremacy and white cultural hegemony. It prevents the real issue from ever being called into question. Furthermore, through the illusion that legal reasoning is a distinct method of analysis, law detracts attention from the underlying policy considerations that actually shape legal outcomes. For example, African American legal analysts are still struggling to realize that the affirmative action debate is not about “strict scrutiny,”²⁴⁵ “all deliberate speed”²⁴⁶

243. See *A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* 116 (Gerald Jaynes & Robin Williams, Jr. eds., 1989) (“[B]lacks are far more likely than whites to believe that discrimination and prejudice are ongoing social problems that lie at the heart of black-white inequality.”); *id.* at 131 (“[B]lacks increasingly express skepticism that progress in civil rights is being made.”); *id.* at 151 (1980 survey showed 53% of Blacks believed “blacks face significant discrimination”); *id.* (unlike whites, “Blacks view discrimination as a result of both prejudiced individuals and broader social processes”).

244. Holleman discusses this aspect of Western law in the process of comparing European legal forms to African ones. He notes that while Africans embrace a wholistic legal process that seeks to resolve legal questions by placing them in their broader social context, Europeans do not. Holleman, *supra* note 161, at 6-7. According to Holleman:

Broadly speaking, [Western] rules of procedure aim at isolating the relevant rules of substantive law applicable to a particular lawsuit; and our rules of evidence serve to determine what facts are relevant to the pleaded issues and how their truth should be established. Much attention is paid to the preliminary work of *restricting the field of contested laws and facts*; and to the kind of evidence that is *not* permissible in a given case. In short, what is dished up for the consideration of our judges is mostly the bare bones of legal contention, professionally picked out from the meat of social conflict.

Id. at 5-6.

245. Strict scrutiny is the most exacting standard of constitutional review. See *Korematsu v. United States*, 323 U.S. 214, 216 (1944) (first articulation of strict scrutiny standard); *Loving v. Virginia*, 388 U.S. 1, 9 (1967) (applying strict scrutiny). The Supreme Court recently held that all racial classifications, whether imposed by state, federal or local government, and whether for remedial purposes or not, must be subjected to strict scrutiny review. See *Adarand Constructors v. Pena*, 115 S. Ct. 2097, 2113 (1995).

246. “All deliberate speed” is the timetable set for remedying school segregation by the Supreme Court in the second *Brown* decision. *Brown v. Board of Educ.* (No.

or other formulaic and meaningless legal constructs. The affirmative action debate is about politics, about power and ultimately about morality.

VI. Law, Ideology and the Politics of Eurocentricity

Contesting Eurocentricity is primarily a cultural struggle. It calls for the creation of a separate cultural base that values and responds to a different cultural logic than does Eurocentricity. Aime Cesaire, the great West Indian Pan-Africanist, understood the importance of the cultural struggle and its potential:

[A]ny political and social regime that suppresses the self-determination of a people, must, at the same time, kill the creative power of the people. . . . Wherever there is colonization, the entire people have been emptied of their culture and their creativity. . . . It is certain, then, that the elements that structure the cultural life of a colonized people [must also] retard or degenerate the work of the colonial regime.²⁴⁷

Eurocentric law and its legal structures—legislative bodies, courts, bar associations, law schools, etc.—limit the political program that African-centered cultural activists can undertake. African-centered political activity is circumscribed in part because of a reason I have already discussed: law's limited ability to address issues of concern to African-centered people.²⁴⁸ More significantly, law limits responses to Eurocentricity through its effects on those who would use it to accomplish change.

First, the law accomplishes ideological work as it embraces Eurocentric cultural styles and celebrates European historical traditions. The law and legal institutions, through the artful use of ritual and authority, uphold the legitimacy of European dominance. The constant self-congratulatory references to the majesty of the law, the continual praise of European thinkers, the unconscious reliance on European traditions, values and ways of thinking, all become unremarkable and expected. The law operates as a key component in a vast and mainly invisible signifying system in support of white supremacy. The law is even more capable of struc-

II), 349 U.S. 294, 300-01 (1955) (giving weight to local flexibility and private concerns). Many commentators have criticized the vagueness of the "all deliberate speed" standard, arguing that it needlessly prolonged the maintenance of unequal school facilities and emboldened white resistance in the South. See, e.g., BELL, *supra* note 192, at 546-48 (calling the second *Brown* decision a "mistake").

247. Aime Cesaire, *Culture et Colonisation*, in 3 AIME CESAIRE: OEUVRES COMPLETES 440-41 (1976).

248. See *supra* notes 150-71 and accompanying text (describing how legal problems are not cognizable unless abstracted and objectified) and *supra* notes 236-44 and accompanying text (noting how legal analysis misses fundamental problems).

turing thought because its masquerade that it is fair, even-handed, and impartial is rarely contested.²⁴⁹ Consequently, the law works as an effective "tool for psychological and ideological enslavement."²⁵⁰

To the extent that African-centered activists stand up in white supremacy's courts, and wear white supremacy's suits and ties and robes, to make arguments that are coached in white supremacy's terms, they undercut the effectiveness of their own movement. They reinforce the legitimacy of Eurocentricity in their own minds, in the minds of their constituency, and in the minds of their potential allies.

Second, to become adept at negotiating the labyrinth of the law takes time and energy. Attending law school and becoming a good lawyer is not an easy task. This takes time that a person who is grounded in African culture must spend away from his or her community, which is a problem in and of itself.²⁵¹ More critical, however, is the fact that during this time, the person of color is subjected to an intense ideological program. Not only is law school one of the most conservative educational experiences possible, it is also one of the most racist.²⁵²

Sensitive and reasoned explorations of racial issues are notably absent from the law school curriculum.²⁵³ In organizing their

249. People rarely contest the objectivity of the law as an autonomous construct. What is contested is the impartiality and fairness of actors in the legal system (judges, attorneys, legislators, police, etc.).

250. ANI, *supra* note 7, at 415 (describing how revolutionaries who refuse to follow Western order are labelled "terrorists").

251. One law professor has described the sense of isolation that law school creates for African American students. She reports:

Students whose identities are formed, at least partially, through their connection to the African American community may feel that law school challenges their very selves. They may feel excluded from participating in African American community activities, and thus from being African American, by the time demands and competitiveness of law school culture.

Greenberg, *supra* note 238, at 99.

252. Much has been written about the intensely racist atmosphere of the American law school. See, e.g., JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN AMERICA* 264-68, 293-95 (1976) (providing overview of racism in legal education); DERRICK BELL, *CONFRONTING AUTHORITY* 3-8 (1994) (describing racism at Harvard Law School); Jerome McCristal Culp, *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*, 26 CONN. L. REV. 209, 213-17 (1993) (describing unconscious racism and racist aggressions against the author and other African American scholars); Jennifer M. Russell, *On Being a Gorrilla in Your Midst, or the Life of One Blackwoman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259, 259-62 (1993) (describing racist aggressions against the author). See also Greenberg, *supra* note 238, at 56 (stating that "law school[s], despite [their] claims to be color-blind [are] not culturally neutral; [they] provide inherent preferences for students who can act, think, and write white").

253. See Greenberg, *supra* note 238, at 70-74 (explaining how the law school curriculum centers on traditional subjects such as corporate and tax law, and how

courses, “[l]egal educators, who are themselves predominately white, teach the subjects that are important to them and to the predominately white bar.”²⁵⁴ Thus, for most African-centered students, the law school curriculum lacks “relevance”—any real meaning for the decisions and concerns they face in their lives.²⁵⁵ When Black issues *are* treated in the legal academy, it is in stereotypical ways that demean and stigmatize African people and African culture.²⁵⁶

More problematic is the fact that Black law students are forced to reason in the doctrinal and analytic way that Eurocentricity prefers. They are taught to think in narrow, rule-bound terms, and to write in the detached, sparse, technical style that lawyers favor.²⁵⁷ These questions of aesthetics and pedagogical style distance Black students from their culture and diminish their ability to conceptualize problems and craft solutions in ways that can contribute to the liberation of people of African descent.²⁵⁸

Upon graduation from law school, the situation does not improve. Ironically, the higher one advances in the legal hierarchy,

the topic of race is considered only incidentally in most courses).

254. *Id.* at 74.

255. This criticism of the law school curriculum is long standing. In a magazine article written in 1970, James McPherson noted that law school also lacked relevance for the Black activists of the 1960s. According to McPherson:

[T]he study of law has no immediate relevance to the black community. It is almost pure study. The real relevance comes only after the period of training, when the individual student has to decide for himself what role he wants to play with the tools he has acquired.

James A. McPherson, *The Black Law Student: A Problem of Fidelities*, ATLANTIC MONTHLY, Apr. 1970, at 96.

256. See Greenberg, *supra* note 238, at 75-79 (describing how issues of race are often treated as unimportant and inferior in law school curricula and legal texts).

257. Law school’s preference for a particular form of written work may be especially disadvantageous to students who are grounded in the cultures of the African diaspora. *Id.* at 106-07. This is true because:

[t]he African American oral tradition . . . glories in exactly those aspects of language that the legal style excludes: emotion, exaggeration, double entendre, and a whole range of tropes. For a student who has found her voice within the oral tradition, the requirements of legal writing will be tantamount to writing in a different voice.

Id. at 107 (citations omitted).

258. See David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981, 2013-26 (1993) (arguing legal education discourages Black corporate attorneys from engaging in pro bono efforts to help Black communities). Wilkins argues that “[l]egal education, by privileging generality over context, procedure over substance, and partisanship over purposivism,” makes it difficult for African American lawyers “to recognize when their actions will . . . adversely affect the legitimate interests of the black community” *Id.* at 2014. He states, I think correctly, that “the rhetoric of generality and neutrality employed in many law school classes simultaneously obscures important contextual distinctions and delegitimizes all race consciousness.” *Id.*

the less effective one can be. As one moves from student, to law clerk, to lawyer, to judge one has less ideological flexibility. People who are entrenched in the hierarchy can engage less in open political or cultural activism without risking their credibility or subjecting themselves to political or social pressure.²⁵⁹ One can see this in the simple matter of cultural styles of attire. It is far easier for a law student or a law clerk to wear Kente cloth, for example, than it is for an attorney or a judge.²⁶⁰ As a person advances in the legal hierarchy, then, their accountability to the European-dominated system becomes greater and their accountability to their communities of origin become less.

In most jurisdictions, the African American community has little influence over whether an African American judge keeps his or her job.²⁶¹ Lani Guinier's comments about the tenuous account-

259. This is especially true since "explicit [African] race consciousness has been considered taboo for at least fifteen years within mainstream American politics and for far longer within the particular conventions of law and legal scholarship." Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 759.

260. See Patricia Gaines-Carter, *D.C. Lawyer Told to Remove African Kente Cloth for Jury Trial*, WASH. POST, May 23, 1992, at F1 (attorney ordered to remove Kente cloth or face sanctions).

261. Most states use some form of electoral process to select or retain judges. See Peter D. Webster, *Selection and Retention of Judges: Is There One "Best" Method?*, 23 FLA. ST. U. L. REV. 1, 17, 25 (1995) (at least 26 states use either partisan or nonpartisan for selection or retention of judges). Since African Americans are a minority, they have limited influence over the retention of judges. This is especially true since the Supreme Court has refused to extend the principle of "one-man, one-vote" to judicial elections. See *Wells v. Edwards*, 347 F. Supp. 453 (M.D. La. 1972), *aff'd mem.*, 409 U.S. 1095 (1973). As a consequence, "state election officials bent on disenfranchising blacks [may] apportion judges so that white citizens are 'represented' by more judges than are black citizens." Andrew S. Marovitz, *Casting a Meaningful Ballot: Applying One-Person, One-Vote to Judicial Elections Involving Racial Discrimination*, 98 YALE L.J. 1193, 1195 (1989).

Furthermore, the electoral process itself may be unsuited to the task of empowering Black communities, and thus giving them control over the retention of judges. Lani Guinier points out that voting rights law and litigation proceeds on a packet of false assumptions she terms "the theory of black electoral success." See Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077 (1991). The core of the theory of Black electoral success is that "[s]imply by virtue of election opportunities, black electoral success advances civil rights enforcement, government intervention on behalf of the poor, and black 'role-model' development." *Id.* at 1079. However, the double Achilles' heel of the Black electoral success theory are the twin problems of "tokenism" and "false consciousness." *Id.* at 1116 (stressing that the mere fact that a Black person gains elective office is no guarantee that person will be able to exert any meaningful influence on the political process). There is a strong possibility that those chosen will lack cultural identification with the African American community, and consequently fail to represent the interests of the constituency that elected them. See *id.* at 1103-09.

Where judges are selected and retained by appointment, there is even less likelihood that African American communities will be able to influence who serves

ability of Black elected officials apply with equal force to the lot of Black lawyers and judges:

Once assimilated into the political mainstream, black officials may define their political agenda without reference to or consultation with a community base. Their reference point may instead become other members of the governing elite with whom they share personal experiences and comparable "rank." With access to prestige rather than power, some black politicians may simply censor themselves in order "to play ball," or characterize political patronage as constituent servicing.²⁶²

This not to say that law and lawyers are not necessary, that there is no role for them to play in waging the cultural struggle against Eurocentricity. Lawyers and legal strategies *are* needed, to protect individuals and institutions from state intervention and private abuse and to provide professional advice and assistance.²⁶³ But this role is primarily supportive. It is more important for legal workers to find ways to use their social positions to challenge white cultural hegemony. This requires a reinterpretation of the law and the majority peoples'²⁶⁴ relationship to it. European law cannot be viewed as transcendent and universal. It must be treated as ordinary and functional, relied upon to suit the needs of the moment, then discarded when no longer effective.²⁶⁵

on the bench.

262. Guinier, *supra* note 261, at 1119 (citations omitted). Stokely Carmichael and Charles V. Hamilton made similar observations in their classic work on the African American political condition, *Black Power*. According to Carmichael and Hamilton:

[T]he white power structure rules the black community through local blacks who are responsive to the white leaders, the downtown, white machine, not to the black populace. These black politicians do not exercise effective power. They cannot be relied upon to make forceful demands in behalf of their black constituents, and they become no more than puppets Colonial politics causes the [Black politician] to muffle his voice while participating in the councils of the white power structure. The black man forfeits his opportunity to speak forcefully and clearly for his race, and he justifies this in terms of expediency.

STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 10 (1967).

263. This includes contractual work, tax assistance, criminal defense and other legal services.

264. By "majority peoples," I mean people of color, who constitute the non-white, non-European majority of the world's population. See Henry J. Richardson III, "Failed States," *Self-Determination, and Preventative Diplomacy: Colonialist Nostalgia and Democratic Expectations*, 10 TEMP. INT'L & COMP. L.J. 1, 8-9 (1996) (describing "majority peoples of color" as representative of most of humanity).

265. David Papke argues that the Black Panther Party developed this kind of "cynical legalism" in the late 1960s and early 1970s. David Ray Papke, *The Black Panther Party's Narratives of Resistance*, 18 VT. L. REV. 645, 662-72 (1994). In Papke's view, "[t]he Panthers' legal thought . . . manifested no deep respect for law or abiding belief in a warming parable of legal change." *Id.* at 670. According to Papke, "the Panthers [just] wanted to know the law and abide by it in order to pro-

Conclusion

African people are no longer held in bondage by the chains of slavery, but by the belief that their oppressed status on the margins of white world civilization is their rightful one. The cage of oppression that encircles the Black race is psychological, not material.²⁶⁶ Law, with its great apparatus of justification, is a critical part of the invisible engine that silently subjugates Africa and Africans. Behind its facade of objectivity and universality, law organizes the world according to Eurocentric values, then defends and legitimates that organization, while simultaneously limiting the ability of African-centered activists to contest white cultural domination. For, if they embrace the law, African-centered activists cannot even conceptualize, let alone confront, the true dimensions of their struggle.

To successfully resist Eurocentricity, African people must interpret the law in light of their own cultural perspectives. This means the creation of an African-centered approach to law that is grounded on the concept of a non-material, spiritually-infused universe.²⁶⁷ To do this, law as we now know it can no longer exist. There can no longer be any separation between law and morality, between science and belief, between practicality and justice. Law's Empire²⁶⁸ must be overthrown.

tect themselves and to thumb their noses at the system." *Id.*

This account is not entirely convincing, because as Professor Papke points out, the Panthers were themselves tied down by their strong belief in law's supremacy: Intellectually speaking, the greatest problem with the Panthers' understanding of constitutional rights involved their static positivism. They seemed to think, almost like conservative right-to-bear-arms zealots, that the meaning of constitutional amendments was unambiguously known. They wanted rights to play fixed and certain roles in their tales of personal and collective liberation. Their constitutional jurisprudence was oversimplified and reductively ahistorical.

Id. at 666-67. The view of law that Papke criticizes here is precisely the perspective that African-centered activists should seek to avoid.

266. This proposition is a linchpin of African-centered thought. See, e.g., NA'IM AKBAR, CHAINS AND IMAGES OF PSYCHOLOGICAL SLAVERY (1984) and HILLIARD, *supra* note 24, at 8-9.

267. See MYERS, *supra* note 24, at 11-14; ANI, *supra* note 7, at 97-99.

268. See RONALD DWORKIN, LAW'S EMPIRE (1986). Dworkin, one of the Western world's leading legal philosophers, presents an imagined world where reason has colonized everything and erected an "empire" founded on an abstract conception of law as "integrity." In Law's Empire, "courts are the capitals" and "judges are its princes." *Id.* at 407. "It falls to philosophers, if they are willing," to serve as the "seers and prophets" of Law's Empire. *Id.* Dworkin's Empire seems extremely dead and lifeless, the epitome of the extreme rational and abstract thought that Marimba Ani criticizes so powerfully. See ANI, *supra* note 7, at 69-82.

The employment of an abstract "original position," or "state of nature," is a common heuristic device employed by Eurocentric philosophers seeking to cloak their opinions in the veil of objectivity. See, e.g., THOMAS HOBBS, LEVIATHAN

(C.B. Macpherson ed., 1968) (1651); IMMANUEL KANT, *THE PHILOSOPHY OF LAW* (W. Hastie trans., 1974); JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (C.B. Macpherson ed., 1980) (1690). These attempts fail to reach their stated goal of objective analysis because they exclude alternative constructions of reality that are too "messy" or conflict with the philosophers own values or biases. See Mari J. Matsuda, *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice*, 16 N.M. L. REV. 613, 613 (1986) (arguing Rawls' abstract original position ignores "equally plausible counterassumptions" and reveals his theory "as one that must be accepted on faith alone").

