## 1NC

### 1

We should problematize their deployment of “Keep Ya Head Up”—it furthers the myth that only men can protect women---undermines gender equality

Chase, 13

(Keesha, “Language: A Heteronormative Reinforcement,” https://onlineacademiccommunity.uvic.ca/keeshachasepoli328/research-topic-3/

Both Nadine Puechguirbal and Jackson Katz argue that the language surrounding gendered violence obscures the reality of gender equality. Perhaps the most notable example of such is the protector myth. In short **the protector myth asserts that men, the protectors, have an obligation as men to protect wome**n. While this myth may not appear to be riddled with negative connotations at first, it is indeed. By putting on a gendered lens one is able to fully grasp, and engage with both the myth and the political impacts of such. While Puechguirbal focuses on United Nations Resolution (UN) 1325, and Katz focuses on societal gender violence, to support their claims, I will examine the ways in which the protector myth is imbedded in popular culture to support my claim in the same right (that the language surrounding gendered violence obscures the reality of gender equality). Overall I assert that, the protector myth serves as a heteronormative reinforcement and clearly illustrates that gender equality is not yet a reality. It is important to examine the ways in which gender and language interact within the protector myth to better understand why it is that it is in fact riddled with negative connotations. Taken at face value, the protector myth illustrates that we must put an end to violence. This in itself sends a good message, but when you start to deconstruct the role the protector myth is meant to play, it becomes much more complicated then what meets the eye. First and foremost, the protector myth is meant to play a social role. By this I mean that the protector myth reinforces the existing social order.[1] **The protector myth doesn’t just hold that we must put an end to violence, it holds that we must put an end to violence against women, and that it is the responsibility of men to do so**. Ultimately men are assigned the role of protector because women are seen as weak, and thus unfit to protect themselves.[2] They are categorized with truly vulnerable groups such as children, the elderly, and the disabled in an effort to completely ostracize women from meaningful roles in society (in short this is the political role that the protector myth plays). Women become disempowered and dependent upon men to provide for them.[3] While it is being argued that ending gendered violence is a step towards gender equality, the ways in which the end of gendered violence is being brought about, i.e. through masculinist and public spheres perspectives, is in itself a step back from gender equality.[4] The social, political, and cultural forces at work in denouncing gendered violence are themselves the same forces that reinforce the existing power structure.[5] Puechguirbal and Katz do well to illustrate that the protector myth has been politically institutionalized. However, while acknowledging the ways in which such a degradative system has been politically institutionalized is essential to the deconstruction of such, cultural impacts are much more long standing than are political ones, and they too deserve some attention. As is illustrated in Tupac Shakur’s “Keep Ya Head Up”, degradative language is not alone synonymous with politics. Popular culture mirrors the protector myth narrative: “I wonder why we take from our women Why we rape our women, do we hate our women I think its time to kill for our women Time to heal our women, be real for our women”[6] As is politically noted, while it appears that we are on the road to achieving gender equality, the language devised says otherwise. **Shakur’s lyrics, a clear alternation of the protector myth, aim to rally societal support for gender equality by putting an end to gendered violence. What Shakur is most likely unaware of is that he rallying the wrong kind of support. Shakur is rallying support for the right reasons, but the kind of support he is seeking out inadvertently works against the movement by disempowering women because it seeks out exterior means to empower women rather than giving women the tools to empower and help themselves.** I am not saying that men should make no contribution to advancing women’s rights, but I am saying that **in their endeavors, both men and women, must be sure to approach and knick the problem at its grass roots. We want not only to rid ourselves of gendered violence, but we want to deconstruct the power structure that empowers such. We want to deconstruct the power system where men are put at the forefront of making decisions for women; we want to deconstruct the power system that ostracizes women.** Both the protector myth and the aforementioned stanza in Shakur’s “**Keep Ya Head Up” are examples of ways in which language works to obscure the reality of gender equality**. While both the protector myth and the lyrics noted in “Keep Ya Head Up” appear to argue for gender equality by denouncing gendered violence, there are contradictions within the message they aim to present and the message they do in fact present. Taken at face value, each offers a positive message, but when you put on a gendered lens, and really grapple with what the text is saying, the text does not indeed serve the purpose it claims to. Rather **the text serves as heteronormative reinforcement. While it appears that something meaningful is coming out of the denouncement of gendered violence, it is simply a disguise, a forefront, for reinforcing the status quo: we need to stop gendered violence because it is unethical, but we as men need to do this because women are too weak to do it themselves. Men are giving women power, or making them less vulnerable, so it appears, but only as they see fit.** **Once you really grapple with the language it becomes clear that the protector myth is but a mechanism to reinforce heteronormativity.**

### case

Your decision should answer the resolutional question: Is the enactment of topical action better than the status quo or a competitive option?

1. “Resolved” before a colon reflects a legislative forum

Army Officer School ‘04

 (5-12, “# 12, Punctuation – The Colon and Semicolon”, http://usawocc.army.mil/IMI/wg12.htm)

The colon introduces the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g.  A *formal* resolution, after the word "resolved:"

Resolved: (colon) That this council petition the mayor.

2. “USFG should” means the debate is solely about a policy established by governmental means

Ericson ‘03

(Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb *should*—the first part of a verb phrase that urges action. 3. An action verb to follow *should* in the *should*-verb combination. For example, *should adopt* here **means to put a** program or **policy into action though governmental means**. 4. A specification of directions or a limitation of the action desired. The phrase *free trade*, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the *affirmative side* in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

They claim to win the debate for reasons other than the desirability of topical action. That undermines preparation and clash. Changing the question now leaves one side unprepared, resulting in shallow, uneducational debate. Requiring debate on a communal topic forces argument development and develops persuasive skills critical to any political outcome.

The “war powers authority” of the President is his Commander-in-Chief authority

Gallagher, Pakistan/Afghanistan coordination cell of the U.S. Joint Staff, Summer 2011

(Joseph, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication,” *Parameters*, http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf)

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.4

The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to war powers authority**, **the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief.**6 This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

That means the military

Random House Dictionary 2013

(http://dictionary.reference.com/browse/commander+in+chief)

commander in chief

noun, plural commanders in chief.

1.

Also, Commander in Chief. the supreme commander of the armed forces of a nation or, sometimes, of several allied nations: The president is the Commander in Chief of the U.S. Army, Navy, and Air force.

2.

an officer in command of a particular portion of an armed force who has been given this title by specific authorization.

Simualted national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course **was to bridge the gap between theory and practice by conveying** doctrinal **material and** creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, **while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage**. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. **This is the most important determination, because the substance of the** doctrinal portion of the course and the **simulation follows from this decision**. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. **This**, then, **becomes a guide for the** doctrinal part of the **course, as well as the grounds on which the specific scenarios developed for the simulation** are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. **The one-size fits all approach** currently **dominating the conversation in legal education, however, appears ill-suited to address the concerns raised** in the current conversation. **Instead of looking at law across the board, greater insight can be gleaned by looking at** the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion **simulations**, which have not yet been addressed in the secondary literature for civilian education in national security law, may **provide an important way forward**. Such **simulations** also **cure shortcomings in other areas of experiential education**, such as clinics and moot court. It is in an effort to address these concerns that I developed **the simulation model** above. NSL Sim 2.0 certainly is not the only solution, but it **does provide a** starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. **It makes use of technology and physical space to engage students in a multi-day exercise, in which** they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

This enables broad-based resistance to executive overreach and racist war powers authority

Mellor, European University Institute Graduate Student, 13

(Ewan E. Mellor, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs,” Paper Prepared for BISA Conference 2013, http://www.academia.edu/4175480/Why\_policy\_relevance\_is\_a\_moral\_necessity\_Just\_war\_theory\_impact\_and\_UAVs, accessed 10-20-13, CMM)

This section of the paper considers more generally the need for just war theorists to engage with policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. It draws on John Kelsay’s conception of just war thinking as being a social practice,35 as well as on Michael Walzer’s understanding of the role of the social critic in society.36 It argues that the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.”37 ¶ Kelsay argues that: [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38 ¶ He also argues that “good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 This is important as it highlights the need for just war scholars to engage with the ongoing operations in war and the specific policies that are involved. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”40 in terms of being able to discuss it and judge it in moral terms. ¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. The just war theorist, as a social critic, must be involved with his or her own society and its practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 the just war theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted.42 It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to demonstrate its hypocrisy and to show the gap that exists between its practice and its values.43 The tradition itself provides a set of values and principles and, as argued by Cian O’Driscoll, constitutes a “language of engagement” to spur participation in public and political debate.44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis.¶ Engaging with the reality of war requires recognising that war is, as Clausewitz stated, a continuation of policy. War, according to Clausewitz, is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued.47 Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship.48 This engagement must bring just war theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers, however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition the policy-makers will be forced to account for their decisions and justify them in just war language. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 it is incumbent upon just war theorists to ensure that the public are informed and are capable of holding their political leaders to account. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, it is precisely because it is “our country” that we are “especially obligated to criticise its policies.”51 ¶ Conclusion ¶ This paper has discussed the empirics of the policies of drone strikes in the ongoing conflict with those associate with al Qaeda. It has demonstrated that there are significant moral questions raised by the just war tradition regarding some aspects of these policies and it has argued that, thus far, just war scholars have not paid sufficient attention or engaged in sufficient detail with the policy implications of drone use. As such it has been argued that it is necessary for just war theorists to engage more directly with these issues and to ensure that their work is policy relevant, not in a utilitarian sense of abdicating from speaking the truth in the face of power, but by forcing policy makers to justify their actions according to the principles of the just war tradition, principles which they invoke themselves in formulating policy. By highlighting hypocrisy and providing the tools and language for the interpretation of action, the just war tradition provides the basis for the public engagement and political activism that are necessary for democratic politics.52

Debate over a controversial point of action creates argumentative stasis—that’s key to avoid a devolution of debate into competing truth claims, which destroys the decision-making benefits of the activity

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

Debate is a means of settling differences, so there must be a controversy, a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a feet or value or policy, there is no need or opportunity for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four,” because there is simply no controversy about this state­ment. Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions of issues, there is no debate. Controversy invites decisive choice between competing positions. Debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants live in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this “debate” is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies are best understood when seated clearly such that all parties to the debate share an understanding about the objec­tive of the debate. This enables focus on substantive and objectively identifiable issues facilitating comparison of competing argumentation leading to effective decisions. Vague understanding results in unfocused deliberation and poor deci­sions, general feelings of tension without opportunity for resolution, frustration, and emotional distress, as evidenced by the failure of the U.S. Congress to make substantial progress on the immigration debate. Of course, arguments may be presented without disagreement. For exam­ple, claims are presented and supported within speeches, editorials, and advertise­ments even without opposing or refutational response. Argumentation occurs in a range of settings from informal to formal, and may not call upon an audi­ence or judge to make a forced choice among competing claims. Informal dis­course occurs as conversation or panel discussion without demanding a decision about a dichotomous or yes/no question. However, by definition, debate requires "reasoned judgment on a proposition. The proposition is a statement about which competing advocates will offer alternative (pro or con) argumenta­tion calling upon their audience or adjudicator to decide. The proposition pro­vides focus for the discourse and guides the decision process. Even when a decision will be made through a process of compromise, it is important to iden­tify the beginning positions of competing advocates to begin negotiation and movement toward a center, or consensus position. It is frustrating and usually unproductive to attempt to make a decision when deciders are unclear as to what the decision is about. The proposition may be implicit in some applied debates (“Vote for me!”); however, when a vote or consequential decision is called for (as in the courtroom or in applied parliamentary debate) it is essential that the proposition be explicitly expressed (“the defendant is guilty!”). In aca­demic debate, the proposition provides essential guidance for the preparation of the debaters prior to the debate, the case building and discourse presented during the debate, and the decision to be made by the debate judge after the debate. Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, “Public schools are doing a terri­ble job! They' are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do some­thing about this” or, worse, “It’s too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as “What can be done to improve public education?”—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies, The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities” and “Resolved; That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. This focus contributes to better and more informed decision making with the potential for better results. In aca­demic debate, it provides better depth of argumentation and enhanced opportu­nity for reaping the educational benefits of participation. In the next section, we will consider the challenge of framing the proposition for debate, and its role in the debate. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about a topic, such as ‘"homeless­ness,” or “abortion,” Or “crime,” or “global warming,” we are likely to have an interesting discussion but not to establish a profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet by itself fails to provide much basis for dear argumen­tation. If we take this statement to mean *Iliad* the written word is more effec­tive than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose, perhaps promoting positive social change. (Note that “loose” propositions, such as the example above, may be defined by their advocates in such a way as to facilitate a clear contrast of competing sides; through definitions and debate they “become” clearly understood statements even though they may not begin as such. There are formats for debate that often begin with this sort of proposition. However, in any debate, at some point, effective and meaningful discussion relies on identification of a clearly stated or understood proposition.) Back to the example of the written word versus physical force. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote weII-organized argument. What sort of writing are we concerned with—poems, novels, government documents, web­site development, advertising, cyber-warfare, disinformation, or what? What does it mean to be “mightier" in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, “Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?” The basis for argument could be phrased in a debate proposition such as “Resolved: That the United States should enter into a mutual defense treaty with Laurania.” Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advo­cates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

Decisionmaking is the most portable and flexible skill—key to all facets of life and advocacy

Steinberg and Freeley ‘13

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In the spring of 2011, facing a legacy of problematic U.S, military involvement in Bosnia, Iraq, and Afghanistan, and criticism for what some saw as slow sup­port of the United States for the people of Egypt and Tunisia as citizens of those nations ousted their formerly American-backed dictators, the administration of President Barack Obama considered its options in providing support for rebels seeking to overthrow the government of Muammar el-Qaddafi in Libya. Public debate was robust as the administration sought to determine its most appropriate action. The president ultimately decided to engage in an international coalition, enforcing United Nations Security Council Resolution 1973 through a number of measures including establishment of a no-fly zone through air and missile strikes to support rebels in Libya, but stopping short of direct U.S. intervention with ground forces or any occupation of Libya. While the action seemed to achieve its immediate objectives, most notably the defeat of Qaddafi and his regime, the American president received both criticism and praise for his mea­sured yet assertive decision. In fact, the past decade has challenged American leaders to make many difficult decisions in response to potentially catastrophic problems. Public debate has raged in chaotic environment of political division and apparent animosity, The process of public decision making may have never been so consequential or difficult. Beginning in the fall of 2008, Presidents Bush and Obama faced a growing eco­nomic crisis and responded in part with '’bailouts'' of certain Wall Street financial entities, additional bailouts of Detroit automakers, and a major economic stimu­lus package. All these actions generated substantial public discourse regarding the necessity, wisdom, and consequences of acting (or not acting). In the summer of 2011, the president and the Congress participated in heated debates (and attempted negotiations) to raise the nation's debt ceiling such that the U.S. Federal Govern­ment could pay its debts and continue government operations. This discussion was linked to a debate about the size of the exponentially growing national debt, gov­ernment spending, and taxation. Further, in the spring of 2012, U.S. leaders sought to prevent Iran from developing nuclear weapon capability while gas prices in the United States rose, The United States considered its ongoing military involvement in Afghanistan in the face of nationwide protests and violence in that country1 sparked by the alleged burning of Korans by American soldiers, and Americans observed the actions of President Bashir Al-Assad and Syrian forces as they killed Syrian citizens in response to a rebel uprising in that nation and considered the role of the United States in that action. Meanwhile, public discourse, in part generated and intensified by the cam­paigns of the GOP candidates for president and consequent media coverage, addressed issues dividing Americans, including health care, women's rights to reproductive health services, the freedom of churches and church-run organiza­tions to remain true to their beliefs in providing (or electing not to provide) health care services which they oppose, the growing gap between the wealthiest 1 percent of Americans and the rest of the American population, and continued high levels of unemployment. More division among the American public would be hard to imagine. Yet through all the tension, conflict was almost entirely ver­bal in nature, aimed at discovering or advocating solutions to growing problems. Individuals also faced daunting decisions. A young couple, underwater with their mortgage and struggling to make their monthly payments, considered walking away from their loan; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job and a teenager decided between an iPhone and an iPad. Each of these situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions. Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consider­ation: others scorn to just happen. Couples, families, groups of friends, and co­workers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make deci­sions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations. We all engage in discourse surrounding our necessary decisions every day. To refinance or sell one’s home, to buy a high-performance SUV or an eco­nomical hybrid car, what major to select, what to have for dinner, what candi­date to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? Should we watch The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue—all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, Time magazine named YOU its "Person of the Year.” Congratulations! Its selection was based on the participation not of “great men” in the creation of his­tory, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs, online networking, YouTube, Facebook, Twitter, Wikipedia, and many other “wikis," and social networking sites, knowledge and truth are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. Through a quick keyword search, we have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? Much of what suffices as information is not reliable, or even ethically motivated. The ability of every decision maker to make good, reasoned, and ethical deci­sions' relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength, And, critical thinking offers tools enabling the user to better understand the' nature and relative quality of the message under consider­ation. Critical thinkers are better users of information as well as better advocates. Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized. The executive order establishing California's requirement states; Instruction in critical thinking is designed to achieve an understanding of the relationship of language to logic, which would lead to the ability to analyze, criticize and advocate ideas, to reason inductively and deductively, and to reach factual or judgmental conclusions based on sound inferences drawn from unambigu­ous statements of knowledge or belief. The minimal competence to be expected at the successful conclusion of instruction in critical thinking should be the ability to distinguish fact from judgment, belief from knowledge, and skills in elementary inductive arid deductive processes, including an under­standing of die formal and informal fallacies of language and thought. Competency in critical thinking is a prerequisite to participating effectively in human affairs, pursuing higher education, and succeeding in the highly com­petitive world of business and the professions. Michael Scriven and Richard Paul for the National Council for Excellence in Critical Thinking Instruction argued that the effective critical thinker: raises vital questions and problems, formulating them clearly and precisely; gathers and assesses relevant information, using abstract ideas to interpret it effectively; comes to well-reasoned conclusions and solutions, testing them against relevant criteria and standards; thinks open-mindedly within alternative systems of thought, recognizing, and assessing, as need be, their assumptions, implications, and practical con­sequences; and communicates effectively with others in figuring our solutions to complex problems. They also observed that critical thinking entails effective communication and problem solving abilities and a commitment to overcome our native egocentrism and sociocentrism,"1 Debate as a classroom exercise and as a mode of thinking and behaving uniquely promotes development of each of these skill sets. Since classical times, debate has been one of the best methods of learning and applying the principles of critical thinking. Contemporary research confirms the value of debate. One study concluded: The impact of public communication training on the critical thinking ability of the participants is demonstrably positive. This summary of existing research reaffirms what many ex-debaters and others in forensics, public speaking, mock trial, or argumentation would support: participation improves die thinking of those involved,2 In particular, debate education improves the ability to think critically. In a com­prehensive review of the relevant research, Kent Colbert concluded, "'The debate-critical thinking literature provides presumptive proof ■favoring a positive debate-critical thinking relationship.11'1 Much of the most significant communication of our lives is conducted in the form of debates, formal or informal, These take place in intrapersonal commu­nications, with which we weigh the pros and cons of an important decision in our own minds, and in interpersonal communications, in which we listen to argu­ments intended to influence our decision or participate in exchanges to influence the decisions of others. Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of’ others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job offer, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few Of the thousands of deci­sions we may have to make. Often, intelligent self-interest or a sense of respon­sibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for our product, or a vote for our favored political candidate. Some people make decision by flipping a coin. Others act on a whim or respond unconsciously to “hidden persuaders.” If the problem is trivial—such as whether to go to a concert or a film—the particular method used is unimportant. For more crucial matters, however, mature adults require a reasoned methods of decision making. Decisions should be justified by good reasons based on accurate evidence and valid reasoning.

Trend lines prove the status quo form of political engagement works— this isn’t to say that everything is OK, but that engagement can be effective

Zach Beauchamp, Think Progress, 12/11/13, 5 Reasons Why 2013 Was The Best Year In Human History, thinkprogress.org/security/2013/12/11/3036671/2013-certainly-year-human-history/

Racism, sexism, anti-Semitism, homophobia, and other forms of discrimination remain, without a doubt, extraordinarily powerful forces. The statistical and experimental evidence is overwhelming — this irrefutable proof of widespread discrimination against African-Americans, for instance, should put the “racism is dead” fantasy to bed.

Yet the need to combat discrimination denial shouldn’t blind us to the good news. Over the centuries, humanity has made extraordinary progress in taming its hate for and ill-treatment of other humans on the basis of difference alone. Indeed, it is very likely that we live in the least discriminatory era in the history of modern civilization. It’s not a huge prize given how bad the past had been, but there are still gains worth celebrating.

Go back 150 years in time and the point should be obvious. Take four prominent groups in 1860: African-Americans were in chains, European Jews were routinely massacred in the ghettos and shtetls they were confined to, women around the world were denied the opportunity to work outside the home and made almost entirely subordinate to their husbands, and LGBT people were invisible. The improvements in each of these group’s statuses today, both in the United States and internationally, are incontestable.

On closer look, **we have reason to believe the happy trends are likely to continue.** Take racial discrimination. In 2000, Harvard sociologist Lawrence Bobo penned a comprehensive assessment of the data on racial attitudes in the United States. He found a “national consensus” on the ideals of racial equality and integration. “A nation once comfortable as a deliberately segregationist and racially discriminatory society has not only abandoned that view,” Bobo writes, “but now overtly positively endorses the goals of racial integration and equal treatment. There is no sign whatsoever of retreat from this ideal, despite events that many thought would call it into question. **The magnitude, steadiness, and breadth of this change should be lost on no one.**”

The norm against overt racism has gone global. In her book on the international anti-apartheid movement in the 1980s, Syracuse’s Audie Klotz says flatly that “the illegitimacy of white minority rule led to South Africa’s persistent diplomatic, cultural, and economic isolation.” The belief that racial discrimination could not be tolerated had become so widespread, Klotz argues, that it united the globe — including governments that had strategic interests in supporting South Africa’s whites — in opposition to apartheid. In 2011, 91 percent of respondents in a sample of 21 diverse countries said that equal treatment of people of different races or ethnicities was important to them.

Racism obviously survived both American and South African apartheid, albeit in more subtle, insidious forms. “The death of Jim Crow racism has left us in an uncomfortable place,” Bobo writes, “a state of laissez-faire racism” where racial discrimination and disparities still exist, but support for the kind of aggressive government policies needed to address them is racially polarized. **But there’s reason to hope that’ll change as well**: two massive studies of the political views of younger Americans by my TP Ideas colleagues, John Halpin and Ruy Teixeira, found that millenials were significantly more racially tolerant and supportive of government action to address racial disparities than the generations that preceded them. Though I’m not aware of any similar research of on a global scale, it’s hard not to imagine they’d find similar results, suggesting that we should have hope that the power of racial prejudice may be waning.

The story about gender discrimination is very similar: after the feminist movement’s enormous victories in the 20th century, structural sexism still shapes the world in profound ways, but the cause of gender equality is making progress. In 2011, 86 percent of people in a diverse 21 country sample said that equal treatment on the basis of gender was an important value. The U.N.’s Human Development Report’s Gender Inequality Index — a comprehensive study of reproductive health, social empowerment, and labor market equity — saw a 20 percent decline in observable gender inequalities from 1995 to 2011. IMF data show consistent global declines in wage disparities between genders, labor force participation, and educational attainment around the world. While enormous inequality remains, 2013 is looking to be the worst year for sexism in history.

Finally, we’ve made astonishing progress on sexual orientation and gender identity discrimination — largely in the past 15 years. At the beginning of 2003, zero Americans lived in marriage equality states; by the end of 2013, 38 percent of Americans will. Article 13 of the European Community Treaty bans discrimination on the grounds of sexual orientation, and, in 2011, the UN Human Rights Council passed a resolution committing the council to documenting and exposing discrimination on orientation or identity grounds around the world. The public opinion trends are positive worldwide: all of the major shifts from 2007 to 2013 in Pew’s “acceptance of homosexuality” poll were towards greater tolerance, and young people everywhere are more open to equality for LGBT individuals than their older peers.

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Once again, these victories are partial and by no means inevitable. Racism, sexism, homophobia, and other forms of discrimination aren’t just “going away” on their own. They’re losing their hold on us because people are working to change other people’s minds and because governments are passing laws aimed at promoting equality. Positive trends don’t mean the problems are close to solved, and certainly aren’t excuses for sitting on our hands.

That’s true of everything on this list. The fact that fewer people are dying from war and disease doesn’t lessen the moral imperative to do something about those that are; the fact that people are getting richer and safer in their homes isn’t an excuse for doing more to address poverty and crime.

But too often, the worst parts about the world are treated as inevitable, the prospect of radical victory over pain and suffering dismissed as utopian fantasy. The overwhelming force of the evidence shows that to be false. As best we can tell, the reason humanity is getting better is because humans have decided to make the world a better place. We consciously chose to develop lifesaving medicine and build freer political systems; we’ve passed laws against workplace discrimination and poisoning children’s minds with lead.

So far, these choices have more than paid off. It’s up to us to make sure they continue to.

Progressive reform to war powers structures are impossible—racial differences don’t create unbridgeable gaps, but decisionmaking is key

Clark, professor of law – Catholic University, ‘95

(Leroy D., 73 Denv. U.L. Rev. 23)

I must now address the thesis that there has been no evolutionary progress for blacks in America. Professor Bell concludes that blacks improperly read history if we believe, as Americans in general believe, that progress--racial, in the case of blacks--is "linear and evolutionary." n49 According to Professor Bell, the "American dogma of automatic progress" has never applied to blacks. n50 Blacks will never gain full equality, and "even those herculean efforts we hail as successful will produce no more than temporary 'peaks of progress,' short-lived victories that slide into irrelevance." n51

Progress toward reducing racial discrimination and subordination has never been "automatic," if that refers to some natural and inexorable process without struggle. Nor has progress ever been strictly "linear" in terms of unvarying year by year improvement, because the combatants on either side of the equality struggle have varied over time in their **energies, resources, capacities, and** the quality of their plans. Moreover, neither side could predict or control all of the variables which accompany progress or non-progress; some factors, like World War II, occurred in the international arena, and were not exclusively under American control.

With these qualifications, and a long view of history, blacks and their white allies achieved two profound and qualitatively different leaps forward toward the goal of equality: the end of slavery, and the Civil Rights Act of 1964. Moreover, despite open and, lately, covert resistance, black progress has never been shoved back, in a qualitative sense, to the powerlessness and abuse of periods preceding these leaps forward. n52

The law is malleable—debating it is the only way to affect change

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more **pliant and responsive** to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism. A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project. Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes: I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59 A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge. The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject. [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62 Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity). What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests. Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany. This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7 There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order. Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities. Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition: In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80 Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82 It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them. 4. Conclusion Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law. This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. **But the denial of their** legitimacy or **possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration** that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to **fully do so**.

Legal reform strategies don’t coopt extra-legal strategies for change—it’s not zero sum

Smith 12

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CONCLUSION

In the debates prevalent within Native sovereignty and racial justice movements, we are often presented with two **seemingly** orthogonal positions – long-term revolutionary extra-legal movements or shortterm reformist legalist strategies. Short-term legal strategies are **accused** of investing activists within a white supremacist and settler colonial system that is incapable of significant change. Meanwhile, revolutionaries are accused of sacrificing the immediate needs of vulnerable populations for the sake of an endlessly deferred revolution. The reality of gender violence in Native communities highlights the untenability of these positions. Native women’s lives are at stake **now** – they **cannot wait for** the **revolution** to achieve some sort of safety. At the same time, the short-term strategies often adopted to address gender violence have often increased violence in Native women’s lives by buttressing the prison industrial complex and its violent logics. While this reformist versus revolutionary dichotomy **suggests** two radically different positions, in reality they share a common assumption: that the **only way** to pursue legal reform is to fight for laws that that reinforce the appropriate moral statement (for instance, that the only way to address violence against Native women is through the law and to make this violence a ‘crime’). Because the US legal system is inherently immoral and colonial, however, attempts to moralise the law **generally** fail. It is not surprising that the response to these failures is to **simply give** **up** on pursuing legal strategies. However, the works of Derrick Bell, Christopher Leslie, and Sarah Deer, while working in completely different areas of the law, point to a different approach**. We can challenge the assumption that the law will reflect our morals** **and instead seek to** use the law **for its** strategic effects**.** In doing so, we might advocate for laws that might in fact contradict **some** of our morals because we recognize that the law cannot **mirror** our morals anyway. We might then be free to engage in a relationship with the law which **would free us** **to change our strategies as we assess its strategic effects.** At the same time, by divesting from the morality of the law, we then will also **simultaneously** be free to invest in building our own forms of community accountability and justice outside the legal system. Our extra-legal strategies would go beyond ceremonial civil disobedience tactics designed to shame a system that is not capable of shame. Rather, we might focus on actually building the political power to create an alternative system to the heteropatriarchal, white supremacist, settler colonial state.

Specifically not exclusive with the 1ac’s method

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(Donald F., 15 J. Gender Race & Just. 47)

But the fashioning of Black existence within the framework of post-racialism presupposes a significant recognition about state power: how can we assess this state of dis-union through an understanding of the nexus between America's war on social issues and popular culture? In particular, how is post-racial America affected by this nation's longstanding war on Blackness, ranging from the Black Power Era to the era of Hip Hop? n11 How does the state's power to control the narrative of race demonstrate its ongoing efficacy in both classifying crimes and who is criminal? More importantly, what are some of the insidious ways in which state power [\*50] moves under the cover of darkness? I maintain a key component for understanding the "fallout" of declaring war on social issues and its impact on young people of color is the recognition that the state is most effective where it is least visible n12 - for example, in the trajectory of American law. Contesting racial progress is not an easy task. After all, most Americans embrace the idea that our racial tolerance today is considerably different from the past: that the old vanguard of American racism is dead and buried, and racial enlightenment has risen from the fiery ashes of de jure and de facto segregation obliterated by 1960s civil rights struggles. n13 While there may be some value to that argument, strict regimentation begs the question: racial enlightenment according to whom? In order to contest racial progress we must approach the discussion honestly. In other words, we need to locate these new discussions about post-racialism in the old discourse of colorblindness, n14 which itself needs situating in terms of the state's naked criminality against the liberation fighters of the Black Power Era. Post-racialists, of course, would have us believe that the landmark ruling in Brown v. Board of Education n15 and the passage of the Civil Rights Acts of 1964, n16 the Voting Rights Act of 1965, n17 and the Fair Housing Act of 1968, n18 effectively made racism a thing of the past. n19 In other words, law not only officially outlawed racism, but it also reframed its abrogation with [\*51] irrefutable evidence of Black equality, most specifically, with the presence of more Blacks in high profile careers. But that characterization misses the mark. Because white civil society in this country has "long considered black people to be weapons of mass destruction," n20 the increasing presence of Black men in prominent positions should indeed give us pause. The persistence of racial inequality is not so easily replaced because a few Blacks have poked through America's glass ceiling in law, politics, and business. Instead, racial inequities, namely in policing and punishment, still overwhelmingly prevail. n21 In fact, the ongoing discourse of post-racialism actually makes it difficult to discern the ongoing reality of anti-Blackness in American law. Campaigns, such as "get tough" on crime, n22 wage a "war on drugs," n23 and "increase our border security" n24 adopt colorblind language, but their targets are almost overwhelmingly Black and Brown people. n25 Simply, the effect of post-racial ideology on racial progress is to render racism illegitimate and suspect by definition, hence the use of the phrase "playing the race card" anytime a person of color simply points to the most mundane and obvious moments of racism in the post-Civil Rights Era. n26 Although Critical Race scholars have interrogated post-racial ideology and its jurisprudence, n27 no one has connected it to its material base: the [\*52] historiography of the late 1960s Black Power Era where the dirty work of an anti-Black state apparatus was deeply mired in extra-legal activities. During the Black Power Era, from 1966 through 1980, the state pursued two primary strategies in repressing the Black liberation struggle: to criminalize Black expressions of sovereignty and to criminally assault Black people everywhere. n28 The FBI's clandestine counterintelligence program, COINTELPRO, was a central means toward this end n29 and should be a requisite study for all generations. Fraudulent prosecutions and assassinations of Black leaders and rank and file activists were coupled with the mundane killings of everyday Black folk by the police. n30 Between 1966 and 1969, the federal government engaged in numerous counterintelligence operations against Black liberation organizations and their leaders. n31 Between 1971 and 1973, nearly 1000 Black people were killed by law enforcement. n32 This is a higher rate of state-sanctioned death - over one police murder per day for three years - than during the height of anti-Black lynchings around the turn of the twentieth century. n33 [\*53] To all that's been said thus far about post-racialism, I wish to add this: the discourse on post-racialism emerges from a context of profound anxiety and self-consciousness about the ongoing brutality of the law's relationship to Black Americans. n34 The assiduous insistence on defining racism as merely individual acts of bias betrays a desire to hide the reality of structural violence and institutionalized forms of discrimination. Whereas post-racialism emerged out of a raw and violent period of social protest and state repression, seeking to transform the meaning of these struggles from a historic political context to merely a matter of criminality, legal discourse on post-racialism appears after four decades of law and order retrenchment. n35 The memory of the social movements, of the state's naked criminality, and of the law as a space of open contestation has waned. n36 So, also, has the memory of a racial discourse that was actually grounded in reality. Post-racialism, therefore, is really about a desire by whites to move this society into a post-Black people era. It ignores the insatiable demands of the Black community and denies the ways in which Black existence is a reminder of state violence. Simply, post-racialism hopes Black people will stop being Black. While new generations of young people are raised under conditions that are considerably worse than those faced prior to the post-Civil Rights Era, both liberal and conservative whites appear eager to "move on" - to disregard, with finality, the historical context that produced today's miserable conditions. The generation I refer to is the children of the Black Power activists of the 1960s and 1970s, the children who came of age in the 1980s and 1990s, and were bequeathed revolutionary ideals in a post-revolutionary age. n37 This generation also faced a society in which changes in [\*54] the political economy have reduced employment and education opportunities forever, state restructuring abetted rather than ameliorated poverty, conservative jurisprudence facilitated draconian public policy, and Cold War foreign policy translated into war-making against people of color throughout the Third World. n38 This generation of Black and Brown youth would come to be called gangsters, thugs, and hoodlums, while they would come to call themselves "the Hip Hop generation." n39 [\*55] The 1980s, the beginning of the post-Civil Rights Era of colorblindness and formal legal equality, saw an increase in structural violence that hit Black communities the hardest. The portion of Black children living in poverty during this decade increased from 41.2 to 43.7 percent. n40 The increase in child poverty is directly related to deindustrialization and state restructuring. By the 1980s, the rise of the financial industry and the decline in manufacturing meant a devastating loss in stable working-class jobs, a decline in real wages for all working people, and a rise in part-time, low-wage, dead-end service-sector jobs. n41 Fifty percent of Black males employed in the manufacturing sector in five Midwest states lost their jobs as a result of deindustrialization between 1979 and 1984. n42 Consequently, between 1965 and 1990, Black family income fell fifty percent, and Black youth unemployment quadrupled. n43 Although popular discourse pathologized the Black family for the problems it faced during these times, the shifts in the political economy clearly meant that parents' material conditions to provide for their children had seriously deteriorated. n44 State restructuring over the course of the 1980s and 1990s undermined Civil Rights Era progress in substantial ways. It ended welfare and affirmative action, rolled back many basic social services, and established a new reliance on criminal justice to create and deal with the predictable problems connected to joblessness and poverty. n45 During this period of social change, the children of the former Black revolutionaries came to [\*56] know the meaning of race through their experiences of continuing and cumulative discrimination in housing, employment, and education, persistent police brutality, and toxic environmental pollution in their neighborhoods. n46 In other words, unlike their parents' generation, whose struggles focused on legal equality and deeply entrenched battles against racial segregation, the Hip Hop generation is besieged by a plethora of post-Civil Rights problems, including racial profiling, rising rates of incarceration, poor(er) education, heightened sexual-identity wars, environmental racism, AIDS, and unemployment worsened by the onset of American capitalist globalization, namely job outsourcing to low wage developing countries. Although Black residents organized their communities throughout the 1960s and 1970s against the violations of civil rights legislation guaranteeing fair housing, fair employment, and educational equity, the post-Civil Rights political imagination is **more concerned with** the **cultural controversies** stirred up by the beats, rhymes, graffiti art, dance styles, and posturing emerging from inner-city youth. From "the promises that break by themselves ... to the breaks with great promise," n47 the Hip Hop generation rose from the devastation of the state's war against Black revolutionaries to carry on the tradition of irreverence and creative artistry that has been a central component of Black expressive vernacular culture since at least the "baaadman tales" of Jelly Roll Morton in the late nineteenth century and the age-old tradition of "signifying." n48 Like the attack on Black politics during the Black Power Era, n49 the attack on politics in rap music n50 - combined with the structural violence of the political economy - narrowed the cultural terrain on which counter- [\*57] narratives about our present historical moment might address ongoing Black dispossession. By narrowing the field of representation, hardcore lyrics and stereotyped Black maleness become a commodity for purchase, trade, and power. In the absence of political mass movements, revolutionary hardcore or "conscious" rap is difficult to sell. n51 As Professor Joy James explains: The drive for capital promotes some and curtails other underground narratives: boasting about breaking women = $ $ ; boasting about reading to your two-year-old = $ 0; romanticizing killing or dying by the young rebel = $ $ ; celebrating the pursuit of old age as irascible rebel = $ 0. Capital as medium transforms the hardcore into market transactions, that is, into forms of alienation in labor, desire, and politics. n52 In other words, rapping about shooting, killing, or dominating other Black men n53 is far more lucrative than rapping about how corporate lawyers [\*58] in Citizens United v. Federal Election Commission colonized the First Amendment to the U.S. Constitution to define the corporation as a "legal person," enabling them to successfully claim that the corporation is entitled to free speech like an actual human being. n54 II. Contesting Racial Progress: Connecting Black Power, Hip Hop, and the Salience of Anti-Blackness In the preface to his book, The Civil Rights Movement and the Logic of Social Change, Professor Joseph Luders reminds us: "The civil rights struggle changed American democracy in fundamental ways, pushed gross racial inequalities into the national spotlight, and triggered bold federal action." n55 But our near obsessive praising of the long Civil Rights Movement, our over dependence on the legal victories in Brown v. Board of Education, n56 and the passage of the Civil Rights Act of 1964 n57 to implement racial healing has left a considerable void in reconciling post-Civil Rights racial progress within United States's law and order. The diffusion of Black liberation struggles and the embrace of colorblindness as a normative approach to "fixing" the United States's social issues has allowed the state to not only regain its power over the human spirit, but also reclaim its power over reproducing a political, social, and legal anti-Black agenda. n58 Our failure to openly confront race and racism, like we did during the Civil Rights and Black Power Eras, has left the intersection of race and U.S. legal consciousness severely disjointed. While this silence in American public discourse has closed one dialogue, it has opened another. It has opened a [\*59] space for Hip Hop music to seriously critique what we can learn about the fallout of declaring war on Blackness. n59 What began as Hip Hop more than twenty years ago as a means for providing entertainment at parties has morphed into a billion-dollar industry spanning the world globe. n60 While some argue that Hip Hop has lost its way from its beginnings, n61 where socially conscious rhymes were more common [\*60] than the braggadocios rhymes that we hear today, this Article takes a different path. It argues that rap music's real talent, its real branding, is its ability to affect legal consciousness and teach law to a generation of youth most affected by the U.S. wars on drugs and crime: the sons and daughters of the Black Power generation. In other words, Hip Hop's voice, which is arguably one of the least respected art forms in U.S. legal culture, n62 has always, and perhaps always will, be a source of social critique. n63 Most importantly, it is one of the most prolific artistic mediums for critiquing America's love affair with the "War on" (drugs, crime, terror) paradigm. n64 Hip Hop critiques America's failure to uphold constitutional ideals of justice and equality and her reproduction of the long history of Black suffering inside and outside American law. n65 American society has generally missed [\*61] that point, leaving Hip Hop misunderstood, misquoted, and misused. In the post-Civil Rights Era, the over-incarceration of young Black males has supplied the state with a powerful legal warrant for using color as a proxy for dangerous. n66 More importantly, American courts have followed this dominant crime-fighting paradigm by ceding more power to the state, namely the police, to employ race as a signal of increased risk of criminality. n67 Worse, legal scholars have endorsed the prosperity of a colorblind criminal justice system as "a rational adaptation to the demographics of crime." n68 Paradoxically, this rational adaptation is made salient, and valid, by the rapid blackening of the prisoner population after the ghetto riots of the 1960s. The legal formula "Young + Black + Male" is routinely equated with "reasonable suspicion" - authorizing state-sponsored unconstitutional stops, searches, questioning, and seizures of thousands of African American males every year. n69 The presence of race, more specifically anti-Blackness, figures prominently in this legal dilemma. Consider, for example, the genesis of the modern-day stop and frisk procedure that emanated from the 1968 Supreme Court decision in Terry v. Ohio, n70 which itself was colored by the race of [\*62] defendants John W. Terry and Richard Chilton as Black men. n71 In the narration of the case, Terry and Chilton make several passes in front of a series of stores, peer into the windows, and then stop and talk to each other on a local corner. n72 Witnessing this behavior, Detective Martin McFadden, a white male police officer, approached Terry and Chilton, asked them some identifying questions, and, after being dissatisfied with their responses, spun Terry around and patted down his outer clothing to discover that he was carrying a gun in his jacket pocket. n73 If we pause at that legal moment, John Terry, at most, is guilty of a misdemeanor crime: carrying a concealed weapon without a permit. n74 There is no direct evidence of either his attempted robbery or that his actions were indicative of his impending decision to commit a crime. But the legal decision in Terry eventually came to stand for more. It became the entry into modern policing where otherwise innocent behavior, enhanced by race, suggests that young Black men are acting with criminal intent. At trial, the arresting officer Detective McFadden took the witness stand to tell his version of the facts. n75 On cross-examination his story sounded like the pronouncement of modern-day racial profiling. n76 When asked why he decided to approach Terry and Chilton, McFadden testified that he decided to stop, question, and search Terry and Chilton because they were "negroes" and he just "didn't like them." n77 He was suspicious that they were "casing" a store for robbery, although he had never in his more than thirty-nine years as a police officer arrested anyone for a robbery or witnessed someone "casing" a store for a robbery. n78 Discarding this [\*63] testimony, and in fact never mentioning in the majority opinion that race was relevant to McFadden's suspicion, the Supreme Court, vis-a-vis Terry, avoided the salience of race in police interdictions, particularly in those instances where establishing "reasonable suspicion" is the lynchpin to the investigation. As greater evidence of the young Black male factor affecting reasonable suspicion, the Court's establishment of the now infamous Terry stop was also not racially neutral in relation to its social history. When the Court decided Terry in 1968, the era of Black Power was at its zenith as a social movement. n79 In June 1966, SNCC President Stokely Carmichael made a "call to arms" for Black Power during the Meredith March in Greenwood, Mississippi - where civil rights leaders led a three-week-long demonstration in June 1966 to the Magnolia State's capitol following the shooting of the activist James Meredith on the second day of his one-man "march against fear." n80 Four months later, in October 1966, Black Power's lead organization, the Black Panther Party, was formed. n81 For the next two years [\*64] preceding the Terry decision, Black Power activists advocated armed resistance to a long-standing de facto policy and practice of local police brutalizing, killing, and violating the constitutional rights of young Black men. For example, the launching of the Black Panthers began over the shooting death of Denzil Dowell, a young Black man suspected of stealing an automobile. n82 When questioned about the legality of the shooting, the local sheriff told the Panthers that he not only had no intention of either investigating or disciplining the officer, but if they did not like his answer, they could take it up with the legislators in Sacramento. n83 This prompted the Panthers to march into the Sacramento legislature's assembly meeting, brandishing guns in protest, and it became the crowning achievement of their organization. n84 Additionally, the Black Power Movement set American ghettos on fire - literally and figuratively. Terry was decided following the long, hot summers of the mid-1960s, which yielded racial rebellions in Black American ghettos in major cities, namely Watts, Los Angeles (1965); Newark (1967); and Detroit (1967). n85 Additionally, other Black Power organizations, namely Black protection organizations such as the Deacons for Defense and Justice, were in full operation and actively working side-by-side to protect civil rights protestors from white vigilante violence as marchers attempted to legally change the racial status quo. n86 Finally, the government was directly complicit in the violence through the FBI's COINTELPRO operations designed to assault the Black body and spirit. n87 In [\*65] other words, the Supreme Court decided Terry with race very much on its mind - how could it not? Race was everywhere then, and it remains everywhere now. In the decades since Terry, however, the standard for reasonable suspicion has reached new lows. The steady lowering of the threshold of evidence required to satisfy Terry's reasonable suspicion standard means that Fourth Amendment privacy rights have all but dissipated. n88 And in many respects they have dragged the legal existence of young Black men deeper asunder. n89 Since the Court's pronouncement in Illinois v. Gates of a "totality of circumstances" standard in evaluating police investigations, racial factors, such as ethnic stereotypes, have become more salient in determinations of criminal activity. n90 Under the Gates standard, modern courts take non-probative facts, which they admit do not individually establish reasonable suspicion, and add them together to justify police interdiction. In other words, the courts rely on mathematical analysis to arrive at mathematical nonsense: where 0 + 0 + 0 + 0 = reasonable suspicion. n91 More troubling, those "zero factors" can take otherwise innocent [\*66] behavior and criminalize it through the lens of race. n92 Worse, courts are not only comfortable with the progression of the war on crime in this manner, but have become as bold as to incorporate - and publish - these racist factors into their opinions. n93 Consider the following two cases. In United States v. Condelee, the Eighth Circuit Court of Appeals upheld the search of Chareou Caprice Condelee based on a DEA officer's evaluation of her conduct during her routine airplane travel. n94 According to the officer, who had seventeen years of experience, Ms. Condelee exhibited several factors that were sufficient to create suspicion that she was trafficking drugs. n95 Those factors were: (1) that she was traveling with only carry-on luggage; (2) that she was very nervous during a consensual search; (3) that she attempted to conceal contents of her purse from a (male) agent; and (4) that her purse made a loud noise when placed on a nearby trashcan. n96 However, most disturbing, and what actually drew the officer's attention to Ms. Condelee, was the final factor: that she was a "black woman [who] was stylishly dressed." n97 Two years later, the Eighth Circuit again found reasonable suspicion in United States v. Weaver because, among other things, Mr. Arthur Weaver was a ""roughly dressed' ... black male," traveling directly from Los Angeles to Kansas City, who had lost his plane ticket during the flight and walked too quickly to a taxicab upon exiting the plane. n98 Interestingly, in both cases, although separated by two years, the same arresting officer, Agent Carl Hicks, used race to take otherwise nondescript behavior and criminalize it in order to justify his reasonable suspicion. n99 More simply, [\*67] since the war on crime has always been framed as a war on Blackness, and vice-versa, the Eighth Circuit comfortably relied on race as a factor in ruling on whether an officer's suspicion of criminal activity was reasonable. While the Eighth Circuit's explicit use of a race factor in establishing reasonable suspicion is indeed troubling, it is far from a singular moment in Fourth Amendment jurisprudence. Particularly, the Supreme Court has not lagged far behind. In Illinois v. Warlow, the Court upheld the search of William "Sam" Wardlow after an officer detained and searched him following a foot chase on the South Side of Chicago. n100 While en route to another part of Wardlow's high crime neighborhood, the officers became suspicious when Wardlow purportedly looked at their vehicle and began to run. n101 According to the officers, Wardlow's flight was enough to establish reasonable suspicion that he was engaging in criminal activity. n102 The Court, however, disagreed with the officer's statement of reasonable suspicion - yet still upheld the search. n103 Writing for a 5-4 majority, Justice Rehnquist ruled that while evasive behavior, in this case running, and mere presence in a high crime neighborhood were individually insufficient to establish reasonable suspicion, the two activities taken together justified police interdiction. n104 In other words, running plus a mere presence in a high crime area establish the reasonable suspicion that Sam Wardlow was engaging in criminal activity. n105 Of course, one should note that "high crime neighborhood" is code for poor Black ghetto. n106 [\*68] With respect to race, Wardlow is especially troubling because it allows the police to take otherwise non-criminal behavior (movement) and criminalize it based on where it is being committed: poor Black communities. The decades following Terry, Condelee, Weaver, Wardlow, and their ilk have yielded a new standard that suggests that race, clothes, travel, and neighborhood are now salient indicators of modern crime. According to Professor David Harris, this standard "begins and perpetuates a cycle of mistrust and suspicion, a feeling that law enforcement harasses African Americans and Hispanic Americans with Terry stops as a way of controlling [minority] communities." n107 Professor Harris is correct - Terry and the reasonable suspicion standard not only "strengthen the impression that this country has two justice systems, one for whites and one for minorities," n108 but also that the war on social issues will continue to be situated and enforced as a war on Blackness. III. Hip Hop and the Fourth Amendment: A Narrative on Law and Policing I want to now turn to my reading of Hip Hop artist KRS-One, whose moniker stands for "Knowledge Reigns Supreme," n109 in order to show how rap music uses art to dialogue and openly critique law, race, and the Fourth Amendment. Here, I show the connective fissures of race and legal consciousness during the early years of Hip Hop. I use KRS-One to center my critique for three main reasons. First, to show how for a significant moment in time Hip Hop represented the highest form of legal consciousness, defined by Patricia Ewick and Susan S. Sibley as "ways in which ordinary people - rather than legal professionals - understand and make sense of the law." n110 Notably, in these early years Hip Hop and Critical Race Theory traveled the same path: a conscious liberation from state power by attacking the same theme (racism in American law) using the same [\*69] critical methodology (intellectual narrative). n111 Second, KRS-One is significant because of his body of work. His most familiar songs - Criminal Minded, n112 Black Cop, n113 and my personal favorite, Sound of da Police n114 - are some of the earliest expressions of "conscious rap" during the early years of Hip Hop. n115 Finally, KRS-One does something more than most of current Hip Hop: he actively, as part of his rap persona, seeks to teach history and philosophy through his lyrical styles, thereby justifying his self-proclamation as the Teacha n116 and supporting his popular songs like You Must Learn n117 and My Philosophy. n118 [\*70] But it is his groundbreaking song, Sound of da Police, where KRS-One walks us through the first stage of Hip Hop's critical musings on colorblindness and state power by issuing a powerful critique of the nature of Black alienation in a society experiencing change and challenge in the post-Civil Rights Era. n119 Although much of the criticism of Hip Hop has centered largely on the violence present in its word - the racism, homophobia, misogyny, drug dealing, and financial irresponsibility n120 - Sound of da Police claims no ownership. Rather, the song investigates the struggle of Black existentialism within a system of American criminal justice that appropriates colorblindness as an interpretative strategy for understanding the disjointed character of Black double consciousness under American law. n121 Using policing and Black existence as a backdrop, the song suggests how Black identity remains problematized and even fragmented by the law in the post-Civil Rights Era. KRS-One explains this in his first verse: Stand clear! Don man a-talk You can't stand where I stand, you can't walk where I walk. Watch out! We run New York, Police man come, we bust him out the park. I know this for a fact, you don't like how I act You claim I'm sellin' crack But you be doin' that I'd rather say "see ya" Cause I would never be ya Be a officer? You WICKED overseer! Ya hotshot, wanna get props and be a saviour First show a little respect, change your behavior Change your attitude, change your plan There could never really be justice on stolen land Are you really for peace and equality? Or when my car is hooked up, you know you wanna follow me Your laws are minimal Cause you won't even think about looking at the real criminal This has got to cease [\*71] Cause we be getting HYPED to the sound of da police! n122 Using Hip Hop, KRS-One narrates how policing Black people is actually the cornerstone of anti-Blackness under American law. Although African Americans are, arguably, protected by the U.S. Constitution to the same degree as whites, KRS-One claims that those "laws are minimal," meaning they fail to protect Black freedom from police oppression. n123 According to KRS-One, this is possible because the police "won't even think about looking at the real criminal," by which he means the police themselves. n124 Worse, civil rights organizations, which were once the hallmark of Black liberation and freedom from legal oppression, are struggling to find modern ways of effectively managing police practices. n125 The ability to sue police, departmentally and individually, has become so bootstrapped with legal protections that it is nearly impossible to prevail in a civil lawsuit challenging oppressive police practices. Between departmental cover-ups, n126 police protocol and training policies, and the creation of legal protections in the Good Faith Doctrine n127 and Qualified Immunity, n128 legal [\*72] vindication against police violence is Sisyphean: an endless, unavailing labor or task. n129 Further, post-Civil Rights juries continue to encourage bad police behavior through outright acquittals in criminal trials involving police brutality or reward the same through the reinstatement of rogue cops to their jobs, with the added insult of back pay. n130 The conflation of Blackness and criminality is not limited to the perimeter of the urban core; rather, its pervasiveness stretches into non-Black communities as well. In other communities, the police have extended and the courts have endorsed the "out-of-place" practice of reasonable suspicion, which permits a police officer to find suspicious a person of one ethnicity in an area primarily populated by another. Thus, when Blacks enter white neighborhoods, their race becomes the outward indicator of potential criminal activity and justifies stopping, questioning, searching, and in some cases murdering them. n131 Similarly, when whites enter the ghetto, the police either assume that they are engaged in criminal activity, typically as consumers of drugs or prostitution, or that they are lost or in need of help. n132 [\*73] The "out-of-place" practice of reasonable suspicion applied in both communities and random investigatory stops and street sweeps applied in Black ones indicates how race is often the sole factor in deciding which criminal suspects to detain. n133 As writer John Edgar Wideman points out: It's respectable to tar and feather criminals, to advocate locking them up and throwing away the key. It's not racist to be against crime, even though the archetypal criminal in the media and the public imagination almost always wears "Willie" Horton's face. Gradually, "urban" and "ghetto" have become code words for terrible places where only Blacks reside. Prison is rapidly being re-lexified in the same segregated fashion. n134 The courts' widespread acceptance of race as probative of criminal activity and the steady erosion of the reasonable suspicion standard set by the judiciary's racist interpretations of Terry v. Ohio produce one surety: poor, urban Blacks will always find themselves caught in the clutches of the penal system in numbers and with an intensity far disproportionate to their criminal involvement. n135 In this regard, the conflation of Blackness and crime, as collective representations of justice policy, remakes race and reactivates racism by re-legitimating racism in American law and order. n136 In the post-Civil Rights Era, this current expression of anti-Black animus takes the form of public vituperation of young Black men as criminals and violent deviants. n137 Here, modern policing draws on slave and Jim Crow paradigms [\*74] for policing Black communities. n138 This is what KRS-One means when he claims the police act as modern day overseers of state power vexed against Black freedom. n139 Now here's a likkle truth, Open up your eye While you're checking out the boom-bap, check the exercise Take the word "overseer," like a sample Repeat it very quickly in a crew for example Overseer Overseer Overseer Overseer Officer, Officer, Officer, Officer! Yeah, officer from overseer You need a little clarity? Check the similarity! The overseer rode around the plantation The officer is off paroling all the nation The overseer could stop you what you're doing The officer will pull you over just when he's pursuing The overseer had the right to get ill And if you fought back, the overseer had the right to kill The officer has the right to arrest And if you fight back they put a hole in your chest! n140 Unlike the first verse of Sound of da Police, KRS-One uses his second verse to ask for an explanation about police rather than make a statement about it. Specifically, he wants to know why Blacks are policed more heavily than whites. n141 Hefty resources are spent on overseeing the Black [\*75] population in ways that place Blacks and the police at ideological odds: freedom vs. repression, survival vs. destruction. n142 Perhaps KRS-One recognizes these ideological odds, analogizing plantation overseers to modern police overseers: (Woop!) They both ride horses After 400 years, I've got no choices! The police them have a little gun So when I'm on the streets, I walk around with a bigger one (Woop-woop!) I hear it all day Just so they can run the light and be upon their way. n143 KRS-One's reference to how the police "oversee" Black men is rooted in current policing's reaffirmation of the omnipotence of a legal Leviathan in the restricted domain of public order maintenance, symbolized by continuous battles against street delinquency. For example, Broken Windows styles of policing, which focuses on enforcing minor petty offenses such as jaywalking, loitering, or vagrancy, is used by the modern metropolis to address major political dysfunction within local communities. n144 Instead, however, it only succeeds at encouraging anti- [\*76] Black policing and prosecutions. n145 An example of this policing style and its use is the City of Chicago's attempts to employ anti-gang statutes to sweep Black communities, in an effort to "move along" groups of three or four Black men who loiter. n146 Although this practice was encouraged by Chicago's political machine, namely local and state governments, [\*77] prosecutors, and the judiciary, this style of policing was ultimately declared unconstitutional by the United States Supreme Court in Chicago v. Morales. n147 Speaking for the Court, Justice Stevens declared that "broad sweeps [of the law] violate the requirement that a legislature establish minimum guidelines to govern law enforcement" and any ordinance that "encompasses a great deal of harmless behavior" is unconstitutional. n148 Curiously, this happens just when poverty-stricken Black communities demonstrate an inability to stem the decomposition of wage labor or to bridle the hypermobility of global capital and fall victim to urban gentrification. n149 This is not mere coincidence. Rather, it is "common sense," a way of comprehending, explaining, and acting in the world, n150 but only to the extent that we invest our morphology with racial meaning. n151 Because American legal elites have converted to the ideology of colorblind formalistic approaches to the law n152 and state elites have either reduced or abandoned their work in those legal and social matters affecting their most distressed constituencies, n153 the post-Civil Rights America finds itself [\*78] curiously comforted by an ideology that reduces young Black men to a sole criminal dimension. n154 IV. Conclusion Focusing on the "long fetch" n155 of Black suffering that emanates from the era of Black Power, this Article claims that understanding the present state of anti-Blackness in modern policing and the trajectory of Fourth Amendment analysis, which currently authorizes racial stereotypes in (de)establishing privacy rights, is critical to reconciling the specter of legal violence against young Black men. While the Black Power Era was a period of Black self-determination, n156 the post-Civil Rights Era, which has been recognized as the Hip Hop Era, has witnessed the rise of the American gangster - emanating from the government, extending to its citizens. n157 Understanding how legal proclivities on race and criminal justice induce narratives that emanate from Black Power and influence rap music is important because it reveals how the contemporary dialogue championing [\*79] the successes of the Civil Rights Era fails to account for the hidden history of America's protracted war on Black liberation. n158 Further, missing these historical connections prevents public recognition that modern interpretations and applications of the Fourth Amendment have not only changed post-Civil Rights policing, but also retrenched anti-Blackness in everyday legal parlance. While there is much fallout from the war on Black Power, namely the over-incarceration of young Black men, police brutality, unconstitutional searches and seizures, and racial profiling, there exists one more: the problem of honestly narrating race and law in a colorblind world. n159 Simply put, Hip Hop artists have replaced the political visionaries of the Black Power Era as the voices of resistance to, and freedom from, racial and political oppression deeply embedded within American law. n160 Recognizing the rise of Hip Hop, and rap music, as part of the fallout from the war on Black Power helps us clearly see how stories of law and order shifted from the soapbox poets of Black Power to the street poets of Hip Hop. In this space, Hip Hop's shifting discourse on law takes a decidedly different form: where reading or listening to rap music reveals how the fallout of the war on crime and the war on drugs exposes the deep connections between Black social existence and transformation within American law.

Linking the ballot to a *should* question in combination with USFG simulation teaches the skills to organize pragmatic consequences *and* philosophical values into a course of action

Hanghoj 8

http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf

 Thorkild Hanghøj, Copenhagen, 2008

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 Joas’ re-interpretation of Dewey’s pragmatism as a “theory of situated creativity” raises a critique of humans as purely rational agents that navigate instrumentally through meansends- schemes (Joas, 1996: 133f). This critique is particularly important when trying to understand how games are enacted and validated within the realm of educational institutions that by definition are inscribed in the great modernistic narrative of “progress” where nation states, teachers and parents expect students to acquire specific skills and competencies (Popkewitz, 1998; cf. chapter 3). However, as Dewey argues, the actual doings of educational gaming cannot be reduced to rational means-ends schemes. Instead, the situated interaction between teachers, students, and learning resources are played out as contingent re-distributions of means, ends and ends in view, which often make classroom contexts seem “messy” from an outsider’s perspective (Barab & Squire, 2004). 4.2.3. Dramatic rehearsal The two preceding sections discussed how Dewey views play as an imaginative activity of educational value, and how his assumptions on creativity and playful actions represent a critique of rational means-end schemes. For now, I will turn to Dewey’s concept of dramatic rehearsal, which assumes that social actors deliberate by projecting and choosing between various scenarios for future action. Dewey uses the concept dramatic rehearsal several times in his work but presents the most extensive elaboration in Human Nature and Conduct: Deliberation is a dramatic rehearsal (in imagination) of various competing possible lines of action… [It] is an experiment in finding out what the various lines of possible action are really like (...) Thought runs ahead and foresees outcomes, and thereby avoids having to await the instruction of actual failure and disaster. An act overtly tried out is irrevocable, its consequences cannot be blotted out. An act tried out in imagination is not final or fatal. It is retrievable (Dewey, 1922: 132-3). This excerpt illustrates how Dewey views the process of decision making (deliberation) through the lens of an imaginative drama metaphor. Thus, decisions are made through the imaginative projection of outcomes, where the “possible competing lines of action” are resolved through a thought experiment. Moreover, Dewey’s compelling use of the drama metaphor also implies that decisions cannot be reduced to utilitarian, rational or mechanical exercises, but that they have emotional, creative and personal qualities as well. Interestingly, there are relatively few discussions within the vast research literature on Dewey of his concept of dramatic rehearsal. A notable exception is the phenomenologist Alfred Schütz, who praises Dewey’s concept as a “fortunate image” for understanding everyday rationality (Schütz, 1943: 140). Other attempts are primarily related to overall discussions on moral or ethical deliberation (Caspary, 1991, 2000, 2006; Fesmire, 1995, 2003; Rönssön, 2003; McVea, 2006). As Fesmire points out, dramatic rehearsal is intended to describe an important phase of deliberation that does not characterise the whole process of making moral decisions, which includes “duties and contractual obligations, short and long-term consequences, traits of character to be affected, and rights” (Fesmire, 2003: 70). Instead, dramatic rehearsal should be seen as the process of “crystallizing possibilities and transforming them into directive hypotheses” (Fesmire, 2003: 70). Thus, deliberation can in no way guarantee that the response of a “thought experiment” will be successful. But what it can do is make the process of choosing more intelligent than would be the case with “blind” trial-and-error (Biesta, 2006: 8). The notion of dramatic rehearsal provides a valuable perspective for understanding educational gaming as a simultaneously real and imagined inquiry into domain-specific scenarios. Dewey defines dramatic rehearsal as the capacity to stage and evaluate “acts”, which implies an “irrevocable” difference between acts that are “tried out in imagination” and acts that are “overtly tried out” with real-life consequences (Dewey, 1922: 132-3). This description shares obvious similarities with games as they require participants to inquire into and resolve scenario-specific problems (cf. chapter 2). On the other hand, there is also a striking difference between moral deliberation and educational game activities in terms of the actual consequences that follow particular actions. Thus, when it comes to educational games, acts are both imagined and tried out, but without all the real-life consequences of the practices, knowledge forms and outcomes that are being simulated in the game world. Simply put, there is a difference in realism between the dramatic rehearsals of everyday life and in games, which only “play at” or simulate the stakes and risks that characterise the “serious” nature of moral deliberation, i.e. a real-life politician trying to win a parliamentary election experiences more personal and emotional risk than students trying to win the election scenario of The Power Game. At the same time, the lack of real-life consequences in educational games makes it possible to design a relatively safe learning environment, where teachers can stage particular game scenarios to be enacted and validated for educational purposes. In this sense, educational games are able to provide a safe but meaningful way of letting teachers and students make mistakes (e.g. by giving a poor political presentation) and dramatically rehearse particular “competing possible lines of action” that are relevant to particular educational goals (Dewey, 1922: 132). Seen from this pragmatist perspective, the educational value of games is not so much a question of learning facts or giving the “right” answers, but more a question of exploring the contingent outcomes and domain-specific processes of problem-based scenarios.

## 2NC

### subotnik

we can’t refute the argument that people don’t exist, just that we can attempt to find middle ground for dialogue

SUBOTNIK 98

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Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, **the central** CRT **message is not simply that minorities are being treated unfairly**, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - **but that the minority scholar himself or herself hurts and hurts badly**.

An important problem that concerns the very definition of the scholarly enterprise now comes into focus. **What can an academic** trained to [\*694] question and to doubt n72 **possibly say to Patricia Williams when effectively she announces, "I hurt bad"?** n73 **"No, you don't hurt"? "You shouldn't hurt"?** "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, **writes Williams, the failure by those "cushioned within the invisible privileges of race and power**... to incorporate a sense of precarious connection as a part of our **lives is... ultimately obliterating**." n74

"Precarious." "Obliterating." **These words will clearly invite responses only from fools and sociopaths; they will, by effectively precluding objection, disconcert and disunite others**. **"I hurt," in academic discourse, has three broad though interrelated effects**. First, **it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly** n75 **- destructive and, above all, self-destructive arti cles.** n76 **Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from abstracting themselves from their pain in order to gain perspective on their condition**. n77

 [\*696] **Last, as we have seen,** it precludes the possibility of open and structured conversation with others. n78 [\*697] **It is because of this conversation-stopping effect** of what they insensitively call "first-person agony stories" **that Farber and Sherry deplore their use.** "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience on the table, along with other relevant material, but to subject that experience to the same level of scrutiny.

If **through the foregoing rhetorical strategies CRATs succeeded in limiting academic debate**, why do they not have greater influence on public policy? **Discouraging white legal scholars from entering the national conversation about race**, n80 I suggest, **has generated a kind of cynicism in white audiences** which, in turn, has had precisely the reverse effect of that ostensibly desired by CRATs. **It drives the American public to the right and ensures that anything CRT offers is reflexively rejected.**

In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, **the kinds of issues** raised by Williams **are too important** in their implications  [\*698]  for American life **to be confined to communities of color.** If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, **it would seem to be of great importance that white thinkers and doers participate in open discourse** to bring about change. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

Nobody is politically powerless—we can have radical and non-radical resistance—that’s the whole point of our argument, one is a training ground for the other

Andrews ‘10

Kehinde, PhD, University of Birmingham, “Back to Black: Black Radicalism and the Supplementary School Movement”\*”I am we” = quote from Emory Douglas, Black Panther Cultural Minister from 1967-80

Black radicalism has often, unsurprisingly given the House/Field split, taken a dim view of the success of the Black middle class. As outlined above success in the White world can be seen to be at the expense of the masses. Moving out of the neighbourhood, going to better schools and socialising in different circles, have all been seen as going against the interests of the people. Participating in ―Babylon system‖ and accepting its corrupt rewards is not always seen as success (Kennedy, 2008). There exists for some a certain level of scepticism of professors, lawyers, doctors etc because of their position in mainstream society. Individual success is sometimes seen as coming at the expense of community success. However, there is a problem with this equation. **If “I am we”** is the case then **surely the opposite is true**, in that “we are I”. By this I mean that more individual success should have a benefit to the community; **the more mainstream success of the I the better for the we.** This is an important note to make here because authenticity within the Black radical tradition is based on **politics** and not socio-economic position. **It is not selling out** or ―tomming‖ to have a good career, live in a nice house outside the neighbourhood or even to have a White partner. **Where authenticity comes in is whether or not the successes of the I are being used to benefit the we**. Having a relatively privileged position in the social structure enables a person to donate money, use **resources and skills** they are fortunate enough to have acquired and also put time back in to the community. This is the test of authenticity from the Black radical standpoint: whether or not someone is involved in improving the conditions of Black people as a whole.

### code switching

only cross-code discussions foster linguistic pluralism through constructive collision

Shuaib **Meacham 4**, education prof at Colorado Boulder, “Comments on Bakhtin and Dialogic Pedagogy”, Journal of Russian and East European Psychology, vol. 42, no. 6, November–December 2004, pp. 82–85

By way of critique, my primary concern returns to the issue of race and language mentioned earlier. While acknowledging the linguistic diversity as sumed by the presence of class, Bakhtin’s examples are limited to punctuation related issues. In the study of grammar instruction, a vital area of consideration is the element of “stigma” that is attached to certain types of nonstandard word usages. His dialogic comparisons rooted in different punctuational possibilities do not touch on the far more stigmatizing grammatical issues related to verb tense and subject verb agreement. Such cases applied to Bakhtin’s pedagogy would require teachers to employ highly stigmatized grammatical constructs within the context of language instruction. Within the context of instruction, the use of such phrases was at the core of the Ebonics controversies that emerged close to ten years ago. Merely juxtaposing nonstandard constructs with the standard as a means of helping students to learn the standard patterns more effectively ignited a storm of national controversy. Bakhtin’s pedagogy would not only allow for basic comparisons, but, given the prominence of hip-hop and its power for today’s youth, would accommodate the possibility that the nonstandard form might be more linguistically powerful than the standard comparison. Bob Marley has a phrase recently quoted by the hip-hop group Dead Prez: “Them belly full but we hungry.” Bakhtin’s pedagogy would necessarily celebrate the semantic advantages of the words chosen in the phrase although they do not represent a standard form. To realistically think of preservice teachers celebrating nonstandard language constructs again speaks to the need for a “conversion” experience. Bakhtin’s pedagogy is powerful because for him the language is a living experience, it is a source of joy. In our present ethos, language is a source of fear and dread. The Ebonics controversy and hip-hop both constitute clear indications of the manner in which the dread of racialized language sends people into paroxysms of loathing. Bakhtin’s article is a refreshing taste of a liberated language consciousness and what it can accomplish in the heavily policed domain of language pedagogy. But the deeper question perhaps goes back to the source of Bakhtin’s dialogic fascination, Dostoevsky (1994) Notes from Underground. This metaphor of the “underground,” a perspective from below, speaks of a place where perception is no longer ruled and policed by surface illusion and its enforcers. Perhaps one has to go underground to be liberated linguistically, to experience a liberated perception. Perhaps the core of Bakhtin’s consciousness exists below the surface in which case the question is not only how to foster a pedagogy of dialogue but how to foster a pedagogy of conversion as well. How do we teach preservice teachers not to fear the language of the students, not to fear the infinite possibilities of language so that they will see flesh and language as something to celebrate instead of something to dread? With respect to research, Bakhtin does an excellent job of representing the researcher as a learner. Not so much through the article itself, but from Eugene Matusov’s commentary, one is able to appreciate the considerable labor involved in Bakhtin’s engagement of pedagogical issues. In order to carry out and discuss his pedagogy, Bakhtin not only learns about the field of education but learns from the students in the context of instruction. Bakhtin welcomes the learning involved in dialogue, the “colliding,” as Matusov describes, of different perspectives coming together. “Collision” in U.S. English is not traditionally a positive occurrence. Collision normally implies that something negative has occurred. Elements traditionally meant to be in their own separate paths have unwittingly come together to create this negative outcome called a “collision.” Collision, as a positive construct, speaks of a necessary violence that is required to open up previously closed conceptions to new possibilities of meaning and understanding. Elements that are usually represented as oppositional, through collision, can become perceived as relational and leading to new paths of understanding. This potentially can lead to new processes of inquiry wherein the primary aim is disruption and redefinition, an inquiry that expands language and unearths previously closed off domains of relationship. Perhaps this inquiry can lead to a new vision of language that promotes conversion by disrupting long-held conceptions and opens both researcher and reader to new conceptions that enable us to celebrate instead of fearing language diversity and dialogue with students.

### at: can’t reform usfg

There’s no choice—we can work in and outside of established systems

Andrea Smith, Ph.D., co-founder of Incite! Women of Color Against Violence, UC Riverside Associate Professor, 2010, Building Unlikely Alliances: An Interview with Andrea Smith, uppingtheanti.org/journal/article/10-building-unlikely-alliances-an-interview-with-andrea-smith/

You’ve said that you saw the Obama election as a moment for social movements to build themselves. What are your thoughts about electoral politics and the role of the state in terms of the question of power?

Until you have an alternative system, then there is no “outside” of the current system. I don’t think there is a pure place in which to work, so you can work in many places, including inside the state. I think there is no reason not to engage in electoral politics or any other thing. But it would probably be a lot more effective if, while we are doing that, we are also building alternatives. If we build the alternatives, we have movements to hold us accountable when we work within the system and we also have more negotiating power. It can actually be helpful.

In terms of, say, state repression, if we have some critical people within the state then we might be able to do something about it. We might think about them as a way to relieve some of the pressure while trying to build the alternatives. **I don’t think it is un-strategic** to think about it like that. I am just not the kind of person who ever says, “never do ‘x’.” You always have to be open-minded and creative. It may not work out. You may get co-opted or something bad might happen. But if we really knew the correct way to do something we would have done it by now.

## 1NR

### affect

The content of our arguments determines the quality of our affect – any other interpretation doesn’t make any sense

Ruth Leys 11, humanities and history prof at Johns Hopkins, The Turn to Affect: A Critique, Critical Inquiry 37 (Spring 2011)

It is important to notice that Massumi imposes on Sturm’s experimental ﬁndings an interpretation motivated by a set of assumptions about the asignifying nature of affect. These assumptions drive his analysis of Sturm’s data in order to produce a distinction between, on the one hand, the conscious, signifying (“emotional” and intellectual) processes held to be captive to the ﬁxity of received meanings and categories and, on the other hand, the nonconscious affective processes of intensity held to be autonomous from signiﬁcation. Differently from Tomkins and Ekman but to the same end, Massumi conceptualizes affect as inherently independent of meaning and intention. What he and other affect theorists share with Tomkins and Ekman— hence also with Sedgwick and Smail—is a commitment to the idea that there is a disjunction or gap between the subject’s affective processes and his or her cognition or knowledge of the objects that caused them. The result is that the body not only “senses” and performs a kind of “thinking” below the threshold of conscious recognition and meaning but—as we shall see in a moment— because of the speed with which the autonomic, affective processes are said to occur, it does all this before the mind has time to intervene. And now the larger stakes of Massumi’s effort to distinguish “affect” from signiﬁcation begin to become clear. He is not interested in the cognitive content or meaning political or ﬁlmic or ﬁctional or artistic representations may have for the audience or viewer but rather in their effects on the subject regardless of signiﬁcation. The whole point of the turn to affect by Massumi and like-minded cultural critics is thus to shift attention away from considerations of meaning or “ideology” or indeed representation to the subject’s subpersonal material-affective responses, where, it is claimed, political and other inﬂuences do their real work. The disconnect between “ideology” and affect produces as one of its consequences a relative indifference to the role of ideas and beliefs in politics, culture, and art in favor of an “ontological” concern with different people’s corporeal affective reactions. We ﬁnd a similar disconnect between meaning and affect in Smail’s neurohistory, where, for example, gossip is said to have nothing to do with meaning, but is a “meaningless social chatter whose only function is the mutual stimulation of peace-and-contentment hormones. Gossip, in this model, remains important as a medium of communication,” as Smail observes, but what get communicated are not “primarily words and their meanings” but “chemical messengers.” 30 For both the affect theorists and Smail, then, political campaigns, advertising, literature, visual images, and the mass media are all mechanisms for producing such effects below the threshold of meaning and ideology. 31 In short, according to such theorists affect has the potential to transform individuals for good or ill without regard to the content of argument or debate. These are the reasons Massumi and the others are interested in scientiﬁc studies allegedly showing that affective processes and even a kind of intelligence go on in the body independently of cognition or consciousness and that the mind operates too late to intervene.

Their account of affect is hogwash – “vote for the good affect, reject the bad” is so reductive the concept becomes useless

Clare Hemmings 5, feminist theory prof at the London School of Economics, Invoking Affect, Cultural Studies Vol. 19, No. 5 September 2005, pp. 548 /567

While appreciative of a critical focus on the unusual, which is to say the non-socially-determined, not as a bid for group rights, but a bid for social transformation, I remain sceptical of what is often a theoretical celebration of affect as uniquely situated to achieve this end. This article explores my scepticism of such affective celebration through close engagement with Sedgwick’s (2003) and Massumi’s (2002) work on the subject. Both authors are well-respected contributors to contemporary cultural theory, and both have recently published monographs invoking affect as the way forward within that arena. For both authors it is affect’s difference from social structures that means it possesses, in itself, the capacity to restructure social meaning. But both authors are thereby presented with something of a problem. As prominent cultural theorists, they cannot fail to be aware of the myriad ways that affect manifests precisely not as difference, but as a central mechanism of social reproduction in the most glaring ways. The delights of consumerism, feelings of belonging attending fundamentalism or fascism, to suggest just several contexts, are affective responses that strengthen rather than challenge a dominant social order (Berlant 1997). Sedgwick and Massumi do both acknowledge this characteristic of affect in their work, but do not pursue it, interested instead as they both are in that ‘other affect’, the good affect that undoes the bad. It is difficult to maintain such an affective dichotomy of course, particularly in light of their own professed irritation with cultural theorists’ tendency to divide the world up into good and bad, repressive or subversive and so on, as I discuss in more detail below. But unfortunately neither author offers any explanation as to the relationship between these ‘two kinds’ of affect, which means the relationship remains dyadic.

Instead, both authors negotiate a way out of their own uncomfortable critical position by turning the question of affective freedom back onto the cultural critic, leaving it up to her or him to decide whether the direction they wish to pursue is one of the pessimism of social determinism (including bad affect) or the optimism of affective freedom (good affect). Two points come to mind at this point. Firstly, this question to the critic is hardly an open one. ‘Wouldn’t you rather be free?’ can hardly elicit a negative response in anyone but the most hardened cultural theorist, whose hardness is indeed evidenced by that response. Secondly, as part of persuading the critic that the question is a valid one, both the ills of cultural theory to date and the restorative power of affect need to be overstated. My overarching contention in this article, then, is that while affect may be an interesting and valuable critical focus in context, it often emerges as a rhetorical device whose ultimate goal is to persuade ‘paranoid theorists’ into a more productive frame of mind.

### links

NAMING DA The 1AC says “we all came from a woman, got our name from a woman”—

Couple of problems:

A – false universalism – their discourse does violence to historically oppressed groups including the Eskimo with different naming practices

Bodenhorn, professor of anthropology at the University of Cambridge, 2006

(Barbara, *An Anthropology of Names and Naming*, kindle 2164 – 2191)

As Neakok stated above, the responsibility of designating a child's name does not fall to the parents alone: siblings, aunts, and uncles, "all the families together," may be brought (or may introduce themselves) into the process. In discussing who named her twelve children, Mattie Bodfish, currently the North Slope's eldest resident, began by saying, "I never name them myself-but my mother and my aunt always put the name - Eskimos to their relatives. They always come over and name then after they're born."15 Although it emerged that four names were indeed given by Mattie and two by her husband, others came from her biological mother; her adoptive mother, an uncle, the adoptive father of one of her closest friends and even in one case, the child himself. Although relatives are the most common name givers, this is by no means a closed universe. Leona Okakok explained that her own three names were acquired over the course of about forty years, the last being given to her by a Navajo man during a stay in the American Southwest. Ethel Negovana, a young Wainwright mother when I first began fieldwork, described how her son received a name in each of the seven communities they visited on the homeward trip from the Anchorage hospital where she gave birth. In many of these cases, names seem to have been assigned. Conversations about how people decide what the proper name of a child should be, however, suggest that this is often a question of discovery. People may recognize the return of a loved one through the behavior of an infant, which suggests that a particular name is back. If a child smiles when a recently bereaved person enters the room; if they seem to recognize a particular spot on the landscape that held importance for a deceased person; if they take to a specific kind of food which had been someone's favorite - all this is taken as evidence of a reincarnated presence that should be recognized by matching the proper name to the newborn person.

That’s a D-rule – naming is fundamental to social coding

Bodenhorn, professor of anthropology at the University of Cambridge, 2006

(Barbara, *An Anthropology of Names and Naming*, kindle 191-199)

As we have mentioned, naming practices may express information about a broad range of social classification. European names, among others, can provide information about gender, kinship, class, marriage, ethnicity, and religion, reflecting existing classificatory groups. In many societies, changes in social status are reflected by name changes and in some, the name change effects the shift in status. As Hugh-Jones and Bloch discuss in this volume, parents in Amazonia, as in Madagascar are known by teknonyms (the mother/father of so-and-so). According to Evans-Pritchard (1964), Nuer birth (or true) names are followed by patronyms, matronyms, teknomyms, clan praise names, ox-names, and dance names. Similarly Renato Rosaldo's (1984) discussion of Ilongot naming practices includes birth order names, childhood names, friendship names, nicknames, teknonyms, and necronyms. Although Evans-Pritchard and Rosaldo acknowledge the classificatory aspect of these name categories, each emphasizes that names are used as a way of negotiating social relations. Once again, with the recognition that names are part of a linguistic code, we come to the intersection between the logically closed nature of a classification system and the open nature of speech acts - of using names as an expression of contingent relationships. And, as Bloch (1971a) has noted for the use of kinship terms, Evans-Pritchard is explicit that these modes of address "serve to evoke the response implied in the particular relationship" (1964:221).11 In many situations, as Bodenhorn explores in her chapter (Chapter 7), people are faced with the possibility of choosing among acceptable names, the choice reflecting conscious strategies concerning the relationship thus potentiated.

B – biologism – They play into the Western conflation of biological and social births

Layne, professor of humanities at the Rensselaer Polytechnic Institute, 2006

(Linda, *An Anthropology of Names and Naming*, kindle 552-562)

Anthropologists have used the differences between this U.S. practice and naming norms in many societies to develop the distinction between social and biological birth. According to anthropological convention, "biological and social birth are not recognized as separate events in Western societies" (Morgan 1996:24),2 but are often separate elsewhere. In such cases anthropologists report that social birth occurs some time after the biological birth, often as part of a ceremony that ends a period of ritual seclusion for mother and new-born. It is not until this period is ritually ended that personhood is attributed and the baby welcomed as a new member of the society. One of the most common features of such rituals is naming. For example, in rural China a "child-reaching-full-month" ceremony is held at which "the child is shaved and given a personal name by his maternal uncle" (Fei 1946:35). Among the Wari' of Amazonia, mothers and their newborns remain in seclusion for six weeks after birth and the baby is referred to during that time by a term which means "still being made." The child is given a personal name once seclusion ends and it begins interacting with the wider community (Conklin and Morgan 1996:672). In the Gambia, a newborn is "ritually carried outdoors, named, and blessed, to establish its place in the paternal family" about one week after birth (Bledsoe 1999:26). In some U.S. slave communities, children were not named until one month after birth. Historical research suggests that during the colonial years, New Englanders also delayed naming and the associated attribution of personhood for some time after birth, referring to their infants "as `it,' `the little stranger,' or `the baby' until the "little strangers became familiar" (Scholten 1985:61). Whereas in the above, social birth always occurs after biological birth, recent accounts of pregnancy loss reveal that naming - and thus social birth - can occur either well before or well after biological birth. .

C – heternormativity – they say we got our name from “a woman” singular – excluding two-women couples from parenthood

Bodenhorn et al, professor of anthropology at the University of Cambridge, 2006

(Barbara, *An Anthropology of Names and Naming*, 506-509)

Carsten's recent volume (2000) advances the discussion in innovative ways. However, naming as a means of generating relationships is referred to only in Bodenhorn's contribution to that volume. In Loizos and Heady's (1999) recent collection, naming is only mentioned in passing. Single works, however, continue to touch on these issues. For example, Hayden's (1995:50) study of lesbian kinship in the United States shows that children obtain the combined or hyphenated surnames of both their biological and non-biological mother. .

It turns the case – naming reentrenches shaming tactics that assign identity and reify violence

Bodenhorn, professor of anthropology at the University of Cambridge, 2006

(Barbara, *An Anthropology of Names and Naming*, kindle 86-91)

That identities can be stolen, traded, suspended, and even erased through the name reveals the profound political power located in the capacity to name; it illustrates the property-like potential in names to transact social value; and it brings into view the powerful connection between name and self-identity. How these factors intersect, collide, and influence each other to produce different effects is a theme running through the book. It goes some way to explain why names seem simultaneously ubiquitous and infinitely changeable in their meaning. It allows us to see patterns in what might at first glance seem to be simply cultural variation. That names are thought to have the capacity to fix identity creates a tension with their capacity to detach from those identities. Thus the stark realities confronted in the crises above expose the potential moral and cultural instability experienced by named selves as well as the ongoing and socially interconnected histories names may generate. .

It’s an independent justification for the PIC – naming practices need to be foregrounded in an interrogation of violence

Bodenhorn, professor of anthropology at the University of Cambridge, 2006

(Barbara, *An Anthropology of Names and Naming*, kindle 113-121)

One of the patterns to emerge in the volume overall is the extent to which names carry with them the capacity, not only to delineate the boundaries of social status, but also to bridge them. Names may reveal crucial information about gender, kinship, geographical origin, or religion. At the same time, they may also provide the vehicle for crossing boundaries between those very same categories, as well as between life and death, past and future, humans and non-humans. Here we return our attention to the capacity of names to fix and to detach. The potential for the name to become identical with the person creates the simultaneous potential to fix them as individuals and as members of recognized social groups. It is their detachability that renders names a powerful political tool for establishing or erasing formal identity, and gives them commodity-like value. And it is precisely their detachability that allows them to cross boundaries. How these capacities combine and recombine, bringing boundaries into view and bridging others, provides another through line in the volume. As illustrated in the chapters to come, cultural practices around naming combine several key concerns in recent social theory: embodied personhood, gendered subjectivity, displacement, semantic and biographic memory, the power of discourse, and symbolic analysis more generally. Recent anthropological engagement with these issues has generally sidelined or neglected names and naming altogether. In calling attention to this omission, we have concentrated primarily on the exploration of personal names.' .

It’s a personal choice – their model obviates agency

Kushner, chief managing editor, UCLA law review, 2009

(Juia Shear, THE RIGHT TO CONTROL ONE’S NAME, <http://www.uclalawreview.org/pdf/57-1-7.pdf>)

Last, and arguably most importantly, **names serve as a** part of or as a particular **manifestation of personal identity**.50 Sigmund Freud wrote, “A man’s name is a principal component of his personality, perhaps even a portion of his soul.”51 Names are more than identifiers; they are descriptive and can communicate much about a person including gender, ethnic or national background, social status, religion, and familial ties.52 The meanings of **our names** not only tell others about us, but can **inform our own sense of who we are**.53 The identity function of naming is thus distinct from self-expression. The “**expression** function” **means using one’s name to communicate something about oneself to others**; the “**identity** function” **means using one’s name to define one’s own self-concept**.54 **Both functions render names intensely personal**.

And FAMILY DA – Keep Ya Head Up appears anti-sexist but actually reinforces a dichotomy that gives women primacy because of their role as mothers – it is conservative family values discourse and is co-opted for racial and sexual oppression

Lubiano, Associate Professor; African & African American Studies, 1998

(Wahneema, *The House That Race Built*, pg. 246-8)

**Let me turn to Tupac** Shakur**'s** "**Keep Ya Head Up**.” I turn to it because it caught the attention of millions of black people who consume rap, and because **our consumption of art is part of our world-making**. **Cultural artifacts** do not simply hold up a mirror to what we already think we know, they "**make**" **what we know**. **This rap song was not only immensely popular**, **but** it was often **touted as antisexist and supportive of black women** because of its defense of young black mothers and welfare mothers. It is also beautiful—the lyrics, his voice, the refrain—the voices singing in harmony “keep ya head up." It includes a nod to an older black R&B group and a sentimental ballad favorite—the Five Staimeps and “Ooh, Ooh Child"——with its quotation of “things are gonna get easier." And the song fits comfortably within the paradigms of the black nationalist reproductive narrative—peoplehood and children.

The lyrics articulate a combination of black family themes: support for women on welfare and a sense of future possibility for the group through the family. The language evokes a black group past, present, and future, and connects those times to black women and childbearing. lts explicit language of positive dark "roots"-—when “black was the thing to be," of “sisters on welfare," “young mothers," of a need to “heal the race . . . [or we’ll produce] a race of babies who hate the ladies who make the babies”—-—and its warning about the insanity of within the—group violence——“a setup from the outside"-—reproduces familiar imperatives. It announces that once we had a healthy good past, but our future is threatened by our participation in demonic othering of young and welfare dependent mothers, a threat that comes from outside the community.

In a moment when welfare mothers, young mothers. and single parent families are under relentless attack, the presence of such a rap song is poignant. It serves as an antidote to widely available discursive poison about black female and black family pathology and unites the comfort of that antidote with a desire for a future better than the present.

Why subject such a song to criticism? Because **this kind of positive rap**, which **comes out of** **conventional madonna-whore narratives**, beautifully **plays out** the black equivalent of **family-values discourse** and is therefore more disturbing than gangsta rap. It is more disturbing precisely because **it is so easily accommodated**, **so easily routinized in ways that reproduce the problematic status quo**. It does this in large part because it is beautiful. It is because it is not transgressive, not dramatic and sensational, that it doesn't draw our attention to its ideological content. Its contrast to the rhetoric of gangsta rap—a form explicitly and deliberately situated outside civil mores—hills our critical faculties as it helps con' tribute aesthetically to the pleasure of consuming family values, differently styled.

Not least, **the song betrays black women and the possibility of centering their own sexual desire**, insofar **as it reiterates the confined space in which they must exist in order to be venerated**, to be respected. **lt reasserts the primacy of motherhood in our imagining of female importance**.

**Imagine a coalition of antichoice factions**: Ralph Reed’s (and Pat Robertson's) Christian Coalition, Newt Gingrich, and the reigning government elite **managing to acquire some degree of cool**. Together they produce a few sixty- and ninety-second TV spots supporting more restrictions on reproductive rights and intensifying the coercive rhetoric of nominal respect for women by insisting that every reproducing woman have a husband and be barred from contraceptive devices and abortion. The spots are beautifully produced and photographed with absolutely gorgeous black people dressed either in 'hoodwear or kentewear. Tupac Shakur's “Keep Ya Head Up” provides the sound track.

To draw attention to the ways in which the state or **any** other **coercive power**, or elite group, or the routine operation of capitalism. **can make use of the cultural production of a marginalized group in order to aid in repressing that group** is to draw attention to dynamics that have been in use for a very long time. Still, **it is important to understand how such deployments take new form and acquire added resonance** given particular circumstances.

Interrogation of the term family is necessary to uproot the traditional patriarchal structures that it evokes

Arnold, 8

(Attorney-Transitional Family Resources, <http://www.transitionalfamilyresources.com/Articles/Male-Patriarchy.aspx>)

Bogenschneider advocates that instead in speaking in terms of “family policies” we speak to “a family perspective in policymaking.”   In this way we overcome the American patriarchal resistance to interference with individual “rights” by shifting the focus to “the consequences of any policy or program, regardless of whether it is explicitly aimed at families, for its impact on family well being.” Historically, family policies have been myopic in part because **there has been no working definition of “family**”, but also because of the American penchant to view inter-relational systems from the patriarchical perspective.   That launching point has ignored what Bogenschneider terms the “critical element” which moves beyond the individual to a relationship of two or more individuals, who are equals, and whom are tied together by blood, legal bonds, or the performance of family functions.

When discussing families and family values, Americans tend to act as though these matters are indeed “self-evident”, particularly in regards to the structuring of relationship and its place within the larger social contexts.  We act as though there is agreement of how families are constituted, but in truth we know more about what the family is not than what it is.   In reality the term “family” is relative.   Its attributes differ with race, culture, gender, convention, choice and point of view.   Yet, our nation’s laws and policies have been applied as though there was an absolute definition that is consistent with all human experience which was in reality shared by very few.    For instance in terms of its myths our society continues to think of “family” **as meaning a heterosexual, legally married couple, with children** – until recently it was further assumed that the wife probably did not work beyond part-time.   (Carter and McGoldrick, 2005).   This paradigm reflects and is **designed to sustain class stratifications in a society** that supports and perpetuates American capitalism.   Questioning or challenging the hegemony of the “nuclear family” of the 1950’s as the be-all end-all for social structure is considered as an equivalent to heretical national disloyalty.   The reaction and repercussions to such questioning is a form of xenophobia. The American model of the nuclear family is derived from a professional-managerial class view of family structuring, even though only a very small percentage of Americans comprise that class. Two areas that have received much less attention, although this is beginning to change, involve custodial rights to children of diverse social and economic backgrounds, and spousal and child support, particularly as support impacts women.   The subject of children is clearly intertwined with definitions of family. It is an area into which government more cautiously intrudes into the lives of parents.   It is also an area where increasingly the rights of the individual must give way to the needs of the state, by the so-called exercise of police power.   The question of diversity of cultures – particularly as it relates to issues involving children – is an area fraught with xenophobia, racism, bias and ignorance.    After all, most cultures treat grandparents as being important and necessary parts of the care and education of children in terms of their social roles (Carter and McGoldrick, 2005), yet the United States Supreme Court in *Troxel v. Granville* (2000) basically held that state government does not have such a compelling reason to intrude on “parental rights” to children as an exercise of state power that it may entitle grandparents to visitation rights over the objection of parents.   This holding is based upon an erroneous assumption of what the “traditional” family consists of   (Henderson, T. 2004), but perpetuates the assumptions implicit in the anglicized patriarchal family structure. While child support has obvious ideological and economic foundations in terms of costs to society and the poverty of children, government laws and policies are only now becoming sensitized to the historic slavery of women as the domestic workers of our society.   This lack of clarity concerning the roles of women is more evident as it relates to spousal support, since many state statutes and judicial decisions have difficulty articulating why alimony is fair, important, and necessary.

Conclusion The laws and policies that govern marriage and family relations in the United States are a patchwork outgrowth of a homocentric laissez faire attitude towards an individualism of a privileged few.    The current conflicts and growth spurts of the social sciences and family law reflects the slow death knell of patriarchy within western civilization. This imperfect transition is very much incomplete.   The patriarchal model today determines the balance of power between the genders; it has assigned children to women and so treated them as members of the same undervalued class.   The history of marriage in western society, as in most civilizations, has been nothing less than an invisible economic war waged by a privileged group over a weaker population, with the ensuing enslavement of that weaker population; capitalism as we know it can exist without an exploited class.   Incredibly, this war has been almost entirely covert.   This is because, surprisingly, the aggressors have vastly been themselves unaware of their unconscious agendas.   Instead, they have created social myths and definitions to bind even themselves into an illusion.   Women are unwitting co-conspirators.   Because the paradigm is inherently flawed, and structured to perpetuate the illusion in service of its underlying rapacious need to own and absorb everything human beings hold valuable, laws and governmental response to it – even those designed to rebalance power and redistribute wealth – must fall of their own flawed weight.   Because all of the old definitions that framed the debate miss that mark and adorn phrases such as “family” with attributes and characteristics that do not exist, the debate must fail and so perpetuates the underlying regime.   **It is only by creating a new language and a wholly new way of viewing the interrelationships of people that improvement in the lives of people will become possible.**

### pic

Fifth, the permutation is an add and stir strategy that empirically lets gendered violence go unaddressed

Hooks 95 (bell hooks, black feminist and author, postmodern blackness, “Killing Rage”)

**When race and racism are the topic in public dis- course the voices that speak are male. There is no large body of social and political critique by women on the topics of race and racism.** **When women write about race we usually situate our discussion within a framework where the focus is not centrally on race**. We write and speak about race and gender, race and representation, etc. **Cultural refusal to listen to and legitimize the power of women speaking about the politics of race and racism in America is a direct reflection of a long tradition of sexist and racist thinking which has always represented race and racism as male turf, as hard politics, a playing field where women do not really belong. Traditionally seen as a discourse between men just as feminism has been seen as the discourse of women, it presumes that there is only one gender when it comes to blackness so black women's voices do not count-how can they if our very existence is not acknowledged.**

 **It presumes that the business of race is down and dirty stuff, and there- fore like all male locker rooms, spaces no real woman would want to enter.** Since white women's bodies embody the sexist racist fantasy of real womanness, they must not sully them- selves by claiming a political voice within public discourse about race. **When race politics are the issue, it is one of the rare moments when white men prick up their ears to hear what black men have to say. No one wants to interrupt those moments of interracial homo-social patriarchal bonding to hear women speak**. Given these institutionalized exclusions, it is not surprising that so few women choose to publicly "talk race." In the past year, I **have been on many panels with black men discussing race**. Time and time again**, I find the men talking to one another as though nothing I or any other woman has to say on the topic could be a meaningful insightful addition to the discussion. And if I or any other black woman chooses to speak about race from a standpoint that includes feminism, we are seen as derailing the more important political discussion, not adding a necessary dimension. When this sexist silencing occurs, it usually happens with the tacit complicity of audiences who have over time learned to think always of race within blackness as a male thing and to assume that the real political leaders emerging from such public debates will always and only be male. Not' listening to the voices of progressive black women means that black political discourse on race always suffers from critical gaps in theoretical vision and concrete strategy**. Despite backlash and/or the appropriation of a public rhetoric that denounces sexism, **most black male leaders are not commit- ted to challenging and changing sexism in daily life.** That means that there is a major gap between what they say and how they deal with women on the street, in the workplace, at home, and between the sheets**. Concurrently, many black women are self-censoring and -silencing for fear that talking ace desexualizes, makes one less feminine. Or that to enter these discussions places one in direct competition with black males who feel this is their turf. Facing this resistance and daring to "talk race," to be as political as we wanna be, is the contemporary challenge to all black women, especially progressive black females on the Left**.