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CRITICAL RACE THEORY & THE GOSPELS

ANTHONY PAUL FARLEY*

ABSTRACT

Commodities can speak. They pray constantly for release. The slave is the commodity that speaks. This Essay is the slave's prayer for release, for resurrection. The slave is imprisoned, entombed, in the commodity form, a form in which it appears as a thing that is exchangeable for other things, not an end-in-itself.

Yesterday is not gone. Emancipation has yet to take place. The conceits of the modern era are all around us written in ruin and in specters of future ruin. Critical Race Theory is a flower in the midst of ruin. Critical Race Theory is said to be radical? Critical Race Theory is radical. Critical Race Theory, the stone that the builders refused, is as radical as the Gospels, as avante garde as philosophy, as American as the abolition of slavery, and as necessary as tomorrow.

* Matthews Distinguished Professor of Jurisprudence at Albany Law School. This Essay is the beginning of a larger project on liberation theology. It was an honor to participate in *Critical Race Theory and the Law*, an event built around Angela Onwuachi-Willig's Richard J. Childress Memorial Lecture. I am very grateful to the Editors of the Saint Louis University Law Journal for their help and hospitality. Many thanks to Mario L. Barnes, Daniel M. Conway, David Niven, Ngozi Okidegbe, and Christopher Tinson for their insights. Thanks, finally, to Café Dessalines, Phyllis Goldfarb, and Margaretha Haughwout.

*Did they die or us?*¹

*What is said beside the dead is the beginning of the harvest.*²

*[T]he harvest is the end of the world; and the reapers are the angels.*³

SLAVERY AS CRUCIFIXION

We have heard that *faith is the substance of things hoped for, the evidence of things not seen*.⁴ What is true of *faith* is also true of *critique*.⁵ The critical moment begins with the realization, first, that things are stranger than they appear to be, and, second, that appearances follow rules of our own making.⁶

Slavery is a crucifixion. Slavery is the long crucifixion. Slavery is the original sin of the modern era and its capitalist foundation.⁷ The end was in the beginning,⁸ and the beginning was bathed in blood.⁹

1. LOWKEY, GHOSTS OF GRENFELL (Mesopotamia Music 2019).

2. RUBEM ALVES, ON TIME AND ETERNITY (Glenn Alan Cheney trans., 2020).

3. *Matthew* 13:38 (King James).

4. *Hebrews* 11:1 (King James).

5. Immanuel Kant described his critical project as follows:

We have therefore wanted to say that all our intuition is nothing but the representation of appearance; that the things that we intuit are not in themselves what we intuit them to be, nor are their relations so constituted in themselves as they appear to us; and that if we remove our own subject or even only the subjective constitution of the senses in general, then all constitution, all relations of objects in space and time, indeed space and time themselves would disappear, and as appearances they cannot exist in themselves, but only in us. What may be the case with objects in themselves and abstracted from all this receptivity of our sensibility remains entirely unknown to us. We are acquainted with nothing except our way of perceiving them, which is peculiar to us, and which therefore does not necessarily pertain to every being, though to be sure it pertains to every human being. We are concerned solely with this. Space and time are its pure forms, sensation in general its matter. We can recognize only the former a priori, i.e., prior to all actual perception, and they are therefore called pure intuition; the latter, however, is that in our cognition that is responsible for its being called a posteriori cognition, i.e., empirical intuition. The former adheres to our sensibility absolutely necessarily, whatever sort of sensations we may have; the latter can be very different.

IMMANUEL KANT, CRITIQUE OF PURE REASON (A42/B59–60).

6. *Id.*

7. The modern era has other names: Necrocene, Plantationocene, Capitalocene. *See generally*, ANTHROPOCENE OR CAPITALOCENE? NATURE, HISTORY, AND THE CRISIS OF CAPITALISM (Jason W. Moore ed., 2016) [hereinafter ANTHROPOCENE OR CAPITALOCENE?].

8. RALPH ELLISON, INVISIBLE MAN 4 (1952) (“The end is in the beginning and lies far ahead”).

9. *See* Anthony Paul Farley, *A General Theory of Antiracism*, in ANTIRACISM (Moon-Kie Jung and João Costa Vargas eds., 2021).

Slavery is death.¹⁰ Death is the end. There is no progress to be made after the end. Slavery to segregation to neo-segregation is white-over-black to white-over-black to white-over-black, and white-over-black to white-over-black to white-over-black is laughter at the foot of the Cross, not progress, not redemption, and certainly not resurrection.¹¹

It was an honor to stand before Dred and Harriet Scott on the morning of the Saint Louis University Law Journal's Childress Lecture.¹² Facing the Scotts, their backs to the Old Courthouse, my back to the St. Louis Arch, I celebrated the fact that I would have this chance to stand before this audience this morning and participate in a discussion of faith and critique. The matter before us was salvation or death.¹³

Spectacular time is the eleventh station of the Cross: the one "seen in the watchfires of a hundred circling camps" is nailed to the Cross, over and over and over again, forever forsaken.¹⁴ We must, therefore, transcend spectacular time. Our time, the time of history, is time within which life unfolds. The time of the

10. I do not mean that slavery is social death, as Orlando Patterson famously posited. See ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH* (1982) (defining slavery as the "permanent, violent domination of natively alienated and generally dishonored persons"). I do not mean that slavery is civil death, the *mors civilis* of the convicted criminal, in Blackstone's words:

For when it is now clear beyond all dispute, that the criminal is no longer fit to live upon the earth, but is to be exterminated as a monster and a bane to society, the law sets a note of infamy upon him, puts him out of its protection, and takes no further care of him barely to see him executed. He is then called attaint, attinctus, stained or blackened.

4 WILLIAM BLACKSTONE, *COMMENTARIES* *223; Ross Learner, *Civil Death in Early Modern England*, 32 *EXEMPLARIA* 326, 327 (2020). The death about which I am writing is real death. *Matthew* 27:50 ("Jesus, when he had cried out again with a loud voice, yielded up the ghost."); *Mark* 15:37 ("And Jesus cried with a loud voice, and gave up the ghost."); *Luke* 23:46 ("And when Jesus had cried out with a loud voice, He said, 'Father, into Your hands I commit My spirit.' Having said this, He breathed His last.") (emphasis added); *John* 19:29 ("When Jesus had received the vinegar, He said, 'It is finished.' and he bowed his head, and gave up the ghost.").

11. *Matthew* 27:42 ("He saved others; himself he cannot save. If he be the King of Israel, let him now come down from the cross, and we will believe him."); *Mark* 15:29–32 ("And they that passed by railed on him, wagging their heads, and saying, Ah, thou that destroyest the temple, and buildest it in three days. Save thyself, and come down from the cross. Likewise also the chief priests mocking said among themselves with the scribes, He saved others; himself he cannot save. Let Christ the King of Israel descend now from the cross, that we may see and believe. And they that were crucified with him reviled him."); *Luke* 23:36–39 ("And the soldiers also mocked him, coming to him, and offering him vinegar, And saying, If thou be the king of the Jews, save thyself. And a superscription also was written over him in letters of Greek, and Latin, and Hebrew, THIS IS THE KING OF THE JEWS. And one of the malefactors which were hanged railed on him, saying, If thou be Christ, save thyself and us.") (emphasis added).

12. The Richard J. Childress Memorial Lecture, *Critical Race Theory and the Law*, took place on October 8, 2021, at Saint Louis University School of Law.

13. 1 *Corinthians* 15:56 (King James) ("The sting of death is sin; and the strength of sin is the law.").

14. *Matthew* 27:46 (King James); *Mark* 15:34 (King James).

spectacle is the time of endless repetition, the motionless movement of death. From the point of view of spectacular society, all is well, all has always been well, and all will always be well, so long as capital extracts value from labor, as long as the crucified are on the Cross and forsaken.

If commodities could speak, they would pray. If slavery's crucified could speak, they would pray. They would pray to be released from the endless wheel of capitalist becoming: slavery to segregation to neo-segregation, or, more accurately, slavery to slavery to slavery. Slavery is death. They would pray for and have faith in resurrection from the death that they are forever being made to repeat.

Commodities can speak, and they do in fact pray for release. The slave is the commodity that speaks. This Essay is the slave's prayer for release, for resurrection. The slave is imprisoned, entombed, in the commodity form, a form in which it appears as a thing that is exchangeable for other things, not an end-in-itself.

Slavery is death, death only, and that continually. This death, far from being an escape "devoutly to be wish'd," is a perpetual calamity:

To die, to sleep,
 No more. And by a sleep, to say we end
 The heartache and the thousand natural shocks
 That flesh is heir to—'tis a consummation
 Devoutly to be wish'd. To die, to sleep;
 To sleep, perchance to dream. Ay, there's the rub.
 For in that sleep of death, what dreams may come
 When we have shuffled off this mortal coil
 Must give us pause. There's the respect
 That makes calamity of so long life.¹⁵

Slavery is crucifixion. Death, calamitous death, is forever.¹⁶

When a person is reduced to a thing, as is the case with the enslaved, the person, now a former person, has in fact "shuffled off this mortal coil," not "to sleep," not exactly, but certainly to dream "in that sleep of death."¹⁷

Shakespeare's Hamlet asks:

For who would bear the whips and scorns of time,
 Th' oppressor's wrong, the proud man's contumely,

15. WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 1, l. 66–76.

16. *But see, e.g., Mark 5:39* ("And when he was come in, he saith unto them, Why make ye this ado, and weep? the damsel is not dead, but sleepeth."); *Luke 8:52* (King James) ("And all wept, and bewailed her: but he said, Weep not; she is not dead, but sleepeth.").

17. *HAMLET*, *supra* note 15, at act 3, sc. 1, l. 74.

The pangs of despised love, the law's delay,
 The insolence of office, and the spurns
 That patient merit of the unworthy takes,
 When he himself might his quietus make
 With a bare bodkin?¹⁸

The question, *to be or not to be*, is the question Georg Hegel, after learning of the Haitian Revolution, the first true revolution in the history of the world, described as the master/slave dialectic. In *The Phenomenology of Spirit*, Hegel's 1807 "exposition of the coming to be of knowledge," the story of conflict between two abstract subjectivities lets readers know that asymmetrical relations, master/slave relations, can yield only nothingness, and nothingness is not knowledge.¹⁹ If, as Socrates said, "the unexamined life is not worth living," then the unexaminable life, the life that cannot yield knowledge, is not worth anything.²⁰

Why not end it all? When we know that there is nothing to live for, nothing but masters-and-slaves, why not *give up the ghost*?²¹ The answer, for the slave, after all is said and done, is that it has all always already ended, and death's open door leads right back to the "undiscover'd country," right back to the unbearable fardels, right back to the whips and scorns of time, right back to the oppressor's wrong, right back to the proud man's contumely, right back to the pangs of disprized love, right back to the law's delay, right back to the insolence of office, and right back to the spurns that patient merit of the unworthy takes:

Who would fardels bear,
 To grunt and sweat under a weary life,
 But that the dread of something after death,
 The undiscover'd country, from whose bourn
 No traveler returns, puzzles the will,
 And makes us rather bear those ills we have,
 Than fly to others that we know not of?²²

Slavery is "the undiscover'd country from whose bourn no traveler returns" because no traveller has ever truly departed, death's open door leads right back.²³

18. *Id.* at I. 78–84.

19. GEORG WILHELM FRIEDRICH HEGEL, *THE PHENOMENOLOGY OF SPIRIT* (Michael Baur & Terry Pinkard eds., 1807).

20. PLATO, *THE APOLOGY* (37e-6).

21. *Mark* 15:37 (King James); *Luke* 23:46 (King James); *John* 19:30 (King James).

22. HAMLET, *supra* note 15, at act 3, sc. 1, I. 74.

23. *Id.* at I. 87–88.

Slavery is death. Death is the end. Death offers no escape from death, only its repetition. The slave's dreams "must give us pause," and that pause is "the respect that makes calamity of so long life" because the slave's dreams are nightmares, nightmares nightmarishly repeated forever, nightmares of an eternal return to "the whips and scorns of time, th' oppressor's wrong, the proud man's contumely, the pangs of despised love, the law's delay, the insolence of office, and the spurns that patient merit of the unworthy takes"²⁴ For those of us who remain within slavery's spell, *toda la vida es sueño, y los sueños, sueños son*.²⁵ We are, each and every one of us, still within slavery's spell.

Slavery is white-over-black, segregation is white-over-black, neo-segregation is white-over-black; it is the same old dream since even before 1619.²⁶ White-over-black to white-over-black to white-over-black is not progress. White-over-black to white-over-black to white-over-black is not development. White-over-black to white-over-black to white-over-black is not life. White-over-black to white-over-black to white-over-black is nothingness, horrifically repeated, not repeated as a dream, repeated as a nightmare, repeated as a nightmare of never-ending nothingness.

The "dread of something after death" is the dread of the death that keeps coming, the dread that was Dred and Harriet's cross to bear, and their children's cross to bear, and our cross to bear. The motionless movement of death finds its perfection, its Golgotha, in jurisprudence:²⁷

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the

24. *Id.* at I. 78–82.

25. Pedro Calderón de la Barca, *La vida es sueño* (1635) (Segismundo's monologue).

26. Anthony Paul Farley, *The Apogee of the Commodity*, 53 DEPAUL L. REV. 1229, 1230 (2004).

27. James Baldwin described this situation of nothingness:

We are controlled here by our confusion, far more than we know, and the American dream has therefore become something much more closely resembling a nightmare, on the private, domestic, and international levels. Privately, we cannot stand our lives and dare not examine them; domestically, we take no responsibility for (and no pride in) what goes on in our country; and, internationally, for many millions of people, we are an unmitigated disaster.

James Baldwin, *Letter from a Region in my Mind*, NEW YORKER (Nov. 9, 1962), <https://www.newyorker.com/magazine/1962/11/17/letter-from-a-region-in-my-mind>. Malcolm X described the nightmare in similar terms:

No, I'm not an American. I'm one of the 22 million black people who are the victims of Americanism. One of the 22 million black people who are victims of democracy, nothing but disguised hypocrisy. So, I'm not standing here speaking to you as an American, or a patriot, or a flag-saluter, or a flag-waver—no, not I. I'm speaking as a victim of this American system. And I see America through the eyes of the victim. I don't see an American dream; I see an American nightmare. . . . So it's time in 1964 to wake up.

Malcolm X, *The Ballot or the Bullet* (Apr. 12, 1964) (original speech given before the King Solomon Baptist Church in Detroit, Michigan).

Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.²⁸

Slavery to segregation to neo-segregation is not the death of slavery, it is slavery. Slavery is death. Death cannot die. We are still, therefore, enslaved, and the Scott family and all the slaves ever enslaved are still on the Cross.

The original intentions of the Framers of the Constitution and those who signed the Declaration of Independence were clear; as the Supreme Court of the United States made clear, slavery is death:

[Black people] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.²⁹

The fact of blackness, its permanent presence on the Cross, was, per the Supreme Court of the United States, an absolute certainty:

[A]nd that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.³⁰

In *State v. Mann*, writing for the North Carolina Supreme Court, Justice Thomas Ruffin held that a slavemaster committed no crime by shooting and killing a slave because “[t]he power of the master must be absolute, to render the submission of the slave perfect.”³¹ Ruffin went on to serve as chief justice of the North Carolina Supreme Court from 1833 to 1852.³² His portrait continues in its place of honor, his writings are part of the body of the law that rules.

By 1896, race-based segregation was the special favorite of the law everywhere. In *Plessy v. Ferguson*, the doctrine of “separate but equal” was upheld by the Supreme Court.³³ Separate but equal accommodations for whites

28. *Scott v. Sanford*, 60 U.S. 393, 407 (1856).

29. *Id.*

30. *Id.*

31. *State v. Mann*, 13 N.C. 263, 264, 266 (N.C. 1829). Dred, the revolutionary slave of Stowe’s second anti-slavery novel, HARRIET BEECHER STOWE, *DRED: A TALE OF THE GREAT DISMAL SWAMP* (1856), was created with the horror of *Mann* in mind. See Sally Greene & Eric L. Muller, *Introduction: State v. Mann and Thomas Ruffin in History and Memory*, 87 N.C.L. REV. 669, 669 (2009).

32. CHIEF JUSTICES—NC SUPREME COURT, N.C. SUP. CT. HIST. SOC’Y (2022), <https://ncschs.net/justices-judges-members/chief-justices-nc-supreme-court/>.

33. 163 U.S. 537, 552 (1896).

and blacks imposed by Louisiana, wrote Justice Henry B. Brown for the Court, did not violate the Thirteenth or Fourteenth Amendments, a clear victory for the doctrine of white-over-black.³⁴ In the shadow of that white-over-black victory, disguised as a dissent, was another victory for white-over-black. Justice Harlan, writing in dissent, made it clear that white-over-black was white-over-black was white-over-black, whether it was achieved through the *de jure* efforts of the segregationists or the *de facto* efforts that I have called neo-segregation:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty.³⁵

What of the Constitution?

But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.³⁶

The “eye of the law,” then, sees through a glass, darkly.³⁷ How does color enter the world? Crucifixion:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the indigenous population of that continent, the beginnings of conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of blackskins, are all things which characterize the dawn of the era of capitalist production. These idyllic proceedings are the chief moments of primitive accumulation.³⁸

These “idyllic proceedings” create the differences that are represented as “race.” White-over-black, per Justice Harlan, was to continue as the goal of all real-world wanderings “for all time,” but in the juridical world conjured by his dissent, jurists were to pretend, as a matter of legal method, that white-over-black was no child of the law.

Harlan stated that “the white race deems itself to be” and is “the dominant race in this country . . . in prestige, in achievements, in education, in wealth, and in power,” and it cannot be doubted that “it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty.”³⁹ Caste and class, then, were to exist “for all time” in the real world,

34. *Id.* at 542–43, 550–51.

35. *Id.* at 559 (Harlan, J., dissent).

36. *Id.*

37. *Corinthians* 13:12 (King James) (“For now we see through a glass, darkly; but then face to face: now I know in part, but then shall I know even as I am known.”).

38. KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* 915 (Ben Fowkes trans., vol. 1 1976).

39. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896).

just not in the world of pretend, the world in which legal method compels us to pretend that caste and class do not exist:

In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.⁴⁰

Justice Brown, writing for the Court, and Justice Harlan, writing in dissent, were united in their juridical support for the permanence of racism, for the permanence of white-over-black.

Justice Brown, writing for the Court and for the *de jure* segregation era, expressed white-over-black as “separate but equal,” while Justice Harlan, writing a dissent that would later serve as the cornerstone of the *de facto* or neo-segregation era, expressed white-over-black as “tradition” and “principles of constitutional liberty.”⁴¹ *Slavery* was white-over-black from the start, yesterday’s *separate-but-equal* was white-over-black, today’s *constitutional liberty* is white-over-black, and, to be clear, white-over-black is white-over-black. Law’s *tomorrow and tomorrow and tomorrow* is not the death of slavery.⁴² Law’s tomorrow is the perfection of slavery, slavery’s extension “to the last syllable of recorded time.”⁴³

II. ABOLITION AS RESURRECTION

Every slave is an abolitionist.⁴⁴ Every slave insurrection is Easter Sunday, a celebration of the defeat of death and the fulfillment of the slave’s hope of salvation within historical time: “I am with you always, even unto the end of the world.”⁴⁵ Abolition, then, is the art of resurrection, not in the juridical world, not

40. *Id.*

41. *Id.* at 511, 559.

42. WILLIAM SHAKESPEARE, *MACBETH* act 5, sc. 5, I. 18.

43. *Id.* at I. 20.

44. FREDERICK DOUGLASS, *NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS: AN AMERICAN SLAVE* (1845).

45. *Matthew* 28:20 (King James). As Dietrich Bonhoeffer preached:

Fairy tales and legends from the oldest times tell of the days when God walked among human beings. Those were splendid times . . . that spoke of all the slumbering, secret human hopes as if they had already become reality. . . . Remember, I am with you . . . Jesus Christ, God himself, speaks to us from every human being; . . . indeed, it is the holy God in person whom we encounter. God’s claim is made on us in the wanderer on the street, the beggar at the door, the sick person at the door of the church, though certainly no less in every person near to us, in every person with whom we are together daily. “Just as you did it to the least of these, you did it to me,” Jesus says [Matt. 25:4]. I am for you, and you are for me is God’s claim, God’s very self; in this recognition, our gaze opens to the fullness of divine life in the world.

See God is with Us (First Sunday After Easter), April 15, 1928 1, 2–6, in *THE COLLECTED SERMONS OF DIETRICH BONHOEFFER* (Isabel Best ed., 2012).

in the world of the spectacle, but in the real world, in historical time and not in spectacular time.

Abolition is the art of resurrection, and it is our Cross to carry. The arc of the universe is long.⁴⁶ Does it bend toward justice? The answer to that question is not ours to know, not in this life. We have this life to live, and we have each other; we have these two certainties and one other: we have certainty that the fact we have this life to live means that having each other is enough. Enough to what? Enough to live this life that is the only one we have before us, this life that is held before us in a way that reminds us constantly and painfully that we are not living it.

What does it mean to say that the arc of the universe is long, but it bends toward justice?⁴⁷ As will be demonstrated below, when we open the letter of the law, the first line is everywhere and always: “To Whom It May Concern . . . Keep This N*gger-boy running.”⁴⁸ The letter of the law should be put to the torch.

Law tethers property to people as if property tethered to a person expressed a relationship between a person and an object of property instead of a relationship between persons regarding that property. A person cannot have a relation to an object of property. People exist in relations with other people, not with commodities or objects of property. When people are treated as objects, they are not treated as people. A person is not an object. People ought everywhere and always to be treated as what they actually are, ends-in-themselves, not objects to be used as means only.

Whenever and wherever people are made objects of property, it is a crucifixion and a class relation. One person cannot keep another person in chains, not profitably, not forever, not even for long, not without others, not without a class of similarly-situated others who successfully monopolize the legitimate use of violence: hunger, thirst, flight, rags, illness, and imprisonment are crucifixions. Hunger, thirst, flight, rags, illness, and imprisonment do not fall from the moon. These pains are products of empire. These pains are empire.

The first accumulations of capital were brought about through millions of crucifixions: colonialism, genocide, and slavery. Capitalism turns the hunger, thirst, flight, rags, illness, and imprisonment of the crucified into wealth and empire.⁴⁹ Sharing is one thing, empire is another thing:

And the devil, taking him up into a high mountain, shewed unto him all the kingdoms of the world in a moment of time. And the devil said unto him, All this power will I give thee, and the glory of them: for that is delivered unto me;

46. Martin Luther King, Jr., *Out of the Long Night*, GOSPEL MESSENGER, Feb. 8, 1958, at 3, 14; THEODORE PARKER, TEN SERMONS OF RELIGION 84–85 (1853).

47. *Id.*

48. ELLISON, *supra* note 8, at 35.

49. *See* MARX, *supra* note 38.

to whomsoever I will, I give it. If thou therefore wilt worship me, all shall be thine.⁵⁰

Law exists to tell us that this devilish arrangement is the best of all possible worlds, and, moreover, that as it has been so from the beginning, just like God, it must, just like God, be so until the end, world without end.

Law's method is an eternal return to Golgotha, to the original accumulation, to the slavery, genocide, and colonialism that birthed the first capital and sustains it atop a mountain of skulls. Law is law only to the extent it successfully prevents a return to the moment before its instantiation, an instantiation that is always bathed in blood-and-forgetting. *Stare decisis* happens after, only after the crucified are nailed to the Cross, and then continually: *stare decisis*, "to stand in the-things-that-have-been-decided" is everywhere and always to stand with the empire against the crucified when the first thing decided, the inviolability of the empire's instantiation, has always already been decided. Slavery is death. Slavery to segregation to neo-segregation, white-over-black to white-over-black to white-over-black, tomorrow and tomorrow and tomorrow, is and can only be death, and that is why one can and should say of legal method's eternal return to the day *after* the blood and dirt of its beginning:

And all our yesterdays have lighted fools
The way to dusty death. Out, out, brief candle!⁵¹

Within the law's method:

Life's but a walking shadow, a poor player
That struts and frets his hour upon the stage
And then is heard no more: it is a tale
Told by an idiot, full of sound and fury,
Signifying nothing.⁵²

Law is "a tale told by an idiot, full of sound and fury, signifying nothing"⁵³ as its judgments proceed:

[F]rom case to case, like the ancient Mediterranean mariners, hugging the coast from point to point, and avoiding the dangers of the open sea of system or science[.]⁵⁴

But the "open sea of system or science" is a "danger" to empire, not to the crucified.

50. *Luke* 4:5–7 (King James).

51. *MACBETH*, *supra* note 42, at act 5, sc. 5, l. 22–23.

52. *Id.* at l. 24–28.

53. *Id.*

54. Robert Wright, *The Study of Law*, 54 L.Q. REV. 185, 186 (1938).

For the crucified, the “miracle of liberation” is no danger. The crucified therefore have faith in “the open sea.”⁵⁵ Capitalism’s material conditions, all tethered to the original accumulation and its eternal repetitions, cannot be used to create a new society; the new society requires us to dispense with the capitalist law of value:

As I stand by the sea, so can I learn from the sea. No one has the right to demand of the sea that it bear an infinite number of boats, nor of the wind that it continually fill every sail. By the same token I can hardly be expected to hold my life captive to the performance of certain tasks.⁵⁶

How to dispense with the capitalist law of value (“I can hardly be expected to hold my life captive to the performance of certain tasks”)? How to dispense with the tasks to which capital’s spell holds our lives captive, the tasks that take our lives from us and turn them into value for the class in control of the means of production? How to escape a law of value grounded in mass murder? We need a theory of transition:⁵⁷ “Consider the lilies of the field, how they grow; they toil not, neither do they spin.”⁵⁸ Prayer! “For where two or three are gathered together in my name, there am I in the midst of them.”⁵⁹

What does it mean to gather together in the name of God? The God-made-flesh, the hope of Dred and Harriet Scott and the other enslaved, was made flesh as the hungry, the thirsty, the stranger, the one in rags, the sick, and the imprisoned. The fact that the “least of these,”⁶⁰ as Dred and Harriet Scott well knew, is “Emmanuel or God-with-us”⁶¹ is an occasion for celebration: “good tidings of great joy, which shall be to all people.”⁶² The promise of “good tidings

55. *Matthew* 14:22–33 (King James); *Mark* 6:45–52 (King James); *John* 6:16–21 (King James).

56. Stig Dagerman, *Our Need for Consolation Is Insatiable* (1951), in 5 *LITTLE STAR: A JOURNAL OF POETRY AND PROSE* 301, 305 (Ann Kjellberg ed., Steven Hartman trans., 2014).

57. ISTVÁN MÉSZÁROS, *BEYOND CAPITAL: TOWARDS A THEORY OF TRANSITION* xvii (1995).

58. *Matthew* 6:28–31 (King James) (“Consider the lilies of the field, **how they grow; they toil not, neither do they spin:** and yet I say unto you, That even Solomon in all his glory was not arrayed like one of these. Wherefore, if God so clothe the grass of the field, which today is, and tomorrow is cast into the oven, *shall he* not much more *clothe* you, O ye of little faith? Therefore take no thought, saying, What shall we eat? or, What shall we drink? or, Wherewithal shall we be clothed?”) (emphasis added); *Luke* 12:27–32 (King James) (“Consider the lilies how they grow: they toil not, they spin not; and yet I say unto you, that Solomon in all his glory was not arrayed like one of these. If then God so clothe the grass, which is today in the field, and tomorrow is cast into the oven; how much more *will he clothe* you, O ye of little faith? And seek not ye what ye shall eat, or what ye shall drink, neither be ye of doubtful mind. For all these things do the nations of the world seek after: and your Father knoweth that ye have need of these things. But rather seek ye the kingdom of God; and all these things shall be added unto you. Fear not, little flock; for it is your Father’s good pleasure to give you the kingdom.”) (emphasis added).

59. *Matthew* 18:20 (King James).

60. *Matthew* 25:40, 45 (King James).

61. *Matthew* 1:23 (King James).

62. *Luke* 2:10 (King James).

of great joy . . . to all people” is possible only if the great joy is “the miracle of liberation.”⁶³ The miracle of liberation is key to any theory of transition to a classless society, which is another way of saying that the classless society itself is our vehicle and instrument of transition, and we have seen it already, we have seen the promised land.⁶⁴ There is only one miracle reported in all four gospels. It is the miracle of sharing.⁶⁵ When possessions are shared in the Epimethean way modeled in the gospels, there is always more than enough.⁶⁶

Dred and Harriet Scott would have been well aware that the Christ of Christianity was none other than the hungry, the thirsty, the stranger, the naked, the sick, and the imprisoned.⁶⁷ The Scotts and everyone ever enslaved would have understood—consciously or unconsciously—that the Cross they carried was to feed the hungry, bring water to the thirsty, show hospitality to the stranger, clothe the ones in rags, minister to the sick, and free the imprisoned from the abomination of desolation:

Then shall the King say unto them on his right hand, Come, ye blessed of my Father, inherit the kingdom prepared for you from the foundation of the world: For I was an hungered, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in: Naked, and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came to visit me.”

Then shall the righteous answer him, saying, Lord, when saw we thee an hungered, and fed *thee*? or thirsty, and gave *thee* drink? When saw we thee a stranger, and took *thee* in? or naked, and clothed *thee*? Or when saw we thee sick, or in prison, and came unto thee?

And the King shall answer and say unto them, Verily I say unto you, Inasmuch as ye have done *it* unto one of the least of these my brethren, ye have done *it* unto me.⁶⁸

The Scotts would have understood their Cross as a Cross to be carried in the present: “and they shall call His name Emmanuel, which being interpreted is, God with us.”⁶⁹ The God of their tradition is “with us” in defiance of death and

63. Dagerman, *supra* note 56.

64. Martin Luther King, Jr., *I’ve Been to the Mountaintop* (Apr. 3, 1968). Dr. King delivered the original speech in support of the striking sanitation workers at Mason Temple (Church of God in Christ Headquarters) in Memphis, Tennessee, the day before he was assassinated.

65. *Matthew* 14:13–21 (King James); *Mark* 6:31–44 (King James); *Luke* 9:12–17 (King James); *John* 6:1–14 (King James). In each version of the miracle, a multitude of 5,000 people were fed with just five loaves and two fish. The miraculous feeding of 4,000 with seven loaves of bread and a few small fish, is reported in *Matthew* 15:32–39 and *Mark* 8:1–9, but not by Luke or John. The miracle of liberation is accomplished by sharing.

66. *Matthew* 14:13–21 (King James); *Mark* 6:31–44 (King James); *Luke* 9:12–17 (King James); *John* 6:1–14 (King James).

67. *Matthew* 25:34–40 (King James).

68. *Id.* (emphasis added).

69. *Matthew* 1:23 (King James).

in the form of the “the least of these”: the hungry, the thirsty, the naked, the sick, the stranger, and the imprisoned.

Dred Scott, a slave before the law, was an abolitionist, like everyone ever enslaved, and, as every Cross to be carried is also our Cross to carry, we, today, all of us, should, as abolitionists, carry his Cross: “Then he called the crowd to him along with his disciples and said: ‘Whoever wants to be my disciple must deny themselves and take up their cross and follow me.’”⁷⁰ If the moral law commands that we ought to be better human beings now, it inescapably follows that we must be capable of being better human beings now, in the present, in this life that is the only life we have to live, in this life that it seems we have already lost, in this life in which all seems lost.⁷¹

“My God, my God, why hast thou forsaken me? *why art thou so far from helping me, and from the words of my roaring?*”⁷² If the Christians’ Gospel is true, and Dred and Harriet Scott no doubt believed it to be true, then its “good tidings of great joy” are for all of us in this life,⁷³ for lives now in being, not confined to some world to beyond this veil of tears, not confined at all, but right here with us now.⁷⁴ It must mean that God is with us now, not just later, not just in a hereafter:

And all that believed were together, and had all things in common; and sold their possessions and goods, and parted them to all men, as every man had need. And they, continuing daily with one accord in the temple, and breaking bread from house to house, did eat their meat with gladness and singleness of heart, Praising God, and having favor with all the people.⁷⁵

III. THE MIRACLE OF LIBERATION

Who can face a universe in which the hope of abolition is based on nothing?⁷⁶ We have this life to live. We have each other. We cannot face a

70. *Mark* 8:34 (King James).

71. IMMANUEL KANT, *RELIGION WITHIN THE BOUNDARIES OF MERE REASON* 69–70 (Allen Wood & George Di Giovanni trans., Cambridge Univ. Press 2d ed. 1998) (2018).

72. *Psalms* 22:1 (King James) (emphasis added); *Matthew* 27:46 (King James) (“And about the ninth hour Jesus cried with a loud voice, saying, Eli, Eli, lama sabachthani? that is to say, My God, my God, why hast thou forsaken me?”); *Mark* 15:34 (King James) (“And at the ninth hour Jesus cried with a loud voice, saying, Eloi, Eloi, lama sabachthani? which is, being interpreted, My God, my God, why hast thou forsaken me?”).

73. *Luke* 2:10–11 (King James) (“And the angel said unto them, Fear not: for, behold, I bring you good tidings of great joy, which shall be to all people. For unto you is born this day in the city of David a Saviour, which is Christ the Lord.”).

74. *Isaiah* 7:14 (King James) (“Therefore the Lord himself shall give you a sign; Behold, a virgin shall conceive, and bear a son, and shall call his name Emmanuel.”).

75. *Acts* 2:44–47 (King James).

76. “On June 8th, 2012, the Dred Scott Heritage Foundation, the National Parks Service, and master sculptor Harry Weber were incredibly proud to unveil a statue of Dred and Harriet Scott on the south lawn of the Old Courthouse in downtown St. Louis. The Scotts are depicted standing

universe in which their hope, a hope that is also our own, amounts to nothing. We must, therefore, be enough. Because we have only each other, we must be enough. The alternative, endless crucifixion, is unbearable. The Scotts, long thought dead, are dead, but must now be thought of as alive. The dead, as Dred and Harriet Scott's faith told them, must only be sleeping, and their resurrection—which is also our own—must be well within our powers:

Come unto me, all ye that labour and are heavy laden, and I will give you rest. Take my yoke upon you, and learn of me; for I am meek and lowly in heart: and ye shall find rest unto your souls. For my yoke is easy, and my burden light.⁷⁷

In the Gospel of Matthew, a text I saw through the eyes of Harry Weber's 2012 bronze statue of Dred and Harriet Scott the morning of the Lecture, the hoped-for abolition in which the Scotts had faith, is born as a human, as *Emmanuel*, "which being interpreted is, God with us."⁷⁸ The great joy is now, in this world, not confined to a world to come or to the experience of a life we do not live: "And the angel said unto them, Fear not: for, behold, I bring you good tidings of great joy, which shall be to all people."⁷⁹

The world is one thing, perhaps it is a little thing, but it is for us and we are for it. The spectacle of the auction block is nothing, a nightmare of nothingness. Under the spell of capital, we have mistaken the image for the real, we have built an entirely fake world on the nothingness, the spectacle, of the auction block. The world, the world the masters built, the spectacle and all its morals and all of its laws and all of its possibilities, is the world we must leave:

We all have our masters. . . . And I begin to sense that suicide may be the only real proof of human freedom.⁸⁰

But from somewhere I cannot yet discern the miracle of liberation draws nearer to me. . . . But what exactly does this miracle consist of? Nothing less than an epiphany, a realization that no influence—neither power nor person—may hold such sway over me that my desire for life should wither beneath it. For without this desire how can anything exist?⁸¹

close, holding their heads high, their eyes directed not only Arch-ward and across the Mississippi River, but toward a horizon of freedom in which they believed enough to one day finally see." See *Dred and Harriet Scott Statue Dedication*, DRED SCOTT HERITAGE FOUND., https://www.thedredscottfoundation.org/dshf/index.php?option=com_content&view=article&id=156&Itemid=53 (last visited Jan. 14, 2022).

77. *Matthew* 11:28–30 (King James).

78. *Matthew* 1:22–23 (King James).

79. *Luke* 2:10 (King James).

80. Dagerman, *supra* note 56, at 301, 304–05.

81. *Id.* at 305. Dagerman writes:

Any consolation that does not acknowledge my freedom . . . is fraudulent, a mere reflection of my despair. When my despair urges me to abandon hope, "for the day is enclosed by two nights!" my false consolation enjoins me to embrace hope, "for the night is enclosed by two days!"

Every power or person who acts in a way that causes our desire for life to wither should and therefore can be stopped. The “miracle of liberation” for Dred and Harriet Scott would have been the Cross, the Cross they took up, the Cross they are still on, the Cross that it is our calling to take up.

The modern era has capital as its cornerstone. Capital only comes into being after the number of murders exceeds what is imaginable, after mass murder transcends what can be described in secular terms. The number of murders exceeds the imaginable when entire peoples are crucified, not just people but also their eschatology. What did they think as their lives were ended? We do not and cannot know, for their languages and philosophies and theologies were also ended. There is no going back, the end was in the beginning. Slavery, genocide, colonialism are the first capitals, and slavery is the alpha and omega of capitalism. The powers and principalities of the modern era extract value and leave hunger, thirst, flight, humiliation, sickness, and imprisonment in their wake.

Consider these observations of the Cross from the *Narrative of the Life of Frederick Douglass*:

I was broken in body, soul, and spirit. My natural elasticity was crushed, my intellect languished, the disposition to read departed, the cheerful spark that lingered about my eye died; the dark night of slavery closed in upon me; and behold a man transformed into a brute!⁸²

And from *Soledad Brother: The Prison Letters of George Jackson*:

I look into myself at the close of every one of these pretrial days for any changes that may have taken place. I can still smile now, after ten years of blocking knife thrusts and pick handles; of anticipating and faceless sadistic pigs, reacting for ten years, seven of them in Solitary. I can still smile sometimes, but by the time this thing is over I may not be a nice person. And I just lit my seventy-seventh cigarette of this 21-hour day. I'm going to lay down for two or three hours, perhaps I'll sleep . . .⁸³

And from Sandra Bland before she was found dead in a Texas jail cell on July 13, 2015:

But what good is a superficial consolation when what we seek is a consolation that enlightens. . . .

What . . . is time but a consolation that nothing human can ultimately endure? And what a miserable consolation that is, profiting only the Swiss.

82. See DOUGLASS, *supra* note 44, at 61–62. Douglass continued,

At times I would rise up, a flash of energetic freedom would dart through my soul, accompanied with a faint beam of hope, that flickered for a moment, and then vanished. I sank down again, mourning over my wretched condition. I was sometimes prompted to take my life . . .

83. GEORGE JACKSON, *SOLEDAD BROTHER: THE PRISON LETTERS OF GEORGE JACKSON* 17, 28 (Lawrence Hill Books 1994) (1970).

I'm still just at a loss for words, honestly, about this whole process. How switching lanes with no signal turned into all of this, I don't even know. But I'm still here, so I guess call me back when you can.⁸⁴

Slavery is death, death did not die with the *Confederacy*, death did not die with *Jim Crow*, and death will not die with *neoliberalism* or its *prison industrial complex*. Death is death when it is slavery, death is death when it is segregation, and death is death when it is neo-segregation. Death remains what it is, the end, the “undiscover'd country,” white-over-black to white-over-black to white-over-black, world without end.

The slave has “no rights that white man [is] bound to respect.”⁸⁵ Segregation is equality.⁸⁶ The prisoner is a slave of the state.⁸⁷ Twenty-first Century prison looks like slavery because it is slavery.⁸⁸ Slavery is death. It is time to abolish prison and replace it with nothing. It is time to free Dred and Harriet Scott. It is time to free ourselves and everyone. It is time to leave the tomb.

The conceits of the modern era are all around us written in ruin and in specters of future ruin.⁸⁹ The ruins are an opening.⁹⁰ Critical Race Theory is a flower in the midst of ruin. Critical Race Theory is said to be radical? Critical Race Theory *is* radical. Critical Race Theory, the stone that the builders refused, is as *radical* as the Gospels, as *avante garde* as philosophy, as *American* as the abolition of slavery, and as necessary as tomorrow.⁹¹

84. These are Sandra Bland's last known words. Bland was arrested by the Texas police after a traffic stop on July 10, 2015, for allegedly failing to signal while switching lanes. This sort of infraction rarely leads to police stops. The arresting officer, Brian Encinia, ordered her to put out her cigarette. It is not illegal to smoke during a traffic stop. Officer Encinia ordered Bland out of her vehicle and can be seen on video pointing his taser at her. Encinia then moved out of view of his camera and forced her to the ground. Encinia claims that after he forced Bland to the ground, she kicked him in the shin. The Texas authorities booked her for “assaulting a public servant” on July 10, 2015. Bland was found dead in her cell three days later. Bland's death was ruled a suicide by hanging by the Texas authorities, a ruling the family disputes. See Bryan Smith, *An American Tragedy*, CHI. MAG. (Dec. 14, 2015), <https://www.chicagomag.com/Chicago-Magazine/January-2016/Sandra-Bland/>.

85. *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1857).

86. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

87. *Ruffin v. Commonwealth*, 62 Va. (1 Gratt.) 790, 796 (1871).

88. *Shaw v. Murphy*, 532 U.S. 223, 223 (2001) (holding that incarcerated persons possess no “First Amendment right to provide legal assistance to fellow inmates”).

89. See Jason W. Moore, *The Rise of Cheap Nature*, in ANTHROPOCENE OR CAPITALOCENE?, *supra* note 7, at 78–115; Justin McBrien, *Accumulating Extinction*, in ANTHROPOCENE OR CAPITALOCENE?, *supra* note 7, at 116–137.

90. See generally Margaretha Haughwout, *The Politics of the Graft*, 13 LUNCH J. 2019, at 255–63.

91. *Mark* 12:10 (“And have ye not read this scripture; The stone which the builders rejected is become the head cornerstone.”).

