# 1NC

## off 1

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.

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.

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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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

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.

Tying demands for black liberation to pragmatic policy reform is good Shelby 7 **–** Tommie Shelby, Professor of African and African American Studies and of Philosophy at Harvard, 2007, We Who Are Dark: The Philosophical Foundations of Black Solidarity

But African American philosophy does not typically make public policy recommendations. Although engaged with social realities and historical events, its mode of inquiry still tends to be relatively abstract and somewhat tentative in its conclusions, often asking more questions than it answers. It operates at the level of general principles rather than offering concrete proposals for social change. The intellectual culture of the United States has a strong bias against speculative inquiry, and thus philosophical work of the kind I engage in here may frustrate some readers, especially those interested in ideas largely for their immediate practical application to concrete problems. Political philosophy in particular can appear as worthless pontification or superfluous splitting of hairs. Moreover, given that African American philosophy scrutinizes and defends basic normative ideals, it might seem to be hopelessly Utopian, as engaged in painting a picture of an ideal world in which none of us will ever live. Because of this, some who are eager to get on with the important work of changing the world and not merely interpreting it become impatient with philosophical reflection—often concluding that, at best, it is irrelevant to **practical matters** or, at worst, it is a meaningless form of recreation engaged in by a self-important cadre of the intellectual elite. This study hopes to vindicate African American philosophy of the charge of practical irrelevance by using philosophical techniques to analyze current social problems that African Americans face. The Structure of the Book Chapter 1 foreshadows my core themes and conclusions by offering a new interpretation of the political philosophy of Martin R. Delany, a mid-nineteenth-century radical abolitionist and one of the founders of black nationalism. Competing strands in Delany's social thought—"classical" nationalism and "pragmatic" nationalism—offer two different foundations for black political solidarity. I argue that the pragmatic variant is the more cogent of the two, and the one that can still serve usefully as a theoretical schema through which African Americans can understand and carry out important political projects. Chapter 2 takes up the challenge that class differentiation among black Americans poses for their solidarity, a subject Du Bois grappled with throughout his life. Focusing on his account of the relationship between black ideals, political solidarity, self-help strategies, and elite leadership, I argue that Du Bois, while never fully rebutting the charge of elitism often made against him, puts forward a conception of black solidarity that fuses moral principle, racial identification, and self-interest into a motivational basis for collective action across class differences. This account does not eliminate the threat of class-based fragmentation within the greater black population, but it does show that, despite growing class differentiation and social cleavages, black American political cooperation on terms of fairness and equal respect is still possible. It also helps us to better understand the significance of black pride and militancy for black politics. In Chapter 3 I examine the conception of black solidarity that was initially urged by Malcolm X and then later developed by Black Power advocates during the late 1960s and early 1970s. Despite several critical flaws, this thinking still shapes the political orientation of many African Americans today. I criticize the Black Power conception of black solidarity, focusing specifically on its commitment to black institutional autonomy, its social analysis of the black condition in terms of white supremacy, its treatment of the black population as a cohesive kinship unit that is capable of speaking with one voice, and its tendency to exclude, marginalize, and sometimes alienate needed nonblack allies. In light of the problems with Black Power but retaining its key insights, in Chapter 4 I offer an alternative conception of black political solidarity. I argue that black unity must operate across multiracial political organizations; it must recognize that the sources of black disadvantage cannot all be reduced to racism; and it should acknowledge the need for a decentralized network of black advocacy. This conception identifies the basic aims, political principles, and proper scope of black politics. It also suggests a way to conceive of the relationship between the demands of racial justice and the ideal of racial equality. In Chapter 5 I critically discuss black cultural nationalism (or cultural pluralism). I argue against including the goal of cultural autonomy among the basic aims of black political solidarity, and I suggest that the so-called politics of difference is not an appropriate model for contemporary black politics. I first provide a general characterization of the ideal of black cultural self-determination in the form of eight tenets, ranging from the claim that there is a distinct black culture to the thesis that blacks are, and should be regarded as, the foremost interpreters of the meaning and worth of their cultural ways. I then highlight the conceptual and normative errors that are frequently committed by those who defend this conception of cultural politics. Once again using Du Bois as a point of departure, in Chapter 6 I offer an extended discussion of the relationship between social identity and political solidarity. Relying on the analytical groundwork developed in previous chapters, I distinguish thin conceptions of blackness, which view black identity as a vague social marker imposed from outside, from thick conceptions, which view the marker as signifying something "deeper," perhaps even something that blacks can autonomously and positively embrace as a component of their self-conception. I show that a shared thick black identity, whether "racial," ethnic, cultural, or national, is not needed for political solidarity and that, in fact, the attempts to develop such an identity are counterproductive to blacks' emancipatory aims. In the conclusion I elaborate the pragmatic nationalist conception of political solidarity. I draw out the implications of the foregoing argument by integrating its various strands. In particular, I offer an interpretation of the ideal of black self-determination that demonstrates the coherence of the pragmatic nationalist outlook and its relationship to the broader nationalist tradition in African American political thought. This interpretation highlights a significant but often unnoticed connection between the value of individual autonomy and the emancipatory aims of black unity, revealing important common ground between political liberalism and black nationalism, which many scholars have overlooked.

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**.

Engaging the law through in-depth debate is critical to solve their impacts

Harris, professor of law – UC Berkeley, ‘94

(Angela P., 82 Calif. L. Rev. 741)

CRT has taken up this method of internal critique. Like the crits, race-crits have tried to go beyond espousing Doctrine X over Doctrine Y, claiming instead to show that both doctrines are biased against people of color from the outset. n33 For example, as Brooks and Newborn note, the CRT critique of equal protection law challenges not only the "intent" test of Washington v. Davis, n34 but the understanding of racism on which that test is based. n35 And, as Farber notes, the CRT critique of affirmative action challenges the very notion of "merit." n36 This commitment to conceptual as well as doctrinal critique is CRT's radicalism - its attempt to dig down to the very roots of legal doctrine, in contrast with the more reformist bent of traditional civil rights scholarship. Following the first wave's announcement that law is not separate from politics, the second wave of CLS moved to the study of law as "rhetoric" - [\*748] the ways in which legal reasoning accomplishes its ideological effects. n37 Second wave crits have attempted to examine how binary thinking in the law is produced and how it reflects larger historical processes of bureaucratization and commodification. In so doing, the second wave of CLS has found no "there" there beneath the rhetoric of law. Where first wave crits assumed that beneath law's indeterminacy was a "fundamental contradiction" in the human condition itself, n38 or relied on the existence of moments of unalienated, authentic "being" in the world, n39 second wave crits have begun to question whether the very assumption of a human condition separate from the language we use to talk about it makes sense. I call this mood of profound doubt and skepticism "postmodernist." There are as many different definitions of postmodernism as there are postmodernists. n40 As law professors have understood the term, n41 however, [Postmodernism] suggests that what has been presented in our social-political and our intellectual traditions as knowledge, truth, objectivity, and reason are actually merely the effects of a particular form of social power, the victory of a particular way of representing the world that then presents itself as beyond mere interpretation, as truth itself. n42 Postmodernism's strength is in its corrosiveness. First wave crits insisted that law functions as a mask for power; second wave crits question the first wave's faith in "unmasking" itself. The effort to expose law as ideology assumed that it was possible, through the force of critique, to suddenly see the way things "really" are in a flash of enlightenment. But the [\*749] second wave crits doubt this very reliance on a "real reality" underlying ideology. Instead, they suggest that ideology is all there is. n43 Postmodernist critique is congenial to race-crits, who had already drawn from history the lesson that "racism" is no superficial matter of ignorance, conscious error, or bigotry, but rather lies at the very heart of American - and western - culture. In one of the foundational articles of CRT, Kimberle Crenshaw notes that the civil rights movement achieved material and symbolic gains for blacks, yet left racist ideology and race-baiting politics intact. n44 In Crenshaw's view, the crits' critiques did not go far enough to expose the racism in legal reasoning and legal institutions. Derrick Bell argues that racism is a permanent feature of the American landscape, not something that we can throw off in a magic moment of emancipation. n45 And in a moment of deep pessimism, Richard Delgado's fictional friend "Rodrigo Crenshaw" has suggested that racism is an intrinsic feature of "The Enlightenment" itself. n46 **The deeper that race-crits dig, the more embedded racism seems to be**; the deeper the race-crit critique of western culture goes, the more useful postmodernist philosophy becomes in demonstrating that nothing should be immune from criticism. By calling everything taken for granted into question, postmodernist critique potentially clears the way for alternative accounts of social reality, n47 including accounts that place racism at the center of western culture. Thus, Gerald Torres has identified postmodernism as a useful position from which to criticize both theories of interest-group and "communitarian" politics. n48 Anthony Cook sees deconstruction, a postmodernist method of reading texts, as potentially "liberatory" for progressive scholars of color. n49 [\*750] And Robert Chang argues that post-structuralism is useful in order to understand the interaction between Asian American political action and the law. n50 Postmodernist thought refuses to accept any concept, linguistic usage, or value as pure, original, or incorruptible. Postmodernist narratives, as used by race-crits, contend that concepts like neutrality and objectivity, and institutions like law, have not escaped the taint of racism, but rather are often used to perpetuate it. Postmodernist narratives emphasize the ways in which "race" permeates our language, our perceptions, even our fondest "colorblind" utopias. n51 CRT tells postmodernist narratives when it digs down into seemingly neutral areas of law and finds concepts of "race" and racism always already there. B. CRT and Modernist Narratives Even while it exposes racism within seemingly neutral concepts and institutions, however, CRT has not abandoned the fundamental political goal of traditional civil rights scholarship: the liberation of people of color from racial subordination. Although, like crits, race-crits have questioned concepts of neutrality and objectivity, they have done so from a perspective that places racial oppression at the center of analysis and privileges the racial subject. This commitment to antiracism over critique as an end in itself has created rifts between CRT and CLS. For example, in a symposium published by the Harvard Civil Rights-Civil Liberties Law Review, race-crits broke with crits over the efficacy of "rights talk." n52 CLS writers had argued "that rights were malleable and manipulative, that in practice they served to isolate and marginalize rather than empower and connect people, and that progressive people should emphasize needs, informality, and connectedness rather than rights." n53 Patricia Williams, Richard Delgado, and Mari Matsuda, however, all rejected this yearning to go beyond rights to more [\*751] direct forms of human connection, arguing that, for communities of color, "rights talk" was an indispensable tool. n54 This argument between CRT and CLS was more a matter of strategy and tactics than of fundamental disagreement. Both sides agreed that progressive political action should be antiracist and that human connection was a good thing. But a comparison of CRT work with the second wave of CLS work also indicates a more serious tension. In its commitment to the liberation of people of color, CRT work demonstrates a deep commitment to concepts of reason and truth, transcendental subjects, and "really-out-there" objects. Thus, in its optimistic moments, CRT engages in "modernist" narratives. n55 Modernist narratives assume three things: a subject, free to choose, who can be emancipated or not; an objective world of things out there (a world "the way it really is" as opposed to the way things appear to be in a condition of false consciousness); and "reason," the bridge between the subject and the object that enables subjects to move from their own blindness to "enlightenment." Modernist narratives thus call on a particular intellectual machinery, a methodology Brian Fay describes as "critical social science." Critical social science requires the following: First, that there be a crisis in a social system; second, that this crisis be at least in part caused by the false consciousness of those experiencing it; third, that this false consciousness be amenable to the process of enlightenment ...; and fourth, that such enlightenment lead to emancipation in which a group, empowered by its new-found self-understanding, radically alters its social arrangements and thereby alleviates its suffering. n56 [\*752] In its optimistic moments, CRT is described very well by "critical social science." The crisis in our social system is our collective failure to adequately perceive or to address racism. This crisis, according to CRT, is at least in part caused by a false understanding of "racism" as an intentional, isolated, individual phenomenon, equivalent to prejudice. This false understanding, however, can be corrected by CRT, which redescribes racism as a structural flaw in our society. Through these explanations, readers will come to a new and deeper understanding of reality, an enlightenment which in turn will lead to legal and political struggle that ultimately results in racial liberation. Under CRT, as Fay remarks of critical social science in general, "the truth shall set you free." n57 This project fits well with the kind of scholarship most often found in law reviews. As several scholars have recently argued, one characteristic of conventional legal scholarship is its insistent "normativity": the little voice that constantly asks legal scholars, "So, what should we do?" n58 Normativity is both a stylistic and a substantive characteristic. At the stylistic level, normativity refers to how law review articles typically are structured: the writer identifies a problem within the existing legal framework; she then identifies a "norm," within or outside the legal system, to which we ought to adhere; and finally she applies the norm to resolve the problem in a way that can easily translate into a series of moves within the currently existing legal system. n59 At the substantive level, normativity describes the assumption within legal scholarship of a coherent and unitary "we" - a legal subject who speaks for and acts in the people's best interest - with the power to "do" something. Legal normativity also confidently assumes "our" ability to reason a way through problems with neutrality and objectivity: to "choose" a norm and then "apply" it to a legal problem. n60 Whereas second-wave CLS work sits very uneasily with this scholarly method, n61 both traditional civil rights scholarship and CRT adhere for the [\*753] most part to stylistic and substantive normativity. Although the "we" assumed in these articles and essays is often "people of color" and progressive whites rather than a generic "we," the same confidence is exhibited of "our" ability to choose one norm over another, to apply the new principle to a familiar problem, to achieve enlightenment, and to move from understanding to action. n62 Even when the recommended course of action goes beyond adopting Doctrine X over Doctrine Y, as CRT makes a point of doing, the exhortation to action often still assumes that liberation is just around the corner. CRT's commitment to the liberation of people of color - and the project of critical social science (generally) and normative legal scholarship (in particular) as a way to further that liberation - suggest a faith in certain concepts and institutions that postmodernists lack. When race-crits tell modernist stories, they assume that "people of color" describes a coherent category with at least some shared values and interests. They assume that the idea of "liberation" is meaningful - that racism is something that can one day somehow cease to exist, or cease to exert any power over us. Modernist narratives assume a "real" reality out there, and that reason can bring us face to face with it. And modernist narratives have faith that once enough people see the truth, right action will follow: that enlightenment leads to empowerment, and that empowerment leads to emancipation. Modernist narratives, then, are profoundly hopeful. They assume that people of color and whites live in the same perceptual and moral world, that reason speaks to us all in the same way despite our different experiences, and that reason, rather than habit or power, is what will motivate people. Modernist narratives also can be profoundly romantic. They imagine heroic action by a formerly oppressed people rising up as one, "empowered" to be who they "really" are or choose to be, breathing the thin and bracing air of freedom. This optimism and romanticism, though easy to caricature, cannot be easily dismissed. As Patricia Williams and Mari Matsuda have pointed out, faith in reason and truth and belief in the essential freedom of rational subjects have enabled people of color to survive and resist subordination. n63 Political modernism, more generally, has been a **powerful force** in the lives of subjugated peoples; as a practical matter, politically liberal societies are [\*754] vastly preferable to the alternatives. n64 A faith in reason has sustained efforts to educate people into critical thinking and to engage in debate rather than violence. n65 The passionate and constructive energy of modernist narratives of emancipation is also grounded in a moral faith: that human beings are created equal and endowed with certain inalienable rights; that oppression is wrong and resistance to oppression right; that opposing subjugation in the name of liberty, equality, and true community is the obligation of every rational person. In its modernist moments, CRT aims not to topple the Enlightenment, but to make its promises real. n66

## off 2

Resistance via the ballot can only instill an adaptive politics of being and effaces the institutional constraints that reproduce structural violence

Brown 95—prof at UC Berkeley (Wendy, States of Injury, 21-3)

For some, fueled by opprobrium toward regulatory norms or other mo- dalities of domination, the language of "resistance" has taken up the ground vacated by a more expansive practice of freedom. For others, it is the discourse of “empowerment” that carries the ghost of freedom's valence ¶ 22¶. Yet as many have noted, insofar as resistance is an effect of the regime it opposes on the one hand, and insofar as its practitioners often seek to void it of normativity to differentiate it from the (regulatory) nature of what it opposes on the other, it is at best politically rebellious; at worst, politically amorphous. Resistance stands against, not for; it is re-action to domination, rarely willing to admit to a desire for it, and it is **neutral with regard to possible political direction**. Resistance is in no way constrained to a radical or emancipatory aim. a fact that emerges clearly as soon as one analogizes Foucault's notion of resistance to its companion terms in Freud or Nietzsche. Yet in some ways this point is less a critique of Foucault, who especially in his later years made clear that his political commitments were not identical with his theoretical ones (and un- apologetically revised the latter), than a sign of his misappropriation. For Foucault, resistance marks the presence of power and expands our under- standing of its mechanics, but it is in this regard an analytical strategy rather than an expressly political one. "Where there is power, there is resistance, and yet. or rather consequently, this resistance is never in a position of exteriority to power. . . . (T]he strictly relational character of power relationships . . . depends upon a multiplicity of points of resis- tance: these play the role of adversary, target, support, or handle in power relations.\*39 This appreciation of the extent to which resistance is by no means inherently subversive of power also reminds us that it is only by recourse to a very non-Foucaultian moral evaluation of power as bad or that which is to be overcome that it is possible to equate resistance with that which is good, progressive, or seeking an end to domination. ¶ If popular and academic notions of resistance attach, however weakly at times, to a tradition of protest, the other contemporary substitute for a discourse of freedom—“empowerment”—would seem to correspond more closely to a tradition of idealist reconciliation. The language of resistance implicitly acknowledges the extent to which protest always transpires inside the regime; “empowerment,” in contrast, registers the possibility of generating one’s capacities, one’s “self-esteem,” one’s life course, without capitulating to constraints by particular regimes of power. But in so doing, contemporary discourses of empowerment too often signal an oddly adaptive and harmonious relationship with domination insofar as they locate an individual’s sense of worth and capacity in the register of individual feelings, a register implicitly located on some- thing of an other worldly plane vis-a-vis social and political power. In this regard, despite its apparent locution of resistance to subjection, contem- porary discourses of empowerment partake strongly of liberal solipsism—the radical decontextualization of the subject characteristic of¶ 23¶ liberal discourse that is key to the fictional sovereign individualism of liberalism. Moreover, in its almost exclusive focus on subjects’ emotionalbearing and self-regard, empowerment is a formulation that converges with a regime’s own legitimacy needs in masking the power of the regime.¶ This is not to suggest that talk of empowerment is always only illusion or delusion. It is to argue, rather, that while the notion of empowerment articulates that feature of freedom concerned with action, with being more than the consumer subject figured in discourses of rights and eco- nomic democracy, contemporary deployments of that notion also draw so heavily on an undeconstructed subjectivity that they risk establishing a wide chasm between the (experience of) empowerment and an actual capacity to shape the terms of political, social, or economic life. Indeed, the possibility that one can “feel empowered” without being so forms an important element of legitimacy for the antidemocratic dimensions of liberalism.

This reactionary impulse is the condition of possibility for all violence—we must transcend exclusive identities and victimization.

Enns 12

Dianne, Professor of Philosophy at McMaster University, The Violence of Victimhood

These are responses to suffering that may at the same time prevent the conditions that lead to further suffering, opening **possibilities rather than burning bridges,** crossing over to the other, like the acrobat refusing to look at "the separation." These individuals and groups reject the worldview of the victim, literally or figuratively laying down their arms. This is not a passive refusal but an act of political will, ignited by the very pragmatic need for a bearable life. To lay down our arms means **to refuse the dictated terms of the fight**, **exit the ring**, **reject the means of defense provided**. While this appears to leave us powerless or defenseless—the other cheek turned in a display of utter passivity—it only does so if we haven't rejected the binary terms on which the power struggle is waged. **It is not the power of the sword that the victimized need**, **or the power of a moral authority** granted to the victim, but the power of political will—a power that can arise spontaneously out of shared vulnerability. It may be an act of civil disobedience, dissent, or the slow, patient work of changing attitudes—of "reviving the person inside the suit of armor"°7—in any case, the operative principle is a refusal to march blindly to the drummer's beat without reflection**, collective deliberation**, or judgment. This is the political work that we must never "neutralize": the cultivation of civil coexistence—**of communities** of fate—**that refuse violent solutions to conflict. To prevent the conditions that lead to war**—**and** the **normalization of** politics as **violence**—we need to elaborate alternatives that embrace neither consensus and unity as **Utopian peace nor dissensus and conflict** as violence. As Balibar puts it, we have to defend politics against "the twin enemies of extreme violence and consensus."00 Obedience could be worse than intolerance in situations of rising political unrest, and disobedience more important than reconciliation. In a discussion of what peoples of the former Yugoslavia need, for example, Boris Buden states unequivocally that it isn't truth commissions or reconciliation programs. The region has undergone a "depoliticization” that no truth of the past will eradicate. To repoliticize would mean to "invent a new form of political solidarity" that transcends their national, ethnic, and religious identities—a public life that includes political argument and contestation,43 not merely, as Buruma puts it, "the soothing rhetoric of healing.'"11 Disagreement, disobedience, conflict— these are indispensable ingredients in the practical work of politics and its necessary conditions. This claim does not contradict the demand to lay down one's arms. Conflict need not lead to violence. But to be vigilant against the incursion of a politics defined by the terms of war requires above all a vigilance against becoming immune to empathy and its effects. For Remarque's Paul Baumer, restoring his enemy to humanity occurs too late. We need to ward off the process of dehumanizing one's enemy before it begins. **We are already too late** **when identities are formed on the basis of** political **ideologies and** when **victims are granted an unquestioned moral authority**. To prevent the conditions of war, we must learn to see ourselves through the eyes of others.

Identity is only ever a confirmation of contingent relationships, not metaphysics. A politics that places a shared commitment to remedying injustice can avoid securitizing difference and reactionary politics that culminate in passivity.

Bhambra ‘10

Gurminder K Bhambra, University of Warwick, and Victoria Margree, University of Brighton, “Identity Politics and the Need for a ‘Tomorrow”

1 Exclusionary Politics

It is **inexcusable** to build analyses of historical experience around exclusions, exclusions that stipulate, for instance, that only women can understand feminine experience, only Jews can understand Jewish suffering, only formerly colonial subjects can understand colonial experience (Said 1993: 35). The idea of a politics underpinned by solidarities based on “sameness” has a long history in the critical tradition. Marx’s initial conceptualisation of the standpoint of the proletariat (albeit, significantly different from those of subsequent developments of standpoint epistemology) has been used by feminist theorists as well as those arguing for a post-colonial perspective in terms of the subaltern, and, more recently, for a dalit standpoint (Hartsock 1984, Guha 1983, Rege 1998, 2000). However, while using identity as the basis of political action has been seen to be powerful (and effective), it has also increasingly become seen as problematic. The exclusionary politics of movements such as **black** **power**, much **radical and lesbian feminism**, and latterly, movements for **ethnic purity** and/or religious integrity, for example, have yielded a deep concern with the programme of separation and isolationism that such movements are often seen to be based upon. For many critics, more troubling still has been the usually accompanying claim that only women can be feminists, or only black people can work against racism, or only dalits against caste oppression, and so on. A position which states that **only those who have experienced an injustice can understand and thus act effectively** up**on** **it** seems to rest upon an **essentialist theory of identity** which assumes that the possibility of knowledge about particular situations is restricted to one’s possession of the relevant (seemingly) irreducible traits (being female, black, dalit, and so forth). Arguably, one consequence of these separatist tendencies is that they perpetuate the individualist fallacy that oppressive social relationships can be reformed **by particular subjects** **without** the **broader** **agreement** of others who, together, constitute the **social relations** within which the injustices are embedded. But even where the limitations of a purely exclusionary form of identity politics are recognised, many theorists continue, nevertheless, to argue for a form of “strategic essentialism” (Fuss 1989, Spivak 2003) suggesting that where structures of inequality overlap with categories of identity, then a politics based on those identities is both liberatory and necessary (Bramen 2002). In our view, however, the claim for a “strategic essentialism” remains fraught with problems, for at least three reasons. First, it establishes an epistemological division between those who assert a particular identity in advancing political claims and the observer who is sympathetic to those claims but “recognises” the limitations of basing such claims on a putative identity.1 There is something highly problematic in claiming to support a political movement from the basis of being able to “see” something that the individuals constituting the movement do not see, and in then not engaging with them with regard to this. This sets the observer up in a privileged position vis-à-vis other members of the movement and thus makes solidarity difficult to achieve.2 Second, the claim for “strategic essentialism” posits solidarity, that is, collective identification around a particular standpoint, as a prerequisite for collective action to address perceived injustices. This is as against recognising that solidarities can also emerge through the actions taken to correct particular injustices and can include those who recognise the injustice as the reason for action while not directly being disadvantaged themselves. Third, the assertion of “strategic essentialism” generally occurs in the context of claiming justice through an appeal to the wider community but with no explanation as to why the wider community ought to honour this claim for justice, especially when it is often not deemed possible for them to constitute a part of the movement itself. There is a requirement of inclusivity then – in terms of demanding acceptance of the validity of the claims made – at the same time, as an assertion of its impossibility across what are posited as irreducible, essential traits (for a fuller discussion see Holmwood 1995). The arguments of this paper start out from a broad agreement that developing a politics from the basis of occupying a **particular social position** or having a **specific** (singular) **identity** is problematic for the reasons identified above, as well as for covertly legitimating – “absolving and forgiving”, in Said’s (1993: 35) words – the **ignorance of those whose understanding and actions are** necessary **for countering social injustices**. It has to be recognised that issues exist between people and are not in people: that is, problems of social injustice occur in the relationships through which subjectivities are produced and thus, all those implicated in those relationships are involved in their address. For example, sexism is not a problem for women to deal with alone, but is a problem situated in the contemporary relationships of **social and material inequalities** and requires mutual engagement for its address. This is an address which we consider is best served by the solidarities generated as a consequence of the activities around perceived injustices (that is, solidarities generated through the political movements of people working towards equality, justice) as opposed to those activities having to rely on **assumed preexisting solidarities** (that is, being female, gay, black, dalit, etc). This is **not** an argument for movements against specific injustices or inequalities to be subsumed within a wider (say, socialist) movement but, rather, an argument for movements to be **conceived** inclusively as movements where membership is not restricted to those presumed to suffer the injustice or inequality. As such, a question arises as to what would happen if the “identity” in “identity politics” were rethought along the lines of the solidarities that are generated around the address of injustices rather than the solidarity that is presumed to ensue from being the victim of an injustice. Defending “identity” against a variety of critiques from the academic left, Bramen (2002) asserts that identity can also be productive in its construction of moral and other communities. Our question, however, would be why such communities – sites of resistance and the discovery of political agency – need to be constructed around **essentialising rhetoric and restricted** (this is the implication) to those who suffer the injustice. Indeed, Bramen herself recognises that “identity politics certainly has its limitations, primarily in terms of prescribing modes of behaviour that pressure individuals to conform to certain standards of authenticity” (2002: 7-8). And this surely is a real problem; that essentialist rhetoric establishes belonging to a community, and thus identity, on the basis of presumed shared attributes or experiences that are imagined to be irreducible. As such, not only may the **community itself become oppressive** to those who do not share those attributes, or who wish to articulate experiences that differ from those expressed by the majority, but the community itself may be weakened in its resistance to **other forms of oppression** by the distraction of its **internal policing against difference.** We suggest that **alternative models of identity and community are required** from those put forward by essentialist theories, and that these are offered by the work of two theorists, Satya M ohanty and Lynn Hankinson Nelson. Mohanty’s ([1993] 2000) post-positivist, realist theorisation of identity suggests a way through the impasses of essentialism, while avoiding the excesses of the postmodernism that Bramen, among others, derides as a proposed alternative to identity politics. For Mohanty ([1993] 2000), identities must be understood as **theoretical constructions** that enable subjects to read the world in particular ways; as such, substantial claims about identity are, in fact, implicit explanations of the social world and its constitutive relations of power. Experience – that from which identity is usually thought to derive – **is not something that simply occurs**, or announces its meaning and signifi cance in a self-evident fashion: rather, experience is always a work of interpretation that is collectively produced (Scott 1991). Mohanty’s work resonates with that of Nelson (1993), who similarly insists upon the communal nature of meaning or knowledge-making. Rejecting both foundationalist views of knowledge and the postmodern alternative which announces the “death of the subject” and the impossibility of epistemology, Nelson argues instead that, it is not individuals who are the agents of epistemology, but **communities**. Since it is not possible for an individual to know something that another individual could not also (possibly) know, it must be that the ability to make sense of the world proceeds from shared conceptual frameworks and practices. Thus, it is the community that is the generator and repository of knowledge. Bringing Mohanty’s work on identity as theoretical construction together with Nelson’s work on epistemological communities therefore suggests that, “identity” is one of the knowledges that is produced and enabled for and by individuals in the context of the communities within which they exist. The post-positivist reformulation of “experience” is necessary here as it privileges understandings that emerge through the processing of experience in the context of **negotiated premises** about the world, over experience itself producing self-evident knowledge (self-evident, however, only to the one who has “had” the experience). This distinction is crucial for, if it is not the experience of, for example, sexual discrimination that “makes” one a feminist, but rather, the paradigm through which one attempts to **understand acts of sexual discrimination**, then it is not necessary to have actually had the experience oneself in order **to make the identification “feminist”**. If being a “feminist” is not a given fact of a particular social (and/or biological) location – that is, being designated “female” – but is, in Mohanty’s terms, an “achievement” – that is, something worked towards through a process of analysis and interpretation – then two implications follow. First, that not all women are feminists. Second, that feminism is something that is “achievable” by men.3 While it is accepted that experiences are not merely theoretical or conceptual constructs which can be transferred from one person to another with transparency, we think that there is something **politically self-defeating** about insisting that one can only understand an experience (or then comment upon it) if one has actually had the experience oneself. As Rege (1998) argues, to privilege knowledge claims on the basis of direct experience, or then on claims of authenticity, can lead to a **narrow identity politics** that **limits** the **emancipatory potential** of the movements or organisations making such claims. Further, if it is not possible to understand an experience one has not had, then **what point is there in listening to each other?** Following Said, such a view seems to authorise privileged groups to **ignore** the **discourses of disadvantaged ones, or,** we would add, to **place exclusive responsibility for addressing injustice with the oppressed themselves**. Indeed, as Rege suggests, reluctance to speak about the experience of others has led to an assumption on the part of some white feminists that “confronting racism is the sole responsibility of black feminists”, just as today “issues of caste become the sole responsibility of the dalit women’s organisations” (Rege 1998). Her argument for a dalit feminist standpoint, then, is not made in terms solely of the experiences of dalit women, but rather a call for others to “educate themselves about the histories, the preferred social relations and utopias and the struggles of the marginalised” (Rege 1998). This, she argues, allows “**their cause**” to become “**our cause**”, not as a form of appropriation of “their” struggle, but through the transformation of subjectivities that enables a recognition that **“their” struggle is also “our” struggle**. Following Rege, we suggest that social processes can facilitate the understanding of experiences, thus making those experiences the possible object of analysis and action for all, while recognising that they are not **equally** available or **powerful for all subjects**.4 Understandings of identity as **given and essential**, then, we suggest, need to give way to understandings which accept them as **socially constructed** and **contingent** on the work of particular, overlapping, epistemological communities that agree that this or that is a viable and recognised identity. Such an understanding avoids what Bramen identifi es as the postmodern excesses of “post-racial” theory, where in this “world without borders (“racism is real, but race is not”) one can be anything one wants to be: a black kid in Harlem can be Croatian-American, if that is what he chooses, and a white kid from Iowa can be Korean-American” (2002: 6). Unconstrained choice is not possible to the extent that, as Nelson (1993) argues, the concept of the epistemological community requires any individual knowledge claim to sustain itself in relation to standards of evaluation that already exist and that are social. Any claim to identity, then, would have to be recognised by particular communities as valid in order to be successful. This further shifts the discussion beyond the limitations of essentialist accounts of identity by recognising that the communities that confer identity are constituted through their shared epistemological frameworks and not necessarily by shared characteristics of their members conceived of as irreducible.5 Hence, the epistemological community that enables us to identify ourselves as feminists is one that is built up out of a broadly agreed upon paradigm for interpreting the world and the relations between the sexes: it is not one that is premised upon possessing the physical attribute of being a woman or upon sharing the same experiences. Since at least the 1970s, a key aspect of black and/or postcolonial feminism has been to identify the problems associated with such assumptions (see, for discussion, Rege 1998, 2000). We believe that it is the identification of injustice which calls forth action and thus allows for the construction of healthy solidarities. 6 While it is accepted that there may be important differences between those who recognise the injustice of disadvantage while being, in some respects, its beneficiary (for example, men, white people, brahmins), and those who recognise the injustice from the position of being at its effect (women, ethnic minorities, dalits), we would privilege the importance of a **shared political commitment to equality** as the basis for negotiating such differences. Our argument here is that thinking through identity claims from the basis of understanding them as epistemological communities **militates against exclusionary politics** (and its associated problems) since the emphasis comes to be on participation in a shared epistemological and political project as **opposed to** notions of **fixed characteristics** – the focus is on the activities individuals participate in rather than the characteristics they are deemed to possess. Identity is thus defined further as a function of activity located in particular social locations (understood as the complex of objective forces that influence the conditions in which one lives) rather than of nature or origin (Mohanty 1995: 109-10). As such, the communities that enable identity should not be conceived of as “imagined” since they are produced by very real actions, practices and projects.

Our alternative is to recognize debate as a site of contingent commonality in which we can forge bonds of argumentation beyond identity---the affirmative’s focus on subjectivity abdicates the flux of politics and debate for the incontestable truth of identity

Brown ‘95

Wendy, professor at Berkeley, *States of Injury POWER AND FREEDOM IN LATE MODERNITY, 47-51*

The postmodern exposure of the imposed and created rather than dis- covered character of all knowledges—of the power-surtuscd, struggle-¶48¶produced quality of all truths, including reigning political and scientific ones—simultaneously exposes the groundlessness of discovered norms or visions. It also reveals the exclusionary and regulatory function of these norms: white women who cannot locate themselves in Nancy Hartsock’s account of women’s experience or women s desires, African American women who do not identify with Patricia Hill Collinss account of black women’s ways of knowing, **are once again excluded from** the Party of **Humanism**—this time in its feminist variant. ¶**Our** **alternative to reliance** up**on** such **normative claims** **would seem to be engagement in political struggles in which there are no trump cards** such as “morality” or “truth."Our alternative, in other words, is to struggle within an amoral political habitat for temporally bound and fully contestable visions of who we are and how we ought to live. Put still another way, postmodernity unnerves feminist theory not merely because it deprives us of uncomplicated subject standing, as Christine Di Stefano suggests, or of settled ground for knowledge and norms, as Nancy Hartsock argues, or of "centered selves and “emancipatory knowledge," as Seyla Bcnhabib avers. Postmodernity unsettles feminism because it erodes the moral ground that the subject, truth, and normativity coproduce in modernity. When contemporary feminist political theorists or analysts complain about the antipolitical or unpolitical nature of postmodern thought—thought that apprehends and responds to this erosion—they are protesting, inter' aha, a Nietzschean analysis of truth and morality as fully implicated in and by power, and thereby delegitimated qua Truth and Morality Politics, including politics with passion- ate purpose and vision, can thrive without a strong theory of the subject, without Truth, and without scientifically derived norms—one only need reread Machiavelli, Gramsci, or Emma Goldman to see such a politics flourish without these things. The question is whether feminist politics can prosper without a moral apparatus, whether feminist theorists and activists will give up substituting Truth and Morality for politics. Are we willing to engage in struggle rather than recrimination, to develop our faculties rather than avenge our subordination with moral and epistemological gestures, to fight for a world rather than conduct process on the existing one? Nietzsche insisted that extraordinary strengths of character and mind would be necessary to operate in the domain of epistemological and religious nakedness he heralded. But in this he excessively individualized a challenge that more importantly requires the deliberate development of postmoral and antirelativist political spaces, practices of deliberation, and modes of adjudication.¶49¶The only way through a crisis of space is to invent a **new space** —Fredric Jameson. “Postmodernism"¶ Precisely because of its incessant revelation of settled practices and identities as contingent, its acceleration of the tendency to melt all that is solid into air. What is called postmodernity poses the opportunity to radically sever the problem of the good from the problem of the true, **to decide “what we** **want”** rather than derive it from assumptions or arguments about “who we are.” Our capacity to exploit this opportunity positively will be hinged to our success in developing new modes and criteria for political judgment. It will also depend upon our willingness to break certain modernist radical attachments, particularly to Marxism’s promise (however failed) of meticulously articulated connections between a comprehensive critique of the present and norms for a transformed future—a science of revolution rather than a politics of one. Resistance, the practice most widely associated with postmodern political discourse, **responds to** **without fully meeting the** normativity challenge of postmodernity. A vital tactic in much political work as well as for mere survival, resistance by itself **does not contain a critique, a vision, or grounds for organized collective efforts to enact either**. Contemporary affection for the politics of resistance issues from postmodern criticism’s perennial authority problem: our heightened consciousncss of the will to power in all political “positions” and our weariness about totalizing analyses and visions. Insofar as it eschews rather than revises these problematic practices, **resistance-as-politics does not raise the dilemmas of responsibility and justification entailed in “affirming” political projects** and norms. In this respect, like identity politics, and indeed sharing with identity politics an **excessively local viewpoint** and tendency toward **positioning without mapping**, the contemporary vogue of resistance is more a symptom of postmodernity’s crisis of political space than a coherent response to it. **Resistance goes nowhere in particular,** **has no inherent attachments**, **and hails no particular vision**; as Foucault makes clear, resistance is an effect of and reaction to power, not an arrogation of it.¶ What postmodernity disperses and postmodern feminist politics requires are cultivated political spaces for posing and questioning feminist political norms, for discussing the nature of “**the good”** for women. Democratic political space is quite undertheorized in contemporary feminist thinking, as it is everywhere in late-twentieth-century political theory, primarily because it is so little in evidence. Dissipated by the increasing technologizing of would-be political conversations and processes, by the erosion of boundaries around specifically political domains¶50¶and activities, and by the decline of movement politics, **political spaces are scarcer and thinner today than even in most immediately prior epochs of Western history**. In this regard, their condition mirrors the splayed and centrifuged characteristics of postmodern political power. Yet precisely because of postmodernity’s disarming tendencies toward political disorientation, fragmentation, and technologizing, the creation of spaces where political analyses and norms can be proffered and contested is **supremely important**.¶ Political space is an old theme in Western political theory, incarnated by the polis practices of Socrates, harshly opposed by Plato in the Republic, redeemed and elaborated as metaphysics by Aristotle, resuscitated as salvation for modernity by Hannah Arendt, and given contemporary spin in Jurgen Habermas's theories of ideal speech situations and communicative rationality. The project of developing feminist postmodern political spaces, while enriched by pieces of this tradition, necessarily also departs from it. In contrast with Aristotle’s formulation, feminist political spaces cannot define themselves against the private sphere, bodies, reproduction and production, mortality, and all the populations and is- sues implicated in these categories. Unlike Arendt’s, these spaces cannot be pristine, ratified, and policed at their boundaries but are necessarily cluttered, attuned to earthly concerns and visions, incessantly disrupted, invaded, and reconfigured. Unlike Habermas, we can harbor no dreams of nondistorted communication unsullied by power, or even of a ‘com- mon language,’\* but we recognize as a permanent political condition partiality of understanding and expression, cultural chasms whose nature may be vigilantly identified but rarely “resolved,” and the powers of words and images that evoke, suggest, and connote rather than transmit meanings.42 Our spaces, while requiring some definition and protection, cannot be clean, sharply bounded, disembodied, or permanent: to engage postmodern modes of power and honor specifically feminist knowledges, they must be **heterogenous, roving**, **relatively noninstitutionalized**, **and democratic** to the point of exhaustion. ¶Such spaces are **crucial for developing the skills and practices** of post- modern judgment, addressing the problem of “how **to produce** a discourse on **justice** . . . when one no longer relies on ontology or epistemology.”43 Postmodemity’s dismantling of metaphysical foundations for justice renders us quite vulnerable to domination by technical reason ¶51¶unless we seize the opportunity this erosion also creates to develop democratic processes for formulating postepistemelogical and postontological judgments. Such judgements require learning how to have public conversations with each other, arguing from a vision about the common (“what I want for us") rather than from identity (“who I am”), and from explicitly postulated norms and potential **common values** rather than **false essentialism** **or unreconstructed private interest**.44 Paradoxically, such public and comparatively impersonal arguments carry potential for **greater accountability** **than arguments from identity** or interest. While the former may be interrogated to the ground by others, the latter are **insulated from such inquiry** with the mantle of truth worn by identity-based speech. Moreover, post identity political positions and conversations potentially replace a politics of **difference** with a politics of **diversity**—differences grasped from a perspective larger than simply one point in an ensemble. Postidentity public positioning **requires** an outlook that discerns structures of dominance within diffused and disorienting orders of power, thereby stretching toward a more politically potent analysis than that which our individuated and fragmented existences can generate. In contrast to Di Stefano's claim that 'shared identity” may constitute a more psychologically and politically reliable basis for “attachment and motivation on the part of potential activists,” I am suggesting that **political conversation oriented toward diversity and the common**, **toward world rather than self**, and involving a conversion of ones knowledge of the world from a situated (subject) position into a public idiom, offers us the greatest possibility of countering postmodern social fragmentations and political disintegrations.¶ Feminists have learned well to identify and articulate our "subject positions —we have become experts at politicizing the “I” that is produced through multiple sites of power and subordination. **But the very practice so crucial to making these elements of power visible** **and subjectivity political** may be partly at odds with the requisites for developing political conversation **among a complex and diverse “we.”** We may need to learn public speaking and the pleasures of public argument not to overcome our situatedness, but in order **to assume responsibility for our situations and to mobilize a collective discourse that will expand them**. For the political making of a feminist future that does not reproach the history on which it is borne, we may need to loosen our attachments to subjectivity, identity, and morality and to redress our underdeveloped taste for political argument.

## case

There is demonstrable progress in racial inequality—this is *not* to say that everything is perfect by any means, but it does prove that pragmatic change is possible within the current system

Feldscher, Harvard School of Public Health, 9/19/’13

(Karen, “Progress, but challenges in reducing racial disparities,” http://www.hsph.harvard.edu/news/features/progress-but-challenges-in-reducing-racial-disparities/)

September 19, 2013 — Disparities between blacks and whites in the U.S. remain pronounced—and health is no exception. A panel of experts at Harvard School of Public Health (HSPH) discussed these disparities—what they are, why they persist, and what to do about them—at a September 12, 2013 event titled “Dialogue on Race, Justice, and Public Health.” The event was held in Kresge G-1 and featured panelists Lisa Coleman, Harvard University’s chief diversity officer; David Williams, Florence Sprague Norman and Laura Smart Norman Professor of Public Health in the HSPH Department of Social and Behavioral Sciences; Chandra Jackson, Yerby Postdoctoral Research Fellow in the HSPH Department of Nutrition; and Zinzi Bailey, a fifth-year doctoral student in the HSPH Department of Social and Behavioral Sciences. Robert Blendon, Richard L. Menschel Professor of Public Health and Professor of Health Policy and Political Analysis at HSPH, moderated the discussion. Gains, but pains Health care disparities are troubling, Coleman said. One study found that doctors recommended coronary revascularization—bypass surgery that replaces blocked blood vessels with new ones—among white patients with heart disease 50% of the time, but just 23% of the time for blacks. Black women are less likely to be given a bone marrow density test than white women, even when it’s known they’ve had prior fractures. And the black infant mortality rate is 2.3 times higher than that of non-Hispanic whites. Each speaker acknowledged that racial minorities have made significant gains over the past half-century, but said there is much more work still to do. They cited statistics providing stark evidence of continuing disparities in health, wealth, education, income, arrest and incarceration rates, foreclosure rates, and poverty. Coleman called the data “disconcerting; in some cases, alarming.” Schools are desegregated, she said, but not integrated; median income is $50,000 per year for whites but $31,000 a year for blacks and $37,000 a year for Hispanics; since the 1960s, the unemployment rate among blacks has been two to two-and-a-half times higher than for whites; and one in three black men can expect to spend time in prison during their lifetimes. Blendon shared results from surveys that accentuate sharp differences of opinion about how well blacks are faring in the U.S. For instance, in a survey that asked participants if they thought that the lives of black Americans had changed dramatically over the past 50 years, 54% of whites said yes but only 29% of blacks did. Another survey asked whether or not people approved of the verdict in the George Zimmerman trial; 51% of whites approved but only 9% of blacks did. Reducing disparities through research, education Jackson talked about growing up in a segregated neighborhood in Atlanta and attending a school with 99% black students and inadequate resources. She became the first in her family to attend college. Now, through her research, she hopes to expose and reduce racial health disparities. In a recent study in the American Journal of Epidemiology, Jackson and colleagues reported that blacks—particularly black professionals—get less sleep than whites, which can have potentially negative impacts on health. Bailey discussed what’s known as the “school-to-prison pipeline”—a trajectory in which black teens do poorly in school, get held back a grade, drop out, commit a crime, then end up in jail. On the flip side, she said, there are “diversity pipelines” to recruit minority students into higher education. “Often these programs target students who have already avoided the school-to-prison pipeline,” Bailey said, noting that she would like to see higher education institutions connect with black students at earlier ages to steer them toward positive choices.

Progressivism is possible, and it depends on effective decision-making, so T turns the case

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 aff’s claim state engagement is impossible destroys progressivism and re-entrenches racism—we can acknowledge every problem with the status quo, but adopt a pragmatic orientation towards solutions

Clark, professor of law – Catholic University, ‘95

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

A Final Word

Despite Professor Bell's prophecy of doom, I believe he would like to have his analysis proven wrong. However, he desperately leans on a tactic from the past--laying out the disabilities of the black condition and accusing whites of not having the moral strength to act fairly. That is the ultimate theme in both of his books and in much of his law review writing. That tactic not only lacks full force against today's complex society, it also becomes, for many whites, an exaggerated claim that racism is the sole cause of black misfortunes. n146 Many whites may feel about the black condition what many of us may have felt about the homeless: dismayed, but having no clear answer as to how the problem is to be solved, and feeling individually powerless if the resolution calls for massive resources that we, personally, lack. Professor Bell's two books may confirm this sense of powerlessness in whites with a limited background in this subject, because Professor **Bell does not offer a single programmatic approach** toward changing the circumstance of blacks. He presents only startling, unanalyzed prophecies of doom, which will easily garner attention from a controversy-hungry media. n147

It is much harder to exercise imagination to create viable strategies for change. n148 Professor Bell sensed the despair that the average--especially average black--reader would experience, so he put forth rhetoric urging an "unremitting struggle that leaves no room for giving up." n149 His contention is ultimately hollow, given the total sweep of his work.

At some point it becomes dysfunctional to refuse giving any credit to the very positive abatements of racism that occurred with white support, and on occasion, white leadership. Racism thrives in an atmosphere of insecurity, apprehension about the future, and inter-group resentments. Unrelenting, unqualified accusations only add to that negative atmosphere. Empathetic and more generous responses are possible in an atmosphere of support, security, and a sense that advancement is possible; the greatest progress of blacks occurred during the 1960s and early 1970s when the economy was expanding. Professor Bell's "analysis" is really only accusation and "harassing white folks," and is undermining and destructive. There is no love--except for his own group--and there is a constricted reach for an understanding of whites. There is only rage and perplexity. No bridges are built--only righteousness is being sold.

A people, black or white, are capable only to the extent they believe they are. Neither I, nor Professor Bell, have a crystal ball, but I do know that creativity and a drive for change are very much linked to a belief that they are needed, and to a belief that they can make a difference. The future will be shaped by past conditions and the actions of those over whom we have no control. Yet it is not fixed; it will also be shaped by the attitudes and energy

with which we face the future. Writing about race is to engage in a power struggle. It is a non-neutral political act, and one must take responsibility for its consequences. Telling whites that they are irremediably racist is not mere "information"; it is a force that helps create the future it predicts. If whites believe the message, feelings of futility could overwhelm any further efforts to seek change. I am encouraged, however, that the motto of the most articulate black spokesperson alive today, Jesse Jackson, is, "Keep hope alive!" and that much of the strength of Martin Luther King, Jr. was his capacity to "dream" us toward a better place.

# 2NC

## 2nc ov

## at: we meet

Not law enforcement

Alston, U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, 5/28/2010

(Philip, “Study on Targeted Killings,” U.N. General Assembly, Human Rights Council, Fourteenth Session, http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf)

A. **Definition of** “**targeted killing**”

7. Despite the frequency with which it is invoked, “targeted killing” is not a term defined under international law. Nor does it fit neatly into any particular legal framework. It came into common usage in 2000, after Israel made public a policy of “targeted killings” of alleged terrorists in the Occupied Palestinian Territories.1 The term has also been used in other situations, such as: • The April 2002 killing, allegedly by Russian armed forces, of “rebel warlord” Omar Ibn al Khattab in Chechnya.2 • The November 2002 killing of alleged al Qaeda leader Ali Qaed Senyan al-Harithi and five other men in Yemen, reportedly by a CIA-operated Predator drone using a Hellfire missile.3 • Killings in 2005 – 2008 by both Sri Lankan government forces and the opposition LTTE group of individuals identified by each side as collaborating with the other.4 • The January 2010 killing, in an operation allegedly carried out by 18 Israeli Mossad intelligence agents, of Mahmoud al-Mahbouh, a Hamas leader, at a Dubai hotel.5 According to Dubai officials, al-Mahbouh was suffocated with a pillow; officials released videotapes of those responsible, whom they alleged to be Mossad agents.6 8. Targeted killings thus take place in a variety of contexts and may be committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict.7 The means and methods of killing vary, and include sniper fire, shooting at close range, missiles from helicopters, gunships, drones, the use of car bombs, and poison.8 9. **The common element in all these contexts is that lethal force is intentionally and deliberately used**, **with a degree of pre-meditation**, **against an individual or individuals specifically identified in advance by the perpetrator**.9 **In a targeted killing**, **the specific goal of the operation is to use lethal force**. This distinguishes targeted killings from unintentional, accidental, or reckless killings, or killings made without conscious choice. It also distinguishes them from law enforcement operations, e.g., against a suspected suicide bomber. Under such circumstances, it may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but **the goal of the operation**, **from its inception**, should not be to kill. 10. Although in most circumstances targeted killings violate the right to life, in the exceptional circumstance of armed conflict, they may be legal.10 **This is in contrast to** other terms with which “targeted killing” has sometimes been interchangeably used, such as “**extrajudicial execution**”, “**summary execution**”, **and** “**assassination**”, all of which are, by definition, illegal.11

## 2nc at: case da—long

We link turn this – decisionmaking skills enable us to have a bigger impact on effective resistance in the long run – that was in the overview. Debate is a training ground for creating change, which they destroy.

Also, engagement with national security law allows critique to spill over broadly – so our education is better, that’s Donohue.

Topical version of the aff solves: reduce presidential war power authority in the Phillipines

Orly Lobel, University of San Diego Assistant Professor of Law, 2007, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

V. RESTORING CRITICAL OPTIMISM IN THE LEGAL FIELD

“La critique est aisée; l’art difficile.”

A critique of cooptation often takes an uneasy path. Critique has always been and remains not simply an intellectual exercise but a political and moral act. The question we must constantly pose is how critical accounts of social reform models contribute to our ability to produce scholarship and action that will be constructive. To critique the ability of law to produce social change is inevitably to raise the question of alternatives. In and of itself, the exploration of the limits of law and the search for new possibilities is an insightful field of inquiry. However, the contemporary message that emerges from critical legal consciousness analysis has often resulted in the distortion of the critical arguments themselves. This distortion denies the potential of legal change in order to illuminate what has yet to be achieved or even imagined. Most importantly, cooptation analysis is not unique to legal reform but can be extended to any process of social action and engagement. When claims of legal cooptation are compared to possible alternative forms of activism, the false necessity embedded in the contemporary story emerges — a story that privileges informal extralegal forms as transformative while assuming that a conservative tilt exists in formal legal paths. In the triangular conundrum of “law and social change,” law is regularly the first to be questioned, deconstructed, and then critically dismissed. The other two components of the equation — social and change — are often presumed to be immutable and unambiguous. Understanding the limits of legal change reveals the dangers of absolute reliance on one system and the need, in any effort for social reform, to contextualize the discourse, to avoid evasive, open-ended slogans, and to develop greater sensitivity to indirect effects and multiple courses of action. **Despite its weaknesses, however, law is an optimistic discipline**. It operates both in the present and in the future. **Order without law is often the privilege of the strong**. Marginalized groups have used legal reform precisely because they lacked power. Despite limitations, these groups have often successfully secured their interests through legislative and judicial victories. **Rather than experiencing a** disabling disenchantment **with the legal system, we can learn from both the successes and failures of past models, with the aim of** constantly redefining the boundaries of legal reform **and making visible law’s broad reach**.

Evaluate the topical version as a counterplan that solves their offense sufficiently—we don’t have to win a specific policy solves their offense, just that it’s possible to engage discussions of [ ] within our interpretation

T isn’t exclusion. Saying that a game rule is the same as actual suffering is a pretty weak logic chain that trivializes actual suffering and exclusion. Seriously, this K team tactic is a standard formula for cookie-cutter criticism. Take your oppression, make a strained analogy to T, and then run with it.

Attempts to apply their aff to T should be rejected – we weren’t prepared to have this debate. If we win that separating that ballot from the resolutional question is bad, you can’t use your ballot to endorse this argument as a prior question.

This ev is a straw person—it’s cut from a book review, which concludes that Wake’s vision of state violence isn’t even accurate

Dillon 12

Ph.D. candidate in American Studies at the University of Minnesota.

(“State of White Supremacy: Racism, Governance, and the United States” (Book Review) August 28, 2012, http://www.darkmatter101.org/site/2012/08/28/book-review-state-of-white-supremacy-darkmatter-journal/)

These critiques of the state are powerfully extended by the work of Andrea Smith and João H. Costa Vargas in the book’s final section. Smith continues the collection’s critique of the law by observing that “genocide has never been against the law in the United States” because “Native Genocide has been expressly sanctioned as the law” (231). Like Rodríguez, Smith argues for a politics of abolition and undoing rather than reform and inclusion. In her analysis of hate crimes legislation, Smith argues that instead of making racialized and gendered violence illegal (given that racialized and gendered violence is already executed through the law in the prison, reservation, and the ghetto), we must make our organizing, theorizing, and teaching against the law. If the state is foundational to racialized, gendered, and heterosexist violence, then the state should not be the mediator of pain and grievance because “the state is now going to be the solution to the problem it created in the first place” (232). The work of João H. Costa Vargas complements this analysis by making clear the ways the law produces anti-black genocide. For Vargas, the black diaspora is a “geography of death” where the premature and preventable deaths of black people are authorized by a “cognitive matrix” that systematically renders black life devalued. Vargas would surely understand the preventable deaths produced by the medical industry as a form of genocide, namely because intent is not central to his theorization of the concept. Instead, creating or tolerating conditions that produce mass-based uneven vulnerability to premature death is genocidal, making white supremacy itself a genocidal project. Accordingly, genocide is at the core of our ethical standards, is foundational to modern politics, and is central to our cognitive apparatuses (269). To challenge genocide we must undo the epistemologies that support systems of value and disposability and make possible the slow deaths that are the “condition of possibility for our present subjectivities and modern politics” (269).

**[Wake’s card ends]**

These important challenges to dominant (and leftist) understandings of race, subjectivity, the law, the state, and knowledge are what make this text significant, and are at the heart of its intervention into critical studies of race and power. However, the collection is inconsistent with the interventions it makes in contemporary critical scholarship. A number of the essays simply repeat well-known and well-worn arguments about race in the United States. For example, post-colonial and feminist scholars have long argued that liberalism is an intensely racialized and gendered project. Indeed, one of the collection’s most profound shortcomings is its inability to analyze white supremacy as always and already colluding with gender, sexuality, capitalism, and heteropatriarchy. While the work of Smith, James, and Junaid Rana considers the complicities between race, gender, and sexuality, many of the essays treat white supremacy as analytically distinguishable from other formations of power. For at least the last 40 years, feminists of color have argued that race, gender, class, sexuality, and the state are interlocking and colluding mechanisms of power. Thus, women of color feminism names the ways multiply determined difference is simultaneously central to and yet incessantly disavowed in the production and reproduction of capital, the state, and the law. In other words, white supremacy is not, nor has it ever been, isolated or separated from the operations of gender, sexuality, and capital. The absent insights of these scholars, in addition to more recent work in queer studies that deploys queer of color critique, is a major shortcoming of the collection.[5] Nevertheless, the collection could provide a powerful teaching tool for sociology, American studies, political science, and cultural studies, in addition to providing an urgent call for scholars to center white supremacy in their research and classrooms.

That proves that process comes before product—inscribing a set ethical outcome at the outset destroys agency

Race and Pedagogy Project, University of California at Santa Barbara, 2005, Jay, Gregory and Gerald Graff. “A Critique of Critical Pedagogy”, http://bit.ly/11e8uXY

Jay and Graff argue that **critical pedagogy is problematic** because it claims to liberate students but in fact only reinforces the “banking” dynamic by forcing progressive ideologies upon students, enforcing a predetermined outcome based upon an assumed true position on the part of the teacher. Oppositional pedagogy makes the same mistake. Instead, the authors recommend a method of “teaching the conflicts,” where the unilateral teacher’s authority in the classroom is balanced by a “counterauthority,” thus opening the possibility for multiple points of view, all of which are laid open to critique. Suggestions for practical application follow. Freire’s close adherence to the Marxian-Hegelian master-slave dialectic, in which all desire on the part of the oppressed is inevitably formed by the oppressor, suffers from a double bind, giving power only to the “liberatory” teacher, who must impose liberation upon the oppressed, freeing them from false consciousness by persuading them of his (tacitly correct) point of view. In other words, **only students persuaded to the radical point of view of the teacher can be expressing an authentic desire**. “This assumption spares Freire from ever having to consider an unpleasant possibility: that what ‘the people’ authentically prefer might conflict with the pedagogy of the oppressed. The assumption is that, deep down, in our most authentic selves, we are all Christian or existentialist Marxists. According to Freire’s model, the resistance of students to the pedagogy of the oppressed would be taken seriously only as a symptom of their woefully mystified consciousness. The teacher would treat their ideas as the suspect products of their political unconscious, not as arguments that might have their own rationality, persuasiveness, and basis in experience. Needless to say, the possibility never arises that the radical teacher might have his or her mind seriously challenged by the conservative student.” (203) The authors are careful to state that they are both progressives themselves; their **opposition to critical pedagogy rises not from a desire to maintain conservative systems, but rather to avoid the** reinscription of oppression **that** they believe **critical** and oppositional **pedagogies promote by silencing and denying authentic agency to the student who has an alternative point of view**. “The failure to take seriously the objections of the unpersuaded seems to us a serious limitation of critical pedagogy both on ethical and strategic grounds.” (204) The authors further attack critical pedagogy by noting a contextual problem: “Freire’s assumption of a student body that will readily accept a description of themselves as the oppressed is understandable in the original context of Freire’s work with Latin American peasants. But Freire’s model encounters serious problems when it is transplanted to a North American campus, where not all students are obviously members of an oppressed class, and where even many of those who might plausibly fit that designation refuse to accept it.” (204) And later, “In our view, the definition of categories such as the disenfranchised and the dominant, oppressed and oppressor, should be a product of the pedagogical process, not its unquestioned premise.” (207) In contrast, “teaching the conflicts” allows for the autonomy and freedom of the subject through the building of discourse communities which go outside the tacit authority of the teacher, and even outside of the traditional boundaries of the classroom. “To be sure, there is a useful place for the ‘collaborative learning’ strategy of decentering authority by breaking the class into small groups. To decenter authority in a fully useful way, however, and transcend the double bind of radical pedagogy, our classrooms need not just to diffuse authority, but to introduce counterauthorities. And this for us means moving beyond the limitations of the isolated course, a model that unwittingly echoes the myth of the unified subject.” (210) **Students should be** presented with multiple viewpoints in any given classroom **and invited to support or contest all of them**. This does not remove politics from the classroom**, but** in fact **makes it truly possible.** “**Real political** opposition and **change** cannot be accomplished by isolated individuals or random acts of critique. Unlike critique, politics is a social enterprise. It requires that persons form communities based on some degree of trust and faith and. mutual respect – even for those with whom one is ideologically at odds.” (208)

## 2nc at chased by oppressor

Our interpretation doesn’t exclude any perspective—that was in the overview—we don’t think the ballot is the most important thing in debate, but it exists and guides competition, and should be channeled to achieve the best educational ends. At the same time, any personal or political issue that supercedes debate should obviously be discussed before we compete.

We don’t demand BELIEF in the federal government, just its use as a HEURISTIC to develop SKILLS. We’ve also made arguments that decision-making allows us to resist the government, and that the government can be reformed. Those skills are critical in the long term.

A topical version of the aff could include a CRITIQUE of the government with a prescription for CHANGE—that’s distinct from endorsing the system. In fact, no aff in debate endorses the USFG as it currently exists.

Debate is not asking the oppressor

Gooding-Williams 3

Race, Multiculturalism and Democracy

Robert Gooding-Wiliams

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Issue

Constellations

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Consider, for example, the view held by many (though not all) African Americans that the (comparatively) low, average socioeconomic status of African-Americans, because it is due to the cumulative effects of racial slavery and antiblack racism, is an injustice for which African Americans deserve compensation. Some white Americans will dismiss this assertion of injustice, largely because they are "reluctant to see the present social plight of blacks as the result of American slavery."65 Still, were these whites to learn something of American racial slavery and of its impact 011 African-American life, they could begin to see that the argument for reparations is plausible, and begin to share with the African-Americans who advance that argument a common moral ground for further deliberations, hi other words, through the study of African American social history, they could begin to acknowledge the cogency of the considerations in light of which many African-American black persons, in reflecting on that history, have insisted that being black in America involves collective injustice. Supposing that they augmented this study with inquiry into the central themes of African-American political thought66 (as it has evolved, say from the writings of Martin Delaney to those of Martin King), they could enlarge the common ground by beginning to recognize the range and force of African-American perspectives oil other race-related issues.

It would be a mistake, of course, to think that multiculturalism needs to be race-conscious only when addressing the self-understandings of black persons or, by analogy the self-understandings of racially classified but non-black "persons of color." America is also a nation of racially classified whites and white persons; and white personliood, we know, cuts across ethnic lines. Again, by analogy to blacks who become black persons, whites who become white persons let their descriptions of themselves as white matter to the ways in which they live their lives. David Roediger's work on the racial formation of Irish-American workers is relevant here, as it provides a model for historical inquiry that illuminates the social construction and etlmic cultural significance of white racial identities.67 Also important, in this context, is Toni Morrison's book. Playing in the Dark. Reflecting 011 the nature of American literature, Morrison writes: that cultural identities are formed and informed by a nation's literature, and... what seemed to be 011 the 'mind' of the literature of the United States was the selfconscious construction of the American as a new white man. Emerson's call for this new man 111 'The American Scholar" indicates the deliberateness of the construction the conscious necessity for establishing the difference. But the writers who responded to this call, accepting or rejecting it. did not look solely to Europe to establish a reference for difference. There was a very theatrical difference underfoot. Writers were able to celebrate and deplore an identity already existing or rapidly taking a form that was elaborated through racial difference. That difference provided a huge payout of sign, symbol, and agency in the process of organizing, separating, and consolidating identity . . .6S

For Morrison, reading American writers after Emerson (e.g.. Poe and Twain) is a matter of engaging complicated constructions of white racial identities implicated in a racial ideology ("American Africanism" is Morrison's phrase) that assigns multiple meanings to the African presence in America. Self-consciously constructing a literature in light of descriptions of themselves as white, the "founding writers of young America" were white persons (in my sense of the term) for whom the figure of the black African became a "staging ground and arena for the elaboration of the quintessential American identity."® For my purposes, Morrison's short study is valuable, because it affords some excellent examples of the ways multicultural inquiry can explore the cultural construction of white racial identities and their connection to the promotion of racial ideologies. In America, multicultural education cannot avoid race, because socially constructed racial identities - those of black persons and white persons alike come into view 110 matter what class or ethnic perpsective one occupies in crosscultural deliberations. And while one ought not to conflate multiculturalism with struggles against racism and economic injustice, or promote it as a substitute for such straggles, multicultural education, by being race conscious, can contribute to an understanding of the issues posed by these struggles.70

## subotnik

Their specific form of advocacy SHUTS DOWN DEBATE – starting with personal experiential narratives makes it IMPOSSIBLE to NEGATE

SUBOTNIK 98

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7 Cornell J. L. & Pub. Pol'y 681

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.

# 1NR

## K

Vote neg on presumption—even successful identity politics necessarily unravel.

Brown ‘95

Wendy, professor at Berkeley, *States of Injury POWER AND FREEDOM IN LATE MODERNITY, “*Wounded Attachments”

These paradoxes of late modern liberalism and colonialism, of course. are not a matter of simple historical accident-indeed, they are both incomplete and mutually constitutive to a degree that belies the orderly chronological scheme Hall and I have imposed on them in order to render them pleasurable ironies. Moreover, the ironies do not come to an end with the Jamaican postcolonials sailing into London nor with the historically marginalized constructing an oppositional political culture and critique out of their historical exclusion. Even as the margins assert themselves as margins, the denaturalizing assault they perform on coherent collective identity in the center **turns back on them to trouble their own identities.** **Even as it is being articulated**, circulated, and lately institutionalized a host of legal, political, and cultural practices, identity is unraveling-.**metaphysically, culturally, geopolitically, and historically as rapidly as It is being produced**. The same vacillation can be seen in the naturalistic legitimating narratives of collective identity known as nationalism. lmploded within by the insurrectionary knowledges and political claims of historically subordinated cultures, and assaulted from without by the spectacular hybridities and supranational articulations of late twentiethcentury global capitalism as well as crises of global ecology, nation formation-loosened from what retrospectively appears as a historically fleeting attachment to states-is today fervently being asserted in cultural-political claims ranging from Islamic to deaf, indigenous to Gypsy, Serbian to queer.

Inclusion in the debate space is an empty act of tolerance that ensures that nothing really changes

Zizek 8

Slavoj, Institute for Social Sciences, Ljubljana, The Prospects of Radical Politics Today, Int’l Journal of Baudrillard Studies, 5;1 ellipses in orig

Let us take two predominant topics of to day's American radical academia: postcolonial and queer (gay) studies. The problem of postcolonialism is undoubtedly crucial; however, "postcolonial studies" tend to translate it into the multiculturalist problematic of the colonized minorities' "right to narrate" their victimizing experience, of the power mechanisms which repress "otherness," so that, at the end of the day, we learn that the root of postcolonial exploitation is our intolerance toward the Other, and, furthermore, that this intolerance itself is rooted in our intolerance toward the "Stranger in Ourselves," in our inability to confront what we repressed in and of ourselves. The politico-economic struggle is thus imperceptibly transformed into a pseudo-psychoanalytic drama of the subject unable to confront its inner traumas ... The true corruption of American academia is not primarily financial, it is not only that they are able to buy many European critical intellectuals (myself included – up to a point), but conceptual: notions of "European" critical theory are imperceptibly translated into the benign universe of Cultural Studies chic. My personal experience is that practically all of the "radical" academics silently count on the long-term stability of the American capitalist model, with the secure tenured position as their ultimate professional goal (a surprising number of them even play on the stock market). If there is a thing they are gen­uinely horrified of, it is a radical shattering of the (relatively) safe life environ­ment of the "symbolic classes" in the developed Western societies. Their excessive Politically Correct zeal when dealing with sexism, racism, Third World sweatshops, etc., is thus ultimately a defense against their own innermost identi­fication, a kind of compulsive ritual whose hidden logic is: "Let's talk as much as possible about the necessity of a radical change to make sure that nothing will really change!" Symptomatic here is the journal October: when you ask one of the editors to what the title refers, they will half-confidentially signal that it is, of course, that October – in this way, one can indulge in the jargonistic analyses of modern art, with the hidden assurance that one is somehow retaining the link with the radical revolutionary past ... With regard to this radical chic, the first gesture toward Third Way ideologists and practitioners should be that of praise: they at least play their game straight and are honest in their acceptance of global capitalist coordinates, in contrast to the pseudo-radical academic Leftists who adopt toward the Third Way the attitude of utter disdain, while their own radi­cality ultimately amounts to an empty gesture which obligates no one to any­thing determinate. II. From Human to Animal Rights We live in the "postmodern" era in which truth­ claims as such are dismissed as an expression of hidden power mechanisms – as the reborn pseudo-Nietzscheans like to emphasize, truth is a lie which is most efficient in asserting our will to power. The very question "Is it true?" apropos of some statement is supplanted by another question: "Under what power con­ditions can this statement be uttered?" What we get instead of the universal truth is a multitude of perspectives, or, as it is fashionable to put it today, of "narratives" – not only of literature, but also of politics, religion, science, they are all different narratives, stories we tell ourselves about ourselves, and the ultimate goal of ethics is to guarantee the neutral space in which this multitude of narratives can peacefully coexist, in which everyone, from ethnic to sexual minorities, will have the right and possibility to tell his/her story. The two philosophers of today's global capitalism are the two great Left-liberal "progres­sives," Richard Rorty and Peter Singer – honest in their respective stances. Rorty defines the basic coordinates: the fundamental dimension of a human being is the ability to suffer, to experience pain and humiliation – consequently, since humans are symbolic animals, the fundamental right is the right to nar­rate one's experience of suffering and humiliation.2 Singer then provides the Darwinian background.3

The melancholic relationship to slavery is important, but a starting point of explicating injustice reproduces suffering. Brown says no solution is ever adequate when we use “resistance as politics.” That means they can only make things worse

Enns ‘12

Dianne, Professor of Philosophy at McMaster University, The Violence of Victimhood

The Melancholic Victim

Fanon's renunciation of the “amputation” of victimhood might be considered unusual in the context of current views of victimhood. His attention to the agency of the victim, whether he is making an apology for revolutionary violence or urging the colonized to refuse both the mentality of victimization and the inhumanity of the European, provides a **provocative opening** into the potentially problematic or even pathological response of the victim to the condition of victimhood. Fanon anticipates more recent work by scholars interested in contemporary formulations of racial identity and relations, wary of the naturalization of injury and the neglect of the victim's own investment in the condition of victimhood. The term “melancholia” has become important in this discussion; whether in the context of colonialism or of racism, the idea that grief can turn to grievance rather than resolution **recalls** our discussion of **ressentiment** in chapter 1. Nietzsche's attention to the narcissism that leads to ressentiment in the victim, to what Wendy Brown describes as the **attachment to** **one's** subordinate status or **wounds**, has some affinity with Freud's explanation for this attachment, underscoring the ambivalence of the experience of victimhood. The “diminution” of self-regard that results from mourning gone wrong, according to Freud, has contributed to the understanding, evident throughout Fanon's work, of **the “double consciousness**” **of the victim of racism or colonialism.** In his 1917 essay “Mourning and Melancholia,” Freud distinguishes melancholia from mourning as a state of dejection, a pathological form of grief unlike the healthy, normal response to loss. In mourning a beloved object, lost through death or abandonment, the libido must do the work of withdrawing its attachment to the object. Naturally, this incites fierce opposition, Freud points out, an opposition so intense that sometimes a turning away from reality occurs. In the normal case, the work of mourning is carried out bit by bit, requiring “a great expense of time and cathectic energy” during which the existence of the lost object is prolonged in the psyche through memories and expectations. When the work of mourning is completed, however, the ego becomes free and uninhibited again. 8 Through the finite process of mourning, the lost object is relinquished and eventually replaced. 9 Successfully completing the work of mourning thus involves a narcissistic directing of energies **inward** in order to assimilate the lost object and the feelings of loss associated with it, in an effort to rebuild the ego. 10 **In melancholia**, however, this attempt at assimilation fails. Freud describes the mental features of melancholia as identical to those of mourning—“ painful dejection, cessation of interest in the outside world, loss of the capacity to love, inhibition of all activity”— but adds to this “an **extraordinary diminution” of self-regard**. The melancholic displays “an impoverishment of his ego on a grand scale.” While in mourning the world has become poor and empty, in melancholia **the ego itself** becomes “**worthless,** incapable of achievement **and morally despicable**.” Instead of being assimilated, the lost object is swallowed whole, a paralyzing process for the melancholic that ironically gives rise to what Freud calls “critical agency.” Stuck with the object, the melancholic begins to criticize himself for attributes associated with the lost object, for the subject does not know or recognize what has been lost. 11 Whether one agrees with Freud's analysis, and the psychoanalytic framework it assumes, what remains fascinating is the recognition that victims may internalize the beliefs that lead to their subordination, and the description of this internalization as undesirable, even pathological. Much has been written about this split or alienated consciousness in the field of race studies. 12 W. E. B. Du Bois notes that the double consciousness of the black man, who sees himself through his own eyes but also through the eyes of the white man, leads tragically to shame and to “a hesitant and doubtful striving” that makes him appear powerless and weak. Prejudice, Du Bois explains, inevitably brings about self-abnegation on the part of the black man, echoed and enforced by the larger culture, “the Nation.” “We are diseased and dying … we cannot write, our voting is vain; what need of education, since we must always cook and serve?” And the Nation responds, yes, be content to be servants, and nothing more.” 13 With supreme irony, then, the melancholic in **effect feeds on the lost object**— manifesting the curiously nurturing feature of the impoverishment of melancholia. But the nourishment works both ways; the victim is not alone in this strange entanglement. Anne Anlin Cheng remarks that in the context of contemporary racial dynamics, as in the colonial world, this “feeding” means that **the** identity and authority of whites are secured through the melancholic introjection of racial others, which can't be completely relinquished or accommodated. Equally troubling, the “racial other” suffers similarly from a melancholia in which his racial identity is **imaginatively reinforced** through “the introjection of a lost, **never-possible perfection**, an inarticulable loss that comes to inform the individual's sense of his or her own subjectivity.” 14 Evidently, these two “sides” are deeply entangled. In Cheng's words, this process reveals “an intricate world of psychical negotiation that unsettles the simplistic division between power and powerlessness.” “Like melancholia,” she writes, “racism is hardly ever a clear rejection of the other. While racism is mostly thought of as a kind of violent rejection, racist institutions in fact often **do not want to** fully expel the racial other; instead, they wish to maintain that other within existing structures…. **Segregation and colonialism are internally fraught** institutions not because they have eliminated the other but **because they need the very thing they hate or fear.”** We have moved from recognizing injury to naturalizing it, as Cheng astutely concludes, failing to attend sufficiently to the ways in which **individuals and communities remain invested in maintaining certain identity categories** “even when such identities prove to be prohibitive or debilitating.” **We naturalize injury by** **jumping from psychic injury to** **inherent disability** and from **descriptive to prescriptive** psychological **analyses**. 15 An example is instructive here: Cheng reflects on a scene in Ralph Ellison's novel Invisible Man. After complaining that whites refuse to see him, the black narrator relates an incident in which he accidentally bumps into a white man at night who then glares at him insolently with his blue eyes and curses him. The narrator yells at him, demanding an apology, then beats the stranger, who continues to curse and struggle. “I kicked him profusely,” he admits, but then realizes “that the man had not seen me, actually; that he, as far as he knew, was walking in the midst of a walking nightmare … a man almost killed by a phantom.” 16

2) the ballot---the 1ac isolates deep structural imbalances in debate—massive inequality, rampant racism, bigots like the Weekly Standard writers.

The idea that winning the game can resist it is incoherent and masks the root causes of debate’s problems. It’s easier to ask for ballots than for changes in program funding, the UDL system, or the hyper-competitive nature of the activity

Brown 95—prof at UC Berkeley (Wendy, States of Injury, 21-3)

For some, fueled by **opprobrium toward** **regulatory norms** or other mo- dalities of domination, the language of "resistance" has taken up the ground vacated by a more expansive practice of freedom. For others, it is the discourse of “empowerment” that carries the ghost of freedom's valence ¶ 22¶. Yet as many have noted, insofar as resistance is an effect of the regime it opposes on the one hand, and insofar as its **practitioners often seek to void it of normativity to differentiate it** from the (regulatory) nature of what it opposes on the other, it is **at best** politically rebellious; **at worst**, politically amorphous. Resistance stands **against**, **not for**; it is re-action to domination, rarely willing to admit to a desire for it, and it is **neutral** with regard to possible political direction. Resistance is in no way constrained to a radical or emancipatory aim. a fact that emerges clearly as soon as one analogizes Foucault's notion of resistance to its companion terms in Freud or Nietzsche. Yet in some ways this point is less a critique of Foucault, who especially in his later years made clear that his political commitments were not identical with his theoretical ones (and un- apologetically revised the latter), than a sign of his misappropriation. For Foucault, resistance **marks the presence of power** and expands our under- standing of its mechanics, but it is in this regard an analytical strategy rather than an expressly political one. "Where there is power, there is resistance, and yet. or rather consequently, **this resistance is never in a position of exteriority to power**. . . . (T]he strictly relational character of power relationships . . . depends upon a multiplicity of points of resis- tance: these play the role of adversary, target, support, or handle in power relations.\*39 This appreciation of the extent to which resistance is by no means inherently subversive of power also reminds us that it is only by recourse to a very non-Foucaultian moral evaluation of power as bad or that which is to be overcome that it is possible to equate resistance with that which is good, progressive, or seeking an end to domination. ¶ If popular and academic notions of resistance attach, however weakly at times, to a tradition of protest, the other contemporary substitute for a discourse of freedom—“empowerment”—would seem to correspond more closely to a tradition of **idealist reconciliation**. The language of resistance implicitly acknowledges the extent to which protest always transpires inside the regime; “empowerment,” in contrast, registers the possibility of generating one’s capacities, one’s “self-esteem,” one’s life course, without capitulating to constraints by particular regimes of power. But in so doing, contemporary discourses of empowerment **too often signal** **an oddly adaptive** **and harmonious relationship with domination** insofar as they locate an individual’s sense of worth and capacity in the register of individual feelings, a register implicitly **located on some- thing of an other worldly plane** **vis-a-vis** social and **political power**. In this regard, despite its apparent locution of resistance to subjection, contem- porary discourses of empowerment partake strongly of liberal solipsism—the radical decontextualization of the subject characteristic of¶ 23¶ liberal discourse that is **key to the fictional sovereign individualism of liberalism**. Moreover, in its almost exclusive focus on subjects’ emotional bearing and self-regard, empowerment is a formulation that **converges with a regime’s own legitimacy needs** in masking the power of the regime.¶ This is not to suggest that talk of empowerment is always only illusion or delusion. It is to argue, rather, that while the notion of empowerment articulates that feature of freedom concerned with action, with being more than the consumer subject figured in discourses of rights and eco- nomic democracy, contemporary deployments of that notion also **draw so heavily on an undeconstructed subjectivity** that they risk establishing a wide chasm between the (experience of) empowerment and an actual **capacity to shape the terms of political, social, or economic life**. Indeed, the possibility that one can “feel empowered” without being so **forms an important element of** **legitimacy** for the antidemocratic dimensions of liberalism.

“Privilege” is an empty signifier that installs a reactionary identity politics—this collapses common goals and entrenches the structural factors that create privilege in the first place.

Rob the Idealist, Carleton College, JD candidate, 10/1/13, Tim Wise & The Failure of Privilege Discourse, www.orchestratedpulse.com/2013/10/tim-wise-failure-privilege-discourse/

I don’t find it meaningful to criticize Tim Wise the person and judge whether he’s living up to some anti-racist bona fides. Instead, I choose to focus on the paradigm of “White privilege” upon which his work is based, and its conceptual and practical limitations. **Although the personal is political, not all politics is personal; we have to attack** systems. To paraphrase the urban poet and philosopher Meek Mill: there are levels to this shit. How I Define Privilege There are power structures that shape individuals’ lived experiences. Those structures provide and withhold resources to people based on factors like class, disability status, gender, and race. It’s not a “benefit” to receive resources from an unjust order because ultimately, injustice is cannibalistic. Slavery binds the slave, but destroys the master. So, the point then becomes not to assimilate the “underprivileged”, but to instead eradicate the power structures that create the privileges in the first place. The conventional wisdom on privilege often says that it’s “benefits” are “unearned”. However, this belief ignores the reality and history that privilege is earned and maintained through violence. Systemic advantages are allocated and secured as a class, and simply because an individual hasn’t personally committed the acts, it does not render their class dominance unearned. The history and modern reality of violence is why Tim Wise’ comparison between whiteness and tallness fails. White supremacy is not some natural evolution, nor did it occur by happenstance. White folks \*murdered\* people for this thing that we often call “White privilege”; it was bought and paid for by blood and terror. White supremacy is not some benign invisible knapsack. The same interplay between violence and advantage is true of any systemic hierarchy (class, gender, disability, etc). Being tall, irrespective of its advantages, does not follow that pattern of violence. Privilege is Failing Us **Unfortunately, I think our use of the term “privilege” is no longer a productive way for us to gain a thorough understanding of systemic injustice, nor is it helping us to develop collective strategies to dismantle those systems**. Basically, I never want to hear the word “privilege” again because the term is so thoroughly misused at this point that it does more harm than good. Andrea Smith, in the essay “The Problem with Privilege”, outlines the pitfalls of misapplied privilege theory. Those who had little privilege did not have to confess and were in the position to be the judge of those who did have privilege. Consequently, people **aspired to be oppressed**. Inevitably, those with more privilege would develop **new** heretofore unknown **forms of oppression** from which they suffered… Consequently, the goal became not to actually end oppression but to be as oppressed as possible. **These rituals** often **substituted confession for political movement-building**. Andrea Smith, The Problem with Privilege Dr. Tommy Curry says it more bluntly, “It’s not genius to say that in an oppressive society there are benefits to being in the superior class instead of the inferior one. That’s true in any hierarchy, that’s not an ‘aha’ moment.” Conceptually, privilege is best used when narrowly focused on explaining how structures generally shape experiences. However, **when we overly personalize the problem, then privilege becomes a tit-for-tat exercise in blame, shame, and guilt**. In its worst manifestations, this dynamic becomes “oppression Olympics” and people tally perceived life advantages and identities in order **to invalidate one another**. At best, we treat structural injustice as a personal problem, and moralizing exercises like “privilege confessions” inadequately address the nexus between systemic power and individual behavior. The undoing of privilege occurs **not by** individuals confessing their privileges or trying to think themselves into a new subject position, but through the creation of collective structures that dismantle the systems that enable these privileges. The activist genealogies that produced this response to racism and settler colonialism were not initially focused on racism as a problem of individual prejudice. Rather, the purpose was for individuals to recognize how they were shaped by structural forms of oppression. Andrea Smith, The Problem with Privilege Bigger than Tim Wise However, the problem with White privilege isn’t simply that Tim Wise, a white man, can build a career off of Black struggles. As I’ve already said, White people need to talk to White people about the historical and social construction of their racial identities and power, and the foundation for that conversation often comes from past Black theory and political projects. The problem for me is that **privilege work has become a cottage industry of self-help moralizing that** in no way attacks **the systemic ills that create the personal injustices in the first place**. A substantive critique of privilege requires us to get beyond identity politics. It’s not about good people and bad people; it’s a bad system. It’s not just White people that participate in the White privilege industry, although not everyone equally benefits/profits (see: Tim Wise). Dr. Tommy Curry takes elite Black academics to task for their role in profiting from the White privilege industry while offering no challenge to White supremacy. These conversations about White privilege are not conversations about race, and certainly not about racism; it’s a business where Blacks market themselves as racial therapists for White people… The White privilege discourse became a bourgeois distraction. **It’s a tool that we use to morally condemn whites for not supporting the political goals of** elite black academics that take the vantages of white notions of virtue and reformism and persuade departments, journals, and presses into making concessions for the benefit of a select species of Black intellectuals in the Ivory Tower, without seeing that the white racial vantages

that these Black intellectuals claim they’re really interested in need to be dissolved, **need to be attacked** all the way **to the** very **bottom of American society**. Dr. Tommy Curry, Radio Interview The truth is that a lot of people, **marginalized groups included**, simply want more access to existing systems of power. They don’t want to challenge and push beyond these systems; they just want to participate. **So if we continue to play identity politics and persist with a personal privilege view of power, then** we will lose the struggle. Barack Obama is president, yet White supremacy marches on, and often with his help (record deportations, expanded a drone war based on profiling, fought on behalf of US corporations to repeal a Haitian law that raised the minimum wage). Adolph Reed, writing in 1996, predicted the quagmire of identity politics in the Age of Obama. In Chicago, for instance, we’ve gotten a foretaste of the new breed of foundation-hatched black communitarian voices; one of them, a smooth Harvard lawyer with impeccable do-good credentials and vacuous-to-repressive neoliberal politics, has won a state senate seat on a base mainly in the liberal foundation and development worlds. His fundamentally bootstrap line was softened by a patina of the rhetoric of authentic community, talk about meeting in kitchens, small-scale solutions to social problems, and the predictable elevation of process over program — the point where identity politics converges with old-fashioned middle-class reform in favoring form over substance. I suspect that his ilk is the wave of the future in U.S. black politics. Adolph Reed Jr., Class Notes: Posing As Politics and Other Thoughts on the American Scene Although it has always been the case, Obama’s election and subsequent presidency has made it starkly clear that it’s not just White people that can perpetuate White supremacy. Systems of oppression condition all members of society to accept systemic injustice, and there are (unequal) incentives for both marginalized and dominant groups to perpetuate these structures. Our approaches to injustice must reflect this reality. **This isn’t a naïve plea for “unity”,** **nor am I saying that talking about identities**/experiences **is** **inherently “divisive**”. Many of these privilege discussions use empathy to build personal and collective character, and there certainly should be space for us to work together to improve/heal ourselves and one another. People will always make mistakes and our spaces have to be flexible enough to allow for reconciliation. Though we don’t have to work with persistently abusive people who refuse to redirect their behavior, **there’s a difference between establishing boundaries and puritanism**. Fighting systemic marginalization and exploitation requires more than good character, and we cannot fetishize personal morals over collective action.