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**detention debates focus on legal procedures surrounding enemy combatant status but fail to question why such a category exists in the first place—the Court’s obsession with the epistemological aspects of detention cedes the critical ontological question of the nature of the world and America’s role in it to dominant power structures that attempt to impose Western control over the entire planet. The key question is critiquing that ontological assumption**

**Williams 07** (Daniel, Associate Professor of Law, Northeastern University School of Law, "After The Gold Rush - Part I: Hamdi, 9/11, and the Dark Side of the Enlightenment" Penn State Law Review, Lexis)

Part II of the Hamdi opinion presents the "threshold question" as a particular variant on Legality - **does the Executive have** the **authority to** [\*406] **detain** U.S. **citizens it deems "enemy combatants"?** n234 **Deems, not proves.** n235 The lexical controversy over what exactly is an enemy combatant does not surface with any urgency here because Hamdi was captured on a battlefield and allegedly carrying a rifle, presumably prepared to shoot at American soldiers. n236 In fact, **Hamdi's lack of agency in this narrative construction is precisely the point of the opinion: it is his "status" that must be at issue, not what he has done, even though "the power to detain an individual as an "enemy combatant' turns on entirely conduct."** n237 And so, O'Connor is careful to circumscribe Hamdi's conduct, pointing out that Hamdi's situation as a Taliban fighter in the armed conflict in Afghanistan puts a border around the analysis. n238 **The effect is to link the legal terminology, "enemy combatant," to images of conventional warfare that people of O'Connor's generation have grown up with. But surely she must know that her opinion would become**, as it has indeed become**, a jurisprudential landmark in this new kind of war, where the enemy is stateless, a network of human missiles of destruction.** And with some diligent investigation, she and the other members of the Court might even understand how **enemy-combatant detention is actually a form of empire** police action, **a militarized management of a global order**. n239 Whether that understanding would change the analysis is impossible to know. But what is knowable is the fact that **cabining the case** to involve an alleged Taliban soldier caught fighting us in a conventional war **shuts off the possibility of seeing the true** global **function of enemy-combatant detentions and thus forecloses a reckoning with the reality of Guantanamo.** Because the act-status distinction does not receive any sustained treatment in the Hamdi opinion - it is just there, as if it were some natural epistemic phenomenon n240 - it takes some effort to decode exactly [\*407] what the AUMF is all about, functionally speaking, as it relates to the legal issue in Hamdi. What **Congress supposedly** did t**hrough the AUMF, through the process of legality,** is to **authorize** not so much the detention of so-called "enemy combatants," but to authorize the **suspension of our entire criminal process** when it comes to citizens deemed to be "enemy combatants." **We lose the force of what is really going on when we glide along the antiseptic prose O'Connor deploys because the case becomes a question about wording - does this piece of legislation contain the sorts of words that authorize the President to executively detain certain individuals? The full force of Congress's purported action can only be appreciated if we remind ourselves of how that criminal process is linked to our Enlightenment heritage.** n241 **By stepping back** and seeing that a very basic narrative choice has been made, that **the story is not about Yaser Hamdi's predicament, but the predicament of Legality itself,** we become attuned to the fact that, **in this drama of dignity and minimal respect, we are obligated to ask ourselves, what has 9/11 done to us, what has it really wrought? What has it unleashed?** For it is possible that in this drama, **Legality is a victim of terrorism**, but not in the way that Viet Dinh had in mind. Try as it might to suppress opening up for consideration issues of national identity by framing the case in terms of status, **the Court's narrative ramifies beyond just the prosaic, though important, question of what minimal process (trivial process, actually) detainees like Hamdi are due. The narrative cannot help but be about the unquestioned power of the sovereign to create a particular ontology in this war on terror. The legal issue that is built atop this ontological creation - the category of "enemy combatant" - is the epistemological question of what legal process ought we install to justify a claim that a** certain **individual falls within this status category** (which is, to put it in epistemological terms, a claim to knowledge). **By framing the case purely in terms of epistemology** (is, or is he not, an enemy combatant?), **the Court de facto concedes to the Executive the power of ontology.** And **that concession is no small matter, if it is true that the "war on terror" is, as many suspect, entwined with our nation's quest for unrivaled global hegemony in the service of managing a particular pax Americana global order. Because the matter of global hegemony is off the jurisprudential table, as is the precarious task of managing the pax Americana global order, the** [\*408] **concession can be glossed over as if it were, indeed, a small matter. It can be glossed over as if Guantanamo - the expression of sovereignty-as-power unshackled from legality - is simply a matter of Executive discretion** in wartime. But the ontological/epistemological distinction cannot hold firm, as the urgency that presumably motivates the ontological project of creating a new category (enemy combatant) leads the Court to cut corners on the epistemological project, which is to establish a set of procedures that, one would think, is dedicated to promoting accurate classifications within the ontological universe created by the Executive. What is camouflaged in all this is the crucial observation that **cutting corners on the epistemological project, by virtue of the overwhelming power of the ontological project** (labeling "enemy combatants"), **is** actually the **adding** of **more muscle to the sovereign**. n242 \* \* \* The deep structure of Hamdi contains among its elements a commitment to "the law of identity," which in formal logic posits a fixed category for a concept - namely, that whatever is, is, and that, according to logic's law of contradiction, that which is cannot be what it is not. n243 In Hamdi terms, **one who is an enemy combatant cannot be other than an enemy combatant, and since everything must either be or not be, the world neatly divides** into those who are enemy combatants and those who are not. In the locution of President Bush, **"either you are with us, or you are with the terrorists,"** n244 **which, in this "reduction of history to a radical either-or," entails** a "vision and reality of **politics as perpetual total war.**" n245 This deep structural commitment to formal logic's "law of identity," which is foundational to Enlightenment's means-ends fetishism - manifested most clearly in the rationalists penchant to divide the world up into the observer and the observed, with philosophy serving as a "mirror" on Nature n246 **- is foundational as well to classical legal** [\*409] **reasoning and thus vital to law's functioning as a structuring system**. But the underside to that function is that it banishes complexity by hiding the social and political order that defines the controversy in any genuinely meaningful sense. **"Enemy combatant" both describes and condemns, in one blow, without the unpleasantries of ambiguity**. n247 And **it does so while denying that those individuals who are adjudicated within this highly simplistic ontological universe are social and historical figures. If we are a global community, then enemy combatants act within it, and their subjectivity, their beingness, is bound up with the goings-on in that global community**. But Hamdi's acceptance of the Executive's politically tendentious ontology bespeaks the law's aspiration to deny the moral and political complexity of all judgment. It denies the distributive nature of judgment, that judgment necessarily must account for what the "community" has done, how the community is complicit in the offending act, as it condemns the individual offender. Judgment is always, therefore, ambivalent. But, as in virtually every area of the law, except here with more rigor, that ambivalence must be suppressed in this war on terror. The reason for this is clear: **the simplistic juridical ontology of "enemy combatants" in this war on terror removes from investigation, and thus further solidifies**, a geopolitical world order that itself may be contributing to the very real threats posed by fanatical Islamists. After all, who can rationally oppose neutralizing terrorists bent on destruction? The question alone banishes from thought the difficult moral and political issues that arise if we openly debated and in other ways confronted the possibility (if not the undeniable reality) of our pursuit of **a pax Americana global order.** As democratic theorist Benjamin Barber [\*410] observes, Americans, with their optimism in technology, "can stand uncomprehending in the face of putative evil, blind to the lessons of mere national interest, certain of its own goodness, and thus intolerant of complexity." n248 **This banishment of complexity is precisely what is at stake in the Court's deference to the Executive's power of ontology. And that deference to the Executive, which is beyond the formal logic on which classical legal reasoning nourishes itself, illustrates how legal reasoning is invested with disguised ideological power.**

**This shift in detention jurisprudence is a manifestation of the underside of the Enlightenment—instrumental rationality’s creeping colonization of the lifeworld has resulted in the resurgence of a pre-enlightenment form of sovereignty which threatens global domination and annihilation of the planet**

**Williams 07** (Daniel, Associate Professor of Law, Northeastern University School of Law, "After The Gold Rush - Part I: Hamdi, 9/11, and the Dark Side of the Enlightenment" Penn State Law Review, Lexis)

Every ten years or so, the U.S. needs to pick up some crappy little country and throw it against the wall, just to show the world we mean business. Michael Ledeen, holder of the "Freedom Chair" at the American Enterprise Institute n276 [\*418] Freud identified two competing impulses in the human psyche, Eros and Thanatos, which constantly threaten to collapse into one another. n277 This struggle between the life and death instincts within each individual replicates itself in civilizations and thus produces in humanity a deeply embedded and ineradicable unhappiness, or as Freud put it, a "discontent." n278 Freud's darkly pessimistic outlook percolated out of a dark time, the aftermath of an irrational bloodbath that soaked the European Continent and during the rumblings that foreshadowed the next world war. Though Freud's pessimism captured a global mood - Civilization and Its Discontents n279 was an international bestseller and provoked intense debate - the fact that Freud's thinking was the culmination of an Enlightenment epoch seemed to go unnoticed. **In Freud we see an aggressive rationality, a form of relentless analysis that drills into the depths of the mind, the very tool of rationality itself; Freud's monumental achievement is this phenomenon of rationality turned back on itself, boldly attacking the hubris within our own claim to rationality.** That is, the Enlightenment project, by the time Freud inherited it, led to an exploration into the unconscious in an effort to understand ourselves in a way that shocked and fascinated us, for it was precisely this aggressive rationality that unveiled what lay beneath itself - a disturbing cauldron of irrationality that swirls beneath the thin patina of rationality, which we experience as civilized engagement. n280 It is useful to take stock of this under-appreciated facet of Freud's thinking, for **we may suffer the illusion that the social world is rational, and thus conducive to human freedom, when in fact it may be deeply irrational, with human beings frighteningly amenable to manipulation by overt and subtle propagandistic machinations that serve the very narrow interests of the powerful and the privileged. As astonishing as it may be to see how successful such manipulation has been in places like Nazi Germany and modern-day North Korea, it may be more vital, given our current difficulties with terrorism, to be open to how amenable to propagandistic manipulation is a populace of passive consumers who have lost their** [\*419] **self-identity as citizens.** Being open to that possibility has deep implications for our current war-on-terror jurisprudence, and more generally, for the so-called security-liberty balance that occupies so much of our attention in this era of terrorism. n281 The animating idea here is the possibility that **American democracy itself is threatened more profoundly than we care to admit** to ourselves with the irrationality that Freud's work gestures at, that **there is a** dark **side to the Enlightenment, an aspect of "rationality" operating within a framework of irrationality that ought seize our conscience as being itself dangerous and threatening to our flourishing, if not our very survival. Strip away the mythic nationalistic rhetoric that cloaks our high-school history texts and you see the dark side of the Enlightenment at play in virtually all phases of our national life.** n282 As philosopher Albert Borgmann puts it in describing an earlier quest for empire, "**nothing could stand in the way of the aggressive advance of the railroad, not the claims of the Native Americans, nor the resistance of nature, nor the dissoluteness and the distress of humans.**" n283 Jurgen Habermas updates Borgmann's observation to our post-9/11 age: "in the fear driving the technologically heavily armed superpower [the United States], one can sense the "Cartesian anxiety' of a subject who tries to objectify both itself and the world around it in an effort to bring everything under control." n284 **Rationality produced the marvels of science and the explosion of technological prowess because**, as an extraordinarily powerful tool, **rationality equips the human species with the ability to control and** dominate **ever-increasing domains of Nature** - ultimately to accomplish Rene Descartes' dream, where we have "rendered ourselves the lords and possessors of nature." n285 **Unfettered rationality brings** on **the hubris that, given time,** all o**f Nature can be subdued by** human **ingenuity and** [\*420] **determination**. n286 **It is precisely this gold-rush drive to probe the deepest mysteries of Nature** - a drive that is distinctive to modernity itself n287 **- that has led humanity to** live on the **brink of annihilation** since the 1950s, with the onset of the Atomic Age. **It is** precisely the **triumph** of rationality, with its **means-ends ideology, that has led to an ecological crisis that threatens the habitability of the planet.** It is all this that made it at one time (when many of us were school children) sickeningly "rational" to speak of building cozy bomb shelters into which we might retreat in the event of a nuclear attack. **The dark side of the Enlightenment is** essentially **the cult of rationality**, n288 and it is worth putting on the table for discussion**, as we forge deeper into the darkness that we call the war on terror,** that this cult **of rationality is a source of the greatest violence in the world and is what most threatens humanity.** n289 What does all this have to do with Hamdi and the questioning of our commitment to trial by jury as a vitalizing (not just vital) feature of our Enlightenment heritage? The answer lies in the suggestion that the **current ambivalence we are experiencing over the parameters of trial by jury - should it be jettisoned when it comes to the so-called war on terror? - is symptomatic of the larger ambivalence we have over modernity.** That is, **the issue of bracketing or suspending trial by jury when it comes to terrorists is**, I submit, **a manifestation of our temptation to surrender ourselves completely to a form of rationality,** a form of **means-ends thinking, that threatens to destroy us.** n290 **Means-ends rationality,** and the discourse associated with such instrumental modes of thought, **is the medium through which the security-liberty balance juridically expresses itself.** n291 But instrumental reasoning is tempered in a democracy by the fact that the state must always justify itself so that coercion gets transmuted into consent. It has long been thought, especially after Kant hit the scene, that the [\*421] justification of state power in a democracy cannot be rooted in naked instrumental reasoning. n292 In times of relative calm and social stability, these competing impulses for security and justification find some calibrated equilibrium. Calibrating the proper balance between these two impulses is but a single manifestation - probably the most urgent manifestation - of a larger, overarching calibration that takes place in an Enlightenment-driven culture. Modernity's retreat in the face of what has been called post-modernism is in no small measure an expression of our culture's growing "disenchantment" with instrumental reasoning as the governing framework for navigating through life. n293 This grand-scale calibration of instrumental reasoning's reach within a culture is largely invisible to most people, taking place in the rarified arenas of the arts. In the realm of criminal justice and national security, the calibration is ongoing, usually minor and technical, perhaps provoking blistering critique and debate among specialists but largely ignored by the public at large. But enter into our lives a destabilizing event, one that provokes social instability, such as the 9/11 attacks, and this calibration becomes a top priority within mainstream culture. n294 **Calibrating the competing impulses of security and justification is experienced through governmentality, through the workings of administrative agencies populated with bureaucrats and through the operation of our courts, and most obviously** through **the processes of criminal-law adjudication.** n295 But what that calibration expresses is not so prosaic. **Sovereignty itself exists through these competing impulses, just as the human species exists, expresses itself**, as Freud encapsulates it, **through the competing impulses of Eros and Thanatos. That means, when in** times of **crisis we undergo** an **angst over how** best **to calibrate [\*422] the impulses for security and justification - commonly spoken of as the tension between security and civil liberties - and when that calibration leads to a renewed priority for security and a submerging of our impulse for justifying state power through non-instrumental modes of thought, we are witnessing a surge in sovereignty itself**. n296 **Though it may appear to be a surging of a new kind of sovereignty, what we are witnessing is actually the resurrection of one that is quite old. Once we understand that the Western quest for control** and domination **of nature, culminating in Freud's rationalistic investigation into the very source of rationality itself** (human consciousness), **unveiled a cauldron of desires and impulses and drives - that is, once we understand that rationality unveiled a vast,** dark **wellspring of irrationality - then we can appreciate that the quest** for control and domination **ultimately unveils the folly of the quest itself.** And so it is perhaps with America in this post-9/11 age of fear. **The Western drive to control and dominate the globe has now led to a mode of free-market globalization that threatens to obliterate cultural diversity and reduce the world's peoples to passive consumers who have nothing else to offer except their labor. But what that quest for empire has unveiled is something akin to what Freud discovered, that the pursuit of a stable and supposedly rational global order managed by the military force of a sole global hegemon ultimately exposes another vast and dark wellspring of irrationality, manifesting as a cycle of violence, nihilistic violence of the so-called terrorists and the vengeful violence of the superpower committed to stamping out whatever may impede the quest for control and dominance.** And on the micro level, **what legality has produced in Hamdi** - what supposedly apolitical legal rationality has spawned - **is a form of sovereignty that reverts us back to a pre-Enlightenment moment when sovereignty was indivisible and expressed itself ultimately in its capacity to use violence outside any juridical framework.** The very thing [\*423] that our Enlightenment heritage bequeathed us, **Legality,** **has driven us back into that unveiled cauldron of irrational violence**.

**Administrative jurisprudence threatens to destroy the lifeworld sphere in favor of biopolitical system spheres where means-ends rationality enables global domination, totalitarianism, and genocide. Only the ideals of communicative rationality—community-building, dialogue, value-sharing, and persuasion—can reclaim the lifeworld**

Daniel R. **Williams**, Associate Professor, Law, Northeastern University, “After the Gold rush—Part II: Hamdi, the Jury Trial, and Our Degraded Public Sphere,” PENN STATE LAW REVIEW v. 113 n. 1, 20**08**, p. 95-105.

**Habermas’s social ontology illuminates what is at stake in our war on- terror jurisprudence, exemplified by** cases like **Hamdi**. Habermas’s theory of **communicative action entails a society with two basic spheres**, which he calls **the “lifeworld” and “system” spheres**.169 **The lifeworld** sphere—a construct Habermas acquired from Edmund Husserl,170 which roughly correlates with, but broadens, the concept of the public sphere— **consists of** those domains in life that we experience with our family and friends, our cultural life, our **political life outside of organized politics** (especially party politics), and our voluntary associations.171 The mass media, when performing independently of government and corporate interests, is part of the lifeworld sphere. **Communication, participatory dialogue, and persuasion through reasoned discourse, as opposed to coercion, is the** idealized **medium of the lifeworld** sphere.172 **Consensus is the animating feature** of the lifeworld sphere, **which promotes human bonding, community integration, and value-sharing**.173 **The communicative action of the lifeworld** sphere thus **correlates with the “answerability” thesis** discussed above, **the non-instrumentalist understanding of the criminal trial as a process of rational persuasion, where even the accused**, as a Kantian rational agent, **is obliged to consent to** her own **punishment**. **It is that** idealized **integration of the accused with the judgment of the community that gives the** criminal adjudicatory **process its preeminent moral standing** in our Enlightenment culture— preeminent precisely **because that idealized integration is most difficult in matters of crime and punishment.** So, as I have presented it here, **the criminal adjudicatory process**, in its idealized form, **with trial by jury as the centerpiece to** the paradigm of **how the Sovereign justifies and legitimates** the **detention** of the dangerous, **both exemplifies and nourishes the lifeworld** sphere. **Each time a jury deliberates fairly and reaches an honest verdict, it presents itself as a beacon of the lifeworld** sphere, **where rational persuasion** among free and equal persons **is the bedrock value**. Each fair and honest verdict nourishes the lifeworld sphere by **strengthening our commitment to this mode of communicating with each other, even with those who have breached social norms in the most horrific ways. The more awful the crime, the more powerful is the fair and honest verdict** in nourishing the lifeworld sphere. **This** idea perhaps **explains, in** part, why **a criminal trial is** usually **more healing and more strengthening of a community, and hence more desirable, than a resolution through an administrative** **factfinding tribunal. The power of a fair and robust criminal process to heal and strengthen a community is emblematic of the larger point** being suggested here, **that instrumental rationality cannot bind a people together, but instead, when it predominates** and seeps too deep into the culture, **it ruptures what binds individuals, and leads to a passive consumerist individuality that characterizes modern American life.** Those who are familiar with the doctrinal struggles that take place within criminal procedure will understand that **the criminal adjudicatory process is constantly being** tugged out of the lifeworld sphere (where rights are understood as trumps) and **shoved into the system sphere (where the barometer of fairness is accurate outcomes and where “rights” must purchase their way into existence by promoting reliable outcomes).**174 The system sphere is much more recognizable because of how our capitalist economy developed and because of the particular way in which we have cultivated our Enlightenment heritage. **The system sphere is characterized by communicative action motivated and prompted by instrumental reasoning**; means-ends discourse is the language of the system world.175 The system sphere is the world of governmentality and bureaucracy, where more rigid role-playing dominates how people interact. This is a sphere where language and meaning are instrumental in nature and where people are regarded as atomistic, self-interested, and consumeristic.176 **The medium through which the system sphere operates** in the United States **is money and power**. The more complex the society, and the more administrative and bureaucratic, the more important is the role of the system sphere in maintaining social cohesion.177 If that is true, **then the Court’s decision in Hamdi**, as a cultural document rather than just a narrow jurisprudential one, **ought to warn us about an important danger we face** in our culture as we proceed further along towards the darkness that is the so-called war on terror. Kant identified two forms of rationality that roughly correlate with Habermas’s lifeworld and system spheres: instrumental rationality situates the reasoning agent in a particular role with a predetermined end; universal reason (what we typically regard as Kantian rationality) frees the reasoning agent to use reason as an end in itself, which is the sort of reasoning process that undergirds the lifeworld sphere and the jury trial.178 In After the Gold Rush, Part I, I endeavor to show that the Hamdi Court takes on a role within the so-called war on terror—a role that seems so utterly natural, given our pax Americana consciousness, that it is virtually unnoticeable—that conceals how that so-called war exists to hasten the development of Guantanamo-style detention.179 The suggestion here is that **this role with a predetermined end** (winning the “war on terror,” with no articulation of what “winning” means) **propels the Court to use instrumental rationality to undercut the vitalizing expression of Kantian rationality**. In this sense, Hamdi illuminates how deeply indeed we are at war with ourselves. **The implications are far-reaching**. The more reductionist our language and **the more reductionist our mode of adjudication**, governed by instrumental reasoning alone, then **the more mechanistic we become, not only in the legal “system**” we use, **but in the** “system” sphere we inhabit, and thus in the **consciousness we ultimately formulate**. **It is a consciousness in which “whatever does not conform to the rule of computation and utility is suspect.”**180 **The more mechanistic the consciousness, the more total is the power of the Sovereign, with the endgame being one** that the world has already experienced, **a** systemsphere **Nazi regime** that embraced “the same kind of mechanistic thinking that, in an outwardly very different form, contributed to what most people would consider the glories of modern science.”181 And **lest we comfort ourselves with the view that the Holocaust is** sui generis, **an aberration** in a Western culture imbued with an Enlightenment heritage that assures our essential goodness, we would do well to consider the Scottish poet Edwin Muir’s observation: **Think of all the native tribes and peoples**, all the simple indigenous forms of life which Britain trampled upon, corrupted, **destroyed . . . in the name of** commercial **progress.** All these things, once valuable, once human, are now dead and rotten. The nineteenth century thought that machinery was a moral force and would make men better. How could the steam-engine make men better? Hitler marching into Prague is connected with all this. If I look back over the last hundred years it seems to me that we have lost more than we have gained, that what we have lost was valuable, and that what we have gained is trifling, for what we have lost was old and what we have gained is merely new.182 **The true spirit of trial by jury is the resistance against a mechanistic modality where means-ends consciousness is preeminent and where violence to accomplish control and domination**, sweetened with nicesounding words (freedom, democracy) that have devolved into mere gestures, **is too easily unleashed**. The tension in criminal adjudication between this resistance and the attractions of instrumental rationality is no intrinsic feature of 9/11, for that tension permeates, if not defines, the entire enterprise of criminal procedure.183 The more crucial the role of the system sphere in maintaining social cohesion, the more penetrating is that sphere’s influence on human consciousness. **The system sphere operates on and produces a consciousness beholden to means-ends thinking. This** consciousness is peculiarly well-suited to a consumer culture where people are passive and manipulable by corporate and governmental interests. One might, in a very loose sense, correlate the duality of the lifeworld sphere and the system sphere with Jean-Paul Sartre’s distinction between pour-soi (being-for-itself) and en-soi (being-in-itself)—roughly, human existence versus the existence of things.184 **The lifeworld sphere promotes a person’s embrace of** his pour-soi **character** of his existence, his **capacity for action, decision, and heightened consciousness**. The system sphere tugs in the other direction, towards an en-soi consciousness, which is passive and more thing-like185—a consciousness marred by a repression that leads to self-destruction and aggression.186 The **system-sphere consciousness loses the ability to appreciate the sacred in life,** the non-instrumental ways of being, producing what Arthur Koestler characterized as a “civilization in a cul de sac,” an “everybody-for-himself civilization,”187 with masses who distract themselves with television and dim-witted movies, who understand and respond to the world amoeba-like as a source of pain and pleasure, and who cast about for cheap self-help recipes as a salve for a desiccated spiritual ennui. Role-players through and through, **persons within an encompassing system sphere lose the ability to choose their own ends**. That particular ability, the ability to express oneself authentically through the choosing of ones own ends in life, is the most redeeming feature of a healthy lifeworld sphere. Thus, it is here where the entwining relationship of the lifeworld and system spheres becomes crucial in critical theory. Habermas speaks of the system sphere as a product of the lifeworld, for the latter is the locus of energy and meaning-making in a society—things that the “system” needs to function.188 But the “system” sphere, that domain of instrumental reasoning where the impulse to control and dominate always percolates, has a greediness that is hard to contain. It can only be contained within a society that takes seriously the nurturing and empowerment of the lifeworld. Like the struggle between Eros and Thanatos, **the struggle between the lifeworld and the system spheres always contains the threat that the latter will override— ”colonialize**,” to use Habermas’s locution189—**the former**. Many observers of American culture have warned against **this colonization**, which **continues largely unabated**.190 The mass media, properly in the domain of the lifeworld sphere, has been thoroughly hijacked by corporate power; **education no longer serves a democratic culture where critical thinking is the pedagogical aim,** but instead aims to produce the human wrenches and pliers, the spare parts, or the disposable accoutrements, of an economic machinery that serves narrower and narrower interests. Students entering college today are said to resort more often to cheating than previous generations,191 which is hardly surprising when the prevailing attitude among parents and students alike is focused on getting the credentials so as not to be on the outside looking in (a quintessential system-sphere consciousness), when almost every student shares the same major—upward mobility. More and more **decisions that are vital to our** health and well-**being are delegated to experts** **who fill slots within vast bureaucratic apparatuses.** More and more of **life is removed from democratic control**—a symptom of the shrinkage of the lifeworld sphere brought on by the colonization of the system sphere. What we experience, as a culture, is greater and greater anomie and alienation, erosion of social bonds, passivity, drug and alcohol abuse, and violence. **The triumph of the system sphere and the withering of the lifeworld sphere manifests itself in the cozy bombshelter consciousness, where we had once accepted as rational the construction of livable bomb shelters as a suitable response to the specter of nuclear annihilation** because we abandoned the capacity to critique the irrationality of the Cold War system that produced the threat in the first place.192 101 **The democratic project** within our Enlightenment heritage **insists upon a civic maturation where “the people” have the capacity and the willingness to use their own reasoning powers to govern themselves, as** opposed to delegate governance to elites, charismatic charlatans, and socalled experts, all of whom ultimately serve narrower and narrower interests of privilege.193 It is hard to defend the view that American society has moved steadily in the direction of this civic maturation. We seem to be moving away from it, with a populace deeply manipulated by a “public relations industry, whose objective is to engineer consent among consumers of mass culture.”194 So **here is the grim message** that is intricated **in** the **Hamdi** narrative. At **the very moment when it was most propitious to fortify a noninstrumentalist foundation for our commitment to trial by jury (and the other procedural rights that are associated with our criminal justice process) the Court does the precise opposite**.195 It **uses means-ends thinking to place a veil of administrative decency over what most now recognize to be a heinous practice in Guantanamo** Bay. It endorses a style of thinking and a form of consciousness that is itself a key source of the problem we now find ourselves facing. **If it is true**, as Habermas presents it, **that** Islamic fundamentalism, and the **terrorism a**ssociated with it, **operates in a medium of violence arising from a “communicative pathology**”—a “spiral of violence” rooted in a “spiral of distorted communication that leads through the spiral of uncontrolled reciprocal mistrust”196—**then our juridical response to it,** culminating in opinions like Hamdi, **replicates that “breakdown of communication” by bracketing the most crucial institutional embodiment of our commitment to rational and publicly transparent communication** within our Enlightenment culture—the jury trial—**and thereby sapping it of that significance**.197 **This reinforcing “communicative pathology” in this so-called Age of Terror presents the most pressing challenge to our ~~crippled~~ democracy.** The challenge of a healthy democracy is overcoming the very real danger that the form of consciousness that the system sphere operates on and produces—what I’ll abbreviate as the consumer-consciousness, for that captures the passivity and manipulability of the system-sphere person—squeezes out the participatory-dialogue consciousness that is most congenial to the lifeworld sphere.198 Philosopher Albert Borgmann nicely captures the idea here, describing how the Enlightenment project seemingly placed the individual at the center of its ontology, but somewhere along the way led to the individual becoming “little more than an accomplice to a gigantic and systematic enterprise that, though resting on the consent of most people, was given a shape and momentum of its own.”199 The very power of the Enlightenment to produce magnificent technological prosthetics that “subdued and tamed reality” has reduced the individual self to the status of ignoble “consumer.”200 The “consumer” is but an appendage to the system sphere, a mockery of the ennobled, high-functioning individuals who must populate the lifeworld sphere. **The state is too beholden to moneyed interest**, or to corporate power, **to ally itself with promoting the lifeworld**.201 So **government is not the solution to our cultural ills, but rather is one source of the problem**, as it will do nothing to avert the relentless, inexorable expansion of markets and administration. The so-called war on terror, which in my view can be traced to that expansion, has only fueled the state’s alliance with a system-sphere mentality. This may partly explain why “[s]ome say that ours is a world in which real democracy has become impossible, perhaps even unthinkable.”202 In Habermas’s social ontology, **Hamdi falls smack in the middle of the system sphere.** Yaser Hamdi struggled unsuccessfully to remain in the lifeworld sphere against the state’s quest to extend the system sphere, a quest to intensify the exertion of sovereign power through executive and administrative powers.203 However, **the Court cannot reconcile the Sovereign’s desire to erect a simplistic, life-falsifying ontology that includes enemy combatants within a so-called war on terror with the juridical demand for due process merely by constructing a legal regime from certain conceptual remnants** picked out of Mathews v. Eldridge.204 The fact remains that Hamdi endorses and exemplifies the deployment of law to pursue a system-sphere logic—a means-ends rationality—of detecting and detaining bare-life beings who are deemed “dangerous.” **The Court repudiates trial** by jury, which can only be justified ultimately through a lifeworld logic, **at the very moment our commitment to it is most acutely tested.** While civil libertarians applauded the Court’s refusal to issue the blank check to the Executive, too many have ignored the sinister displacement of the most important expression of what is sacred in our Enlightenment heritage with a mode of reasoning that expresses that heritage’s threatening dark side.205 **We falsify the real force of that displacement by marginalizing it to the realm of some state of exception,** as opposed to seeing it as a fortification of a certain global ambition on the part of the United States that continues to be unexamined within the juridical realm, **despite the fact that what is supposedly sacred in that realm—an entire framework of rights that serve as genuine limits to governmental power—is precisely what must be protected by our courts**.206 It is indeed odd to affirm our commitment to the rule of law through the construction of a legal regime, at the hands of all three branches—which is the basis for some scholarly applause for Hamdi—that is itself prompted by a desire to jettison the very legal regime that is supposed to reflect our commitment to the rule of law. **This is law as a shell game**.207 One would think that the **rule of law contains some limit to the Sovereign’s ability to further confine the domain of a particular legal** regime, like the criminal justice system, **and erect another.** One would think that, before punting the issue of what is sacred within a constitutional democracy to the democratic branches of government— Issacharoff and Pildes’s “process approach”208—the Court would note how far we have moved away from the political environment that the Founders knew, gripped now by partisan politics where political party affiliation is “a much more important variable in predicting the behavior of members of Congress vis-à-vis the President than the fact that these members work in the legislative branch.”209 Gripped, indeed, by something far more frightening and ominous: **Our Congress has been hijacked by corporate America and** its enforcer, **the imperial military machine**. . . . We have allowed our institutions to be taken over in the name of a globalized American empire that is totally alien in concept to anything our founders had in mind. I suspect it is far too late in the day for us to restore the republic that we lost a half-century ago.210 One would think that, as part of our self-identity as a nation, our highest Court would confront the most elemental question: by what framework of legality may the Sovereign decide that a United States citizen (or anyone, for that matter) is unworthy of the sort of communicative enterprise that our Enlightenment heritage rightly regards to be the sine qua non of respect for human dignity? Hamdi is but a recent example of the Court’s disinclination to investigate who we are as a nation as part of its obligation to preserve the noble facets of our Enlightenment heritage, all in the name of eschewing the dreaded sin of putting the Good before Liberty.211 And so, **rather than exemplify the triumph of the rule of law, Hamdi exposes its emptiness**.212

**Thus, Miranda and I advocate that the United States federal government provide trial by a jury of the accused’s peers for individuals indefinitely detained under the War Powers authority of the President of the United States.**

**The affirmative is vital to salvage the public sphere[s]—reclaiming trial by jury as a vitalizing process rather than a means to an end is essential to challenging the myth of American exceptionalism which provides the basis for Sovereign power**

Daniel R. **Williams**, Associate Professor, Law, Northeastern University, “After the Gold rush—Part II: Hamdi, the Jury Trial, and Our Degraded Public Sphere,” PENN STATE LAW REVIEW v. 113 n. 1, 20**08**, p. 106-112.

**For** Enlightenment culture to flourish, and its **humane values to maintain a grip on** our **institutions, our public sphere needs to be detoxified** of the poison of consumerism. **This is essential for the pursuit of rational engagement in the public sphere, for a detoxified public sphere is a crucial condition for Legality** itself **to survive**. **Legality** not only expresses the Enlightenment ideal of rational engagement; it also **depends on a broader culture of rational engagement to nourish itself. Institutions cannot** exist to **shape culture, but must arise from that culture to give expression to the ideal**. **The corruption of Enlightenment culture** through consumerism **is what makes U.S. empire-building both possible and necessary**: **possible, because the citizenry are beguiled by the myth of American** benevolence and **exceptionalism**—America as a normative concept; and necessary, because global hegemony is crucial to maintaining consumerism itself, which has its stranglehold on us precisely to the degree that it advances the narrow material interests of the privileged and powerful.214 At the level of rhetoric, radical Islamists pursue a form of jihadism that attacks our Enlightenment ideals because what they see is the dark side of that project, with its decadence, consumerism, and associated drive to destroy traditional ways of life and to dominate the world. Islamic terrorists are post-modernists in that sense, motivated in part by the meta-narrative of globalization in which the United States (and to a lesser extent, Europe) takes on the role of “privileged vanguard of an evolutionary process that applies to all nations.”215 Globalization, with the advent of instantaneous global communication, heightens this fundamentalist revulsion and thereby further provokes spasms of violence.216 **We may be seduced by the imagery of the religious fanatic** spilling out from a madrasas in Pakistan or Saudi Arabia, existing on the far periphery of our gadgetfilled consumeristic world, indoctrinated to despise the West, and recruited and trained by Al Qaeda to become a killing machine. **But that jihadist is a product of an intricate web of commerce** that is rapidly deluding people from non-Western cultures of their traditions and forms of life, leading them into a cycle of wage labor and the pursuit of some modicum of consumer power, **a cycle resting atop manufactured desires for those creature comforts and distractions that today seduce much of the world’s population.** All this is why we ought to understand Hamdi, more broadly, as an early feature of a jurisprudence of globalization. **Globalization** produces not only a jurisprudence of globalized commerce, but it also **produces a jurisprudence of detention—Hamdi being foundational** in that development. **That jurisprudence of detention produced by pax Americana globalization circles back to reform our domestic juridical understanding of detention. Guantanamo** Bay as a detention **site is not merely a feature of our** so-called **war** on terror**; it is a**nother **feature of an entire carceral system** that stretches back to the seventeenth century and that Foucault powerfully dissects in Discipline and Punish.217 **This is why Hamdi**, by blessing Guantanamo-style detention with a veil of administrative decency**, ought to be linked to** a reality that this article gestures at, **a portrait of consumerist decadence that is poisoning our culture and driving our foreign policy**218—and has for over a half century—**to the point where we are on a collision course with fundamentalism of all sorts**.219 The juridical response to this collision course is the rationalistic message to do it better, to accomplish the detention for the sake of preserving life with greater regard for the tragedy of making a mistake. **Hamdi stands for an invigoration of a carceral system flourishing within a biopower-world, where** the regulatory function of **the law operates on the simplest binary** opposition—the **dangerous and** the **normal—and where** the **“normal” has become the** Western **consumer**. When lonely voices in Western culture lament that we are at war with ourselves, we might do well to understand it, at least in part, in precisely these terms, “for it is a sad fact that Western consumerism explodes like a land mine in the midst of the most disadvantaged layers of the world population.”220 That intensive, exploding consumerism either elicits from those who feel themselves outside the globalization promise a defeatist and dark spiritual reaction that history has taught is violence-prone,221 or it becomes “a kind of intellectual sedative that lulls and distracts its Third World victims while rich countries cripple them, ensuring that they will never be able to challenge the imperial powers.”222 The gaping, echoing silence in Hamdi is this crucial fact: “We are witnessing a real resistance to empire.”223 **The instrumentalist side of Enlightenment thought, the Weberian nightmare of disenchantment with the world, and the narrowly tailored quest for administrative effectiveness, where sacredness is lost to the shallow seductiveness of regulatory success**, technological achievement, and the spirit-killing hyperreality that is its telos, **is the cognitive scaffolding of an empire that must always and everywhere use or threaten to use military force to guarantee the conditions for the functioning of the world market, all the while masking its violence with rule-of-law rhetoric**.224 **That militarized management of the global order has and will inevitably produce the blowback of terrorism, with the capture of “enemy combatants” who must be detained on the instrumental logic of security that chokes off the life-affirming values undergirding civil liberties and rights we once thought sacred to our identity** as a nation. **Trial by jury, the highest vitalizing expression of those life-affirming values, is sacrificed for the sake of a global policing operation that finds its raison d’etre in the preservation and spreading of a system-world consumerist way of being.** VII. Conclusion In After the Gold Rush—Part I, I claim that foreign-policy expertise is the same sort of fiction as managerial expertise.225 From that claim, I argue that **judicial deference to the Executive** in matters of foreign affairs **is an overblown manifestation of our legitimate commitment to separated powers**.226 **Judicial deference** in the service of a moral fiction like “foreign-policy expertise” **amounts to an avoidance of thinking substantively about rights and obligations and of confronting urgent globalization** issues. The upshot is this: **what is important to the Court in Hamdi is** not the globalization issues that generate the controversy, but **the maintenance of** domestic orderliness and **neutrality in the government’s pursuit of its global ambitions. This concern for neutrality** and orderliness **manifests in the Court’s institutional refusal to address the** fundamental **concern that Guantanamo-style detention exists not to serve the so-called war on terror, but the war on terror exists to serve Guantanamo**. In that sense, **the war on terror is really a war on ourselves, a form of auto-immune crisis,** as Jacques Derrida characterizes it.227 **Hamdi expresses our own internal war against the criminal-justice system, exhibiting** not just our ambivalence about it, but **our impulse to** detach it from its Kantian moorings and to **make it** **administrative, and tribunal-like**. Just as our technological prowess on 9/11 was whipsawed back against us, thereby threatening to eliminate the distinction between war and peace, so too **the fundamental anxiety we feel towards our criminal justice process is whipsawed back to strike us hard, causing us to unleash that** other collective drive, the **drive towards a form of governmental administration at the heart of Foucault’s “political dream of the plague,”**228 the drive to overcome inhibitions in constructing an MMDI system, and **a drive that threatens the elimination of the distinction between civil detention and criminal punishment**. Viewed from this prism, **Hamdi is an emblem of how our legal culture, and indicative of how Western culture itself, has become paralyzed by an over-commitment to a form of system-sphere reasoning atrophied by a fetish for means-ends maximization**. The dark side of **the Enlightenment**, which has produced a mighty economic machine that is backed by incredible scientific and technological achievements, **has created a world that** for over a half century **has existed on a precipice of annihilation**. We are perhaps even more precariously situated, largely because the internal drive within our culture to measure most everything in terms of financial **profitability—a drive unleashed by the Enlightenment project to control and dominate— is a compulsion with such overwhelming power that the most economically benefitted inhabitants of this planet simply cannot see beyond their own short-term material interests** for the sake of their own children and grandchildren.229 My point here is that **this overwhelming cultural drive threatens the vital and already-eroded life-affirming foundation of our criminal-justice system.** **What if we looked upon** a legal process, such as **the criminal-justice process, as an end in itself rather than as simply a means** to adjudicate? **What if a legal process elicits our allegiance because it expresses a particular form of human solidarity and community engagement**? **What if a legal process pursues a justification that warrants the assent of the losing party simply because that assent-ability is a good in itself**? **What if a legal process is a commitment,** not a tactic or instrumental feature of governmentality or epistemic method? **What if a legal process were a “fact” in our regime of legality—meaning, it exists in a way that justifies itself rather than as an instrument for some other goal—and thereby becomes a source of value within our culture**? Habermas’s **reconstruction of “communicative competence**”—his ideal-speech theory—**helps illuminate the stakes in our war-on-terror jurisprudence**.230 **The point of Habermas’s reconstruction is not** so much to point the way to **establishing a discursive utopia, but rather, to show that internal to the structure of speech is a telos**, **a direction for humanity to achieve truth, freedom, and justice**. **Ethics can be rationally grounded; facts and values, and theory and practice, can be made inseparable**. **Habermas**’s reconstruction **provides a way to understand the jury trial,** and the whole criminal adjudicatory process, **as an** idealized **expression of a way of life, an anticipation of a way of life where truth, freedom and justice are possible. Internal to the criminal adjudicatory process is the answerability thesis, and internal to the answerability thesis is a set of values** that we have come to regard as **constitutive of who we are as human beings worthy of respect and dignity. The practice of adjudicating conflict through a jury trial**—a practice that partakes in the construction of an ideal-speech situation—**contains within it a telos for humanity, a telos that correlates with** that contained in Habermas’s ideal speech situation wherein “the **truth of statements is linked in the last analysis to the intention of the good and true life**.”231 **Hamdi,** then, **does not just bypass a fact-finding process, it denigrates the vitalizing aspect of the jury trial through a form of reasoning that is suffocating humanity and putting it on an irreversible path towards a brave new world**. **It does so through a framework of necessity that is linked to geo-political activity that must be understood without the distorting effects of an American exceptionalism** that regards “America” as a normative concept. What says it all is this 2004 testimony before the House Armed Services Committee. General James Hill, responsible for military readiness in Latin America, essentially complained of being ignored in this age of 9/11 anxieties. His sphere of command ought to get more war-on-terror money, he argued, because Latin America is filled with “radical populists,” by which he meant, “[y]ou know, emerging terrorists.”232 **In the pursuit of empire, we are** forever threatened by “emerging terrorists”; **forever and everywhere threatened by the plague, all the better to pursue the political dream of the plague.** The merits or demerits of **Guantanamo** Bay **as a detention site is beside the point**, an incidental issue **in the larger struggle over the future of globalization and America’s vision of its place within that future**. **Guantanamo-style detention signifies,** despite how it may betray our values, **our need for military hegemony**, a military hegemony that could hardly be justified where the only threat to American hegemony in a globalized marketplace is the surging economic strength of China or a unified Europe. **It is in that sense that the war on terror serves Guantanamo**, rather than the other way around. **What Guantanamo-style detention ratifies—and thus the key to its true function**, which transcends its merits or demerits as an instrument of policy in our so-called war on terror—**is an ontology manufactured through a resurgent sovereignty, one marked by a dividing line between compliant laborers and consumers** on the one hand, **and on the other, violent terrorists** who are said to hate our liberty-loving way of life. **Guantanamo-style detention may betray our values, but it inscribes in our pax Americana consciousness the existence of an evil,** a plague, **that must be vanquished.**233 It may betray our professed self-identity, but **it inscribes the major duality of our time, the happy consumer** in a globalized wonderland **and the** religiously **fanatical terrorist** bent on sabotaging the entire edifice. **Hamdi’s veil of administrative decency**, then, can **mute the betrayal, a**lleviate a bit the sting of it**, all the while silently deepening that inscription, through its Weberian rationality, through its means-ends rationality** that characterizes a system-sphere logic that Habermas warns us against. **It is upon this platform of critique that one can understand Hamdi to be, not a bracketed scenario, a case arising from a state of exception, but rather an ominous cultural document of our post-9/11 anxieties, an expression and reinforcement of the Western quest for control and domination**, born of the Enlightenment, that has, centuries later, generated this “difficult time in our Nation’s history.”

**Public deliberation is revolutionary—critical analysis of institutions breaks down institutional justifications for domination and checks Sovereignty—disengagement risks the erosion of all remaining vestiges of democracy**

**Williams 08** (Daniel, Associate Professor of Law, Northeastern University, 11-13-08, "After the Gold Rush—Part II: Hamdi, the Jury Trial, and Our Degraded Public Sphere" Penn State Law Review) pennstatelawreview.org/articles/113%20Penn%20St.%20L.%20Rev.%2055.pdf

The classic Frankfurt School diagnosis of American culture is grim and pessimistic. Jurgen Ilabermas rebels against the pessimism that pervades Dialectic of the Enlightenment, but he does not repudiate the essential diagnosis found there, though he surely seeks to deepen it with what he regards as a more nuanced investigation into the true roots of Enlightenment rationality.157 For our purposes, to this observation of humanity's destructive fetish with means-ends rationality, we may add Habermas's emphasis on the public sphere as an optimistic source of rationality.151\* In the idealized vision that Ilabermas presents, the public sphere consists of voluntary associations dedicated to promoting unconstrained rational interchange among free and equal participants of good will.15 **It is in the public sphere, if truly healthy** (free from the distortions of domination), **that the common good can be gleaned**.160 **It is in the public sphere that government overreaching can be checked and averted.**161 On this view, world **public opinion**, cultivated within vibrant public spheres that somehow escape the distortions of governmental and corporate propaganda, **may function**, in this post-Cold War era that has bled into the Age of Terror, **as the only** potential **countervailing force to the dominant super-power**, the United States. What **a vibrant public sphere provides** are **tools to resist** naturalistic **illusions undergirding social institutions and practices that preserve and promote spheres of inequality and regimes of domination, but that seem to be** socially **necessary**. The idea here is well-rehearsed in the literature of critical theory: that which is socially constructed is made to appear fixed **and natural; that which serves narrow interests of power and privilege is made to appear to serve everyone**.162 **A culture beholden to means-ends thinking** is a culture that **has lost its capacity for critical theorizing, and such a culture is, as a result, at the mercy of its illusions. A vibrant public sphere that** successfully **exposes illusions**, which conceal unhealthy conditions for society, **is crucial to** social **change,** for the **exposing** of **such illusions is exactly what loosens the screws that keep unworthy** social **institutions intact.**163 **A vibrant public sphere is the environment for rendering institutions malleable and open to change**, which is why thinkers from Kant to Habermas regard "the public sphere as the definitive institution of democracy."164 The big problem, however, is that **the "public sphere" in consumerist societies such as ours may itself have evolved into an illusion, propping up the justificatory myth that the Sovereign's activity is in check and in harmony with the consent of the governed**.165 Consider the implications if we find, as an empirical matter, that **the public sphere is beholden to the powerful and privileged but still retains the image of functioning largely in its idealized way. That false consciousness**, to use a very unfashionable phrase, **creates manifold opportunities for a bloated sovereignty**—indeed, perhaps one like we are witnessing today—**and a bloated sovereignty coexists nicely with a consumerist mentality that cannot seem to imagine any alternative to the present, other than a future that consists only of the present just with more snazzy gadgets. Evidence abounds that** this **false consciousness pervades America today, with disastrous consequences. Vital issues of war and peace** (let alone important issues revolving around **health care, education, and economic well-being**) **are presented in stage-managed fashion, with vast sums of money spent on manipulating over-worked, anxiety-riddled consumerists who cling to an anachronistic, jingoistic, pre-Cold War understanding of what this nation stands for in the world.** Voting is no longer the culminating act that follows a period of reflection and probing dialogue and debate, but rather **voting is a reaction to "campaigns,"** operations not unlike military campaigns and Madison Avenue advertising campaigns, **where the human commodity on display (the "candidate") has been selected largely through big-money donors and inside-power politics.**166 **If the hollowed-out nature of democracy captures something real in our culture,** then **is it really surprising that** the great institutional **embodiment of democracy and the most vitalizing expression of the Enlightenment, the right to trial by jury, has been under siege?**167 And **if we abide the erosion of it,** if we find that trial by jury cannot purchase its way into our culture because it cannot satisfy our quest for means-ends efficiency and because we have lost our vocabulary for non-instrumentalist justificatory ways of thinking and being, **then what democratic institutions are next?**

**Our rhetorical argument forces institutions to justify their colonization of the lifeworld, reversing their control and opening up space for public debate**

**Doxtader 97** (Erik W., PhD Northwester, International Research fellowship, Institute for Justice and Reconciliation, “Total War and Public Life: A Critical Theory of American Nuclear Deterrence Policy,” June,

Rhetorical-**arguments** are communicative constellations that instantiate forms of critical publicity by mediating the terms of institutional argumentation and public deliberation. They are **communicative events in which interested citizens define procedures for collective interaction** in a manner **that acknowledges, engage, and if necessary, challenges institutional forms of communication. These challenges develop as public actors call on institutions to define and justify their actions. When institutions respond to these invitations, they often enact contradictions between the ends and means of their policies. If so, the public finds a space and referent for deliberation. Transgressing presumptions of institutional responsibility** – on the basis of private experience or need – **produces the possibility of debate oriented to the collective revision of the norms which underpin practices of institutional representation.** Do **rhetorical arguments** exist? I believe so. They **often appear as legal challenges against the state.** Citizens violate standing laws in order to gain recognition. **This** recognition **culminates in a moment when the state**, called on to employ legal sanctions, **is forced to explain why its activities are just**. **The resulting tension between** the purportedly universal ends of **justice and the enforcement mechanisms of law**, evident for instance in Vaclav Havel’s practice of dissent and ACT-UP’s use of civil disobedience**, shows how** state **institutions can be made vulnerable to the force of public deliberation. In betraying their own standards of behavior, institutional arguments become a basis for political reform.** **Rhetorical arguments are enacted through both transgressive and consensual forms of communication. They fulfill the ontological, epistemic and political functions of public deliberation**. Accordingly, they have a marked value for critical theoretical study. As theory, rhetorical argumentation is a means by which to investigate how institutions use communication to structure public deliberation. In other words, **critique can carry out a process of rhetorical argument on behalf of publics. This occurs as critique discerns questions that public actors can use to understand, ratify and/or criticize the declared terms of institutional policy.** **Answers to these questions produce insight into how institutional arguments intervene in public fora.** What’s more, **the questions themselves furnish resources for deliberation; they transgress systemic norms in order to reintroduce private experiences into processes of collective interest formation**. In light of the constitutive elements of public deliberation, there are three basic topoi that enact this questioning process.First, **public interactions with institutions** may **begin with a systematic questioning of how institutions use communication to define events, methodologies and steering mechanisms. It is important to investigate how institutions deploy definitional arguments in order to discern crises, formulate response plans, and codify the terms of the problem-solving logics.**Second, **an understanding of how institutions rely on definitional argument may lend to public actors an incentive** to query whether such definitions make sense; that is, if institutional readings of events are justified as practical solutions to complex problems. Such questioning is worthwhile to the extent that it reveals how institutions fashion common systems of meaning. Institutions present reasons for their arguments. To the degree that the scope, breadth, and coherence of these reasons may offer an understanding of how institutions account for or ignore public interest, the third question publics might ask it: how do **institutions formulate arguments that extend invitations to accept particular standards or values of judgment, which in turn, structure the commonplaces of human interaction? Such inquiry is important to the extent that it can reveal how institutions ground their actions in relationship to symbol systems that may have their origins in the public domain.**

#### Aff key to social transformation—consciousness shift through withdrawal of assent creates a legitimacy crisis

Daniel R. Williams, Professor, Law, Northeastern University, “Adverting a Legitimation Crisis and the Paradox of the War on Terror,” NORTHEASTERN PUBLIC LAW AND THEORY FACULTY WORKING PAPERS SERIES n. 24-2008, 9—08,

http://ssrn.com/abstract = 1265244

Political power and authority are fragile possessions; they hinge almost entirely, in a relatively free and open society, on the consciousness of the public.151 The public must regard the state, and the associated power structure, as legitimate.152 That means the demands for legitimacy are strong and often urgent. When the legitimacy of a certain arrangement of power is threatened—including threats through social movements in a country like the United States by a shifting consciousness that undermines the authority of the state, and the economic order associated with the state—we have what Jurgen Habermas calls a “legitimation crisis.”153 One can read Bobbitt’s entire argument as a particular application of this concept of a legitimation crisis, though he never uses that precise phrase or cites to Habermas.154 A legitimation crisis occurs when the mass of a population withdraws support or loyalty to the existing social order because there has been a rupture of faith in that society’s normative basis.155 Terrorism succeeds when it can provoke that rupture of faith by casting doubt on the state’s ability to protect the population,156 which is perhaps the most fundamental of a society’s normative basis. But the relevance of the concept of a legitimation crisis to the War on Terror goes deeper than the terrorist’s goal to provoke it, and it is here that all the books under consideration in this article find common ground, and it is here that Bobbitt’s treatment of the transformation of the nation-state to market state becomes critical in understanding the function of the War on Terror. Our own particular version of the nation-state, often termed the social-welfare state, or the administrative state, involved governmental interventions into the economy, education, health care, etc.—all in the service of promoting the public welfare. The social-welfare state achieved legitimation through its ability to stabilize society against the up-and-down shocks produced by market forces.157 Strong trade unions and a robust public sector of welfare assistance capable of diminishing social exclusion and a strong public education system were aspects of this legitimation.158 Corporate actors and institutions were regarded as genuine creatures of the state and thus, within the operations of a nation-state, were accountable to the public to a degree that today seems

unimaginable.159

# \*\*\*2AC\*\*\*

**Counter-Ks: 1AC Addition**

**We solve your K**

Lincoln **Dahlberg**, “The Habermasian Public sphere: Taking Difference Seriously?” THEORY AND SOCIETY v. 34, 20**05**, pp. 111-136.

Difference democrat critics of the public sphere conception as con-ceived through Habermas’ theory of communicative rationality have argued that it supports exclusive political discourse for three reasons:it promotes a rationalist form of discourse that devalues aesthetic-affective styles of interaction, which results in certain groups’ ways of speaking being privileged over others; it assumes that power can beseparated from communication, which masks exclusion and domina-tion; and it promotes consensus as the purpose of deliberation, whichmarginalizes voices that do not readily agree. However, I have argued that these **critiques are** in fact **based on limited readings of Habermas.** My more expansive reading of **the public sphere** conception shows that it **does** in fact **accommodate aesthetic-affective forms of discourse**,that it **accounts for both negative and positive forms of power** in commu-nication, **and** that it **promotes the process rather than the end-point of rational deliberation** in public opinion formation. In fact, **disagreement and difference are the whole point of the public sphere, which** ideally **combines both agonistic and respectful forms of argumentation in a democratic contestation of position**. On the one hand, **the** informal **discursive public sphere allows voices and conﬂicts to be expressed in ways in which** the more **inﬂexible formal institu-tions** of democratic governance **do not allow**. On the other hand, **the discursive conditions act to protect and nurture difference**. T**he con-ception works to maximize inclusion,** although this does rely upon the exclusion of coercion and domination. This exclusion not only works to deﬁne democratic communication, but also indicates that **the public sphere is a discursive process with continually contested boundaries**. **This is not to say the public sphere** idealization **will be fully real-ized in practice**, or that the conception will not be used uncritically, as “rationalist” deliberative democrats often do, or that it will not be used cynically to mask power, as Jodi Dean demonstrates is exten-sively being done by many of those individuals and groups embracing information society rhetoric. **As an idealization, the public sphere** conception **is useful** not only **for the critical evaluation of the demo-cratic quality of** actually existing **public communicative practices, and** thus **for thinking about how they can be made democratic**, but also for **highlighting limited and ideological forms of publicity operating in the interests of dominant groups**. Thus, **for those theorists seeking to critique present systems of coercion, domination, and exclusion, the Habermasian public sphere remains a legitimate democratic norm**.

**Analyzing race with the focus on blackness destroys agency and turns their impact**

**Espinoza and Harris 97** Leslie and Angela P., California Law Review, Vol. 85, No. 5, LatCrit: Latinas/os and the Law: A Joint Symposium by "California Law Review" and "La Raza Law Journal" (Oct., 1997), pp. 1585-1645

The papers in this Symposium are about borders. The papers de- fine borders, challenge the need for borders, examine how borders op- erate and endeavor to cross them. **The first border is the color-line**. In broad brush strokes, Professor Perea traces the use of color to create an understanding **of race based on a black/white binary construct. The black/white understanding of race is so compelling,** Perea demonstrates, **that both mainstream and critical discourse on race adopt the two-sided construct as real.**87 Perea analyzes a wide variety of works by authors ranging from prominent black social critics, such as Andrew Hacker,88 to black artists, such as Toni Morrison,89 to reveal the omnipresence of the black/white racial concept. **The black/white construct is everywhere and yet is decidedly not real. Latino/as, Asians, Native Americans and otheroutsiders exist. The black/white racial myth renders Latino/a experiences of race invisible,90 and ultimately this leaves Latino/as themselves powerless**.

**Framing their argument against “white supremacy” justifies racism against excluded groups deemed “white”**

**Cole 7**, Mike, “'Racism' is about more than colour” http://www.timeshighereducation.co.uk/story.asp?storyCode=311222&sectioncode=26 November 23rd

A second**problem with "white supremacy" is that it is inherently unable to explain non-colour-coded racism**. In the UK, for example, **this form of racism has been and is directed at the Irish and at gypsy/traveller communities. There is also a well-documented history of anti-Semitism, too. It is also important to underline the fact that Islamophobia is not necessarily triggered by skin colour**. It is often sparked by one or more (perceived) symbols of the Muslim faith. Finally, a new form of non- colour-coded racism has manifested itself recently in the UK. This has all the hallmarks of traditional racism, but it is directed towards newly arrived groups of people. It has been described by A. Sivanandan, director of the Institute of Race Relations, as "xeno-racism". It appears that there are some similarities in the xeno-racialisation of Eastern European migrant workers and the racialisation of Asian and black workers in the immediate postwar period, a point I address in my latest book**. "White supremacy" is counterproductive as a political unifier and rallying point against racism.** John Preston concluded an article in **The Times Higher** advocating critical race theory ("All shades of a wide white world", October 19) by citing the US journal **Race Traitor** , which seeks the "abolition of the racial category 'white'". Elsewhere, Preston has argued "the abolition of whiteness is ... not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis". Indeed, for Preston, "the abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development".

**Critical Neg: Pedagogy of the Oppressed**

**The pedagogy of the oppressed sounds appealing, but regulates consciousness under the disguise of difference. Making the speaker the gateway for listening to the speech demands ever-greater levels of purification and escalating rhetoric of oppressive history as the source for authority.**

Rob **Moore**, Cambridge **and** Johan **Muller**, University of Cape Town, **99**, “The Discourse of Voice and the Problem of Knowledge and Identity in the Sociology of Education" British Journal of Sociology of Education 20 (2) p. 199-200

The pedagogic device (Bernstein, 1990) of voice discourse promotes a methodology in which the explication of a method’s social location precludes the need to examine the content of its data as grounds for valid explanation. Who says it is what counts, not what is said: This approach favours an ethnography that claims to reveal the cultural specificity of the category – the ‘voice’ of membership. What is held to be the facts, to be the case, is only so – and can only be so – from a particular perspective. The world thus viewed is a patchwork of incommensurable and exclusive voices or standpoints. Through the process of sub-dicision, increasingly more particularized identity categories come into being, each claiming the unique specificity of its distinctive experience and the knowledge authorized by it. The consequence of the abolition of the knowledge boundary that follows from the epistemological theses of postmodernism is the increasing specialization of social categories (See Maton, 1998). Maton describes this process of proliferation in terms of the way such ‘knower’ discourses….base their legitimation upon the privileged insight of a knower, and work at maintaining strong boundaries around their definition of this knower – they celebrate difference where ‘truth’ is defined by the ‘knower’ or ‘voice’. As each voice is brought into the choir, the category of the privileged ‘knower’ becomes smaller, each strongly bounded from one another, for each ‘voice’ has its own privileged and specialized knowledge. The client ‘knower’ group thus fragments, each fragment with its own representative…The procession of the excluded thus becomes, in terms of the privileged ‘knower’, an accretion of adjectives, the ‘hyphenation’ which knower modes often proclaim as progress. In summary, with the emergence of each new category of knower, the categories of knowers become smaller, leading to proliferation and fragmentation within the knowledge formation. (ibid, p. 17) As Maton argues, this move promotes a fundamental change in the principle of legitimation – from what is known (and how) to who knows it. The device that welds knowledge to standpoint, voice and experience, produces a result that is inherently unstable, because the anchor for the voice is an inferior authenticity that can never be demonstrated, only claimed (Taylor, 1992; Siegel, 1997; Fuss, 1990, 1995). Since all such claims are power claims, the authenticity of the voice is constantly prone to a purifying challenge. If you do not believe it you are not one of us’ (Hammersly & Gomm, 1997, para. 3.3) that gears down to ever more rarefied specializations or iterations of the voice category; an unstoppable spiral that Bernstein (1997, p. 176) has referred to as the ‘shrinking of the moral imagination [10]. As Bernstein puts it, ‘The voice of a social category (academic discourse, gender subject, occupational subject) is constructed by the degree of specialization of the discursive rules regulation and legitimizing the form of communication’ (1990, p. 23). If categories of either agents or discourse are specialized, then each category necessarily has its own specific identity and its own specific boundaries. The speciality of each category is created, maintained and reproduced only if the relations between the categories of which a given category is a member are preserved. What is to be preserved? The insulation between the categories. It is the strength of the insulation that creates a space in which a category can become specific. If a category wishes to increase its specificity, it has to appropriate the means to produce the necessary insulation that is the prior condition to its appropriating specificity. (ibid.) Collection codes employ an organization of knowledge to specialize categories of person, integrated codes employ an organization of persons to specialize categories of knowledge (Bernstein, 1977, pp. 106-111) The instability of the social categories associated with voice discourse reflects the fact that there is no stable and agreed-upon way of constructing such categories. By their nature, they are always open to contestation and further fragmentation. In principle, there is no terminal point where ‘identities’ can finally come to rest. It is for this reason that this position can reappear so frequently across time and space within the intellectual field – the same move can be repeated endlessly under the disguise of ‘difference’. In Bernstein’s terms, the organization of knowledge is, most significantly, a device for the regulation of consciousness.

The pedagogic device is thus a symbolic ruler of consciousness in its selective creation, positioning and oppositioning of pedagogic subjects. It is the condition for the production, reproduction, and transformation of culture. The question is: whose ruler, what consciousness? (1990, p. 189) The relativistic challenge to epistemologically grounded strong classifications of knowledge removes the means whereby social categories and their relations can be strongly theorized and effectively researched in a form that is other than arbitrary and can be challenged by anyone choosing to assert an alternative perspective or standpoint.

**There should be no methodological prerequisites for participation in argument and education. This is the only way to give the force of argument and rigorous testing of any idea that is necessary for progressive politics to win the public sphere.**

Rob **Moore**, Cambridge, **and** Johan **Muller**, University of Cape Town **99** "The Discourse of Voice and the Problem of Knowledge and Identity in the Sociology of Education" British Journal of Sociology of Education 20 (2) p.

Our purpose in this paper is to raise some issues about epistemological debates and approaches to knowledge in the sociology of education. Our starting point is the observation that since the phenomenologically inspired New Sociology of Education in the early 1970s to postmodernism today, approaches that question epistemological claims about the objectivity of knowledge (and the status of science, reason and rationality more generally) have occupied an influential position in the field. In earlier times this approach was often referred to as the 'sociology of knowledge' perspective. Yet then as now, it is precisely the idea of knowledge that is being challenged. Such approaches adopt. or at least favour or imply, a form of perspectivism which sees knowledge and truth claims as being relative to a culture, form of life or standpoint and, therefore, ultimately representing a particular perspective and social interest rather than independent, universalistic criteria. They complete this reduction by translating knowledge claims into statements about knowers. Knowledge is dissolved into knowing and priority is given to experience as specialised by category membership and identity (Maton, 1998). For instance, a so-called 'dominant' or 'hegemonic' form of knowledge, represented in the school curriculum, is identified as 'bourgeois', 'male', or 'white’ – as reflecting the perspectives, standpoints and interests of dominant social groups. Today, the most common form of this approach is that which, drawing upon postmodernist and poststructuralist perspectives, adopts a discursive concern with the explication of ‘voice’. Its major distinction is that between the dominant voice and those (‘Others’) silenced or marginalized by its hegemony. As Philip Wexler (1997, p.9) has recently observed: The postmodern emphasis on discourse and identity remain overwhelmingly the dominant paradigm in school research, and with few exceptions, gives few signs of abating’ (see also Delamont, 1997). The main move is to attach knowledge to categories of knowers and to their experience and subjectivities. This privileges and specialises the subject in terms of its membership category as a subordinated voice. Knowledge forms and knowledge relations are translated as social standpoints and power relationships between groups. This is more a sociology of knowers and their relationships than of knowledge. What we will term 'voice discourse' is our principle concern, here. Historically, this approach has also been associated with concerns to reform pedagogy in a progressive direction. At the time of the New Sociology of Education in the early 1970s, this move was expressed in the debate between 'new' sociologists such as Michael Young (1971, 1976) and the philosophical position associated with R.S. Peters and Paul Hirst. More recently, it has been associated with developments such as anti-sexist, multicultural and postcolonial education, and with postmodernist critiques of the 'Enlightenment Project' and 'grand narratives'. The crucial issue, for such approaches, is that where social differentiation in education and the reproduction of social inequalities arc associated with principles of exclusion structured in and through educational knowledge. Hence, the critique of knowledge and promotion of progressive pedagogy is understood as facilitating a move from social and educational exclusion to inclusion and the promotion of social justice. This history can be summarised as follows: in the early 1970s, the New Sociology of Education produced a critique of insulated knowledge codes by adopting a 'sociology of knowledge' perspective that claimed to demystify their epistemological pretensions to cognitive superiority by revealing their class base and form. Knowledge relations were transcribed as class relations [1]. In the late 1970s, feminism challenged the masculinist bias of class analysis and turned attention to the gendered character of educational relations, rewriting knowledge relations in terms of patriarchy. This was in turn followed by a focus upon race. In the 1980s, the primary categories employed by gender and race approaches fragmented as various groups contested the vanguardist claims of the earlier proponents of those perspectives to be representing the interests of women or blacks in general. The category 'woman', for instance, fragmented into groups such as women of colour, non-heterosexual women, working-class women, third-world women and African women (Wolpe, 1998). These fractions of gender and race were further extended by a range of sexualities and, to some degree (although never so successfully), by disabilities. Under this pressure of fragmentation, there was a rapid shift away from political universalism to a thoroughgoing celebration of difference and diversity; of decentred hyphenated or iterative models of the self and, consequently, of identity politics. This poststructuralist celebration of diversity is associated with proclamations of inclusiveness that oppose the alleged exclusiveness of the dominant knowledge form that is revealed when its traditional claims to universalism and objectivity are shown for what they really arc – the disguised standpoints and interests of dominant groups. On this basis, epistemology and the sociology of knowledge are presented as antithetical. The sociology of knowledge undertakes to demystify epistemological knowledge claims by revealing their social base and standpoint. At root, this sociology of knowledge debunks epistemology. The advocacy of progressive moral and political arguments becomes conflated with a particular set of (anti-) epistemological arguments (Siegel, 1995; Maton, 1999). At this descriptive level, these developments are usually presented as marking a progressive advance whereby the assault upon the epistemological claims of the dominant or ‘hegemonic' knowledge code (rewritten in its social form as 'power') enables a succession of previously marginalised, excluded and oppressed groups to enter the central stage, their histories to be recovered and their 'voices' joined freely and equally with those already there [2]. Within this advance, the voice of reason (revealed as that of the ruling class white heterosexual male) is reduced simply to one among many, of no special distinction. This is advance through the multiplication of categories and their differences. Disparities of access and representation in education were (and are) rightly seen as issues that need addressing and remedying, and in this respect constitute a genuine politics. It is important to stress, here, that the issues are real issues and the work done on their behalf is real work. But the question is: is this politics best pursued in this way? The tendency we are intending to critique, then, assumes an internal relation between: (a) theories of knowledge (epistemological or sociological); (b) forms of education (traditional or progressive); and (c) social relations (between dominant and subordinated groups). This establishes the political default settings whereby epistemologically grounded, knowledge-based forms of education are politically conservative, while ‘integrated’ (Bernstein, 1977) or ‘hybrid’ (Muller & Taylor, 1995) knowledge codes are progressive. On this basis, socially, progressive causes are systematically detached from epistemologically powerful knowledge structures and from their procedures for generating and promoting truths of fact and value. For us the crucial problem, here, is that these default settings have the effect of undermining the very argumentative force that progressive causes in fact require in order to press their claims. The position of voice discourse and its cognate forms within the sociology of education has, also, profoundly affected theory and research within the field, with little attention being paid to structural level concerns with social stratification and a penchant for small-scale, qualitative ethnographic methods and ‘culturalist’ concerns with discursive positioning and identity (Moore, 1996a; Hatcher 1998). We will argue that this perspective is not only politically self-defeating, but also intellectually incoherent – that, in fact, progressive claims implicitly presuppose precisely the kind of ‘conservative’ epistemology that they tend to reject and that, to be of value, the sociology of education should produce knowledge in the strong sense. This is important because the effects of the (anti-) epistemological thesis undermine the possibilities of producing precisely that kind of knowledge required to support the moral/political objectives. Indeed, the dubious epistemological assumption may lead not only to an ‘analytical nihilism that is contrary to (their) political project’ (Ladwig, 1995, p.222), but also, to pedagogic conclusions that are actively counterproductive and ultimately work against the educational interests of precisely those groups they are meant to help (Stone, 1981; Dowling, 1994). We agree, thus, with Siegel that, ‘…it is imperative that defenders of radical pedagogy distinguish their embrace of particular moral/political these from untenable, allegedly related, epistemological ones; (ibid, p. 34).

**THEIR PERFORMATIVE VIEW OF AGENCY AS MERELY CONCIEVING OF THE WORLD DIFFERENTLY SOLVING ACTUAL VIOLENCE BLAMES THE VICTIMS AND LEADS TO PASSIVE NIHILISM.**

**GUNN AND CLOUD 2K10**

[Joshua gunn and dana cloud, Phd Communicatoins, University of Texas Austin, Agentic Orientation as magical Voluntarism, Communication Theory]

Below we advance a conception of agency as an open question in order to combat magical thinking in contemporary communication theory. Although we approach the concept of agency from different theoretical standpoints (one of us from the perspective of psychoanalysis, the other, classical Marxism), **we are mutually opposed to the** (bourgeois**) idealism of magical voluntarism in recent work in communication and rhetorical studies on agenc**y.2 Our primary vehicle of argument is a critique of Foss, Waters, and Armada’s essay, ‘‘Toward a Theory of Agentic Orientation: Communication Theory 20 (2010) 50–78 © 2010 International Communication Association 51Agentic Orientation as Magical Voluntarism J. Gunn & D.L. Cloud Rhetoric and Agency in Run Lola Run,’’ which represents a magical-voluntaristic brand of practical reason (phronesis) that is increasingly discredited among a number rhetorical scholars. **We are particularly alarmed by the suggestion that even in ‘‘situations’’ such as ‘‘imprisonment or genocide ... agents have choices about how to perceive their conditions and their agency ...[which] opens up opportunities for innovating ... in ways unavailable to those who construct themselves as victims’**’ (p. 33**). The idea that one can choose an ‘‘agentic orientation’’ regardless of context and despite material limitation not only ignores two decades of research within the ﬁeld of communication studies on agency and its limitations** (and is thus ‘‘regressive’’ in more than one sense**), but tacitly promotes a belief in wish-fulﬁllment through visualization and the imagination, as well as a commitment to radical individualism and autonomy**. As a consequence, embracing magical voluntarism **leads to narcissistic complacency, regressive infantilism, and elitist arrogance.**

# \*\*\*1AR\*\*\*

**This destroys debate and entrenches racism**

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Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - but that the minority scholar himself or herself hurts and hurts badly.¶ An important problem that concerns the very definition of the scholarly enterprise now comes into focus. **What can an academic** trained to [\*694] question and to doubt n72 **possibly say** to Patricia Williams when effectively she announces, "I hurt bad"? n73 **"No, you don't hurt"? "You shouldn't hurt"?** "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74¶ "Precarious." "Obliterating."**These words** will clearly **invite responses only from fools and sociopaths; they** will, by effectively **preclud**ing **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 articles.n76Second, 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 **cynicismin** 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.