

ESSAY ROUNDTABLE

## Confronting the Truth: The Necessity of Love for Justice

Brandon Paradise 

Associate Professor of Law, Rutgers Law School, and McDonald Distinguished Fellow, Center for the Study of Law and Religion, Emory University

doi:10.1017/jlr.2022.19

### Abstract

This essay examines the interplay between law, Christianity, and oppression in the thought of James Baldwin. This essay begins its inquiry from Baldwin's own essay, *Equal in Paris*, and expands out to his broader writing. The essay makes four contributions. First, it shows that *Equal in Paris* presents a view of law and Christianity as simultaneously serving as instruments and sources of hypocrisy and injustice while representing critically important, if difficult to achieve, standards of justice and love. Second, the essay shows that for Baldwin avoidance and denial of collective moral failure underlies the hypocritical use of law and Christianity to perpetrate injustice rather than justice. Third, the essay reveals that Baldwin would see current legislative bans of critical race theory as a means of avoidance and denial of collective moral failure. Moreover, from a Baldwinian perspective, the maintenance of innocence through bans on critical race theory is a “crime” that typifies the problem at the root of racial oppression in America, which is the refusal to come to terms with the reality of white supremacy. Fourth, while agreeing with scholars who find significant overlap between Baldwin's approach to law and critical race theory, the essay concludes that Baldwin's work suggests that critical race theory's neglect of love constitutes a critical shortcoming for critical race theory's anti-subordinationist agenda.

**Keywords:** James Baldwin; “Equal in Paris”; critical race theory; love; law; power; hypocrisy; Christianity

*It is not a romantic matter. It is the unalterable truth: all men are brothers. That's the bottom line. If you can't take it from there, you can't take it at all.*

—James Baldwin, *The Price of the Ticket*<sup>1</sup>

For me, a scholar who writes at the intersection of race, law, and religion, James Baldwin has a special significance: his work anticipates some of critical race theory's central themes and whose rhetoric and moral outlook is deeply shaped by the African-American Christian tradition, even as he offers trenchant critiques of Christianity and the role of the church in the struggle against white supremacy. Published in 1955, “Equal in Paris”<sup>2</sup> was written early in Baldwin's career—nearly a decade before his classic 1963 essay on the Black freedom

<sup>1</sup> *Jimmy's Pulpit: Discussions, Topics & Themes*, JAMES BALDWIN: THE PRICE OF THE TICKET, <http://jamesbaldwinproject.org/AboutJBTTopics.html>, last accessed March 4, 2022.

<sup>2</sup> James Baldwin, *Equal in Paris*, in BALDWIN COLLECTED ESSAYS 101 (Toni Morrison ed., 1998). Hereafter all citations to “Equal in Paris” are parenthetical.

© The Author(s), 2022. Published by Cambridge University Press on behalf of the Center for the Study of Law and Religion at Emory University. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution, and reproduction in any medium, provided the original work is properly cited.



struggle, “The Fire Next Time,” and nearly fifteen years before Martin Luther King, Jr.’s 1968 assassination, an event that profoundly altered Baldwin’s early optimism regarding the possibility of morally reforming white Americans. Set in Paris, the essay does not have as its major themes white supremacy and race. Baldwin even goes so far as to disclaim the importance of race for the essay’s central event—Baldwin’s arrest for possession of a stolen bedsheet—writing, “[t]hat evening in the commissariat I was not a despised black man ... For them [the French police], I was an American” (106–07).

Early in his career and impoverished, Baldwin arrived in Paris with only forty dollars to his name. Among his acquaintances, his destitute condition put him in the “humiliating role of a free-loader” (103). More consequentially, it meant he was forced to tolerate a hotel where his bedsheets remained unchanged and filthy. To escape the filth imposed by his poverty, Baldwin gladly borrowed a sheet a friend stole from another hotel. Baldwin’s subsequent arrest for possession of the sheet took him by utter surprise. He believed the matter trivial (“For I was thinking [upon arrest], it is, after all, only a sheet, not even new”); and that he would be released in time for dinner (105). He instead spent an agonizing eight days in a French prison wondering what his fate would be, only for the experience to culminate in a trial for a matter that caused laughter and “great merriment in the courtroom” (116).

For Baldwin, a Black American whose people had endured decades of long prison sentences on trumped up charges rooted in bogus or trivial offenses, the episode was no laughing matter. It shook him to his core. Upon release from prison and return to his hotel—where he was told to settle his bill or leave—Baldwin attempted to hang himself with one of the dirty bed sheets that led to the whole ordeal.<sup>3</sup> Baldwin’s life would have ended that day in Paris but for the breaking of the pipe that served as his makeshift gallows.

In “Equal in Paris,” Baldwin does more than recount the agony of his prison experience and the suicidal despair to which the incident of the *drap de lit* drove him. He articulates a vision of law and legal justice as historically and socially conditioned by the underlying morality of the society in which the law is administered. In this regard, Baldwin’s approach to U.S. law, like his analysis of French law, resembles the claim from critical race theory that law reflects and perpetuates unjust hierarchy and disparities in power.<sup>4</sup> As I discuss below, however, unlike critical race theory, Baldwin emphasizes the necessity of love for overcoming and resolving the gap between the law and U.S. society’s professed values and the actual practices of a society pervaded by racial hierarchy.

In both “Equal in Paris” and his celebrated work “The Fire Next Time,” Baldwin articulates a view of law and Christianity as simultaneously serving as instruments and sources of hypocrisy and injustice while representing critically important, if difficult to achieve, standards of justice and love.<sup>5</sup> In particular, Baldwin identifies the white majority’s refusal to confront and face its oppressive nature as the underlying reason for the continued maintenance of subordinating social structures. While focused on the absolute necessity of changing oppressive social structures, Baldwin insists that love is indispensable for enabling the confrontation with reality that is necessary for achieving a truly free society. In this regard, Baldwin marries critical race theory’s focus on institutional racism and racial power with a commitment to the importance of love for emancipating the white majority from the lies and hypocrisies that conceal the gap between their professed and practiced commitments. If Baldwin is correct, his work suggests that critical race theory’s neglect of love constitutes a critical shortcoming for its anti-subordinationist agenda.

<sup>3</sup> DAVID LEEMING, *JAMES BALDWIN: A BIOGRAPHY* 72 (2015).

<sup>4</sup> QUENTIN MILLER, *A CRIMINAL POWER: JAMES BALDWIN AND THE LAW* 6–7, 11, 21, 25, 64, 84 (2012).

<sup>5</sup> James Baldwin, *The Fire Next Time*, in *BALDWIN COLLECTED ESSAYS*, *supra* note 2, at 291–347.

### Law as a Socially Conditioned Instrument of Injustice

“Equal in Paris” calls into question the presumed function of French law as an instrument of neutral justice and implicitly strips the law of any pretensions it may have of transcending the prejudices and anxieties that exist in the broader society in which it is administered. Although not, according to Baldwin, a “despised black man” in the eyes of the officers who arrested him, Baldwin was poor—a member of “that precarious group of people of whatever age, race, country, calling, or intention which Paris recognizes as *les étudiants* and sometimes, more ironically and precisely, as *les nonconformists*” (104). He observes that French society wishes to remain ignorant of the fact that it “could be counted on to produce, probably in greater and greater numbers, a whole body of people for whom crime was the only possible career” (114), instead criminalizing the poor through the petty offenses to which poverty inexorably leads. In this way, Baldwin intimates, French society could conceal even from itself the oppressive nature of the poverty to which some are fated. But rather than confronting the injustice of economic oppression, French law transmutes poverty into crime, rendering the condition of poverty a moral failure among the poor rather than a moral failure of the society that produces a whole body of people “for whom crime is the only possible career” (114). Thus, by implication, the French legal system serves to legitimate and facilitate injustice rather than justice.

Baldwin’s arrest for possession of a stolen bedsheet serves as a synecdoche for how, rather than administering justice, French law facilitates and perpetrates injustice. Baldwin remained at a hotel that failed to change his bed sheets because he (presumably) could not afford accommodations that would reliably deliver the basic and expected service of clean linens. In other words, due to his poverty, Baldwin was subject to the hotel equivalent of a slumlord. The poverty and powerlessness of its patrons undoubtedly enabled the hotel’s practice of failing to provide clean linens. Rather than addressing the injustice inherent in the hotel’s failure to provide basic services, French law focuses on Baldwin’s criminal possession of a stolen sheet. The law leaves unexamined the oppressive conditions that led Baldwin to borrow the sheet in the first place.

Baldwin’s description of the courtroom proceedings he observes while awaiting trial tells us that his arrest and imprisonment for a petty crime of necessity was not unique. In the dead of winter, for example, a boy receives a six-month sentence for stealing a sweater, a “crime” that shares with the stolen sheet an origin in a larger, more serious crime that goes unremarked and unreferenced: an economic system that denies basic necessities to the poor (113).

Despite the pettiness of their crimes, it seems to Baldwin that everyone in the courtroom, including the judge, the lawyers, and the prisoners themselves believed “that all the people who were sentenced that day had made, or clearly were going to make, crime their career” (113). In other words, the pettiness of the crimes does not immunize the defendants from the perception of a more deeply rooted tendency toward criminality but actually serves to confirm it: trapped at the bottom of French society, surviving on the economic margins, the impoverished offenders belonged “to a whole body of people for whom crime was the only possible career” (114).

According to Baldwin, pride and lack of sentimentality made it difficult for the French to seriously entertain the possibility that these petty offenders could be rehabilitated and diverted from a life of “crime.” Seriously pursuing their rehabilitation would, after all, entail dealing with the true cause of their criminality—social structures that made crime their only possible career. Thus, as Baldwin strongly implies, the French studiously avoid a genuine confrontation with the moral crisis inherent in criminalizing a whole body of people; the offenders are placed in a part of the courtroom “where they could not be seen—and not because they [the French] were offended at the crimes, unless, indeed they were offended

that the crimes were so petty, but because they did not wish to know” that it was not individual moral failures, but instead their whole society, that manufactured an underclass for whom crime was a *fait accompli* (114).

Baldwin encounters willful ignorance of the true nature of petty crime among the poor in the form of laughter. Rather than a mood commensurate with the agony he experienced during his eight days of incarceration, “great merriment” and laughter accompany the dismissal of his case (116). Although the laughter was intended to “warm” him, it had the opposite effect, chilling him (116). It reminded Baldwin of “the laughter that [he] often heard at home ... of those who consider themselves to be at a safe remove from all the wretched, for whom the pain of the living is not real” (116). Moreover, as literary scholar Adam Kaiserman comments, the laughter of the courtroom does not reflect self-knowledge but the “recognition] that someone else’s misfortunes, while comprehensible, will never happen to oneself.”<sup>6</sup> If the privileged believed that they could suffer the same “misfortune,” rather than laughter, perhaps the deadly seriousness of the situation would fill them with fear.

In the concluding lines of “Equal in Paris,” Baldwin remarks that, despite his wish to find in Paris a refuge from the same laughter that he heard so often in Harlem, his life began “that first year in Paris, when it was borne in on [him] that this laughter is universal and never can be stilled” (116). In Paris, Baldwin discovers that white American laughter at Black oppression is not unique. It is instead the universal response of the safe and the privileged who refuse to confront collective moral failure. Thus, as Kaiserman notes, while not an apology for anti-Black racism in America, in Paris, Baldwin came to understand the universal problem underlying the cruelty of white American indifference to Black suffering.<sup>7</sup>

### Hypocrisy and Whiteness

Baldwin’s decision to title his essay “Equal in Paris” conveys a certain irony. If the laughter of the French courtroom is correctly understood in terms of the universal failure of the privileged to extend equal regard to the humanity of the oppressed, Baldwin’s ostensible experience of equality in Paris—recall that “evening in the commissariat [Baldwin] was not a despised black man ... [he] was an American”—raises the question of whether achieving formal equality would end the subordination of Blacks in America (106–07). In particular, the French system of justice facilitates the moral failure to empathize with and extend equal regard to the poor. In rendering the French underclass—the true victims—as criminals, French law serves to conceal, perpetuate, and foreclose confrontation with the injustice inherent in the social structures that force the poor into crime.

A similar phenomenon of legitimation and concealment is at work in the United States when white supremacy manufactures Black criminality and thereby transforms victims of injustice into its perpetrators. The year prior to the publication of “Equal in Paris,” *Brown v. Board of Education*<sup>8</sup> ended “separate but equal” and disestablished white supremacy as the normative value of American life. As Baldwin’s experience in France anticipates, however, formal legal equality does not spell the end of racial subordination. *Brown* was met with widespread southern resistance to the command of formal equality, but more insidiously, it was met by appeals to “law and order” that criminalized Black people and birthed the era of

<sup>6</sup> Adam Kaiserman, *James Baldwin and the Great Divide: Adapting “Equal in Paris” for Golden Age Television*, 39 MELUS: MULTI-ETHNIC LITERATURE OF THE UNITED STATES 112, 119 (2014).

<sup>7</sup> *Id.*

<sup>8</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

mass incarceration.<sup>9</sup> The law after *Brown* purports to guarantee equality while maintaining racial oppression now concealed from view by the criminalization of Black people. Indeed, just as France makes crime the only career for a whole body of people, Baldwin elsewhere intimates that the same is true for Blacks in America: “Crime became real, for example—for the first time [upon understanding the injustice that white supremacy causes in virtually every facet of Black life]—not as a possibility but as *the* possibility.”<sup>10</sup>

Given the parallel criminalization of victims of injustice in France and the United States, it is perhaps unsurprising when Baldwin writes that the laughter of the French court “remind[ed] [him] of the laughter [he] had often heard at home, laughter which [he] had sometimes deliberately elicited” (116). While Baldwin does not tell us the circumstances or reasons he would deliberately elicit such laughter, we can infer that he did so to enable whites to relieve their anxiety and discomfort in confronting racial oppression. Writing about his tendency to manipulate white reactions, Baldwin says, “I had become very accomplished in New York at guessing and, therefore, to a limited extent manipulating to my advantage the reactions of the white world ... I knew that it was, for them, of the utmost importance that they never be confronted with what, in their own personalities, made [my] role so necessary and gratifying to them, I knew that they could never call my hand or, indeed, afford to know what I was doing” (106). Although he believed Paris would offer escape from such laughter, he nevertheless encounters the same laughter at his trial. The implications are clear. Like their American counterparts, the French use laughter to avoid confrontation with the true nature of themselves and their society. Thus, avoidance of moral failure is the “universal” that Baldwin identifies in the practice of inappropriate laughter, which averts confrontation with the grotesque barbarity of normalizing and even legitimizing the practice of dehumanizing whole groups of people, in France the poor and in America, Black people.

For Baldwin, the pretension that law organizes society in a moral direction when, in reality, it is used to perpetrate and perpetuate injustice in the interests of the powerful reflects the fact that law inevitably expresses the moral character of the society in which it is administered. As literary scholar Quentin Miller has said in his analysis of Baldwin’s play *Blues for Mister Charlie*, Baldwin argues that “the justice system operates according to the common biases of the land,” so that in practice justice is not administered fairly.<sup>11</sup> Notwithstanding the moral principles a legal system may purport to uphold, Baldwin believes that “[e]very society is really governed by hidden laws, by unspoken but profound assumptions on the part of the people, and [American] society is no exception.”<sup>12</sup> In the United States, anti-Black racism constitutes such a hidden law.<sup>13</sup>

The difference between the United States’s professed ideals and the hidden laws that actually govern America is aptly captured by what Princeton University professor Eddie Glaude, Jr. calls the “value gap,” a term that captures the chasm between U.S. democracy as an ideal and American democracy as practiced.<sup>14</sup> In Glaude’s view, the tendency to deny or

<sup>9</sup> James Cullen, *The History of Mass Incarceration: From Alexis de Tocqueville to Ronald Reagan, the Forces That Have Shaped the Current State of our Prison System*, THE BRENNAN CENTER (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>.

<sup>10</sup> Baldwin, *supra* note 5, at 293.

<sup>11</sup> Miller, *supra* note 4, at 68.

<sup>12</sup> *Id.* at 46 (quoting and discussing James Baldwin, *The Discovery of What It Means to Be an American*, in James Baldwin, *NOBODY KNOWS MY NAME: MORE NOTES OF A NATIVE SON* 23 (1961)).

<sup>13</sup> See and compare Baldwin, *supra* note 5, at 300, with EDDIE S. GLAUDE, JR., *BEGIN AGAIN: JAMES BALDWIN’S AMERICA AND ITS URGENT LESSONS FOR OUR OWN* 6–7 (2020).

<sup>14</sup> Glaude, *supra* note 13, at 7–8.

ignore the contradiction between American ideals and practice constitutes “the lie” that as a writer Baldwin strove to face and expose.<sup>15</sup>

Habits of “denial” and “avoidance” are necessary to maintain the “lie” that is implicit in the practice of a racist democracy.<sup>16</sup> As Glaude contends, “[f]or Baldwin, the accumulation of lies suffocated the white southerner,” who “had to lie *continuously* to justify his world.[<sup>17</sup>] Lie that the Black people around him were inferior. Lie about what he was doing under the cover of night. Lie that he was a Christian.”<sup>18</sup> In other words, lying was central to the maintenance of white supremacy.<sup>19</sup> Reflecting the centrality of “the lie” for white supremacy, Baldwin writes:

The idea of white supremacy rests simply on the fact that white men are the creators of civilization ... and are therefore civilization’s guardians and defenders. Thus it was impossible for Americans to accept the black man as one of themselves, for to do so was to jeopardize their status as white men. But not to accept him was to deny his human reality, his human weight and complexity, and the strain of denying the overwhelmingly undeniable forced Americans into rationalizations so fantastic that they approached the pathological.

At the root of the American Negro problem is the necessity of the American white man to find a way of living with the Negro in order to live with himself. And the history of this problem can be reduced to the means used by Americans—lynch law and law, segregation and legal acceptance, terrorization and concession—either to come to terms with this necessity, or to find a way around it, or (most usually) to find a way of doing both these things at once. ... [T]he white man’s motive was the protection of his identity[.]<sup>20</sup>

In other words, white identity is intimately bound up with white supremacy and therefore with the degradation and dehumanization of Black people. In this way, much racial oppression reflects the effort of whites to assign Black people an identity and place consistent with white supremacy. But doing so required resort to lies, including the maintenance of various contradictions, such as the existence of a legal system that purports to do justice even as “lynch law” allowed Blacks to be murdered with impunity, a doctrine of separate but equal that was in fact inherently unequal, and the concession to terrorism in the form of the Klu Klux Klan even while professing a commitment to a moral order.

Despite the obviousness of such contradictions, lies about the alleged inferiority of Black people operated to deny the reality of racial oppression.<sup>21</sup> Thus, for example, many whites insisted that racial differences justified segregation, thereby denying, as *Brown* recognized, that separate is inherently unequal and therefore oppressive. In this regard, the interplay between segregation and lies about Black inferiority as a means of maintaining white supremacy resembles France’s use of petty crimes to criminalize the poor in the interests of justifying a society that leaves some so destitute that crime is their only

<sup>15</sup> *Id.* at 4, 6–7.

<sup>16</sup> *Id.* at 23, 39, 49.

<sup>17</sup> (italics in original).

<sup>18</sup> *Id.* at 49.

<sup>19</sup> *Id.* at 7–8.

<sup>20</sup> James Baldwin, *Stranger in the Village*, in BALDWIN COLLECTED ESSAYS, *supra* note 2, at 127; see also Glaude, *supra* note 13, at 39–40.

<sup>21</sup> See notes 20, 22, and accompanying text.

career. Moreover, just as the privileged who made up the audience at Baldwin's trial in France knew they were at no risk of suffering a misfortune like the one Baldwin did, white Americans have been able and willing to deny racial domination because (being white) they are immune from it. Hence Baldwin's statement that the laughter of the courtroom reminded him of the "laughter that he often heard at home ... of those who consider themselves to be at a safe remove from all the wretched, for whom the pain of the living is not real" (116).

### Hypocrisy and Injustice in Christian Civilization

For Baldwin denial and avoidance of confrontation are key themes in sustaining the dialectic between the oppressor (whites in the United States, the privileged classes in France) and the oppressed (Blacks in the United States, the poor in France). But a question arises regarding why American or French oppressors insist on denying and avoiding their domination of the oppressed. Not every dominant group across space and time has suffered from such double-mindedness. For example, the ancient Romans do not appear to have suffered moral scruples from their domination of others but seem to have celebrated their power to subjugate and inflict pain upon others, even associating oppression with divinity.<sup>22</sup> Indeed, for the ancient world it appears that the poor or the weak altogether lacked the value that we assign by virtue of their humanity.<sup>23</sup>

Philosopher Friedrich Nietzsche famously captured the vast moral difference between antiquity and the contemporary world in his identification with the former as master-morality and the latter as slave-morality. The master-morality of the ancient Greeks and Romans celebrates the strong and the victorious. In contrast, slave-morality, which emerges with the advent of Christianity, attributes value to the weak and the oppressed, exalting victimhood in the figure of Christ-crucified.<sup>24</sup> Whatever one makes of Nietzsche's criticism of Christianity as a subversive ploy by the weak to dupe the strong, Christianity's immense influence on the moral and legal traditions of the West is hard to overstate.<sup>25</sup> It is reasonable to postulate that Christianity and the norm of the equal dignity of all people that it directly or indirectly inspired is the reason that, unlike the ancient Greeks and Romans, the United States and France do not celebrate domination but instead work to deny and conceal it.

Notwithstanding professions of Christian morality and the cognate ideal of the moral worth and equality of all persons, the degree to which Christianity's moral commitments have taken deep root in the everyday mores, as opposed to the professed norms, of Western life is another matter. Thus, although Christianity is arguably the ultimate origin of Western legal concepts of universal equality, as well as everyday contemporary professions of moral concern for the poor, the weak, and the vulnerable,<sup>26</sup> there is a wide gap between the standards of Christian morality and the history of Western societies. Thus, the United States practiced a brutal form of chattel slavery while the overwhelming majority of Americans simultaneously professed to be Christians. The same contradiction

<sup>22</sup> TOM HOLLAND, *DOMINION: HOW THE CHRISTIAN REVOLUTION REMADE THE WORLD* 6, 16 (2019).

<sup>23</sup> *Id.* at 16.

<sup>24</sup> Friedrich Nietzsche, *First Essay: "Good and Evil," "Good and Bad,"* in *ON THE GENEALOGY OF MORALS* (trans. Walter Kauffman and R.J. Hollingdale, 1989); see also, Holland, *supra* note 22, at 462–65.

<sup>25</sup> See generally Holland, *supra* note 22; HAROLD BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983).

<sup>26</sup> Christianity identifies moral goodness with attention to the "least of these." *Matthew* 25:40 (New Jerusalem Bible).

between Christian moral norms and American life continued through the Jim Crow era. In many ways the same contradiction continues today.<sup>27</sup>

Baldwin, like many of his contemporaries, was fiercely critical of the hypocrisy of America as a nation whose people strongly identified with Christianity, while simultaneously practicing and sanctioning white supremacy and racial oppression.<sup>28</sup> In “Equal in Paris,” Baldwin subtly but powerfully captures the irony of Western Christian civilization. Imprisoned in Paris on Christmas day, Baldwin receives permission to attend mass. Baldwin instead finds himself “[f]or a freezing hour and a half, locked in exactly the same kind of cubicle as in the wagon which had first brought [him] to prison, peering through a slot placed at the level of the eye at an old Frenchman, hatted, overcoated, muffled, and gloved, preaching in this language which [he] did not understand, to this row of wood boxes, the story of Jesus Christ’s love for men” (116). Whereas Christianity teaches love and compassion for the imprisoned and condemns oppression of the poor, the French preach the love of Christ to prisoners suffering in the depth of winter for what in many cases amounts to the crime of poverty. The French thereby manage to conceal their oppression of the poor—and transgression of Christian morality—even while their hypocrisy lies in plain sight.

The justificatory role of Christianity in France’s oppression of the poor is also seen in America. Baldwin observes nearly a decade later in “The Fire Next Time” that “legend and theology, which are designed to sanctify our fears, crimes, and aspirations, also reveals them for what they are.”<sup>29</sup> Thus, as Miller notes, for Baldwin, organized religion serves as a means of making crimes against humanity—such as teaching the poor to be content with their poverty—holy.<sup>30</sup> For Baldwin the criminalization of poverty or, in the American context, blackness is accompanied by denial and avoidance of the hypocrisy that defines the professed commitments of the moral inheritance of Christian civilization and its actual practices, including two institutions that constitute the chief sources of morality in Western civilization: the church and the law.<sup>31</sup>

### Baldwin, Racial Illiteracy, and Bans on Critical Race Theory

In “The Fire Next Time,” Baldwin writes, “whoever wishes to become a truly moral human being ... must first divorce himself from all the prohibitions, crimes, and hypocrisies of the Christian church.”<sup>32</sup> Moreover, as Miller contends, for Baldwin abuse of power “under the pretext of the law” can mean “a hypocrisy much deeper” than the hypocrisy of religion.<sup>33</sup> If a society is to be truly moral, it must break free of not just religious but legal hypocrisy.

Critical race theory is the dominant form of race and law scholarship. Its influence now extends far beyond the legal academy. As a scholarly movement, one of critical race theory’s central aims is to uncover how the law purports to be race-neutral and colorblind, while in fact maintaining, furthering, and enacting racial subordination.<sup>34</sup> In particular, critical race

<sup>27</sup> See and compare Robert P. Jones, *White Too Long: The Legacy of White Supremacy*, in *AMERICAN CHRISTIANITY* 175 (2020) (reporting polling data finding “that, in the United States today, the more racist attitudes a person holds, the more likely he or she is to identify as a white Christian”), and Glaude, *supra* note 13, at 202 (“What we need is a third American founding, to begin again without this insidious idea of the value gap that continues to get in the way of a New America.”).

<sup>28</sup> Baldwin, *supra* note 5, at 306–07, 312–13, 316, 335.

<sup>29</sup> *Id.* at 327.

<sup>30</sup> Miller, *supra* note 4, at 89.

<sup>31</sup> See *id.* (In Baldwin’s view the institutions of the church and the legal system “have seized control of the definition of American morality.”).

<sup>32</sup> *Id.* (quoting JAMES BALDWIN, *THE FIRE NEXT TIME* 47 (1963)).

<sup>33</sup> See *id.* at 11.

<sup>34</sup> Cheryl I. Harris, *Equal Treatment and the Reproduction of Inequality*, 69 *FORDHAM LAW REVIEW* 1753, 1762–63 (2001).



theory excavates the law's role in maintaining racial hierarchy by demonstrating that, contrary to mainstream legal thought, the law does not function autonomously and according to objective standards of rationality. The legal system is instead pervaded and constituted by the bias, power-relations, and racial hierarchies that exist in American life as a whole, which in turn shape and reinforce racial subordination in the society at large. In this respect, critical race theory holds a mirror up to American law that reveals the racialized structures of injustice that colorblind standards of legal justice serve to conceal.

From a Baldwinian perspective, critical race theory can thus be understood as constituting a "confrontation" with the collective act of "avoidance" that colorblind jurisprudence implicitly represents.<sup>35</sup> Indeed, insofar as colorblindness in the law purports to be free of racial bias when it in fact reflects and furthers such bias, critical race theory exposes the hypocrisy of American law on issues of racial justice. In this respect, critical race theory and Baldwin share a concern with searching out the deeper motivations of the law, discovering the gap between professed and practiced values, and exposing hypocrisy.<sup>36</sup>

Although critical race theory has long been controversial within the legal academy,<sup>37</sup> it became controversial on a much larger, indeed nationwide, scale when in September 2020 the Trump administration condemned diversity trainings based on critical race theory and cognate ideas as "divisive, un-American propaganda."<sup>38</sup> By executive order, the Trump administration directed federal agencies to end diversity training sessions that, among other things, employ "divisive concepts," such as "race or sex stereotyping," and "race or sex scapegoating."<sup>39</sup> Notwithstanding the foregoing executive order's failure to reference the term "critical race theory," the order has been widely understood as targeting critical race theory and cognate concepts.<sup>40</sup>

Critical race theorist Kendall Thomas has observed that the Trump administration "weaponiz[ed]" critical race theory through an "aggressive and active misrepresentation of [it]."<sup>41</sup> According to Thomas, the administration's real target was not critical race theory,

<sup>35</sup> See and compare Miller, *supra* note 4, at 46; *supra* note 28 and accompanying text; Baldwin, *supra* note 5, at 300; and Baldwin, *supra* note 2, at 106, 116.

<sup>36</sup> See Miller, *supra* note 4, at 4, 6–8, 45 (noting similarity between Baldwin and critical race theory).

<sup>37</sup> DANIEL FABER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* 5, 8, 32–33, 38–40 (1997); Jeffrey J. Pyle, note, *Race, Equality and the Rule of Law: Critical Race Theory's Attack on the Promises of Liberalism*, 40 *BOSTON COLLEGE LAW REVIEW* 787, 816–20 (1999).

<sup>38</sup> OFFICE OF MANAGEMENT & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, OMB MEMORANDUM NO. M-20-34, TRAINING IN THE FEDERAL GOVERNMENT (Sept. 4, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-34.pdf>; see also Cady Lang, *President Trump Has Attacked Critical Race Theory. Here's What to Know about the Intellectual Movement*, TIME (Sept. 29, 2020), <https://time.com/5891138/critical-race-theory-explained/>.

<sup>39</sup> Combating Race and Sex Stereotyping, Exec. Order No. 13950, 85 C.F.R. § 60683, 60685 (Sept. 22, 2020).

<sup>40</sup> See, e.g., Janel George, *A Lesson on Critical Race Theory*, 46 *HUMAN RIGHTS MAGAZINE*, Jan. 11, 2021, available at [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/civil-rights-reimagining-policy/a-lesson-on-critical-race-theory](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policy/a-lesson-on-critical-race-theory) ("In September 2020, President Trump issued an executive order excluding from federal contracts any diversity and inclusion training interpreted as containing 'Divisive Concepts,' 'Race or Sex Stereotyping,' and 'Race or Sex Scapegoating.' Among the content considered 'divisive' is Critical Race Theory (CRT)."); see also Char Adams, *How Trump Ignited the Fight over Critical Race Theory*, NBCBLK, May 10, 2021, <https://www.nbcnews.com/news/nbcblk/how-trump-ignited-fight-over-critical-race-theory-schools-n1266701>. While Trump's executive order banning training sessions does not refer to "critical race theory" as such, it is clear from a prior executive branch memorandum that "critical race theory" is at issue. OFFICE OF MANAGEMENT & BUDGET, *supra* note 38; see also *National Urban League v. Trump*, 2020 WL 6391278 (D.D.C.) (trial pleading) ("On September 5, 2020, a day after OMB's Memorandum issued, President Trump tweeted that 'Critical Race Theory' was a 'sickness that cannot be allowed to continue' and directed people to 'report any sightings so we can quickly extinguish!'").

<sup>41</sup> Kendall Thomas, Nash Professor of Law, Columbia Law School, Remarks at the Wisconsin Law Review Symposium: Wisconsin's Intellectual History and Traditions (Oct. 22, 2020) (transcript on file with Wisconsin Law Review), quoted in Linda S. Greene, *Critical Race Theory: Origins, Permutations, and Current Queries*, 2021 *WISCONSIN LAW REVIEW* 259, 267 (2021).

but ensuring continued “compulsory racial illiteracy” through using a “cultural fantasy” of critical race theory to impede critical race theory’s project of fostering racial literacy.<sup>42</sup> In other words, the Trump administration weaponized and actively misrepresented critical race theory to prevent the distribution of knowledge about the function of race in American society.<sup>43</sup> From a Baldwinian perspective, we can understand the Trump administration’s effort to maintain racial ignorance in terms of a larger tendency to deny and avoid confrontation with the reality of racial oppression in America.

In addition, the executive order’s claims that the diversity trainings it bans constitute a “destructive ideology ... grounded in misrepresentations of our country’s history and its role in the world” would not surprise Baldwin.<sup>44</sup> Baldwin would see the foregoing claim as a familiar example of the American tendency to refuse knowledge about racial subordination—an innocence which for Baldwin “constitutes the crime.”<sup>45</sup> For Baldwin, the innocence achieved by the refusal of knowledge is the crime because it entails that Black people will continue to suffer dehumanization. Thus, for Baldwin, Trump’s attack on critical race theory as a means of maintaining racial illiteracy would “constitute[] the crime” that typifies the problem of racial oppression in America.<sup>46</sup>

Baldwin would be unsurprised to learn that Trump’s effort to perpetuate racial illiteracy has inspired multiple states to ban critical race theory in public schools.<sup>47</sup> Indeed, the existence of widespread efforts to avoid interrogating racial subordination reflects *Equal in Paris’s* theme that societies work hard to avoid knowledge of the oppressive practices that structure their collective lives. In other words, the recent reaction and controversy over critical race theory strongly reflects Baldwin’s view of the centrality of denial in maintaining subordinating and dehumanizing social practices.

### Baldwin and Critical Race Theory: The Problem of Love and Power

Baldwin assigned great importance to the role of denial and avoidance in perpetuating subordinating practices that are inconsistent with a society’s professed commitments. To overcome collective injustice, Baldwin believed it was essential to bring to light the “hidden laws” that actually govern a society, thereby exposing its hypocrisies.<sup>48</sup> In addition to exposing hypocrisy, Baldwin emphasized the importance of power and love to achieving a truly just and free society.

Although Baldwin emphasized the importance of exposing hypocrisy, he does not appear to have believed such exposure would be enough to secure justice. Nor did Baldwin believe appeals to Christian love sufficient to dissolve the gap between professed beliefs and the

<sup>42</sup> Thomas, *supra* note 41, quoted in Greene, *supra* note 41, at 267 (remarking that the Trump administration’s targeting of critical race theory intended to ensure “compulsory racial illiteracy”); Kendall Thomas, Nash Professor of Law, Columbia Law School, Remarks at Oxford University’s Equality and Diversity Lecture 2020 (Nov. 25, 2020), <https://www.law.ox.ac.uk/news/2020-11-25-watch-kendall-thomas-give-2020-equality-and-diversity-lecture> (describing the Trump administration’s caricature of CRT as a “cultural fantasy.”)

(A video of the remarks is available at <https://www.law.ox.ac.uk/news/2020-11-25-watch-kendall-thomas-give-2020-equality-and-diversity-lecture>.)

<sup>43</sup> *Id.*

<sup>44</sup> Combating Race and Sex Stereotyping, *supra* note 39.

<sup>45</sup> Baldwin, *supra* note 5, at 292.

<sup>46</sup> See and compare *id.* at 292, with Thomas, *supra* note 41.

<sup>47</sup> Rashawn Ray and Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS: FIXGOV (Nov. 21, 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/>.

<sup>48</sup> See and compare Miller, *supra* note 4, at 46 (quoting and discussing James Baldwin, *The Discovery of What It Means to Be an American*, in James Baldwin, *NOBODY KNOWS MY NAME: MORE NOTES OF A NATIVE SON* 23 (1961)), and *supra* notes 31–32, 36–37 and accompanying text.

reality of racial oppression. Thus, Baldwin writes, “[n]either civilized reason nor Christian love would cause any of those people to treat you as they presumably wanted to be treated; only the fear of your power to retaliate would cause them to do that, or to seem to do it, which was (and is) good enough.”<sup>49</sup> In so elevating the power of consequences over the efficacy of reason or love, Baldwin reflects a sweeping move away from the appeal to conscience and morality that characterized the early civil rights movement. As Baldwin writes, “the Negro himself no longer believes in the good faith of white Americans.”<sup>50</sup> With the loss of faith in the possibility of morally reforming the white majority, Baldwin could arrive at the conviction that, “there is simply no possibility of a real change in the Negro’s situation without the most radical and far-reaching changes in the American political and social structure.”<sup>51</sup> In other words, like critical race theorists, Baldwin emphasizes the necessity of structural reform.<sup>52</sup>

In light of the contradictions between the white majority’s moral professions and its oppression of Black people, Baldwin writes that “[t]he only thing that white people have that black people need, or should want is power,” the implication being that with power Blacks could resist white domination.<sup>53</sup> But he quickly adds that “no one holds power forever.”<sup>54</sup> Baldwin also emphasizes that power alone is insufficient to secure a moral way of life.<sup>55</sup> Indeed, he warns that those who rely on power alone to change the world always make it worse, writing “[f]or it would seem that a certain category of exceptions never failed to make the world worse—that category, precisely, for whom power is more real than love.”<sup>56</sup> Baldwin therefore implicitly suggests that love is essential to making the world a better place, and that preoccupation with power alone is dangerous.

Although Baldwin emphasizes the necessity of structural reform and the insufficiency of moral appeals for achieving real change, Baldwin maintains that love is indispensable for achieving a truly moral and free society.<sup>57</sup> He also believes love essential for confronting the truth of white supremacy and overcoming the hypocrisy inherent in the gap between professed and lived values. As Baldwin writes,

a vast amount of the energy that goes into what we call the Negro problem is produced by the white man’s profound desire not to be judged by those who are not white, not to be seen as he is, and at the same time a vast amount of the white anguish is rooted in the

<sup>49</sup> Baldwin, *supra* note 5, at 299.

<sup>50</sup> *Id.* at 335.

<sup>51</sup> *Id.*

<sup>52</sup> See, for example, Devon W. Carbado, *Critical What What?*, 43 *CONNECTICUT LAW REVIEW* 1593, 1613 (2011).

<sup>53</sup> See Baldwin, *supra* note 5, at 341–42. It bears noting that power and structural dynamics have concerned black thinkers long before the early 1960s, when Baldwin noted the loss of faith in whites. Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 *CONNECTICUT LAW REVIEW* 1253, 1301 (2011) (“many of the critiques of racial power that were amplified and integrated within critical race theory had been generated by leading race scholars for nearly a century”). It is therefore perhaps best to understand the loss of faith in whites as resulting in a greater as opposed to a wholly new focus on the contribution of power and structures to the problem of racism. See Crenshaw, *supra*, at 1260. It bears noting that critical race theory’s emphasis on power was heavily influenced by the Black Power movement, which also shaped Baldwin. KIMBERLÉ WILLIAMS CRENSHAW ET AL., *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xx (Kimberlé Williams Crenshaw et al. eds., 1995) (“most of us [critical race theorists] ‘really’ identified with [the Black Power movement], whose political insights and aspirations went far beyond what could be articulated in the reigning language of the legal profession and the legal studies we were pursuing.”); Leeming, *supra* note 3, at 257, 273 (noting Baldwin’s “support of the idea of Black Power”).

<sup>54</sup> Baldwin, *supra* note 5, at 341–42.

<sup>55</sup> See *id.* at 328, 342.

<sup>56</sup> *Id.* at 328.

<sup>57</sup> See also Baldwin, *supra* note 5, at 341–42.

white man's equally profound need to be seen as he is, to be released from the tyranny of his mirror. All of us know, whether or not we are able to admit it, that mirrors can only lie, that death by drowning is all that awaits one there. It is for this reason that love is so desperately sought and so cunningly avoided. *Love takes off the masks that we fear we cannot live without and know we cannot live within.*<sup>58</sup>

Thus, according to Baldwin, love can peel away the mask of white society's false self-image, thus liberating society from the oppressive hypocrisies that contribute to and reinforce racial oppression. Baldwin makes clear that he does not have in mind "love" in "the personal sense but as a state of being, or a state of grace—not in the infantile American sense of being made happy but in the tough and universal sense of quest and daring growth."<sup>59</sup>

In contrast to Baldwin, in the main, critical race theorists are silent on the relevance of "love" to resolving the gap between the legal system's commitment to the ideal of color-blindness and racial equality and the lived reality of racial subordination. Indeed, critical race theory's anti-subordinationist agenda is almost exclusively carried out through critique of "racial power" and the subordinating social structures in which racial power is expressed. Critical race theory's focus on power and its general failure to put forward a strong and positive vision are perhaps rooted in a current within it of skepticism toward objective standards of justice. Critical race theory's detractors and opponents have latched on to this failure, having long criticized critical race theory's repudiation of Enlightenment standards of rationality and repudiation of objective truth as reducing law to politics and power.<sup>60</sup>

For reasons that would take us too far afield, many of critical race theory's opponents are guilty of critiquing a strawman.<sup>61</sup> Nonetheless, it is difficult for critical race theory to convincingly respond to the allegation that, in rejecting objective truth, critical race theory reduces law to politics and power.<sup>62</sup> In this respect, critical race theory leaves itself vulnerable to the charge that its overwhelming focus on critiquing law as an instrument of racial power together with its rejection of truth leaves it bereft of a positive vision of society.

<sup>58</sup> Baldwin, *supra* note 5, at 341 (emphasis added).

<sup>59</sup> *Id.* It bears noting that Baldwin's effort to distinguish his sense of love as a "state of being" or a "state of grace" from the American sense of love as a state of happiness calls to mind Martin Luther King, Jr.'s use of love in the Christian sense of "understanding good will" or *agape* and not "some sentimental emotion." Martin Luther King, Jr., *Nonviolence and Racial Justice*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 9 (James W. Washington ed., HarperCollins 1991), Although Baldwin's understanding of love resembles the Christian sense of love as *agape*, his use of "love" in the sense of "quest and daring growth" has existential connotations that cannot be explored here.

<sup>60</sup> Farber & Sherry, *supra* note 37, at 5–6, 8, 32–33; Pyle, *supra* note 37, at 788–89, 797; HELEN PLUCKROSE & JAMES LINDSEY, *CYNICAL THEORIES: HOW ACTIVIST SCHOLARSHIP MADE EVERYTHING ABOUT RACE, GENDER, AND IDENTITY AND WHY THIS HARMS EVERYBODY* 30–31, 115–17, 126, 133 (2020); see also William A. Galston, *A Deeper Look at Critical Race Theory: The Neo-Marxist Movement Rejects Equal Opportunity, Merit and Objectivity*, WALL STREET JOURNAL, (July 20, 2021), <https://www.wsj.com/articles/kimberle-crenshaw-critical-race-theory-woke-marxism-education-11626793272>.

<sup>61</sup> See and compare Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory> (quoting critical race theory scholar Kimberlé Crenshaw, "It should go without saying that what they [critical race theory's critics] are calling critical race theory is a whole range of things, most of which no one would sign on to, and many of the things in it are simply about racism"), and George, *supra* note 40 (describing critical race theory and noting that critical race theory "has been distorted and attacked").

<sup>62</sup> See Brandon Paradise, *How Critical Race Theory Marginalizes the African-American Christian Tradition*, 20 MICHIGAN JOURNAL OF RACE & LAW 117, 157 n.171 (2014) (discussing sources describing critical race theory's paradoxical effort to assert truth claims about racial subordination while simultaneously denying the possibility of objective truth).

In addition to the above critiques, critical race theory has been accused of being hostile to whites.<sup>63</sup> Although such critiques strawman critical race theory, its anti-subordination work has entailed relatively little attention to how such work is redemptive for whites.<sup>64</sup> In fact, concern with redeeming the white majority not only is *not* a prominent theme in critical race theory literature but it may even be seen as reinforcing racial subordination.<sup>65</sup> Indeed, concern with saving whites from the harm of white supremacy may be thought to implicitly conflict with critical race theory's tendency to represent racial subordination primarily in terms of a conflict between oppressors and oppressed that is driven by the interests of the oppressor.<sup>66</sup> In contrast to this view, the ideal of love and concern with white redemption insist that oppression does not actually serve the true interests of oppressors.<sup>67</sup>

In my estimation, the uncomfortable truth about what might be described as a general lack in critical race theory of emphasis on redeeming, liberating, or saving whites from the harm caused to them by Black oppression reflects the historical legacy of the Black power era, which assumed a militant posture that entailed a turn away from love.<sup>68</sup> However, that

<sup>63</sup> Kimberlé Williams Crenshaw, *King Was a Critical Race Theorist before There Was a Name for It*, L.A. TIMES (Jan. 17, 2022), <https://www.latimes.com/opinion/story/2022-01-17/critical-race-theory-martin-luther-king> (noting that “legislatures in 32 states have relied on what is patently a lie—that antiracism is antiwhite—to fuel the antidemocratic crusade against what they call ‘critical race theory.’”).

<sup>64</sup> It bears noting that for some critical race theory theorists the comparatively little attention critical race theory's anti-subordination agenda gives to redeeming whites from racism may reflect a practical judgment about priorities. For example, Kimberlé Crenshaw states, “Optimally, the deconstruction of white race consciousness might lead to a liberated future for both blacks and whites. Yet until whites recognize the hegemonic function of racism and turn their efforts toward neutralizing it, African-American people must develop pragmatic political strategies—self-conscious ideological struggle—to minimize the costs of liberal reform while maximizing its utility.” Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 12 GERMAN LAW JOURNAL 247, 283 (2011). On the other hand, critical race theory's thesis that racism is permanent implies that, as a group, whites may be beyond redemption. In particular, if as a group whites can be redeemed then racism is presumably not permanent. See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992) (arguing that racism is permanent); see also Derrick A. Bell, Jr., *The Unintended Lessons in Brown v. Board of Education*, 49 NEW YORK LAW SCHOOL LAW REVIEW 1053, 1065 (2005) (“We know that the permanence of racism emanates from the determination of whites to dominate blacks and other colored peoples with little regard to the hidden, but no less real, costs of that dominance.”).

<sup>65</sup> See Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of “The Id, the Ego, and Equal Protection,”* 40 CONNECTICUT LAW REVIEW 931, 946 (2008) (rejecting a “good white folks” pass that goes further than not calling a white liberal friend “a bad person” and noting that “When my friends said they didn’t want to be called racist, they were also saying they didn’t want to be held responsible for society’s institutional and structural racism.”). Lawrence’s refusal to go further than not calling a white friend “a bad person” implies that Lawrence would refuse to call a white friend a good person, thereby raising the question of whether a white person is redeemable. See Lawrence, *supra*, at 946. Moreover, although Lawrence’s refusal to grant his friends’ absolution of responsibility for racism raises complicated questions that cannot be explored here, his underlying worry appears to be that white redemption would reinforce racial subordination via white abdication of responsibility for structural racism. See Lawrence, *supra*, at 946. See also and compare Rev. Robert John Araujo, *Justice As Right Relationship: A Philosophical and Theological Reflection on Affirmative Action*, 27 PEPPERDINE LAW REVIEW 377, 427 (2000) (“Elements of Critical Race Theory suggest that there can never be any deep, substantive reconciliation between the current white majority and the colored minority.”), and Araujo, *supra*, at 428–29 (arguing that “John Calmore implied that those who search for common ground, be they racial majority or minority, propose a false and unworkable assimilationist thesis that is doomed to fail.”).

<sup>66</sup> Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARVARD LAW REVIEW 518, 523 (1980).

<sup>67</sup> It bears noting that at times critical race theory theorists observe that racism does not serve the true interests of poor whites. See Crenshaw, *supra* note 64, at 279. However, in contrast to this Marxist inspired analysis, for reasons that cannot be developed here the ideal of love as it is developed in the Christian tradition would insist that racism does not serve the true interests of anyone, regardless of class position.

<sup>68</sup> See Paradise, *supra* note 62, at 157–59 (analyzing the influence of the Black Power movement on critical race theory).

critical race theory in the main continues the historical turn away from love in favor of militancy does not entail that Baldwin was wrong to insist, alongside his emphasis that the oppressed must gain power in society, on the necessity of love for true liberation of both Blacks and whites. Indeed, we may—in fact, ethically I believe we must—ask whether the immense contributions of critical race theory in excavating and examining the many-sided hypocrisies and, in Baldwin’s phrase, the “hidden laws” that perpetuate racial subordination in the United States is sufficient to secure a truly human society, where power is exercised to safeguard the dignity of the human person as opposed to defending and protecting the privilege of some at the expense of others.

## Conclusion

I conclude with a return to the primary theme of “Equal in Paris”: the hypocrisy that dehumanizes some members of society for the privilege of others and legitimizes that dehumanization by obfuscating its mechanics is accompanied by the universal laugh of those who know they will not suffer the fate of the wretched. If we are to quiet this laugh, Baldwin’s work suggests love is a necessity, for “[l]ove takes off the masks that we fear we cannot live without and know we cannot live within.”<sup>69</sup> Thus, while Baldwin shares critical race theory’s emphasis on the indispensable importance of power, in Baldwin we find a teacher who speaks to us *also* of the necessity of love.<sup>70</sup>

<sup>69</sup> Baldwin, *supra* note 5, at 341.

<sup>70</sup> As previously noted, Baldwin’s use of “love” resembles Christian love but it is not entirely clear what conception of love Baldwin has in mind. See *supra* note 59 and accompanying text. It bears noting that although in tension with the thesis that racism is permanent, some critical race theorists have expressed “hope” in racial progress. Patricia J. Williams, *Alchemical Notes: Reconstructed Ideals from Deconstructed Rights*, 22 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW 401, 417 (1987) (“For blacks, the prospect of attaining full rights under the law has always been a fiercely motivational, almost religious, source of hope.”). Future work might profitably explore the nature of expressions of hope in critical race theory, the relationship between secular and Christian notions of hope, and whether expressions of hope in critical race theory could contribute toward a greater emphasis on love in critical race theory.