



THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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Subject Positions

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In *Black Skin, White Masks*, Frantz Fanon described the moment at which he ‘realised’ he was ‘black’ and thus not a person but rather ‘an object’¹. This moment occurred when Fanon entered the ‘white man’s world’ of the metropole (France) and was subjected to the ‘external stimulus’ of someone uttering the phrase ‘Look, a Negro’, followed by a child exclaiming ‘Mama, see the Negro! I’m frightened’.² At this point, Fanon understood he was not simply himself, but rather he was being held responsible for his ‘race’ and his ancestors. Fanon was no longer his own person but had become the repository of the overwhelming weight of the racialised tropes of being ‘black’.³

Fanon was not simply reeling off a microaggression to which he had been subject. Rather, he was describing the way in which race is produced. For Fanon, race only ever exists relationally: the black man is only black ‘in relation to white man’, and it is only amongst white people that people with darker skin pigmentation become ‘black’. In this way, the phrase ‘Look a Negro’ was not the recognition of pre-existing racial difference; rather it was one example of a set of acts which constituted Fanon as black.

These acts – following Althusser – have an interpellatory effect. For Althusser, interpellation is the process through which concrete individuals become ideological subjects: when one is interpellated, one is called on to occupy a specific ‘place’ in the world, ‘a fixed residence’.⁴ One’s specific ‘individual’ characteristics are thus

¹ Frantz Fanon, *Black Skin White Masks* (Pluto, 2008) 82,

² *Ibid*, 83-84.

³ *Ibid*, 83.

⁴ Louis Althusser, ‘Ideology and Ideological State Apparatuses (Notes towards an Investigation)’ in *Lenin and Philosophy and Other Essays* (New Left Books, 1971) 127, at 178.

subsumed into some wider ideological category. Ideology thus operates through positing individuals as 'subjects' and placing them into a role within the dominant mode of social organisation.

Racialisation – although never explicitly addressed by Althusser – is one of the most prevalent forms of interpellation: it takes concrete individuals, transforms them into racial subjects, and then inserts them into a racial hierarchy. As discussed below, interpellation into these racialised hierarchies is a crucial element in cementing and securing the existence of capitalism, colonialism and neocolonialism.

Of course, the modalities through which such interpellations occur vary. Changing material conditions and anti-racist struggles all shape and reshape how racialised interpellation occurs. In today's academia, for instance, it is fairly unlikely that one's colleagues will openly shout 'look a Negro' (although in these times of struggle against 'political correctness' who knows ...). On the contrary, many of the interpellatory acts in academia might be thought of as negative – the omission of a title, forgetting to introduce you, shaking everyone's hand in the room except yours (there was only so long I could maintain that this omission was simply because of startling, boyish good looks).

Material Conditions

On this reading, racialisation is process that goes on 'behind the backs' of those subject to it. Neither the racist nor the racialised subject necessarily understand that they are participating in (and constituting) a global process. This points us to some of the limits of understanding racism primarily through the lens of 'lived experience', as the processes of racialisation need not be recognisable as immediately harmful to be constitutive of race as a global structure of exploitation and subordination. Whilst peoples' personal experiences of racism are important, they cannot replace a systemic analysis of the structures of racialisation.

Once again, Fanon is our indispensable guide. Although Fanon understood that one only became 'black' 'in relation to the white man', he insisted that this was not simply a matter of 'difference'. In the process of racialisation 'the white man is not

only 'The Other but also the master'.⁵ Racism had to be located in a wider set of power relations since '[t]he apparition of racism is not fundamentally determining. Racism is not the whole but the most visible, the most day-to-day and, not to mince matters, the crudest element of a given structure'.⁶

Racism served as 'one element of a vaster whole: that of the systematized oppression of a people'.⁷ And from where did this need for systematised oppression come? Specifically, for Fanon, it was rooted in the 'shameless exploitation of one group of men by another'.⁸ What Fanon points us to is the necessity of understanding race and racism as rooted in – and ultimately stabilising and producing – particular material relations of exploitation. Accordingly, anti-racist action must be built upon a materialist account of racialisation.

And how might we begin to construct such a materialist account? In his 1847 [text](#), *Wage Labour and Capital*, Marx put forward an account of the social relational character of capital. Arguing against those economists who thought of 'capital' as a collection of things, [Marx invoked slavery](#), noting:

What is a Negro slave? A man of the black race. The one explanation is worthy of the other.

A Negro is a Negro. Only under certain conditions does he become a slave. A cotton-spinning machine is a machine for spinning cotton. Only under certain conditions does it become capital. Torn away from these conditions, it is as little capital as gold is itself money, or sugar is the price of sugar.

Here, in an exemplary fashion, Marx demonstrates that capital, money and labour only acquire their peculiar character through definite human social relations. However, Marx was inconsistent: whilst he understood the necessity of rooting capital in a definite set of social relations, he treated race as self-evident: 'A Negro

⁵ Fanon (2008) 138.

⁶ Frantz Fanon, 'Racism and culture', in *Toward the African Revolution: Political Essays* (Grove Press, 1988) 29, at 32.

⁷ *Ibid.*, 33.

⁸ *Ibid.*, 37–38.

is a Negro'. But as Fanon demonstrated, this is not true; a 'Negro' is only a 'Negro' when interpellated as such.

Accordingly, we might take Marx's own analysis and turn it back in on itself – a black person is a human being; *only under certain conditions do they become 'black'*. The question is, what are these conditions? Anti-racist, Third Worldist and black Marxists have sought to deepen Marxist analysis along these lines, seeking to chart the precise material conditions under which human beings are sorted into racial categories. Such conditions included slavery, colonialism, and imperialism. Such an anti-racist materialism understands racialisation as intimately bound up with capitalist social relations.

Race and Capital

A key insight from radical anti-racists is that racism is never about the ideas or prejudices in people's minds, but is instead centrally about power. As Kwamé Turé memorably put it – in a quote for which I could find no source – 'If a white man wants to lynch me, that's his problem. If he's got the power to lynch me, that's my problem. Racism is not a question of attitude; it's a question of power.' Turé understood that power as rooted in capitalism.

Since its inception, capitalism – as a geographically expansive, exploitative, and uneven system – has relied upon the creation of racialised hierarchies. These hierarchies were essential in structuring and justifying the dispossession and genocide of Indigenous peoples, in taking and controlling non-European lands, in the transformation of natives into labourers and in disciplining – and dividing – the working class on domestic and international scales. The historical spread and consolidation of actually existing capitalism is inconceivable without racialisation.

Insofar as racism interpellates us as 'racial subjects', it does this within definite social relations of capitalist – and consequently imperialist – accumulation and exploitation. In this way, we can begin to understand the simultaneously contingent and necessary character of racism. This manifests itself in two key ways. Firstly,

racism is contingent in the sense that it is 'not a constant of the human spirit', racism is not a 'natural' phenomenon borne of our innate drive to create 'Others', or our intrinsic attraction to people 'like us'. But this does not mean that racism is simply 'placed' into our consciousness by bad people. Rather, racism corresponds with the way in which the world is organised and ordered.

Secondly, the particular 'subjects' of racialisation are not fixed. There is no 'real' racial identity into which we neatly slot and then are discriminated against. Rather 'race' is posited through racism, and corresponds to the shifting and changing nature of capitalist social relations. A simple look at the history of European colonialism and its sophisticated mobilisation of different racial and ethnic identities undermines the idea of any eternally fixed hierarchy of racialisation. At the same time these patterns of racialisation are not random. Capitalism is a global system that has spread certain categories of racialisation in deep ways.

What's Law Got To Do With It?

One of Althusser's key insights into interpellation in the context of capitalism was the central role of law. Whilst Althusser understood 'the subject' to have existed in various forms throughout history, it was 'with the rise of bourgeois ideology, above all with the rise of legal ideology', that the 'subject' appeared explicitly under this name'.¹⁰

Whilst other social forms do interpellatory work, in modern capitalist society law stands as interpellator-in-chief. To exist in the world today is to be defined as a legal subject, with law structuring our position. As Akbar Rasulov has put it 'legal regimes, institutions, doctrines, and practices help men and women around the globe to "arrive," so to say, into certain positions within the global class structure and not others'.¹¹

⁹ Ibid, 41.

¹⁰ Althusser (1971) 170.

¹¹ Akbar Rasulov "The Nameless Rapture of the Struggle": Towards a Marxist Class-Theoretic Approach to International Law' (2008) 19 *The Finnish Yearbook of International Law* 243, at 291.

Accordingly, law has played an absolutely central role in the interpellation of peoples as racial subjects in the process of the birth, consolidation, expansion and continued existence of capitalism. As has been demonstrated in Critical Race Theory, TWAIL and Marxist scholarship, law was central in creating the framework for the dispossession and occupation of non-European land, at the very same moment that it commodified black people as slaves. Racialised reasoning lay at the heart of the great liberal legal thinkers of property and contract, and helped to justify and structure the expansion of capital across the globe. The abstract and formal equality of the law was articulated against a series of racialised exclusion of certain peoples from legal subjectivity. If racism and capitalism are structurally intertwined, so too is law.

Insofar as law has such interpellatory effects, it has also served as a crucial ground of struggle for anti-racist, Indigenous and national liberation movements. Yet the law has its limits. As these movements have learned time and time again, these limits were a certain form of liberal equality. And whilst one should never downplay the importance of formal equality, liberal equality was first constituted through racialised relations of dispossession and exploitation. With contemporary capitalism and its more indirect forms of financialised accumulation and debt have come 'subtler' forms of racism, drawing on 'cultural' stereotypes around corruption, laziness, stupidity, and so on. These subtler forms find expression through formally equal legal regimes, which – again as Critical Race Theory and TWAIL scholars have shown – is a type of equality that both codifies and embeds past racial injustice, and reproduces racialised assumptions, languages and forms.

Theorising While 'Black'?

What does all of this say about the role of the black scholar? How does one 'theorise while black'? First, a precaution. A key insight of the radical anti-racist tradition is that 'race' does not have an independent existence from racism and processes of racialisation. There is no authentic, real category of 'black' rooted in biological reality or unified cultural practices. Black people are of course 'really' black insofar as they are interpellated as such, but even here we need to be careful. The forms and limits of who is interpellated as black vary according to scale

(international, regional, domestic) and political-economy. Perhaps the most obvious example of this is the way in which 'mixed-race' people might be interpellated as 'black', 'coloured' or 'mulatto' depending on time and place.

In this way, racism is a global phenomenon that assumes a variety of localised forms. In thinking about race and racism it is necessary to pay due attention to these particular forms and contexts. This is particularly important in the context of the US. 'Blackness' in the US is intrinsically and directly bound up with the historical existence of an internal population of African chattel slaves, who formed a minority of the population. Slavery was articulated and managed through a homogenised concept of 'blackness', which both justified and reinforced the enslaved status of Africans and strongly differentiated them from white wage labourers. This history is not one that is necessarily shared in other contexts where racial formation may have taken different forms.

More importantly, even relatively stable interpellations of 'black' populations are crisscrossed with fundamental antagonisms of class and gender. Relationships of oppression, exploitation and domination exist within black populations. This is reflected in the political differences amongst the various movements for black liberation past and present.

As such, to present oneself as representing the 'voice' or 'position' of black people is a fool's errand at best. At worst, this can represent an attempt to paper over real political differences within a racialised community. Very often this has been a way of taking the views of the most conservative, elite sections of the black community as standing in for the views of the community as a whole. One might think here of the example of the appointment of Clarence Thomas to the Supreme Court of the United States.

Another danger of this approach is its affinity to a certain kind of racial liberalism. If there is an objectively existing 'black' community, then racism can be ended simply by removing discrimination against this community: all that is needed here is legal equality. Thus racial equality can be achieved without fundamental transformation. Instead, if race is understood as *produced* through racist social

relations, which are intrinsically bound up with the law, then the provision of legal equality cannot ultimately defeat racism. Rather it will reinforce those social relations, perhaps generating new forms of racialisation. To overcome racism, what must be targeted are those social relations which give rise to racialisation. It is here that we reach the ultimate contradiction. If 'race' is the product of racism, then to abolish racism, we will have to *abolish race itself*. How, then, do we square this circle? What does it mean to speak as a 'black scholar' who wishes to abolish 'race', and with it 'blackness'?

In *After Empire*, Paul Gilroy noted that oppressed groups have at times 'seized the discursive categories through which their subordination has been transacted', that is to say oppressed groups adopted those very racialised identities as a form of solidarity.¹² Gilroy is sceptical of this, seeing it as ultimately self-undermining in the face of the political differences within racialised communities. However, the strength of the most successful radical anti-racist movements has been to simultaneously understand the oppressive nature of racial categories, whilst also organising within them. The international communist movement, the Black Panther Party, the FLN, and the PAIGC all operated with a materialist understanding of race, whilst trying to unite racialised oppressed peoples under the wider objective of overthrowing those (capitalist) social relations that generate patterns of racialisation.

It is a Good Thing to be Criticised by the Enemy

One perennial act of interpellation for racialised scholars is the degree to which their work is not taken seriously. Often this takes the form of simply pretending it does not exist. However, as issues of race and racism have been increasingly forced onto the agenda, this has become more difficult. Instead, what we have seen – and indeed what sparked this symposium – is the phenomenon of 'whitesplaining', whereby white people explain racism to those racialised as not-white.

Whilst this phenomenon is undoubtedly irritating, it represents something distinct and interesting. Ignoring, or ignorance of, anti-racist work remains by far the most

¹² Paul Gilroy, *After Empire: Melancholia Or Convivial Culture?* (Routledge, 2004) 59.

effective way to dampen it. That defenders of the existing order feel the need to challenge anti-racist work indicates the success that anti-racist movements have had in forcing these issues into the agenda. As Mao once put it:

It is good if we are attacked by the enemy, since it proves that we have drawn a clear line of demarcation between the enemy and ourselves. It is still better if the enemy attacks us wildly and paints us as utterly black and without a single virtue; it demonstrates that we have not only drawn a clear line of demarcation between the enemy and ourselves but achieved a great deal in our work.

Such attacks, particularly insofar as they attempt to paint racialised scholars as ignorant, or extreme, signal the fear felt on the part of those making the critiques.

What is most interesting in the context of the international legal field is the degree to which such whitesplaining is often associated with 'liberal' defenders of the international legal order. A common accusation levelled by such defenders is that, by insisting on the fundamentally racialised character of the international legal order, radical anti-racist scholarship deprives those very racialised subjects it seeks to defend of a powerful tool: the law. I have argued elsewhere that this is false dilemma, depending on the idea that the choice before us is to simply 'use' law as intended, or abandon it altogether, foreclosing the fact that an awareness of the structural limits of law – and the strategic aim of overcoming it – can inform subversive engagements with the law. However, what is more interesting here is the degree to which such 'whitesplaining' fits into a wider pattern of attempts to divide movements for racial justice into genuine, law-abiding, peaceful, reasonable people, and outside agitators, communists, radicals, and so on.

Once again we witness the seductive power of the legal form. White moderates – in Martin Luther King's parlance – are often, if not always, sincere in their defence of liberal equality as the solution to racial injustice. Crises threaten to confirm the fear of such moderates: that their political ideals are built upon a foundation of racial violence and exploitation. There are three possible responses to this, which we might characterise as reactionary, radical and liberal. The reactionary response

is to acknowledge the connection between the unequal status quo and racist social relations, but then to insist that this connection is a price worth paying to retain the benefits of the status quo. This has been the response of the populist right in recent years. By contrast, the radical response – outlined here – is to acknowledge that same connection and insist on transcending the status quo. The 'liberal' response acknowledges the reality of racism without recognising its connection to the existing order. Accordingly, the only response can be whitesplaining: urging 'constructiveness', asking for 'realistic' solutions, demanding that racialised people use the 'proper' channels, and perhaps establishing an unconscious bias training programme. These often represent genuine attempts to acknowledge the reality of racism, whilst simultaneously attempting to preserve the existing order. The net effect of such attempts is to channel the energies of anti-racists into maintaining the status quo.

Back to School

To conclude, we must add a final materialist coda. Knowledge production does not take place in a vacuum. The radical historical traditions and movements discussed above were produced by, and in turn sustained, their own intellectuals. Accordingly, the thinkers of these movements did not tend to be located within universities. Today, in the neoliberal era, the situation is somewhat different, radical movements often lack the resources and infrastructure to produce and sustain their own intellectuals. Accordingly, a large number of radical thinkers today are based largely within the university sector. This is not an occasion for handwringing or self-flagellation. Rather it is an invitation to think through the material position of intellectual production. If racism is a material phenomenon, then anti-racism cannot simply be about producing the correct 'ideas'. Universities themselves are enmeshed within capitalist circuits of production and accumulation, and thus embedded within them their own forms of racialisation. This is true both in terms of the local divisions of labour within universities, and in terms of their situatedness within an unequal international order.

It is often in such a context that the siren song of liberal equality rings very strongly. University administrators enthusiastically embrace 'decolonising the curriculum',

equality and diversity initiatives, and declare 'black lives matter' even as they launch attacks on the lowest paid, racialised staff, provide research to support imperialist initiatives, and collaborate with agents of the state against international students.

A materialist anti-racist theory and practice must take this contradiction seriously. To 'theorise' about the material structures of exploitation and domination without recognising them in front of our faces would be a mistake. A successful anti-racist theory and practice must see the interconnectedness of these relations and struggles and fight them. So at the very least, join your union and don't cross any picket lines.

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