

# A Black Existential Perspective on Afrofuturity and the Law

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*This Essay examines Africana Black existential conditions of Afrofuturity and some of the expectations they may pose for justifying the law. The discussion summarizes the Sankofic dimensions of this kind of thought and the challenges they address for the understanding and alleviation of problems imposed on humankind by the emergence of Euromodern hegemony and its racialized anthropology, conceptions of freedom, crises of justification, and problematic search for redemption. The Essay presents Africana Black existential responses, including kinds of political responsibility and understandings of the existential political commitment they pose. The thesis is that those commitments entail the law playing an important role for people building societies in which they can live livable lives.*

## TABLE OF CONTENTS

INTRODUCTION . . . . .	1410
I. AFRICANA PHILOSOPHY AND BLACK EXISTENTIALISM . . . . .	1415
A. RACIALIZATION AND THEONATURALISM . . . . .	1415
B. FOUR PROBLEMATICS . . . . .	1421
1. Problematic of Humanity . . . . .	1421
2. Problematic of Freedom . . . . .	1422
3. Problematic of Reason. . . . .	1423
a. Epistemology . . . . .	1423
b. Reason. . . . .	1426
c. Power/Action. . . . .	1426
4. Problematic of Redemption . . . . .	1427
II. POLITICAL RESPONSIBILITY IN BLACK . . . . .	1428
A. WHAT IS RESPONSIBILITY? . . . . .	1428

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B. AFROFUTURITY, BLACK MELANCHOLIA, AND THE WAY FORWARD . . .	1431
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CONCLUSION . . . . .	1434
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## INTRODUCTION

A guiding principle of Afrofuturism is that another world is possible.<sup>1</sup> This possibility is linked to an unusual amount of weight on the imagination, since “possible” in Afrofuturistic literature often means *thinkable*. This imaginative recourse emerges from understandings that accompanied the Euromodern transformation of African peoples into “blacks.”<sup>2</sup> In this context, there is a double move, for as there have been—and continue to be—many kinds of blacks, the focus here is on *Afro*-blacks, those concomitant with the rise of the African diaspora. Euromodern societies mark such blacks in specific moments and movements of their history, most of which distinguish those in the “New World” on one side of the Atlantic from those on the “Dark Continent”<sup>3</sup> on the other, with the Indian Ocean on the continent’s other side and the Mediterranean to its north.<sup>4</sup>

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1. Discussions abound. For an excellent succinct summary in the context of legal studies, see generally Bennett Capers, *Afrofuturism and the Law*, CRITICAL ANALYSIS L., no. 1, 2022, at 1. For cross-disciplinary discussions and a history of the subject, see generally NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE, SMITHSONIAN INST., *AFROFUTURISM: A HISTORY OF BLACK FUTURES* (Kevin M. Strait & Kinshasha Holman Conwill eds., 2023).

2. I will use “blacks” to refer to the racialized identity Europeans imposed onto Africans and other groups such as the varieties of Indigenous peoples of Australasia. When I refer to the positive political identity those racialized people create, I will use the capitalized term “Black.” For discussion of this distinction, see LEWIS R. GORDON, *FEAR OF BLACK CONSCIOUSNESS* 18–20 (2022).

3. See generally HENRY M. STANLEY, *THROUGH THE DARK CONTINENT* (London, Sampson Low, Marston, Searle, & Rivington 1890) (describing a nineteenth-century explorer’s travels throughout equatorial Africa).

4. I use the term “Euromodernity” instead of “modernity” because of the negative effects of reducing “modern” to “European,” which dominates many forms of critical discourse on Euromodern life. As “modern” ultimately means to belong to the present, the reduction of the concept to “European” entails non-Europeans belonging to another time, usually the past. A response to this, as we will see in Afrofuturity, is to posit a form of belonging in the future, which retroactively legitimates belonging to the present. See *infra* Section I.A. What is this, however, but then also a form of Afromodernism? For discussion of “Euromodern” and critical interrogation of “modern,” see generally LEWIS R. GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION* (2021) [hereinafter GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION*]. As well, for studies of the varieties of enslavement in and beyond the transatlantic exemplar, see generally JANE ANNA GORDON, *STATELESSNESS AND CONTEMPORARY ENSLAVEMENT* (2020) [hereinafter GORDON, *STATELESSNESS AND CONTEMPORARY ENSLAVEMENT*]; JULIUS S. SCOTT, *THE COMMON WIND: AFRO-AMERICAN CURRENTS IN THE AGE OF THE HAITIAN REVOLUTION* (2018); MURRAY GORDON, *SLAVERY IN THE ARAB WORLD* (New Amsterdam Books 1989) (1987); ROBERT HUGHES, *THE FATAL SHORE: THE EPIC OF AUSTRALIA’S FOUNDING* (Vintage Books 1988) (1986) (using “Aborigines” and “blacks” interchangeably); Titas Chakraborty & Matthias van Rossum, *Slave Trade and Slavery in Asia—New Perspectives*, 54 J. SOC. HIST. (SPECIAL ISSUE) 1 (2020); Alexander Geelen, Bram van den Hout, Merve Tosun, Mike de Windt & Matthias van Rossum, *On the Run: Runaway Slaves and Their Social Networks in Eighteenth-Century Cochin*, 54 J. SOC. HIST. (SPECIAL ISSUE) 66 (2020). And, of course, for enslavers’ eyewitness accounts from proverbial horses’ mouths, see, for example, CHRISTOPHER COLUMBUS, *THE FOUR VOYAGES* 27–123, 283–320 (J.M. Cohen ed. & trans., 1969) (providing accounts from Columbus’s First Voyage, 1492–1493, and his Fourth Voyage, 1502–1504, respectively), and then see generally some accounts by Columbus’s son Hernando, *id.*, and BARTOLOMÉ DE LAS CASAS, *A SHORT ACCOUNT OF THE DESTRUCTION OF THE INDIES* (Nigel Griffin ed.

Yet even this demarcation needs elaboration and added complexity, for the diasporic elements outside of Africa have different markers than those within the continent. Even more, the varieties of Euromodern imperial efforts to subjugate Africans also transformed their subjugators.<sup>5</sup> Thus, carried along are multiple converging forces of cosmological, legal, philosophical, and political reflections. The cosmological asks: How did the world or worlds emerge and what world is this? The legal asks: What kind of regulations of power are at play in this or these worlds? The philosophical asks: How do we make sense of what has happened in this or these worlds and how do we evaluate it? And the political, in a nutshell, asks: What is to be done for the health, legitimacy, maintenance, or transformation of this and any other world?

Because it focuses on worlds produced by racialized African peoples and their diaspora, Afrofuturist thought is a species of Africana or African diasporic thought.<sup>6</sup> Africana thought is not identical to Black thought, although it includes elements of it. Black thought focuses on blackness or the circumstances and conditions of people whom Euromodern, Middle Eastern, and Southwest Asian societies “blackened,” and the questions that phenomenon poses.<sup>7</sup> Blacks are, after all, not the same everywhere, although in most places, everyday people and theoreticians often commit the error of thinking *their* blacks are *the blacks*. North American blacks, for example, have similar and different histories from blacks in the Caribbean, Central and South America, and Africa, and we should also consider black peoples in South Asia and Oceania.<sup>8</sup> And in some instances, blackness

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& trans., 1992) (describing butchery and enslavement throughout the Indies). For a classic account of the process of racialization from the perspective of the enslaved, see QUOBNA OTTOBAH CUGOANO, *THOUGHTS AND SENTIMENTS ON THE EVIL OF SLAVERY* 9–16 (Penguin Books 1999) (1787).

5. See, e.g., 1 JEAN COMAROFF & JOHN COMAROFF, *OF REVELATION AND REVOLUTION: CHRISTIANITY, COLONIALISM, AND CONSCIOUSNESS IN SOUTH AFRICA* 1–6 (1991) (describing how the “colonial encounter” involves “modes of transformation and argument”); 2 JOHN L. COMAROFF & JEAN COMAROFF, *OF REVELATION AND REVOLUTION: THE DIALECTICS OF MODERNITY ON A SOUTH AFRICAN FRONTIER* 5–7 (1997) (summarizing dialectical social relational affects across settling Europeans and indigenous African peoples).

6. For discussions of Africana thought, see generally LEWIS R. GORDON, *BLACK EXISTENTIALISM AND DECOLONIZING KNOWLEDGE: WRITINGS OF LEWIS R. GORDON* (Rozena Maart et al. eds., 2023) [hereinafter GORDON, *BLACK EXISTENTIALISM*]. For specifically Africana philosophy, see generally LEWIS R. GORDON, *AN INTRODUCTION TO AFRICANA PHILOSOPHY* (2008) [hereinafter GORDON, *AN INTRODUCTION TO AFRICANA PHILOSOPHY*].

7. GORDON, *AN INTRODUCTION TO AFRICANA PHILOSOPHY*, *supra* note 6, at 18, 158–59. For discussion of what it means to be “blackened,” see GORDON, *supra* note 2, at 39–53 and LEWIS R. GORDON, *BAD FAITH AND ANTIBLACK RACISM* 97–103 (1995). It was once commonplace to use the “n”-word to refer to varieties of colonized peoples of color in the British Empire. See, e.g., E.M. FORSTER, *A PASSAGE TO INDIA* 181, 216, 235 (1924).

8. In South Asia, there is the complicated history of precolonial hierarchies followed by Euromodern colonialism. For elaboration, see, for example, V.T. RAJSHEKAR, *DALIT: THE BLACK UNTOUCHABLES OF INDIA* 43–44 (3d ed. 1995) (referring to Dalits as “Black Untouchables”); D. Laura Dameris Chellajothi, *Contestation of Intra-structural Power Shifts in the Categories of Race and Caste/Class in Maya Angelou and Bama*, in *RECONSIDERING SOCIAL IDENTIFICATION: RACE, GENDER, CLASS AND CASTE* 281, 282–92 (Abdul R. JanMohamed ed., 2011); Meena Dhanda, *Collective Action Against Graded Inequality: Lessons from Ambedkar and Sartre*, 2 *PHIL. & GLOB. AFFS.* 254, 255–61 (2022); and Meena Dhanda, *The Concurrence of Anti-Racism and Anti-Casteism*, 93 *POL. Q.* 478, 480 (2022). Also, for the

is made so specific that whole continents of black peoples—as is evident in Africa—are erased simply by virtue of not, say, having been kidnapped, subjected to the transatlantic Middle Passage, enslaved, and, even more specifically, Christianized.<sup>9</sup> There are also complicated stories of blackenings in the West Asian peninsula known as “Europe” with which to contend—for example, the racialization of Circassians.<sup>10</sup> There was, however, enslavement without racialization in West Asian or European history; theorists who equate blackness with enslavement should consider the etymological roots of “slave” in the people who became known in Central Asia/Eastern Europe as “Slavs.”<sup>11</sup>

These complexities affect legal interpretations, since the legal systems and rationalizations of enslavers varied from those of, say, common law to code law to those premised on early theological decrees from “Christendom” to caliphates.<sup>12</sup> For purposes of specificity, this reflection will focus on the Anglophone context, in which conceptions of law are mediated by a dialectic between common law and positivist law (or law determined by fiat of an executive, legislative,

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complex interplay of African Indians and Indian Africans, see generally SAYAN DEY, *PERFORMING MEMORIES AND WEAVING ARCHIVES: CREOLIZED CULTURES ACROSS THE INDIAN OCEAN* (2024). For Oceania, see, for example, *THE POLITICS OF IDENTITY: EMERGING INDIGENEITY* (Michelle Harris et al. eds., 2013) (using “Aboriginal” and “Black” interchangeably).

9. These are dominant tropes of U.S. Afropessimism. For discussion and critique, see GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION*, *supra* note 4, at 73–83, 87. Paul Finkelman writes that “another justification for the African slave trade was that it brought Christianity to Africans.” Paul Finkelman, *Slavery in the United States: Persons or Property?*, in *THE LEGAL UNDERSTANDING OF SLAVERY: FROM THE HISTORICAL TO THE CONTEMPORARY* 105, 112 (Jean Allain ed., 2012). Of course, this is more a rationalization than a justification because Christianity in Africa, from Egypt through Ethiopia, preceded the transatlantic slave trade. See *infra* Section I.A.

10. See, e.g., Sarah Lewis, *The Hidden Past of Sochi*, NEW YORKER (Feb. 19, 2014), <https://www.newyorker.com/culture/culture-desk/the-hidden-past-of-sochi> (discussing racialized perceptions of Circassians from the Caucasus Mountains during the American Civil War).

11. For elaboration, see GORDON, *supra* note 2, at 213, and for a recent panoramic discussion of enslavement, see GORDON, *STATELESSNESS AND CONTEMPORARY ENSLAVEMENT*, *supra* note 4, at 5–13. See generally Madina Tlostanova, *How “Caucasians” Became “Black”: Imperial Difference and the Symbolization of Race*, 16 *PERSONALITY. CULTURE. SOC’Y* 96 (2014) (exploring the “manipulative nature of racial taxonomies” by analyzing changing conceptions of Caucasians). The etymology of the word “slave,” from the large number of Slavs forced into bondage in antiquity, is well-known among classicists and theorists of enslavement; see, for a summary, its entry in the Online Etymology Dictionary. Douglas Harper, *Slave*, *ONLINE ETYMOLOGY DICTIONARY* (Dec. 21, 2022), <https://www.etymonline.com/word/slave> [<https://perma.cc/BC4J-AXTF>].

12. For overviews and analyses, see generally *THE LEGAL UNDERSTANDING OF SLAVERY*, *supra* note 9. For the Islamic context, see Bernard K. Freamon, *Definitions and Conceptions of Slave Ownership in Islamic Law*, in *THE LEGAL UNDERSTANDING OF SLAVERY*, *supra* note 9, at 40, 40–60. For discussion of common law in the U.S. context alongside the Louisiana Code law formulations, see section two from that collection, “The American Experience: Blurred Boundaries of Slavery,” especially Finkelman, *supra* note 9, at 105–34, and Rebecca J. Scott, *Under Color of Law: Siliadin v. France and the Dynamics of Enslavement in Historical Perspective*, in *THE LEGAL UNDERSTANDING OF SLAVERY*, *supra* note 9, at 152, 152–64.

or official administrative body).<sup>13</sup> These, of course, have a history of their own rationalizations from appeals to so-called divine law to so-called natural law.<sup>14</sup> An irony of such metaphysical assumptions is that legitimation through the divine and the natural often follows the logic of theodicy. The term “theodicy” is a conjunction of the Greek words *theos* (god) and *dikē* (justice) that addresses the supposed compatibility of the divine’s presence in a seemingly unjust world.<sup>15</sup> The rationalization took at least two forms. The first was that the god’s will was beyond our comprehension, which made injustice an expression of human limitation.<sup>16</sup> The other was that the benevolence of the god granted human beings freedom, which made the deity not responsible for human actions.<sup>17</sup> In sum, the god’s perfection is preserved. Theodicean logic appeals to the intrinsic goodness and absolute power of the god. If we apply this logic to a legal system, the conclusion is that any contradiction of its goodness stands *outside* of it. This amounts to adherents perceiving or at least appealing to the system as intrinsically good. Anglo-legal rationalizations are not immune to this fallacy, as history has shown through judicial interpretations in which the basic goodness and justice of the system is presumed, whether it be the American, Canadian, Australian, or South African (post-apartheid) constitutions, among many others.<sup>18</sup> In the U.S. context, the presumption of intrinsic goodness is so strong that even the country’s most

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13. See, e.g., Joel Feinberg & Hyman Gross, *Introduction to PHILOSOPHY OF LAW* 1, 2–5 (Joel Feinberg & Hyman Gross eds., Wadsworth 2d ed. 1980) (1975); Thomas Aquinas, *Concerning the Nature of Law*, in *PHILOSOPHY OF LAW*, *supra*, at 11, 11–23; DAVID A. REIDY, *ON THE PHILOSOPHY OF LAW* 3–5 (2007); RONALD DWORKIN, *LAW’S EMPIRE* 99, 276–312 (1986).

14. See Feinberg & Gross, *supra* note 13, at 2–5; REIDY, *supra* note 13, at 44–80.

15. For a succinct etymology of “theodicy,” see its entry in the Online Etymology Dictionary. Douglas Harper, *Theodicy*, ONLINE ETYMOLOGY DICTIONARY (March 14, 2024), <https://www.etymonline.com/word/theodicy> [<https://perma.cc/B3C7-KLJW>]. For a discussion in the context of the law, philosophy, and politics, see Lewis R. Gordon, *Philosophical Anthropology, Race, and the Political Economy of Disenfranchisement*, 36 COLUM. HUM. RTS. L. REV. 145, 148–53 (2004) and GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION*, *supra* note 4, at 84–85.

16. Gordon, *supra* note 15, at 150.

17. *Id.*

18. The argument is that constitutions presuppose a basic structure of shared norms and that the institutions they generate reflect that structure. That is the basic premise of social contract theory, whose preeminent proponent in recent times was John Rawls. See JOHN RAWLS, *A THEORY OF JUSTICE* 10 (Belknap Press rev. ed. 1999) (1971). What, however, if the shared norms of the people who produced the constitution were classist, racist, and sexist? This is the critique posed by Carole Pateman and Charles W. Mills, who discuss constitutionalism in both Australia and the United States. See CAROLE PATEMAN & CHARLES W. MILLS, *CONTRACT AND DOMINATION* 35–78, 79–105 (2007). Others discuss constitutionalism in other contexts. See John L. Comaroff & Jean Comaroff, *Law and Disorder in the Postcolony: An Introduction*, in *LAW AND DISORDER IN THE POSTCOLONY* 1, 24–25 (Jean Comaroff & John L. Comaroff eds., 2006) (discussing South African constitutionalism); GLEN SEAN COULTHARD, *RED SKIN, WHITE MASKS: REJECTING THE COLONIAL POLITICS OF RECOGNITION* 2, 20–21 (2014) (discussing Canadian constitutionalism). See generally JAMES TULLY, *STRANGE MULTIPLICITY: CONSTITUTIONALISM IN AN AGE OF DIVERSITY* (1995) (discussing Canadian constitutionalism in relation to the diversity of modern societies). Rawls adds in his formulation the requirement that the people *forming* the basic structure should have as much equality and fairness as possible, which he calls the “principle of participation.” RAWLS, *supra*, at 194–95. A tension is raised, however, with the inevitable problem of judicial review in constitutional democracies. For a critical discussion, see REIDY, *supra* note 13, at 112–50.

renowned political philosophers and political theorists, the late John Rawls being the most eminent, sought justice in the “basic structure,” which included the legal institutions of U.S. society.<sup>19</sup> There were, of course, jurists, philosophers, and political theorists who thought otherwise. That many were Black, such as Martin Delany,<sup>20</sup> W.E.B. Du Bois,<sup>21</sup> Charles Hamilton Houston,<sup>22</sup> William Patterson,<sup>23</sup> Paul Robeson,<sup>24</sup> and Bayard Rustin,<sup>25</sup> or Native American, such as Vine Deloria, Jr.,<sup>26</sup> Sarah Deer,<sup>27</sup> and Glen Coulthard,<sup>28</sup> reveals a system that tends to fall short for African Americans and Native Americans.<sup>29</sup> For them, there is a flawed deep structure at the founding of a legal system that centers enslavement, inequality, exploitation, racism, land theft, and the expulsion of Indigenous peoples at the heart of its juridical aspirations. Appealing to that deep structure as ultimately just is, even in avowed liberal form, conservative and contradictory. Instead, those critics in effect appeal to other sources of authority, which some legal

19. RAWLS, *supra* note 18, at xii, 3, 6–10, 48, 50, 61, 194, 231. For discussion of theodicy and secularized theodicean arguments, as well as a critique of the presuppositions of the Rawlsian and similar frameworks of what Rawls calls a “well-ordered society,” see, for example, *id.* at 397–405 and GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 38–49.

20. See, e.g., Martin R. Delany, Political Destiny of the Colored Race on the American Continent, Address Before the National Emigration Convention of Colored People (Aug. 24–26, 1854) (transcript available at <https://cuny.manifoldapp.org/read/791be92eee02438c1739ccb70fe39906/section/9b25f4da-5cbd-4208-bec4-cdb2542d5441> [<https://perma.cc/A2KZ-XXSL>]).

21. See generally, e.g., W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA (First Free Press 1998) (1935) [hereinafter DU BOIS, BLACK RECONSTRUCTION]; W.E.B. DU BOIS, THE AUTOBIOGRAPHY OF W.E.B. DU BOIS: A SOLILOQUY ON VIEWING MY LIFE FROM THE LAST DECADE OF ITS FIRST CENTURY (Herbert Aptheker ed., 1968).

22. See, e.g., Charles H. Houston, *The Need for Negro Lawyers*, 4 J. NEGRO EDUC. 49, 49 (1935); Charles H. Houston, *Educational Inequalities Must Go!*, 42 CRISIS 300, 301 (1935); Charles H. Houston, *Cracking Closed University Doors*, 42 CRISIS 364, 364 (1935); Charles H. Houston, *Senator Glass Aided School Inequalities*, 43 CRISIS 15, 15 (1936). Charles Hamilton Houston also wrote a series for the *Pittsburgh Courier* between July 20 and October 12, 1940, discussing the experiences of Black soldiers in the U.S. armed forces. See, e.g., Charles H. Houston, *Saving the World for Democracy*, PITT. COURIER, July 20, 1940, at 13.

23. See, e.g., William L. Patterson, *Introduction to WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE*, at xi, xi–xiii (William L. Patterson ed., 1951). Patterson’s introduction is also available online at (1951) *We Charge Genocide*, BLACKPAST.ORG (July 15, 2011), <https://www.blackpast.org/global-african-history/primary-documents-global-african-history/we-charge-genocide-historic-petition-united-nations-relief-crime-united-states-government-against/> [<https://perma.cc/BNK8-7V55>].

24. See, e.g., PAUL ROBESON, HERE I STAND 9–13 (1958).

25. See generally, e.g., BAYARD RUSTIN, I MUST RESIST: BAYARD RUSTIN’S LIFE IN LETTERS (Michael G. Long ed., 2012).

26. See generally, e.g., VINE DELORIA, JR., CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO (1969) (exploring race relations between Indians and whites in America).

27. See generally, e.g., SARAH DEER, THE BEGINNING AND END OF RAPE: CONFRONTING SEXUAL VIOLENCE IN NATIVE AMERICA (2015) (discussing the necessity of legal protections for Native women).

28. See generally, e.g., COULTHARD, *supra* note 18 (critiquing the “politics of recognition” as insufficiently decolonizing).

29. See GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 33–54 (describing the inadequacy of Western normative systems). For an elaboration with a specifically Afrofuturist focus, see generally ALEX ZAMALIN, BLACK UTOPIA: THE HISTORY OF AN IDEA FROM BLACK NATIONALISM TO AFROFUTURISM (2019).

theorists, from Frederick G. McKean in the early twentieth century to Drucilla Cornell in recent times, prefer to call “the law of laws”—in other words, that which brings authority and legitimacy to law beyond mere sovereignty.<sup>30</sup>

To understand the source of these critiques, there are some theoretical resources from Africana philosophy, particularly its Black existential variety, that illuminate discussions of Afrofuturity.

## I. AFRICANA PHILOSOPHY AND BLACK EXISTENTIALISM

### A. RACIALIZATION AND THEONATURALISM

Africana philosophy addresses critical concerns wrought by the emergence of the African diaspora.<sup>31</sup> This entails not only understanding the specificity of both African peoples and their diasporic counterparts but also the reality of the latter being marked entirely black.<sup>32</sup> Although colonialism imposed blackness on African peoples in Africa, their overwhelming numbers on the continent afforded ongoing, living cultural practices beyond the times of high Euromodern colonialism—roughly, from the nineteenth through to the mid-twentieth century.<sup>33</sup> The early period—from roughly the fifteenth century—is often overshadowed by the logic of colonialism, which we shall here call “coloniality,” which distorts its own history with presuppositions of Europeans being the sole agents of history.<sup>34</sup> Among the distortions in the Euromodern context are asymmetrical structures wherein the impact of Africa on what became known as “Europe” is

30. Frederick G. McKean, Jr., *The Law of Laws*, 78 U. PA. L. REV. 950, 957, 961 (1930); see, e.g., DRUCILLA CORNELL, *LAW AND REVOLUTION IN SOUTH AFRICA: UBUNTU, DIGNITY, AND THE STRUGGLE FOR CONSTITUTIONAL TRANSFORMATION* 14–15 (2014); Drucilla Cornell & Nyoko Muvangua, *Introduction to UBUNTU AND THE LAW: AFRICAN IDEALS AND POSTAPARTHEID JURISPRUDENCE* 1, 11 (Drucilla Cornell & Nyoko Muvangua eds., 2012).

31. See GORDON, *AN INTRODUCTION TO AFRICANA PHILOSOPHY*, *supra* note 6, at 1; LEWIS R. GORDON, *EXISTENTIA AFRICANA: UNDERSTANDING AFRICANA EXISTENTIAL THOUGHT* 1–6 (2000).

32. See GORDON, *supra* note 2, at 52; GORDON, *BLACK EXISTENTIALISM*, *supra* note 6, at 128–29, 215.

33. The continent of Africa now has fifty-four countries and several thousand ethnicities with over 2,000 languages. See *People of Africa*, BRITANNICA (Dec. 20, 2022), <https://www.britannica.com/place/Africa/People> [<https://perma.cc/Q67T-QGUR>]; *Number of Living Languages in Africa as of 2022, by Country*, STATISTA (July 18, 2023), <https://www.statista.com/statistics/1280625/number-of-living-languages-in-africa-by-country/> [<https://perma.cc/4JSE-PAQ6>]. Similarly, many studies support this observation. They range from EDWARD WILMOT BLYDEN, *AFRICAN LIFE AND CUSTOMS* (1908) (describing African family structures) to NKIRU UWECHIA NZEGWU, *FAMILY MATTERS: FEMINIST CONCEPTS IN AFRICAN PHILOSOPHY OF CULTURE* (2006) (same); OYÉRŌNKÉ OYÉWŪMÍ, *THE INVENTION OF WOMEN: MAKING AN AFRICAN SENSE OF WESTERN GENDER DISCOURSES* (1997) (describing Yorùbá gender structures); and OYÉRŌNKÉ OYÉWŪMÍ, *WHAT GENDER IS MOTHERHOOD?: CHANGING YORÙBÁ IDEALS OF POWER, PROCREATION, AND IDENTITY IN THE AGE OF MODERNITY* (2016) (same). For a large collection of critical discussions of African frameworks of philosophical critique from across the African continent, see generally *A COMPANION TO AFRICAN PHILOSOPHY* (Kwasi Wiredu ed., 2004).

34. For an elaboration of coloniality, see CATHERINE E. WALSH, *RISE UP, LIVING ON: RE-EXISTENCES, SOWINGS, AND DECOLONIAL CRACKS* 1–10 (2023); cf. GORDON, *supra* note 2, at 6–7, 13–14, 34–35 (providing critical discussions of European presuppositions of being the sole agents of history).

erased.<sup>35</sup> For example, that African political leaders, merchants, and scholars have long traveled into the West Asian peninsula that became known as “Europe”<sup>36</sup> demands an analysis of the transformed geopolitical misrepresentations inaugurated since the fifteenth century.<sup>37</sup> Those circumstances transformed Christendom, with its concomitant theocratic legal systems, into a place that became, in effect, the homeland for a new “race” of people—namely, “whites.”<sup>38</sup> Prior to the conquest of the Americas and the emergence of the transatlantic enslavement of Africans, there was no reason for the many ethnic groups of that West Asian peninsula to refer to themselves in a racially supervening term, although there were groups at different periods who used color terms, including those that could be translated as “white,” to describe the skin of various peoples.<sup>39</sup> There were, after all, albinos, and if not such, at least large groups of pale-skinned

35. On Africa’s influence on Europe, see sources cited *supra* note 5; see also GORDON, *supra* note 2, at 79, 90–92, 137–38, 138 & n.16; GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 1–4.

36. The most popular examples are the Moors in Southern Europe. See generally GOLDEN AGE OF THE MOOR (Ivan Van Sertima ed., Transaction Publishers 2d ed. rev. 2004) (1992); Dep’t of the Arts of Afr., Oceania & the Ams., *The Trans-Saharan Gold Trade (7th–14th Century)*, MET (Oct. 2000), [https://www.metmuseum.org/toah/hd/gold/hd\\_gold.htm](https://www.metmuseum.org/toah/hd/gold/hd_gold.htm) [<https://perma.cc/7UQQ-XVQ8>] (discussing gold trade across the Sahara). For a study of Blacks in northern areas such as England, see generally ONYEKA NUBIA, ENGLAND’S OTHER COUNTRYMEN: BLACK TUDOR SOCIETY (2019). Going back little more than 8,000 years ago, there were no light-skinned or what we now call white people in Europe, which meant the transition to eventually being majority light-skinned must have gone from a period of majority dark-skinned. See Ann Gibbons, *How Europeans Evolved White Skin*, SCIENCE (Apr. 2, 2015), <https://www.science.org/content/article/how-europeans-evolved-white-skin> [<https://perma.cc/MX2R-WZXH>]; see also Ann Gibbons, *New Gene Variants Reveal the Evolution of Human Skin Color*, SCIENCE (Oct. 12, 2017), <https://www.science.org/content/article/new-gene-variants-reveal-evolution-human-skin-color> [<https://perma.cc/BU95-XP8T>]. The upshot is that dark-skinned peoples from Africa, albeit eventually a small minority, were never entirely absent from what is today known as Europe.

37. The existence of these misrepresentations is old news among Africana scholars. See, e.g., JOSEPH E. HARRIS, *AFRICANS AND THEIR HISTORY* 26–69 (1972); CHARLES S. FINCH III, *ECHOES OF THE OLD DARKLAND: THEMES FROM THE AFRICAN EDEN* 131–34 (1991). See generally, e.g., ANTÉNOR FIRMIN, *THE EQUALITY OF THE HUMAN RACES* (Asselin Charles trans., Univ. of Ill. Press 2002) (1885); W.E.B. DU BOIS, *THE WORLD AND AFRICA: AN INQUIRY INTO THE PART WHICH AFRICA HAS PLAYED IN WORLD HISTORY* (Henry Louis Gates, Jr. ed., Oxford Univ. Press 2007) (1947); *THE ARCHAEOLOGY OF AFRICA: FOOD, METALS AND TOWNS* (Thurstan Shaw et al. eds., 1993). And, of course, outside of the framework of Africana scholarship, see DAVID GRAEBER & DAVID WENGROW, *THE DAWN OF EVERYTHING: A NEW HISTORY OF HUMANITY* 1–26 (2021).

38. See GORDON, *supra* note 2, at 39–53, 73–101, in which I elaborate on the historical and conceptual processes of racialization. Additionally, *THE IDEA OF RACE* (Robert Bernasconi & Tommy L. Lott eds., 2000) offers a collection of primary sources from the seventeenth-century physician François Bernier to the nineteenth-century eugenicist Francis Galton in which race was conceptualized and advanced as a scientific division of humankind. See François Bernier, *A New Division of the Earth*, in *THE IDEA OF RACE*, *supra*, at 1, 1–4; Francis Galton, *Eugenics: Its Definition, Scope and Aims*, in *THE IDEA OF RACE*, *supra*, at 79, 79–83; cf. CEDRIC J. ROBINSON, *AN ANTHROPOLOGY OF MARXISM* 33 (2001) (describing the creation of “Europe”). See generally NELL IRVIN PAINTER, *THE HISTORY OF WHITE PEOPLE* (2010); THEODORE W. ALLEN, *1 THE INVENTION OF THE WHITE RACE: RACIAL OPPRESSION AND SOCIAL CONTROL* (2d ed. 2012).

39. Think, for example, of λευκόχρως (*leukochrōs*, “white color”) among the ancient Greeks, *albus* (physical whiteness) and *candidus* (white as in bright, clear, transparent) among the ancient Romans. The classic work on classical ancient views of skin color before the emergence of racialization is by Frank M. Snowden, Jr. See generally FRANK M. SNOWDEN, JR., *BEFORE COLOR PREJUDICE: THE*



peoples in various northern areas since about 8,000 years ago.<sup>40</sup> But such designations were not properly *racial*.<sup>41</sup>

Racialization was linked to varieties of converging processes.<sup>42</sup> Processes that led to racialization in the Indus Valley were different from those in the Mediterranean, which was from the fourth until the seventh century of the common era the stronghold of Christianity.<sup>43</sup> The rise of Islam and its quick spread through caliphates led to an identity among the people of Christendom as fighting, through the Crusades, for what their religion of ultimate judgment and destiny of humankind demanded: their ultimate victory in the eyes of the divine, which, for them, was not separate from what was subsequently called “nature.”<sup>44</sup> This was a form of “theological naturalism,” which afforded legitimacy and the rights both of and to existence to those who were within the realm of the divine and denied them to those who were outside.<sup>45</sup> The metaphysics of this logic is

ANCIENT VIEW OF BLACKS (1983); FRANK M. SNOWDEN, JR., BLACKS IN ANTIQUITY: ETHIOPIANS IN THE GRECO-ROMAN EXPERIENCE (1970).

40. See, e.g., *Genes Responsible for Diversity of Human Skin Colors Identified*, SCIENCE DAILY (Oct. 12, 2017), <https://www.sciencedaily.com/releases/2017/10/171012143324.htm> [<https://perma.cc/MT2W-UGTD>]; Olivia Goldhill, *How Europeans Became Tall and Fair-Skinned 8,500 Years Ago*, QUARTZ (Nov. 28, 2015), <https://qz.com/561034/how-europeans-became-tall-and-fair-skinned-8500-years-ago/> [<https://perma.cc/BYB3-84TY>].

41. See GORDON, *supra* note 2, at 90–101.

42. See generally *id.* (exploring the development of blackness through political, cultural, and historical frameworks).

43. The question of racialization in the ancient Indus Valley is debatable, since one could argue that belonging and not-belonging in Hindu categories do not have the same meaning as Euromodern racism, although the outcome of subordinated groups follows in both. V.T. Rajshekar argues, however, that racism is present in content if not in name. See RAJSHEKAR, *supra* note 8, at 37 (“The outside world hardly knows that in India there is a 3,000 year-old problem called Untouchability.”); *id.* at 62 (“Nietzsche, Max Mueller, etc., have acknowledged that they borrowed their race theory from the sacred scriptures of the Aryan Brahmins. *Adolf Hitler only implemented the Aryan race theory.* Herein lies the secret of Brahmin admiration for Hitler. . . . Aryans [are] the founders of this Fascist theory of ‘purity of blood’ . . . .” (footnotes omitted)). Suraj Yengde appeals to the distinction between similarity and sameness. Suraj Yengde, *Dalit in Black America: Race, Caste, and the Making of Dalit-Black Archives*, 35 PUB. CULTURE 21, 22–23 (2023) (“The question for the Dalit-Black story is how to frame solidarities without shared histories. These peoples are not bound through any statute of common origins or any shared presence in the holy books. No testimony from the past validates their shared humanity. Yet such solidarities . . . become like forms of kinship sustained by individual resistances, common traumas, and a shared and frightening future.”). To all this, we could add: despite different histories, the past few hundred years have the shared elements of Euromodern colonialism and its concomitant racism, especially in bureaucratic processes such as the British Census in India. See Barbara Celarent, 116 AM. J. SOCIO. 1713, 1716 (2011) (reviewing G.S. GHURYE, *CASTE AND RACE IN INDIA* (1932)). Whether “race” or जाति (“*jaati*,” which could also be translated as “breed,” but works its way into English through Portuguese as “caste”), the *varna* (character or social class, of which in Hinduism there were traditionally four *varnas*) will, as with other concepts, exemplify contemporary political forms of intelligibility, whether as caste–race or race–caste or something beyond that fusion. See *id.* at 1716; Douglas Harper, *Caste*, ONLINE ETYMOLOGY DICTIONARY (Nov. 12, 2022), <https://www.etymonline.com/word/caste> [<https://perma.cc/5WPH-3FXF>]. See generally RAJSHEKAR, *supra* note 8; B.R. AMBEDKAR, *ANNIHILATION OF CASTE* (S. Anand ed., Verso 2016) (1936).

44. GORDON, *supra* note 2, at 78–83 (elaborating on theonaturalism and the aim of “the annihilation of all things not Christian”).

45. For discussion of “theological naturalism,” see GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION*, *supra* note 4, at 85–89.

faulty, to say the least, for how can there be a coherent “outside” of an omnipotent and omniscient Creator? If all that is natural is that which is created by the god, wouldn’t those supposedly “outside” be existents without the right of existence in the first place? If they were a mistake, then the deity would be flawed. If they are not a mistake, then they would be natural. If they were naturally inferior, how could Christendom account for a good portion of its southern regions being under non-Christian (Rashidun, Umayyad, Abbasid, and Almohad) rule?<sup>46</sup> Christendom was able to govern up to the borders of what is today southern France, and the mixed African and Middle Eastern Islamic peoples known as the Moors transformed much of the Iberian Peninsula into Andalusia and dominated Mediterranean commerce for the next 800 years.<sup>47</sup> Throughout those historical developments, Christians, Jews, and Muslims mixed with one another culturally and sexually, despite Christianity’s obsession with purity. Among the many conceptual developments was the notion of *raza*, which referred to breeds of dogs and horses and, in a strange categorization in the series, Jews and Moors.<sup>48</sup> The term is a variation on the Arabic *ra’*, which is related to the Hebrew *rosh*, which in turn is related to the ancient Mdw Ntr *ra* (pronounced “ray”).<sup>49</sup> To understand the connection, *ra* referred to the ancient Kmt/Egyptian sun god, which rose in the East.<sup>50</sup> In those ancient societies, one turned southward to look “up,” which meant the sun rose from the left.<sup>51</sup> As the rising sun is the beginning of the day,

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46. See, e.g., ROBINSON, *supra* note 38, at 35 (noting a historian who “argued that the Dark Ages were characterized by Islamic control over the seats of civilization”); MATTHEW GABRIELE & DAVID M. PERRY, *THE BRIGHT AGES: A NEW HISTORY OF MEDIEVAL EUROPE* 136–37, 150–56 (2021). For a succinct summary of these Islamic empires, see *Major Empires and Dynasties of the Islamic World: Important Facts and Events*, MET, <https://www.metmuseum.org/learn/educators/curriculum-resources/art-of-the-islamic-world/introduction/chronology> [<https://perma.cc/MSY3-SW9A>] (last visited May 13, 2024) and *Rashidun*, BRITANNICA, <https://www.britannica.com/topic/Rashidun> [<https://perma.cc/7TPF-ZFHS>] (last visited May 13, 2024).

47. See GORDON, *supra* note 2, at 77–80; ROBINSON, *supra* note 38, at 33–35; Erin Blakemore, *Who Were the Moors?*, NAT’L GEOGRAPHIC: HIST. & CULTURE (Dec. 12, 2019), <https://www.nationalgeographic.com/history/article/who-were-moors> [<https://perma.cc/4N5C-HWS9>]. See generally GOLDEN AGE OF THE MOOR, *supra* note 36.

48. As related by Sebastián de Covarrubias, a lexicographer, cryptographer, and priest from the sixteenth century, *raza* properly referred to “the caste of purebred horses, which are marked by a brand so that they can be recognized. . . . Raza in lineages is meant negatively, as in having some raza of Moor or Jew.” GORDON, *supra* note 2, at 77. For an excellent discussion, see David Nirenberg, *Race and the Middle Ages: The Case of Spain and Its Jews*, in *REREADING THE BLACK LEGEND: THE DISCOURSES OF RELIGIOUS AND RACIAL DIFFERENCE IN THE RENAISSANCE EMPIRES* 71, 71–87 (Margaret R. Greer et al. eds., 2007).

49. GORDON, *supra* note 2, at 77. For a study of the god *Ra* (also spelled *Re*), see generally ERIK HORNING, *AKHENATEN AND THE RELIGION OF LIGHT* (David Lorton trans., Cornell University Press 1999). For a succinct discussion, see *11 Egyptian Gods and Goddesses*, BRITANNICA, <https://www.britannica.com/list/11-egyptian-gods-and-goddesses> [<https://perma.cc/6SS3-YKB7>] (last visited May 13, 2024).

50. GORDON, *supra* note 2, at 77–78.

51. See, e.g., Jeff Burzacott, *Ancient Egypt in One Amazing View*, NILE MAG. (July 25, 2015), <https://www.nilemagazine.com.au/2015-july-1/2015/7/25/ancient-egypt-in-one-amazing-view> [<https://perma.cc/5RYS-8ULH>]; Mike Sowden, *Why Egypt Is Upside-Down (And Why ‘North’ Is All in Our Heads)*, WHEEL & ANCHOR (July 1, 2022), <https://www.wheelandanchor.ca/2022/07/why-egypt-is-upside-down-and-why-north-is-all-in-our-heads/> [<https://perma.cc/UA9A-G9M9>]. To see an example, consult

the term also had connotations with origins, beginning, and head.<sup>52</sup> Think of, in Hebrew, Rosh Hashanah, the “beginning” of the year or “head” of the year.<sup>53</sup> Thus, Christendom on the northern side of the Mediterranean was using a term to refer to people who came both from the south and the east. What is crucial is that it was also metonymic for *not* Christian, even though there were historically African Christians since the beginnings of Christianity, as the Church Fathers Augustine, Origen, and Tertullian, as well as the Coptic Orthodox Church, dating back to 42 ACE, attest.<sup>54</sup> Again, we are dealing with contradictory reasoning.

As Christians were “inside” the eyes of the divine, the non-Christians were outside. The difficulty was that 800 years of mixing made some cases of determining who was inside and who was outside merely on the basis of physical appearance difficult. The defeat of the Moors in Grenada in 1492 inaugurated a new period of inquisitions and conflicts that took to the Atlantic, wherein Columbus and his crewmen landed in the Bahamas in 1492.<sup>55</sup> Prepared with the concept of *raza*, they expected to meet Jews and Moors. Columbus’s crew met people who were neither Christians, Jews, nor Moors, and they had to expand the concept. The rest is history.<sup>56</sup>

The reader may wonder about this historical detour. Among the many concepts the enslaved brought with them from Africa was their understanding of how the past related to the future. Among those from the Akan regions (present-day Ghana), this included the concept of *Sankofa*.<sup>57</sup> The term, which is of high relevance to Afrofuturism, is about the importance of retrieving important information from the past to facilitate moving to the future.<sup>58</sup> The Adinkra symbol for the

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the “Map of the Cosmos” from 664–332 BCE, found in the Yale Map Collection, Accession Number \*61. Colleen Manassa, *Map of the Cosmos*, ECHOES EGYPT: PEABODY MUSEUM OF NAT. HIST., <https://echoesofegypt.peabody.yale.edu/overview/map-cosmos> [<https://perma.cc/M9TY-2SVR>] (last visited May 13, 2024). Notice the Pharaoh and others facing the rising sun on the left.

52. See GORDON, *supra* note 2, at 77–78.

53. See Erin Blakemore, *A Brief History of Rosh Hashanah, the Kickoff to the Jewish New Year*, NAT’L GEOGRAPHIC: HIST. & CULTURE (Sept. 16, 2022), <https://www.nationalgeographic.com/history/article/history-traditions-rosh-hashanah> [<https://perma.cc/PEB8-F22A>].

54. See D. A. Masolo, *African Philosophers in the Greco-Roman Era*, in *A COMPANION TO AFRICAN PHILOSOPHY*, *supra* note 33, at 50, 50–65; *Factbox: Who Are Egypt’s Coptic Christians?*, REUTERS (Apr. 28, 2017, 3:42 AM), <https://www.reuters.com/article/idUSKBN17U0WR/> [<https://perma.cc/TPY7-MTNS>].

55. GORDON, *supra* note 2, at 13, 57, 78–80; GORDON, *AN INTRODUCTION TO AFRICANA PHILOSOPHY*, *supra* note 6, at 4, 16–17, 21–22; *cf.* ROBINSON, *supra* note 38, at 33–35 (discussing economic challenges Muslim control of the Mediterranean posed for Christian commerce, which was one of the impetuses for Columbus’s voyage). For an eyewitness’s critique of those events from that period, see NICCOLÒ MACHIAVELLI, *THE PRINCE* 76 (Peter Bondanella ed. & trans., Oxford Univ. Press 2005) (1532).

56. For elaboration of the history of *raza* and the formation of race in the Iberian context, see GORDON, *supra* note 2, at 77–83.

57. For discussions of this concept, see NATHALIE ETOKE, *MELANCHOLIA AFRICANA: THE INDISPENSABLE OVERCOMING OF THE BLACK CONDITION* 39–40 (Bill Hamlett trans., Rowman & Littlefield Int’l 2019) and *The Power of Sankofa: Know History*, BERA COLL., <https://www.berea.edu/centers/carter-g-woodson-center-for-interracial-education/the-power-of-sankofa> [<https://perma.cc/MQ4X-46CM>] (last visited May 13, 2024).

58. See BERA COLL., *supra* note 57.

concept is a bird whose head reaches back to retrieve an egg or a nut while walking forward.<sup>59</sup> The argument is that the past is not to be erased. It is to be understood. This involves understanding what is necessary to keep and what to leave behind. The bird was not, after all, retrieving the entire past. For the Afrofuturist, the aspects of the past to remember are those that created Black identity and whatever preceding elements facilitated black people's survival and can be foundational for Black futures.

The story of *raza* reveals that certain peoples were first racialized through theological and political processes that rationalized the intrinsic goodness or holiness of Christendom, even in its transformed, secular manifestations, as nation-states arose out of the conflicts and resolutions starting in the fifteenth century.<sup>60</sup> Among them was the inauguration of globalized mercantilism that eventually became the capitalism now studied by economists and in whose cathedrals of business the initiated now pray or conduct commerce.<sup>61</sup> Among the commerce was the double-pronged enslavement of African peoples from the Islamic East and the Christian West.<sup>62</sup> The latter is now known as the transatlantic slave trade.<sup>63</sup> This process had an accompanying anthropology premised on *raza*, through which race was born.<sup>64</sup> In it was the stratification of human beings into hierarchies, in which Africans became "blacks," Europeans "whites," and, of course, the array of other racial designations of other peoples in the Euromodern era.<sup>65</sup>

The geographical locations of these groupings have obvious contradictions. Not all Europeans are "white," not all Africans are "black." There are also generative questions with which to deal as these designations unfold. For one thing, if we place a group of people "above" other human beings and another "below" human beings, the results are "gods," or at least "godlike" beings, above, and non- or sub-human below. This is because the elevated group still claims to be human, while adhering to godlike conceptions of themselves. There is, in other words, a performative contradiction of misanthropy at the heart of this effort of imagined superiority: perfect beings. Humanity—an incomplete, imperfect creature—must be erased, contradictorily, for humanity's sake. The psychiatrist and philosopher Frantz Fanon described this phenomenon as the attempted murder of

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59. See *id.*; *About Sankofa*, STOCKTON UNIV., <https://www.stockton.edu/sankofa/about.html> [<https://perma.cc/AA2E-Q6TG>] (last visited May 13, 2024).

60. See *supra* notes 42–56 and accompanying text.

61. See GORDON, *supra* note 2, at 83 ("A world with multiple economies and many markets was transformed into one governed by an abstraction we now know as 'the market.' That model, capitalism, has ascended to the status of a god . . . ."); GORDON, STATELESSNESS AND CONTEMPORARY ENSLAVEMENT, *supra* note 4, at 8.

62. See, e.g., GORDON, STATELESSNESS AND CONTEMPORARY ENSLAVEMENT, *supra* note 4, at 6–8.

63. The literature on this history is enormous. See, e.g., Thomas Lewis, *Transatlantic Slave Trade*, BRITANNICA (Dec. 29, 2023), [<https://perma.cc/GJ9C-Y4R9>].

64. GORDON, *supra* note 2, at 83.

65. *Id.*

humanity.<sup>66</sup> This project generates at least four problems, each of which is addressed critically in Black existentialism and Africana philosophy of blackness.

## B. FOUR PROBLEMATICS

### 1. Problematic of Humanity

The first is, given the problem of dehumanization, what does it mean to be human? This question brings to the forefront the question of philosophical anthropology. Its implications are manifold in legal study, for it attests to the *subjects* of legal authority. Even where there are avowedly no human beings involved, the question pertains to human beings' relationship to those avowed nonhuman entities. The historical reality of millions of people being transformed into "property" already has its legal implications, as well as philosophical, anthropological, and ethical ones. To become property is to be "owned."<sup>67</sup> In Anglo-property law, that means first that a person could possess another being over the course of the possessor's life or sell or give that being to another person. In effect, that means someone else could have rights over the enslaved for the life of the person with those rights, or that person could extend those rights beyond themselves to others by way of sale or gift.<sup>68</sup> This is not the only set of alienation of rights involved in enslavement, but it offers a sense of the situation, since ownership requires blocking off one's capacity to transcend the condition of being a "thing."<sup>69</sup> A human being, however, stands out from being; to do so is to exist, and to live with possibilities. The closure posed by enslavement or by being reduced to property makes those lived experiences and choices—for instance, to obey or disobey—seem futile. To make matters worse, since it is human beings who are enslaved, their enslavers must identify specifically human characteristics to be used yet denied for the purpose of reduction to property. It requires targeting a human being for dehumanization. Thus, the logic is one of a commitment to a serialized lie about the property—namely, "its" nonhumanity. To address this problem, Black existentialism and Africana philosophy of blackness raise a question that appears at first a contradiction of terms: Can someone be both Black and human? This requires interrogating both terms, which has been a longstanding project of those areas of philosophical thought.<sup>70</sup> Examining how a dehumanized group can be addressed as human requires Black existentialists and philosophers of blackness

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66. See FRANTZ FANON, *PEAU NOIRE, MASQUES BLANCS* 187 (1952) [hereinafter FANON, *PEAU NOIRE*]; FRANTZ FANON, *LES DAMNÉS DE LA TERRE* 240 (1961) [hereinafter FANON, *LES DAMNÉS DE LA TERRE*].

67. See Holly Bewer, *Creating a Common Law of Slavery for England and Its New World Empire*, 39 *LAW & HIST. REV.* 765, 768, 772–78 (2021).

68. See *id.* at 788–89, 816, 829.

69. See *id.* at 796, 816.

70. See GORDON, *supra* note 31, at 35; Gordon, *supra* note 15, at 159–60; GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION*, *supra* note 4, at 73–83. It is this supposed contradiction of being Black and human that informs what is today known as Afropessimism. See, e.g., FRANK B. WILDERSON III, *AFROPESSIMISM* 191–229 (2020). See generally, e.g., Jared Sexton, *The Social Life of Social Death: On Afro-Pessimism and Black Optimism*, 5 *INTENSIONS J.*, Fall/Winter 2011, at 1.

to go further as well into the realm of the legitimacy of laws, for if one could simply legislate or rule away people's humanity, would not law itself stand on the terrain of being "above" or "beyond" human sources and values and function as a form of abdicated truth? Isn't, in other words, there also the reality that the lived experience of the "property," as C.L.R. James in *The Black Jacobins* and, more recently, Jean Casimir in *The Haitians* show, contradicts all efforts of rationalized enslavement?<sup>71</sup>

## 2. Problematic of Freedom

The second, given the problematics of the first, demands a meditation on freedom. One cannot legislate freedom, but one could legislate the conditions of its fruition. Here there are several considerations. The first is the historic hypocrisy of how freedom was extolled in what became Euromodern philosophy and practices of state-building while its progenitures made rigorous implements of enslavement.<sup>72</sup> That produced not only duplicity in thought but also in institutional practices and their concomitant laws and rationalizations thereof. The second is the confusion between liberty and freedom. Liberty means the absence of obstacles. Freedom, however, requires more.<sup>73</sup> One could legislate away obstacles. But freedom pertains to the responsibilities one has with the liberties and options available. Moreover, freedom is socially situated in that it requires meaning. One cannot be free, for instance, under conditions in which meaningfully being so are absent. In everyday language, freedom requires a form of belonging, a form of being at home. It is linked to ancient understandings of having things, in a word, "right." It is one of the reasons why philosophers of

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71. C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION* 11–12 (2d ed. rev. 1989) (1938); JEAN CASIMIR, *THE HAITIANS: A DECOLONIAL HISTORY* 2–3 (Laurent Dubois trans., 2020); see GORDON, *STATELESSNESS AND CONTEMPORARY ENSLAVEMENT*, *supra* note 4, at 7–8.

72. See, e.g., GORDON, *STATELESSNESS AND CONTEMPORARY ENSLAVEMENT*, *supra* note 4, at 77–79; DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* 1–10 (2009).

73. See Gordon, *supra* note 15, at 153–56. This distinction, premised on moving from basic animal life into social life in which culture dominates, is formulated in mythic and philosophical literature ranging from *The Epic of Gilgamesh* and *The Eloquent Peasant* through to the succinct formulation in Confucius's *Analects* through to the first book of Jean-Jacques Rousseau's, *The Social Contract*, and plays a central role in much modern political reflection. In African thought and in Asian thought, it is about realizing human potential through social life and, by extension, building and living in healthy societies. See, e.g., CORNELL, *supra* note 30, at 1–18; JANE ANNA GORDON, *CREOLIZING POLITICAL THEORY: READING ROUSSEAU THROUGH FANON* 102, 107 (2014); MICHAEL J. MONAHAN, *CREOLIZING PRACTICES OF FREEDOM: RECOGNITION AND DISSONANCE* 155–60 (2023); MABOGO PERCY MORE, *LOOKING THROUGH PHILOSOPHY IN BLACK: MEMOIRS* 4, 53, 145 (2019); Rianna Oelofsen, *Decolonisation of the African Mind and Intellectual Landscape*, 16 *PHRONIMON* 130, 143–45 (2015) [hereinafter Oelofsen, *Decolonisation of the African Mind*]; Rianna Oelofsen, *Afro-communitarian Implications for Justice and Reconciliation*, 63 *THEORIA* 1, 15–16 (2016); MOGOBE B. RAMOSE, *AFRICAN PHILOSOPHY THROUGH UBUNTU passim* (rev. ed. 2005); MERCEDES VALMISA, *ADAPTING: A CHINESE PHILOSOPHY OF ACTION* 162–66 (2021); SHUCHEN XIANG, *CHINESE COSMOPOLITANISM: THE HISTORY AND PHILOSOPHY OF AN IDEA* 191–92 (2023); see also GORDON, *FREEDOM, JUSTICE, AND DECOLONIZATION*, *supra* note 4, at 22, 61. See generally MICHAEL NEOCOSMOS, *THINKING FREEDOM IN AFRICA: TOWARD A THEORY OF EMANCIPATORY POLITICS* (2016); ATO SEKVI-OTU, *LEFT UNIVERSALISM, AFRICACENTRIC ESSAYS* (2019).

freedom have often found themselves dealing with terms such as “getting things right” or concepts that refer to ideas of livability or living well or living an existence that is, in a word, blessed.<sup>74</sup>

### 3. Problematic of Reason

The third pertains to practices of justification. That there is no shortage of examples of academic knowledge, other forms of intellectual production, human sciences from anthropology to medicine, the arts, and legal systems devoted to rationalizing enslavement or finding ways of making its practice rigorous<sup>75</sup> leads to a crisis of reason. How can their practitioners legitimately ask the dehumanized to invest in such practices as sources of their liberation? Placed specifically in the context of Blacks, what can be done, as Fanon observed, when reason takes flight whenever the Black enters the room?<sup>76</sup> If reason is allergic to Blacks, what chance do Blacks have in situations of petitioning for reasonable outcomes? It is, as Du Bois put it in “The Study of Negro Problems” and *The Souls of Black Folk*, the problem of *being a problem*, instead of facing problems.<sup>77</sup> Addressing this problem of supposedly being a problem requires at least three considerations on the notion of problematic Blackness—one epistemic, another on reason, and a third on action.

#### *a. Epistemology*

The epistemic problem was posed by Du Bois and examined in one way or another by many in what is called the Black radical intellectual tradition.<sup>78</sup> It is

74. Discussions of this portrait are many. For recent work that contextualizes the genealogy of its unfolding and conceptions offered here, see MONAHAN, *supra* note 73, at 71–167; XIANG, *supra* note 73, at 161–89.

75. In addition to the compendium across the arts and sciences in Bernasconi and Lott’s anthology *THE IDEA OF RACE*, *supra* note 38, see, for example, the following surveys and critical studies: W.E.B. Du Bois, *The Study of the Negro Problems*, 11 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 1–23 (1898); DU BOIS, *BLACK RECONSTRUCTION*, *supra* note 21, at 39, 179–80, 381–82, 618–19, 645, 711–29. *See generally* FIRMIN, *supra* note 37; FANON, *PEAU NOIRE*, *supra* note 66; STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* (1996) (describing and countering scientific racism); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) (a critique of the legal system’s role in upholding white supremacy); MICHEL-ROLPH TROUILLOT, *GLOBAL TRANSFORMATIONS: ANTHROPOLOGY AND THE MODERN WORLD* (2003) (discussing the construction of the “savage slot” in Euromodern social science, especially anthropology); ROBERT V. GUTHRIE, *EVEN THE RAT WAS WHITE: A HISTORICAL VIEW OF PSYCHOLOGY* (Pearson Educ. 2d ed. 2004) (1976) (exploring psychology and race); LEWIS R. GORDON, *DISCIPLINARY DECADENCE: LIVING THOUGHT IN TRYING TIMES* (2006) (discussing reductive conceptions of disciplinarity that in effect dehumanize and foreclose human beings); DOROTHY ROBERTS, *FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY* (2d ed. 2012) (containing discussions of the “new” racial science, technology, and biopolitics).

76. *See* FANON, *PEAU NOIRE*, *supra* note 66, at 96. For discussion, see LEWIS R. GORDON, *WHAT FANON SAID: A PHILOSOPHICAL INTRODUCTION TO HIS LIFE AND THOUGHT* 52–59 (2015).

77. Du Bois, *supra* note 75, at 1–2; W.E. BURGHARDT DU BOIS, *THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES* 1 (1903) (“Between me and the other world there is ever an unasked question . . . How does it feel to be a problem?”). For elaboration and expanded analysis, see GORDON, *supra* note 31, at 22–40.

78. In addition to the compilation found in Bernasconi and Lott’s anthology *THE IDEA OF RACE*, *supra* note 38, see CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 242–47 (1983).

that of double consciousness. It is the phenomenon of seeing oneself through the eyes of hostile, hegemonic forces. For Black people, this means at first seeing ourselves as antiblack racists see us and living how we see ourselves. Du Bois had initially presented this problem as the conjunction in the U.S. context of being Black and American, where the latter is presumed to be, in its authentic form, “white.”<sup>79</sup> As hegemonic, whites could simply be “American.” Curiously, there is an additional third element, despite the notion of doubling. Depending on who the hegemonic population of antiblack racists are, it also involves being aware of how they see themselves. A person, a woman, a man, even a gender-nonconforming individual, in the context of white normativity, is, simply, white. Thus, not only formal learning but also presupposed terms from “citizen” to “plaintiff” would be the same except in cases of presumed negations. The abstract normal, law-abiding person is supposedly white; the criminal, the wrong-doer, black. What follows is a perversion of exceptions and rules. If a white commits a crime, it’s an exception; if a black, it’s the rule. That is among the reasons why many Blacks exhale when individuals accused of heinous crimes are revealed to be white. Yet this form of double consciousness is not the end of the epistemic story. To illustrate, the French philosopher Jean-Paul Sartre famously asked the African-American novelist Richard Wright to tell him about the “Negro problem.”<sup>80</sup>

“There is no Negro problem in the United States,” Wright replied, “there is only a white problem.”<sup>81</sup>

Wright’s insight is that the entire edifice of white supremacy was a system that afforded little room for Black people to live ordinary lives. In fact, for nearly all Black people, accomplishing that was considered an extraordinary achievement. The sociologist and philosopher Paget Henry later described this critique as “potentiated second sight.”<sup>82</sup> Instead of seeing white supremacy as a given reality, it is problematized and challenged. The political theorist Jane Anna Gordon later built on Henry’s observation and reformulated it as “potentiated double consciousness.”<sup>83</sup> That is the epistemic movement of identifying the contradictions

79. I should like to stress here my uses of “black,” “Black,” and “white.” The subsequent discussion should make this clear, but for now, “black” refers to the imposed racialized identity; “Black” refers to the movement from objects to agents who have been designated black but assert their humanity as Blacks; and “white” refers to white people. It doesn’t work with a capital form because, as we already saw, it is already presumed superior in white supremacist and antiblack societies. Thus “White” would refer to hyper-white supremacist, which would be redundant. I discuss these distinctions in GORDON, *supra* note 2. Drucilla Cornell adds to this point about whiteness as follows: “There is no such being as a ‘White person’ because *white* always carries within it a class dimension as well as ethnic divisions. The class/race divide misses the class-ridden nature of *racialized capitalism* embroiled in the fantasy of Whiteness.” DRUCILLA CORNELL, *TODAY’S STRUGGLES, TOMORROW’S REVOLUTIONS: AFRO-CARIBBEAN LIBERATORY THOUGHT*, at xix (2023).

80. RONALD HAYMAN, *SARTRE: A LIFE* 220 (1987).

81. *Id.*

82. Paget Henry, *Africana Phenomenology: Its Philosophical Implications*, in *JOURNEYS IN CARIBBEAN THOUGHT: THE PAGET HENRY READER* 27, 38 (Jane Anna Gordon et al. eds., 2016).

83. See Jane Anna Gordon, *The Gift of Double Consciousness: Some Obstacles to Grasping the Contributions of the Colonized*, in *POSTCOLONIALISM AND POLITICAL THEORY* 143, 145 (Nalini Persram



of a society that makes people into problems. That involves presenting an opposition of segregated poles, as Fanon would put it, of segregated blackness away from protected whiteness.<sup>84</sup> The legal implications of achieving this in the United States are well known not only in rulings over cases leading up to *Plessy v. Ferguson* (1896)<sup>85</sup> but also for the efforts to counteract it that culminated in *Brown v. Board of Education of Topeka I* (1954)<sup>86</sup> and *II* (1955).<sup>87</sup> That battle continued through to the civil rights legislation of the 1960s, especially the Voting Rights Act of 1965,<sup>88</sup> and continues as a coalition of conservative movements have packed the U.S. Supreme Court with Justices<sup>89</sup> ruling—as, for example, in *Brnovich v. Democratic National Committee*<sup>90</sup>—through what is nothing short of “lawfare,” on legislation to turn back the clock on such gains. According to the Lawfare Institute, “Lawfare is the misuse and abuse of law for political and military ends. It is the [conjunction] of the words law and warfare[,] for it is a legal war.”<sup>91</sup> Notice the formulation “legal war.” Jean Comaroff and John L. Comaroff explain:

Lawfare can be limited or it can reduce people to “bare life” . . . [I]t always seeks to launder brute power in a wash of legitimacy, ethics, propriety. Sometimes it is put to work, as it was in many colonial contexts, to make new sorts of human subjects; sometimes it is the vehicle by which oligarchs seize the sinews of state to further their economic ends; sometimes it is a weapon of the weak, turning authority back on itself by commissioning the sanction of the court to make claims for resources, recognition, voice, integrity, sovereignty. But ultimately, it is neither the weak nor the meek nor the marginal who predominate in such things. It is those equipped to play most potently inside the dialectic of law and disorder.<sup>92</sup>

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ed., 2007). See generally Jane Anna Gordon, *The General Will as Political Legitimacy: Disenchantment and Double Consciousness in Modern Democratic Life* (2005) (Ph.D. dissertation, University of Pennsylvania) (ProQuest).

84. See FANON, *PEAU NOIRE*, *supra* note 66, at 7, 172; FANON, *LES DAMNÉS DE LA TERRE*, *supra* note 66, at 29–33; GORDON, *supra* note 2, at 113, 150.

85. 163 U.S. 537 (1896).

86. 347 U.S. 483 (1954).

87. 349 U.S. 294 (1955).

88. Pub. L. No. 89-110, 79 Stat. 437.

89. Today’s majority of Justices are Federalist Society-approved conservatives. For a summary of this achievement, see Ron Elving, *How the Supreme Court’s Conservative Majority Came to Be*, NPR (July 1, 2023, 10:00 AM), <https://www.npr.org/2023/07/13/1185496055/supreme-court-conservative-majority-thomas-trump-bush> [<https://perma.cc/4TX4-QUN3>]. Before this achieved majority, however, there were cases such as *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), and *Shelby County v. Holder*, 570 U.S. 529 (2013). A related case, given the shared agenda of anti-affirmative action and anti-voting rights for Blacks, is the Court’s rejection of affirmative action in higher education in *Students for Fair Admissions, Inc. (SFFA) v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

90. 141 S. Ct. 2321 (2021).

91. *What Is Lawfare?*, LAWFARE INST., <http://lawfareinstitute.com/about-the-institute/> [<https://perma.cc/3P4W-23HZ>] (last visited May 15, 2024).

92. Comaroff & Comaroff, *supra* note 18, at 31 (footnote omitted).

The history of law *against* Black people in North America is as old as the colonies and then the United States.<sup>93</sup> An Afrofuturist response is to imagine what would emerge in a future marked by legal remedies to produce a more just racial future on one hand, and on the other hand, the more pessimistic response would question whether jurists committed to historic white and antiblack hegemony would embrace such a goal. The foci in recent cases are on turning the clock back on advancements for Blacks, women, and anyone affected by sexual and reproductive rights.<sup>94</sup> The prognosis, at least from the current configuration of U.S. Supreme Court Justices, does not look good.

“Legal war” offers an additional consideration. Even lawfare offers justifications. This leads to the second challenge, namely, the problem of reason.

### *b. Reason*

Fanon, as we saw, identified the problem of reason’s apparent fear of Blacks.<sup>95</sup> How should Blacks respond to that fear? Any effort to force reason to stay, to accept and to recognize Blacks, is unfortunately often interpreted as violence. The ironic situation is of having to reason with unreasonable reason *reasonably*. This is where theory about theory—that is, *metatheory*—comes into play. The logic here is inevitably radical, because it faces the challenge of reason also having to evaluate all systems, including those of rationality and reason. That which is to evaluate such systems must be able to transcend them. If subordinated to them, it would be colonized by them. To evaluate them requires an appeal to processes of accountability that cannot be conceived of in advance. This requires being able *to act* or *make things happen*, which requires access to the conditions of doing so. This ability brings us to the third consideration: power.

### *c. Power/Action*

Power is the ability to make things happen with access to the conditions for doing so.<sup>96</sup> For example, having the ability to get to work would be meaningless without roads, vehicles, having sufficient currency, and approval to enter the place of employment. If one works online, one cannot do so without a computer or miniature device such as a smart phone with access to the Internet. Basic activities such as walking or talking require conditions such as something that functions as the ground in the case of the former and language in the case of the latter. Conditions take many forms, such as capital. People’s ability to make things is rendered void without access to the means of producing them. Those means could be called conditions or, in economic terms, capital. Those conditions could lead to actions that produce more conditions. Structuring and ordering this generative capacity are among the functions of law. But bear in mind that one can also hoard

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93. See generally, e.g., Bewer, *supra* note 67.

94. See, e.g., *SFFA*, 600 U.S. at 231; *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 232 (2022).

95. See *supra* note 76 and accompanying text.

96. For elaboration of the definition of power offered here, see GORDON, *supra* note 2, at 153–55.

power through locking up the conditions or privatizing them. In such cases, one's acquisition of power is at the expense or disempowerment of others. This crucial aspect of power is what makes the communicative or shared model of power fundamentally political. It transcends privatization by producing conditions—for example, institutions—that all, in principle, can use. This could reach well beyond what is immediately intelligible to those who produce such conditions. That is one of the reasons why political action, although done in the present, always reaches beyond moments of initial action. It affects, eventually, people whom political actors will never know, not only in their shared time, but also those to come. The actions of past peoples are also conditions of present people's possibilities, just as contemporary actions are conditions of others' possibilities. This is one of the core insights of Black existential and Africana political philosophy: Liberatory political action requires performance without advanced knowledge of outcomes. It is an updating of the existential credo of existence before essence.<sup>97</sup> The existentialist argues that all actions that affect who we become are such. While there is much predictability in the world that allows us to organize our lives, human actions are marked by contingency.<sup>98</sup> They could have been otherwise. It is that contingent aspect of performance in which intentions and expectations brought together build social or shared realities in which social institutions, for example, become conditions for more to come.

#### 4. Problematic of Redemption

The fourth object of critical reflection posed by the rise of Euromodern societies is redemption. This is a tricky matter because every Black person lives under a deluge of redemptive narratives of the systems in which we live. What those who have been advantaged by such systems want to hear is that from colonialism to enslavement, from conquest to genocide, from conflict to dehumanization, all that has transpired since the fifteenth century is worth it. This is one of the reasons forms of narcissistic rage ensue when that narrative is challenged. It is an effort to force the mirror to lie, because the underlying truth is evident in every moment one thinks through what it means to be human, free, and justified under colonial conditions, which is the resolute response: "No!" As racialization, slavery, and oppression were actions wrought by humans, they could have been done otherwise. Contingency and accident are not, however, identical. There is thus responsibility in what has been done, and given the argument about institutions of power, that responsibility is peculiarly *political*.

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97. See Christian J. Onof, *Jean Paul Sartre: Existentialism*, INTERNET ENCYC. PHIL., <https://iep.utm.edu/sartre-ex/> [<https://perma.cc/UBE5-FMNF>] (last visited May 15, 2024).

98. See, e.g., Kevin Aho, *Existentialism*, STAN. ENCYC. PHIL. (Jan. 6, 2023), <https://plato.stanford.edu/entries/existentialism/> [<https://perma.cc/M2SP-QAZU>].

## II. POLITICAL RESPONSIBILITY IN BLACK

### A. WHAT IS RESPONSIBILITY?

At this point, I should like to add an addition before addressing implications of this analysis for Afrofuturism. The culminating argument about political responsibility is not exclusive to Black existentialism and Africana philosophy of blackness. It has been broached as well by philosophers and political theorists who address their roles as citizens in societies premised on profound injustice. In such cases, the theodicean retreat isn't available. The philosopher and political theorists Karl Jaspers, Hannah Arendt, and Iris Marion Young offered excellent analyses of these concerns from the standpoint of those who expected to stand as citizens of such societies.<sup>99</sup> They argued that in any given society, members face metaphysical, moral, legal, and political responsibilities for their actions.

Metaphysical responsibility pertains to the individual's responsibility to the divine. Moral responsibility is about the individual's specific actions pertaining to doing what is right or wrong within a system's, society's, or community's set of rules, mores, or norms. It does not always carry punishment, and at times may even be ignored through the conclusion that an individual is simply immoral, although condemnation could be made by a community of people for whom such norms are intelligible. Legal responsibility is the set of obligations one has to obey the laws of the land or jurisdiction in which one lives. Political responsibility, however, is what one incurs on the basis of the governing institutions of power or what people do to support them or to build alternative or new ones.<sup>100</sup> Regarding legal responsibility, when one's government acts badly and must pay reparations, on whose backs do such payments rest but its people? In cases of a country's being vanquished in war, such as Germany in World War II, the behavior of a people's government could affect, for example, whether its people should receive mercy. This was the question Jaspers posed to his fellow Germans.<sup>101</sup> He argued that all members of German society incurred political responsibility, whether they supported the Nazi Party or not, and worse, their vanquished government's lack of mercy for others forfeited the legitimacy of its people's plea for compassion and forgiveness.<sup>102</sup> Iris Young referred to these concerns as "liability models."<sup>103</sup> By this, she meant that it is past-oriented; it's about what a society has done and what it owes.<sup>104</sup> There are, however, other kinds of political

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99. See generally KARL JASPERS, *THE QUESTION OF GERMAN GUILT* (E.B. Ashton trans., Fordham Univ. Press 2000) (1947); Hannah Arendt, *Collective Responsibility*, in *AMOR MUNDI: EXPLORATIONS IN THE FAITH AND THOUGHT OF HANNAH ARENDT* 43 (James W. Bernauer ed., 1987); Iris Marion Young, *Responsibility and Global Labor Justice*, 12 J. POL. PHIL. 365 (2004); Gregory Evan Doukas, *Political Responsibility in Tumultuous Times* (2022) (Ph.D. dissertation, University of Connecticut) (on file with the University of Connecticut Library, Archives & Special Collections). And for elaboration of the conception of political responsibility I am offering here, see generally GORDON, *supra* note 2.

100. See sources cited *supra* note 99.

101. See JASPERS, *supra* note 99, at 12, 43–44.

102. *Id.* at 26–27, 30, 43.

103. Young, *supra* note 99, at 368, 374.

104. See *id.* at 378.

responsibilities, as the second side of the disjunction attests. Those include what a people may owe future generations. If a people live in a society whose basic structures are designed for the production of inequalities and suffering, Young argues it's their obligation, if they are committed to justice, to change those structures to reduce or eliminate inequalities. Doing the same for those suffering from such structures is a major task of political responsibility.<sup>105</sup>

Young's argument puts her in conversation with Afrofuturists past and present. The writings of Black writers who saw, writ large, the contradictions of Euromodern societies, their colonies, and the countries that sprung from them all argued for the possibility of building better worlds.<sup>106</sup> This requires thinking through not only changing the players in those worlds but also the games. Simply switching places does nothing about oppression, only about who is oppressed. But changing the game is a more complicated project, for it is not clear who the players who play those different games would in fact be. At the heart of this position is what could be called an existential structuralist analysis. It requires looking at possibilities throughout an entire set of practices and the structures they produce. In relation to the status quo, it is correct to say that such projects are fundamentally queer and radical conceptions of freedom, love, and politics. I add love to this mix because it is affected by any model or set of practices that move from things to open considerations of what is involved in living the kinds of existence—of standing out—called “human.” Broadly conceived, love transcends the self through care for others.<sup>107</sup> The decision to become the conditions of possibility for those to come links love to Young's understanding of political responsibility.

Where human beings are not things, their possibilities are not closed. They are open, which means borders of the self erode in a broader sphere of sociality that we could call human reality. This connectedness, this sociality, challenges many models on which Euromodern laws are based. From ancient Greek and Roman models rooted in the concept of “substance”—things in and of themselves, closed realities—property-based versus verb- or action-based and relational and communicative understandings followed.<sup>108</sup> Their erosion requires connections that stem

105. *See id.* at 372.

106. The list of these writers is long. I discuss the ideas of many of them in GORDON, AN INTRODUCTION TO AFRICANA PHILOSOPHY, *supra* note 6. *See also* PAGET HENRY, CALIBAN'S REASON: INTRODUCING AFRO-CARIBBEAN PHILOSOPHY (2000) (focusing on philosophers, social theorists, and literary cultural critics from the Caribbean); ANTHONY REED, FREEDOM TIME: THE POETICS AND POLITICS OF BLACK EXPERIMENTAL WRITING (2014) (discussing African-American literary figures).

107. *See, e.g.*, SIMONE WEIL, GRAVITY AND GRACE 78–80 (Emma Crawford & Mario von der Ruhr trans., 2002) (1947); KEIJI NISHITANI, RELIGION AND NOTHINGNESS 58–62, 274, 277–85 (Jan Van Bragt trans., 1982); GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 27–29, 70, 102–03, 132, 135.

108. For a critical discussion of ancient Greek and Roman substance-based metaphysics, their impact on what is called “Western civilization,” and the difference from East Asian, especially Chinese, perspectives, including conceptual resources from African philosophy, see XIANG, *supra* note 73, at 71–84, 113–27 and GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 78. *See generally* Michaela Ott, *Dividuation As a Heuristic Concept for a World Philosophy*, 2 PHIL. & GLOB. AFFS. 241 (2022).

beyond conflictual models often marked in psychoanalytical terms as “sexual” and “controlled” into the erotics of intimacy alongside other categories such as the elimination of binaries of inner and outer through relations of disclosure and shared, lived realities.<sup>109</sup> In this regard, the human world is transcended into human reality. By human reality, what is meant is the openness through which human beings live. “World” poses a limit that raises problems of closed horizons; living through human reality is the realization that no one stands as its completeness. Ancient African organizations of society were, by contrast, rooted in relational models in which people flourished through a flourishing society.<sup>110</sup> As relationships, they are in relations with every aspect of life. This ancient understanding continued in many African societies and was carried on in various forms across the African diaspora. In contemporary Africa, one of the best exemplars is the concept of *ubuntu* (from isiZulu and isiXhosa in South Africa).<sup>111</sup> Roughly translated, it means humanity toward others.<sup>112</sup> It is a position often supported through the observation, “I am, because we are.”<sup>113</sup> It stands in contrast with the French philosopher René Descartes’s formulation, “I think, therefore I am.”<sup>114</sup> Notice that Descartes thinks and is alone. The response from a variety of African philosophical communities is, “You are what?” And, “How can you think outside of an important condition of thought—namely, a world of others who have produced languages for thought?”<sup>115</sup>

109. See GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 12–32; LEWIS R. GORDON, *Labor, Migration, and Race: Toward a Secular Model of Citizenship*, in BLACK EXISTENTIALISM, *supra* note 6, at 261, 261–67; VALMISA, *supra* note 73, at 2–4; XIANG, *supra* note 73, at 87–88; CORNELL, *supra* note 79, at 81 (demanding “we challenge all forms of sexual and erotic repression, and with it . . . open[] . . . new forms of being together”); BARNABY B. BARRATT, SEXUAL HEALTH AND EROTIC FREEDOM 15 (2005) (seeking “to free human sexuality from the grip of religion and politics”).

110. See generally Alan H. Gardiner, *The Eloquent Peasant*, 9 J. EGYPTIAN ARCHAEOLOGY 5 (1923) (providing a translation of an Ancient Egyptian story of a peasant seeking justice); MAULANA KARENGA, MAAT: THE MORAL IDEAL IN ANCIENT EGYPT: A STUDY IN CLASSICAL AFRICAN ETHICS (Molefi Kete Asante ed., 2004) (discussing the Ancient Egyptian concept of “MAat,” or justice, order, and harmony).

111. See Thaddeus Metz, *Ubuntu: The Good Life*, in ENCYCLOPEDIA OF QUALITY OF LIFE & WELL-BEING RESEARCH 6761, 6761 (Alex C. Michalos ed., 2014), [https://link.springer.com/referenceworkentry/10.1007/978-94-007-0753-5\\_4029](https://link.springer.com/referenceworkentry/10.1007/978-94-007-0753-5_4029) [<https://perma.cc/N7ZF-93CG>].

112. Cf. Oelofsen, *Decolonisation of the African Mind*, *supra* note 73, at 143 (“Humanisation in the sense of *ubuntu* is, at core, about having a healthy collective self, and that involves having good relationships with others in the society.”).

113. See, e.g., Didier Njirayamanda Kaphagawani, *African Conceptions of a Person: A Critical Survey*, in A COMPANION TO AFRICAN PHILOSOPHY, *supra* note 33, at 332, 337.

114. See *Cogito, Ergo Sum*, BRITANNICA (Apr. 4, 2024), <https://www.britannica.com/topic/cogito-ergo-sum> [<https://perma.cc/Q7ND-2D82>].

115. I paraphrased much here, but the reader can consult a wide array of African philosophical texts that present this line of argument. See generally CORNELL, *supra* note 30; MORE, *supra* note 73; RAMOSE, *supra* note 73; Oelofsen, *Decolonisation of the African Mind*, *supra* note 73. Beyond the South African context, see, for example, KWASI WIREDU, CULTURAL UNIVERSALS AND PARTICULARS: AN AFRICAN PERSPECTIVE 140–41, 203 (1996). For ancient African conceptions of persons, community, values, and laws, see generally, for example, THÉOPHILE OBENGA, LA PHILOSOPHIE AFRICAINE DE LA PÉRIODE PHARAONIQUE: 2780-330 AVANT NOTRE ÈRE (1990). Although I’m here focusing on African examples because of their connection to Afrofuturism, the reader should bear in mind that there are other ancient through contemporary models with this relational understanding of being human and

In this regard, many Black texts, save those committed to conservatism, are, through their Sankofic understanding of moving forward while acknowledging the past, ultimately, futuristic (though not always utopic), and those that address legal and political frameworks do so.<sup>116</sup> The conservative models do not work because conservatism appeals to the notion of an ideal or complete past to which to return, and that past is almost always premised on order, safety, and relief from the burdens of freedom or responsibility for existence. Looking at the future, all conservatisms are ultimately pessimistic. They treat the present, always, as to be abandoned, but the basis of that abandonment is a desire, paradoxically, to be the same, in the sense of having an elsewhere in which the present set of values held could continue to have its coherence with perfection (an expectation best met by a god) as the ideal. It is a desire to be the same but in a perfect house often found elsewhere.

#### B. AFROFUTURITY, BLACK MELANCHOLIA, AND THE WAY FORWARD

The meeting of blackness with pessimism results, in psychoanalytical terms, in what could be called Black melancholia.<sup>117</sup> This phenomenon is trapped in the first stage of double consciousness. Recall that double consciousness involves a people seeing themselves as constructed by a society that diminishes them.<sup>118</sup> Black people who see themselves how antiblack racist societies see them exemplify this first stage. If they accept such images of themselves as true, they resign themselves to blackness as constructed through antiblack eyes as an ontological feature of the world—or worse, reality. As the Euromodern world constructed

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producing values, as Shuchen Xiang's *Chinese Cosmopolitanism* attests. See XIANG, *supra* note 73, at 87–88.

116. I have already listed several, such as CUGOANO, *supra* note 4; DU BOIS, *supra* note 77; FANON, PEAU NOIRE, *supra* note 66; FANON, LES DAMNÉS DE LA TERRE, *supra* note 66. Among those I discuss in GORDON, AN INTRODUCTION TO AFRICANA PHILOSOPHY, *supra* note 6, are VICTOR ANDERSON, BEYOND ONTOLOGICAL BLACKNESS: AN ESSAY ON AFRICAN RELIGIOUS AND CULTURAL CRITICISM (1999); MOLEFI KEFE ASANTE, THE AFROCENTRIC IDEA (rev. & expanded ed. 1998); STEVE BIKO, I WRITE WHAT I LIKE: SELECTED WRITINGS (Aelred Stubbs ed., Univ. Chi. Press 2002) (1978); ELIAS KIFON BONGMBA, THE DIALECTICS OF TRANSFORMATION IN AFRICA (2006); PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT (2d ed. 2000); JAMES H. CONE, BLACK THEOLOGY AND BLACK POWER (1969); JAMES H. CONE, A BLACK THEOLOGY OF LIBERATION (1970); JAMES H. CONE, GOD OF THE OPPRESSED (1975); JAMES H. CONE, THE SPIRITUALS AND THE BLUES: AN INTERPRETATION (1991); ANNA JULIA COOPER, A VOICE FROM THE SOUTH (Xenia, Ohio, The Aldine Printing House 1892); KWAME NKURUMAH, CONSCIENCISM: PHILOSOPHY AND IDEOLOGY FOR DE-COLONIZATION (rev. ed. 1970); MARIA W. STEWART, AMERICA'S FIRST BLACK WOMAN POLITICAL WRITER: ESSAYS AND SPEECHES (Marilyn Richardson ed., 1987); HOWARD THURMAN, DISCIPLINES OF THE SPIRIT (1963); HOWARD THURMAN, DEEP RIVER AND THE NEGRO SPIRITUAL SPEAKS OF LIFE AND DEATH (reprint. 1990); CORNEL WEST, PROPHECY DELIVERANCE!: AN AFRO-AMERICAN REVOLUTIONARY CHRISTIANITY (Jonathan Lee Walton ed., 40th anniversary expanded ed. 2022). Other genres are addressed in the present issue of this Journal. In the realm of philosophical fiction, I add JAMES BALDWIN, ANOTHER COUNTRY (1993) and MONIFA A. LOVE, FREEDOM IN THE DISMAL: A NOVEL (1998).

117. For discussion of melancholia Africana, see ETOKE, *supra* note 57, at 3–33 and GORDON, *supra* note 2, at 132, 143, 197, 222.

118. See *supra* Section I.B.3.a.

racialized blackness as negative,<sup>119</sup> the result is the contradiction of being indigenous to or belonging by virtue of having been born in a world in which one is rejected. As a fundamentally negative term, there is a form of bereavement because the conclusion of that world is that, ultimately, life over time would be better off without such racialized phenomena and unfortunately, by extension, people. As racialized blackness did not precede the Euromodern world, is rejected by that world, and is posited as having no legitimate place in its future, there is a radical declivity of this understanding of blackness and the lives of Black people.

There is, however, another direction in which Black melancholia could be addressed. Even if produced by Euromodern projects of denunciation, there is, as we saw, a form of critical Blackness that rejects presuppositions of Euromodern legitimacy. In this regard, positing a future legitimacy retroactively raises questions of a legitimate present and, in similar kind, past. This legitimacy is premised upon the illegitimacy of the structures that produced blackness as a fundamentally illegitimate phenomenon. In effect, it rejects the idea of ontological blackness.

At this point, Black existential philosophy comes to the fore in a productively critical way. As rejecting an essence that precedes human existence, there is also a rejection of maintained similitude. By this is meant the rejection of a recurring analogical self around which circumstances change. Put differently, it is not about finding or seeking a better world for Blacks. It is about *building a better world*. Whether Blacks *as Blacks* will be in that world cannot be determined in advance.<sup>120</sup>

How, then, can anyone act?

The answer to that question is that people have been acting all along. It is an error to think of action as knowing before doing. There are many outcomes of past actions that could not have been anticipated but are entirely dependent on past actions and aspirations. Think, for example, of colonial and racist models of love. For those, one could only love what is similar to oneself, which logically depends on the presupposition that one could only ultimately love oneself. Yet human history is replete with examples of our ability to love and act on the basis of those who are not extensions of ourselves but also radically *different* from ourselves. This is already embedded in notions of ancestry and descendants. There is always something different about people who preceded us and even more so about those who will ultimately succeed us. The more radically in the past we reach, the more anonymous they become. The more radically in the future, the same.

There needs to be a rethinking of the concept of failure in Black, future-oriented thought. Here the message of Sankofa returns, as well as the critique of the kinds of metaphysics and conceptions of the self that are rooted in self-contained

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119. See *supra* Section I.A.

120. For elaboration, see GORDON, *supra* note 2, at 162, 224.



individualism. Under the individualistic model, the formulation, similar to narcissistic love that is ultimately self-referential, is the expression, “I failed.” Even the “we” becomes problematic in a present-centric model of collectives: “We failed.” This is because the present “we” are not the final moment of humanity’s actions. If, however, in revisiting the critique of closed systems “we” were to understand ourselves over time, we would understand that whatever we are able to achieve is a function of the conditions of possibility on and through which we act. If our predecessors failed to act, our conditions would not be possible. Their efforts to change the system were unintelligible to any conception of them that was devoid of agency. Attempts to “correct,” as it were, their efforts in effect revealed failures to cover over what Catherine Walsh calls “cracks” in the system.<sup>121</sup> This could be understood as well through the metaphor of doors. This metaphor describes how the energy required to keep certain doors closed is shifted when attempts to open them occur. Openings are produced. Over time they become, returning to the earlier analysis of power, conditions of empowerment through processes of de-privatization.<sup>122</sup> The public accessibility of power has many implications, including legal ones, since law, in principle, pertains to “all.” How can “all” make sense when by definition privatization means “some” at the expense of all?

The law that applies to all also applies to laws themselves. If laws were privatized, they could apply to everyone but themselves. Paradoxically, laws—or, in some formulations, the law—would be above laws. The argument that no one is above the law could be extended to things; nothing is above the law, including the law itself. This radical accountability reaches beyond the present in a disruption of neat, linear time. The “we” who acted, the “we” who act, and the “we” who may or will act are interconnected not only across three aspects of time but also within their zones to those who are unknown, unaccounted for, and interrelated in a sociality of action and communicative practices in which outcomes before performance are not guaranteed.<sup>123</sup> Under such a model—in which the success or failure of action is not exclusively measured by individuals (a problematic concept retained from an outmoded ontology of “substances”) but by “dividuality” (thematized moments of interrelatedness of a reality to which we are both connected yet always transcends us), as the philosopher Michaela Ott articulates it<sup>124</sup>—is the shared responsibility, affecting and effecting of action. This adds dimension to political responsibility.<sup>125</sup> One could imagine the implications of this view, as well, for the work of a judiciary practicing legal decision-making as a political responsibility for building livable lives not only for those today but also for those to come.

121. See generally WALSH, *supra* note 34.

122. See *supra* Section I.B.3.c.

123. See GORDON, *supra* note 2, at 147–92; GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 29; CORNELL, *supra* note 79, at 102–03.

124. See Ott, *supra* note 108, at 251–52.

125. See *id.*

## CONCLUSION

An aspect of existential thought that is difficult for those invested in a model of action premised on knowing outcomes before performance is that optimism and pessimism are two sides of the same coin. Both optimism and pessimism reduce action to a specific manifestation—advanced or expected knowledge—counting for the whole. Yet there are so many instances of acting without advanced knowledge of outcomes that such a model would render most of human life unintelligible. It is possible to act through existential commitments—namely, what brings coherence and meaning to a human being’s life. Where pertaining to institutions of power and their transformation, such action is extended into existential political commitments.

Committed political actions don’t offer guarantees. That is one of the conundrums of what has historically distinguished right-wing-oriented actions from left-wing-oriented ones. The former seeks salvation in a past that promises, albeit in a distorted way, immediate satisfactions of order and security, usually by way of traditions, forceful authority, and antipathy to difference.<sup>126</sup> The latter accepts the taking on of responsibility for what is to come as a feature of human existence.<sup>127</sup> I added “historically,” however, because there are forms of avowed left-wing orientations that seek closure in the form of absolute, binary constructions that slide into the logic of the right despite claims of being otherwise. There are many examples, but perhaps none that was made more starkly in the realm of Afrofuturistic representation than the antagonist Killmonger’s edict in the film *Black Panther*, summarized by W’Kabi, the former head of security: “The outside world is catching up and soon it will be the conquerors, or the conquered. I’d rather be the former.”<sup>128</sup> Although there were audience members that extolled Killmonger as the real hero,<sup>129</sup> they may think otherwise if they were to realize that such a position is a false dilemma. Why not fight for a world rid of conquest? Why not recognize, as others have argued from Fanon to Cornell, that “violence” versus “non-violence” is complicit with violence and that one should be actively

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126. I discuss the history of what led to the formulations of “right” and “left” in political terms in GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 22–23, 60, 65, 68–69, 129–31. In addition, see André Tridon, *Introduction to SIGMUND FREUD, DREAM PSYCHOLOGY: PSYCHOANALYSIS FOR BEGINNERS*, at iii (M.D. Eder trans., The James A. McCann Co. 1921) and MOURAD WAHBA, FUNDAMENTALISM AND SECULARIZATION 3–41 (Robert K. Beshara trans., 2022) (discussing the “right” as marked by fundamentalism).

127. GORDON, FREEDOM, JUSTICE, AND DECOLONIZATION, *supra* note 4, at 22, 60–62, 129–30, 132, 135; WAHBA, *supra* note 126, at 57–82 (discussing the “left” as marked by secular humanism). See generally Young, *supra* note 99.

128. BLACK PANTHER (Marvel Studios 2018).

129. See, e.g., Adam Bentz, *Black Panther: Michael B. Jordan Explains Why People Sympathized with Killmonger*, SCREEN RANT (Jul. 23, 2021), <https://screenrant.com/black-panther-michael-b-jordan-killmonger-sympathetic-reason/> [https://perma.cc/4CMJ-LPGN]; Ricky L. Jones, *Why Erik Killmonger Is the Real Hero of ‘Black Panther,’* LEO WKLY. (Feb. 28, 2018, 9:04 AM), <https://www.leoweekly.com/news/why-erik-killmonger-is-the-real-hero-of-black-panther-15766600> [https://perma.cc/2AXZ-GEZU].

*anti-violence*, which requires building better societies?<sup>130</sup> And perhaps more concrete, under whose governance would they prefer to live—T’Challa’s, in which one could make fun of the society’s most powerful figure, or Killmonger’s, in which any challenge would be met by the threat of a broken neck, as he did to a female elder?<sup>131</sup>

There is something of which one must let go to transcend conservatism and the lack of imagination about transcending the status quo, and that is the ego. Not taking oneself too seriously affords relationships with others. Much of the conservative impulse is to forego this through a perceived security in the quest for certainty through returning to an imagined safe place, traditional organization of power, or set of values. Adult life, however, is the realization that no one is ultimately “safe.” There is an extraordinary adult sensibility to this form of thought. It faces, constantly, the human dimensions, the metastability, of its strivings. Realizing that nothing can emerge without action, there is an intimate relationship with conditions by which any future can be built and the often-dreaded truth that the future may not necessarily be a better one. But for a better one to have any chance of coming to fruition, actions by which such conditions are laid must be made. Placed in the context of law, legal conditions are, in the end, part of a story greater than themselves. They are, however, a very important part that offers, in the words of Billy Rose and Edward Eliscu, “more than you know.”<sup>132</sup>

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130. See FANON, *LES DAMNÉS DE LA TERRE*, *supra* note 66, at 241–42; CORNELL, *supra* note 79, at 1–23; GORDON, *supra* note 2, at 7, 14–15, 112.

131. The Black Panther is a title carried on by descendants of Bashenga, the first Wakandan leader to consume a poisonous herb infused with vibranium, a special radiated mineral from outer space. Bashenga had a gene that enabled him not only to survive consuming the poisonous plant but also to acquire superhuman powers from it. That gene is carried down to his descendants, many of whom became the Black Panther. Their selection, however, is determined not solely by heredity but also by ritual combat. T’Challa and N’Jadaka (Killmonger’s Wakandan name) are first cousins, which means they carry the gene. The Wakandans have a drug that drains away the Black Panther powers for the ritual combat. Thus, when N’Jadaka challenges T’Challa, they fight as ordinary warriors. N’Jadaka brings to the battle his anger over the hundreds of years of generational enslavement through his mother’s line. He beats T’Challa and throws him over the waterfall. He then takes the herb and becomes the new Black Panther—the first, in fact, that is also African-American. Although aware of African values regarding ancestors and elders, he has contempt for the Wakandan people for failing to use their technologies to liberate enslaved Africans over the past centuries of transatlantic, Arabic, and East Indian slave trades. He announces he is sending Wakandan technologies to liberation groups across the globe to fight against oppressors. Given that he burns what he thinks are the sole remaining herbs, and in an earlier scene murdered his loyal girlfriend in arms, there is good reason for the Wakandans to regard him not as planning global liberation but, instead, tyranny. There is much controversy about whether N’Jadaka/Killmonger was a revolutionary liberator or a power-hungry tyrant. I outline that debate and offer my interpretation in GORDON, *supra* note 2, at 167–92. For a collection of debates and interpretations of the film, see generally AFROFUTURISM IN *BLACK PANTHER: GENDER, IDENTITY, AND THE RE-MAKING OF BLACKNESS* (Renée T. White & Karen A. Ritzenhoff eds., 2021).

132. BILLY ROSE & EDWARD ELISCU, *More Than You Know*, on GREAT DAY (1929).