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#### The United States has forgotten. From the forgetting of the colonization of indigenous populations, the transatlantic slave trade, the Chinese Exclusion Act, the racial justifications for the drugs, to jim crow. There is no shortage of violence and blood in the history of the United States of America. This year like every year, the resolution hails us as subjects and ask us to affirm the decrease in US war powers authority.

#### As students we answer this call, not because we think that examining current political structures will reveal some metaphysical truth about the status quo, rather we answer for the purpose of thinking through various moments in history that have structured our current political situation. We won’t be explaining much of the violence of the United States, in fact we will be discussing a mere moment in history. One that we think could have been otherwise. Chemerinsky in 2011 elaborates…

Erwin Chemerinsky 11, Dean and Distinguished Professor of Law, University of California, Irvine School of Law, April 1st, "Korematsu v. United States: A Tragedy Hopefully Never to Be Repeated," Pepperdine Law Review, pepperdinelawreview.com/wp-content/plugins/bag-thumb/bag\_thumb885\_07\_chemerinsky\_camera\_ready.pdf

III. WHY KOREMATSU WAS ONE OF THE WORST DECISIONS IN HISTORY¶ Applying the criteria described above, there is no doubt that Korematsu belongs on the list of the worst Supreme Court rulings. First, in terms of the social and human impact, 110,000 Japanese-Americans, aliens, and citizens—and 70,000 were citizens—were uprooted from their life-long homes and placed in what President Franklin Roosevelt called “concentration camps.” 18 For many, if not most of them, their property was seized and taken without due process or compensation. They were incarcerated. The only determinate that was used in this process was race. William Manchester, in a stunning history of the twentieth century, The Glory and the Dream, gives this description:¶ Under Executive Order 9066, as interpreted by General De Witt, voluntary migration ended on March 27. People of Japanese descent were given forty-eight hours to dispose of their homes, businesses, and furniture; during their period of resettlement they would be permitted to carry only personal belongings, in hand luggage. All razors and liquor would be confiscated. Investments and bank accounts were forfeited. Denied the right to appeal, or even protest, the Issei thus lost seventy million dollars in farm acreage and equipment, thirty-five million in fruits and vegetables, nearly a half-billion in annual income, and savings, stocks, and bonds beyond reckoning.19¶ Manchester describes what occurred:¶ Beginning at dawn on Monday, March 30, copies of General De Witt’s Civilian Exclusion Order No. 20 affecting persons “of Japanese ancestry” were nailed to doors, like quarantine notices. It was a brisk Army operation; toddlers too young to speak were issued tags, like luggage, and presently truck convoys drew up. From the sidewalks soldiers shouted, “Out Japs!”—an order chillingly like [what] Anne Frank was hearing from German soldiers on Dutch pavements. The trucks took the internees to fifteen assembly areas, among them a Yakima, Washington, brewery, Pasadena’s Rose Bowl, and racetracks in Santa Anita and Tanforan. The tracks were the worst; there, families were housed in horse stalls.¶ . . . .¶ The President never visited these bleak garrisons, but he once referred to them as “concentration camps.” That is precisely what they were. The average family of six or seven members was allowed an “apartment” measuring twenty by twenty-five feet. None had a stove or running water. Each block of barracks shared a community laundry, mess hall, latrines, and open shower stalls, where women had to bathe in full view of the sentries. 20¶ The human impact of the actions of the United States government towards Japanese-Americans during World War II cannot be overstated. It is almost beyond comprehension that our government could imprison 110,000 people solely because of their race.¶ In terms of the judicial reasoning, Korematsu was also a terrible decision. Interestingly, Korematsu is the first case where the Supreme Court used the language of “suspect” classifications. 21 The Court did not use the phrasing of “strict scrutiny,” which came later, but the Court certainly was implying that racial classifications warrant what later came to be referred to as strict scrutiny. 22 Strict scrutiny, of course, means that a government action will be upheld only if it is necessary to achieve a compelling.

#### The Korematsu decision was far from being a radical departure from the treatment of persons of Asian/Japanese ancestry in the United States. Rather the Supreme Court decision against Korematsu is simply another step in the historical chain of violence against Asian peoples in the United States. This system of violence is a symptom of a society that seeks to oppress and enact violence against everything that it identifies as different from the homogeneity it perceives. This process of marking other as violence is the means by which power becomes ingrained in the social, political, and individual experience of being part of the United States. Power has come to determine the historical context.

Saito ‘1 [Natsu Taylor Saito 1, professor at Georgia State University College of Law, 2001, "Symbolism Under Siege: Japanese American Redress and the 'Racing' of Arab Americans as 'Terrorists,'" Asian Law Journal, 8 Asian L. J. 1, 2001, hein online]

Thus far, it has the makings of a feel-good story: a terrible thing happened, but the nation recognized its wrong and stepped forward to provide some redress. The story confirms what so many want to believe, that despite occasional aberrations this is a nation committed to democracy and the equality of peoples. Most people I encounter are open to this story. Like many Japanese Americans, I am invited to tell it at high schools and churches, even military bases. However, if we really care about achieving democracy and equality, we need to look beyond this level of the narrative.¶ Im. FUNDAMENTAL FLAWS IN THE NARRATIVE¶ There are at least two major flaws with the internment narrative. First, it accepts the notion that the internment was an aberration rather than a logical extension of the treatment of Asians in America. Second, it implies that the wrong has actually been righted.¶ A. The Internment Was Not an Aberration in the Context of Asian American History¶ Implicit in the terms of the apology, which attributed the problem to wartime hysteria and racial prejudice, is the notion that the internment was an aberration, an instance in which our nation temporarily strayed from its basic commitment to due process and equal protection.¶ But the internment was not an aberration. One need only look at the social, political, economic, and legal history of Asian Americans in the United States, from the enforcement of the 1790 Naturalization Act's limitation of citizenship to "free white persons,"3 to the exploitation of Chinese labor in the mines and building of the railroads,39 to lynchings and Jim Crow laws,40 to Chinese exclusion in the 1880s and the exclusion of the Japanese in the early 1900S,41 to the alien land laws,42 and to the National Origins Act of 1924,43 to see that the military orders to exclude and then imprison "all persons of Japanese ancestry, both alien and non-alien"4 were really a logical extension of all that had come before.¶ Between the time of the Chinese Exclusion Act of 188245 and the National Origins Act of 1924,"' immigration laws were modified to prevent nearly all Asian migration to the United States. The 1790 Naturalization Act limited citizenship to "free white persons" and Asians were held in a series of cases to be non-white.7 Thus, as Asians were incorporated into the U.S. racial hierarchy, "foreignness" became part of their racialized identity.' Some forms of discrimination, such as segregation and lynchings, were blatantly race-based, but much of it was structured, legally and socially, on the presumption that Asian Americans were not or could not become citizens. State and local laws were enacted which levied special taxes on Asian Americans; others prevented those aliens "ineligible to citizenship" from obtaining employment, possessing various kinds of licenses, or owning land.49¶ Legalized discrimination was compounded by the perpetual "enemy" status afforded Asians in popular American culture. Starting with depictions of the "yellow peril" hordes waiting to take over the country in the 1880s, Asians were routinely portrayed as sneaky, inscrutable, fanatical, unassimilable and, on top of that, fungible." They were foreign, disloyal and therefore an enemy, just as portrayed in the rhetoric of the internment. In this context, the anti-Japanese sentiment and actions taken in the 1940s were unusual only in scope, not in nature.¶ Thus, as we look briefly at the history of Asians in America, we see the internment emerging as a somewhat extreme, but not aberrant, manifestation of a well-entrenched pattern of discrimination rooted in a racialized identification of Asian Americans as perpetually "foreign.'¶ B. Flaw #2: The Real Wrong Has Not Been Righted¶ The second major problem with the standard internment narrative is that it implies that the wrong has been recognized and corrected, or at least that it could not happen again. One of the stated purposes of the Civil Liberties Act was to "discourage the occurrence of similar injustices and violations of civil liberties in the future."52 To understand whether the wrong has been corrected, we must first see if it has been correctly identified. The way the story is usually told, the wrong is one of racial prejudice playing out against a group of people in ways we now recognize to have been excessive.¶ The history of racial discrimination against Asian Americans certainly did not end with the internment. The Chinese, who were "our friends" in World War II,53 rapidly became the enemy as China "went communist." The wars in Korea and Vietnam reinforced this image, despite the fact that Asians were allies as often as they were enemies.54 The refusal to distinguish among individuals and ethnic groups has persisted from General DeWitt's famous pronouncement that "a Jap's a Jap"s through the beating death of Vincent Chin, a fifth generation Chinese American killed by unemployed auto workers in Detroit who were angry at the Japanese automobile industry,56 to the stories of hate crimes against "gooks" and "chinks" still recorded every month.57¶ It was this history that made Asian Americans so suspicious of the allegations against and treatment of Wen Ho Lee, a nuclear physicist accused but never actually charged with espionage.58 According to Neil Gotanda, "The federal government, after years of investigation, has been unable to produce any evidence of espionage. The spy charges have been maintained, not by evidence, but by constant allegations linking Wen Ho Lee to China.59 He continues:¶ The assignment to Wen Ho Lee of a presumption of disloyalty is a well- established marker of foreignness. And foreignness is a crucial dimension of the American racialization of persons of Asian ancestry. It is at the heart of the racial profile of Chinese and other Asian Americans.61 But while racism is inextricable from the story of the internment, the primary "wrong" that should be addressed by reparations is more complex. In what is still probably the best analysis of the Supreme Court's decisions in the internment cases, Yale Law School professor Eugene Rostow, in 1945, summarized the wrong as follows:¶ The Japanese exclusion program thus rests on five propositions of the utmost potential menace: (1) protective custody, extending over three or four years, is a permitted form of imprisonment in the United States; (2) political opinions, not criminal acts, may contain enough clear and present danger to justify such imprisonment; (3) men, women and children of a given ethnic group, both Americans and resident aliens can be presumed to possess the kind of dangerous ideas which require their imprisonment; (4) in time of war or emergency the military, perhaps without even the concurrence of the legislature, can decide what political opinions require imprisonment, and which ethnic groups are infected with them; and (5) the decision of the military can be carried out without indictment, trial, examination, jury, the confrontation of witnesses, counsel for the defense, the privilege against self-incrimination, or any of the other safeguards of 61 the Bill of Rights.¶ Rostow's summary describes a wrong much larger than the "relocation" of 120,000 people on the basis of their race or national origin for three or four years. It goes beyond the denial of Japanese Americans' civil rights and liberties to a dismantling of protections that are supposed to extend to everyone within this system.¶ Have these problems been corrected? The 1943 and 1944 Supreme Court opinions in the Korematsu and Hirabayashi cases have never been overturned. The coram nobis cases decided in the 1980s vacated the convictions but, as Fred Yen says, "Unfortunately, proclamations of Korematsu's permanent discrediting are premature. The Supreme Court has never overruled the case. It stands as valid precedent, an authoritative interpretation of our Constitution and the 'supreme Law of the Land.'"2 Could it happen again? Would it? Given the publicity and the reparations, it is unlikely that it will happen again to Japanese Americans, but that does not mean it could not happen to other groups. The following section explores parallels I have observed between the Asian American experience described above and the contemporary social, political, and legal treatment of Arab Americans and Muslims in the United States.¶ IV. HISTORY REPEATS AS WE WATCH: THE TREATMENT OF ARAB AMERICANS TODAY¶ A. The "Racing" of Arab Americans as "Terrorists" One way to examine whether the wrong done to Japanese Americans during World War II has been righted is to look at how the media and our political and judicial systems are responding to discrimination against Arab Americans and Muslims3 in the United States today. The possibility that Arab Americans could be interned just as Japanese Americans were lies just below the surface of popular consciousness, occasionally emerging as it did in the movie The Seige.6 We have no more legal protections against such a scenario than we did in 1942. However, we need not postulate the wholesale internment of Arab Americans to see how many of the issues faced today by Arab Americans parallel those Asian Americans have encountered.5¶ Just as Asian Americans have been "raced" as foreign, and from there as presumptively disloyal6 Arab Americans and Muslims have been "raced" as "terrorists": foreign, disloyal, and imminently threatening. Although Arabs trace their roots to the Middle East and claim many different religious backgrounds, and Muslims come from all over the world and adhere to Islam, these distinctions are blurred and negative images about either Arabs or Muslims are often attributed to both. As Ibrahim Hooper of the Council on American-Islamic Relations notes, "The common stereotypes are that we're all Arabs, we're all violent and we're all conducting a holy war."67

#### The majority opinion in the Korematsu case is an example of the security ideology inherent in the biopoltical way of thinking about the world. The racialized justification for the decisions renders life inoperable as the decision affirms the contradiction of the law as legal in itself, the very state of being Japanese was affirmed as illegal and dangerous by the Supreme Court decision. This political strategy mobilizes populations against difference and threatens any concept of life that could be thought of as valuable.

**Dillon 2007** (University of Lancaster Michael International Political Sociology wiley)

Ultimately what is therefore at stake in biopoliticized accounts of life is the account being given of life itself, and of what it is to be a life (Deleuze 1995; Agamben 1999). If you wish to contest biopolitics, you cannot do so simply by taking issue with its distributive economy, geopolitical alliances, imperializing practices or murderous promotion of reproductively developmental life planet-wide; "they will either succeed in changing our way of life, or we will succeed in changing theirs" (Rumsfeldt 2006). Ultimately, you are not only forced to contest at the level of what it is to be a living thing in particular, this living thing hitherto called Anthropos or Man. Political modernity's very anthropocentrism, of which liberal biopolitics is a revised hegemonic expression, is itself now brought into question by the many ways in which its very digital and molecular revolutions have transformed what it is to be a living thing in ways some call posthuman and postvital (Hayles 1999; Doyle 2004). There, nonetheless, in the living thing that is now thinking itself beyond itself in these ways, that newly writes, speaks and kills at will as well as on command—because Brecht says it is not given to it not to kill—there nonetheless always seems more to life than meets the molecular biopolitics of contemporary biopower, just as there was always more to the human than meets the phallo-logo anthropocentric Man.4 As Foucault noted, the biopolitics of security wager the life of the species on their own biopolitical strategies. What biopolitics of security therefore amplify in addition is how, wagering the life of the species on biopoliticizing security strategies, and in the very process of biopolitically technologizing life in the cause of its auto-governance, the speciated existence of biopolitical enframing finally calls itself into question if life—whatever it is—is not to be extinguished in the name of life. Thus, as the vital signs of life have changed so also has what a living thing is taken to be. In the process, foundational distinctions between the organic and the inorganic, life and not life, animate and inanimate, no longer hold in the ways that they once did. Reframing inanimate material in terms of code, for example, incorporates it within the now legendary lifelike capabilities of informational systems. Thus, under the regime of information, it increasingly seems as if life ought to be redefined biopolitically as animation. The implications for security politics, in particular those liberal biopolitical security discourses and practices that take life as their referent object of security, could not be more profound. The very thing that it takes as its principle of formation, life itself, becomes inoperable as what it is to be a living thing mutates in such a way that it no longer makes much sense to even pose such a question: since life-like properties can be installed in all systems by codified design, while the lifelike properties of existing systems may be nullified and redesigned by virtue of the same technical capability. Rather than mere protection, security becomes a positive life science preoccupied with experiment and design in the fashioning of resilient self-immunizing bodies. Such changes also provide additional reasons as to why contingency is so central now to the new liberal biopolitics of security, and why the very reason of contingency invokes novel forms of mathematics and synthetic sciences of combination in addition to risk and probability analysis. All of these are central to how The Long War that now incorporates the War on Terror into a war without end on behalf of life simultaneously governs through, as it is governed by the contingency of terror that exemplifies, precisely because it continuously threatens to purely operationalize in world-destructive form, the terror of contingency. Terror piles on terror here for liberal biopolitics of security as the very principle around which it revolves emergent life itself becomes inoperable as it becomes capable of negating itself.

#### This technological approach to the political produces an internal self disciplining drive that enact upon the body a gratuitous violence. To not resist power is to be seduced by powers naturalized allure that produces the self hate and self monitoring that has become characterized of the modern state. It is the invisible nature of this process and the forgetting of events contingent nature that produces the banal violence of the social fabric. This internal violence expresses itself in a very material way, in the politics of rape, racism, genocide and homophobia.

**Athanasiou 2003** (Social Anthropologist at the University of Thessaly, Athena, differences: A Journal of Feminist Cultural Studies 14.1, project muse )

The challenge, following Foucault, is to rethink “technology” not as a singularly constituted and reified instrumentality, but rather as a plural, dispersed, and discontinuous engagement as it is enacted in the following registers: biopolitical technologies, whereby an archive of political rationalities, knowledges, discourses, and practices seek to govern both the individual human body and the welfare of population; technologies of the body, whereby at stake is not (or is not *only*) the memorable image [End Page 144] of Foucault’s publicly tortured “body of the condemned” in Discipline and Punish, but rather the management of the desiring body’s life and agency; and technologies of the self, which permit individuals to act upon themselves and constitute themselves as (intelligible) self-governing subjects. As Foucault has shown, what is technological about such modalities of technology is their performative ability to incite into discourse, to call forth desires and prohibitions, and to bring intelligible figurations of human subjectivity into being. As Ronell puts it, technology has produced man as subject and world as his object (217). The globalized political investment in subjects does not wipe out the modern histories of differentiated subjects as viable or disposable according to certain standards of intelligibility, including class, economic resources, gender, sexuality, race, and ethnicity. If there is anything “new” about the technoscience of Western postmodern biopolitics, it would be that it complicates, decentralizes, proliferates, and intensifies the differentiation of power involved in the definitions, images, fantasies, and representations of “humanity” and its thinkable demarcations. Paradoxically, biopolitical discipline tends thus to be less visible, more subtly dispersed and systematically integrated in the discreet banality of cultural fabric, despite the proliferation of electronic, virtual, digital, and other technologies of surveillance and visual media. This dispersion does not imply that contemporary biopolitics entails necessarily less authoritative violence, but rather that it involves a multitude of recognized and misrecognized techniques of violence through which the conditions of human intelligibility and livability are instituted and confirmed. In the horizon of post–cold war biopolitics, the conceptual and political distinctions between criminal and symbolic violence, welfare and warfare, as well as between fatality and legality, are brought into crisis. It is in a “genealogical” mode that I look at the constitution of epistemes, identifications, discourses, disciplinary techniques, and power practices in the Europe of modernity and postmodernity, in the Europe of humanism, inhumanness, and posthumanity. By epitomizing critical variables of the modern facticity, such as transparency and self-evidence, quantitative formalization came to be indispensable to the emergence of national “population” in the European eighteenth century as a thematized object of scientific inquiry and administrative control, governmentalized through the phenomena of birth and death rates, life expectancy, fertility, patterns of hygiene and habitation. Made possible by the late-nineteenth- and early-twentieth-century epistemological emphasis on standardized quantification, the authority of referentially anchored calculative and [End Page 145] classificatory logic remains part of an imaginary in which numerical normalcy is a crucial characteristic of any nation-state worthy of the name. The contemporary instances of obdurate enmity between the nation-state and its Others, whether insiders (disenfranchised ethnic, religious, or other “minorities”) or outsiders (demonized strangers or foes) ought to be viewed, I suggest, not as irrational expressions of innate primordial sentiments, but as political phenomena grounded in modern rational collective imaginations deeply concerned with—technologically mediated—biopolitical enumeration and ascription. Not only the highly mediatized explosion of ethnic conflicts in the “post-socialist” Balkans during the past decade (such as the recent shambles of Kosovo following Yugoslavia’s demise and the disastrous involvement of the international coalition of “the West”), but also the smaller-scale and anonymous “everyday crimes” of xenophobic animosities against guest-worker and immigrant populations in various European capitalist democracies expose the enduring logic of categorical objectification and taxonomic reification in the age of transnational time-space flexibility and unboundedness. The ethnonationalist politics of rape, the ethnic cleansing and bloodletting during the war in Bosnia-Herzegovina, but also the anti-immigration politics plaguing an increasingly if unevenly integrated “postnational” Europe are expressions and mutations, but not aberrations, of this powerful truth regime.

#### What than are we to do as inherently political subjects with the privilege to speak here today? We think that the solution has been here all along. While our description of the United States has been accurate it has only been one side of the power equation. Resistance is always already ontologically priori to power, something that has always been there from the start. So we affirm resistance to the Korematsu decision by affirming Justice Murphy’s saying No to the majority opinion. Justice Murphy notes in his dissent.

Justice Murphy (Dissenting opinion Korematsu v. United States)

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must, accordingly, be treated at all times as the heirs of the American experiment, and as entitled to all the rights and freedoms guaranteed by the Constitution.

#### Saying no to Korematsu decision may seem piecemeal or anti-revolutionary, however, this act of refusal is resistance to the master-narrative of the internment. We are not under the illusion that Justice Murphy’s dissent is without issue, rather we see this point in history as an essentially contingent event that could have been otherwise. It is in recognizing this simple acting of saying No to powers claim to historical determinism that is liberatory.

**Kelly 2009** (Lecturer in Philosophy at Middlesex University Mark The Political Philosophy of Michel Foucault p 109-111)

"To say no is the minimum form of resistance. But, of course, at times that is very important," says Foucault (EW1 168). The importance of such a gesture is in the adaptedness of it as a response. To say "no" might seem like a simple diametrical refusal, as might doing the exact opposite of what was intended, but in fact these are already strategic responses in practice. Which is to say, they are not determined in their specificity by power. The no is an irruption from the human subject of power, which is not compliance, nor the regular reaction of a physical object to a quantum of force. Resistance is what opposes power, not simply diametrically but transversally, opposing by going off in a different direction to power's strategies.1 If someone tel1s me to stand up, I could stand (obey), I could continue sitting (disobey), I could lie down on the floor (disobey by doing something else), or I could stand up and punch the one who ordered me to stand, obedience with a supplement of resistance, or indeed any number of other responses; there is no "simple refusal," but rather many ways of refusing. Acts of refusal indeed typically involve power themselves, even the most passive responses: the point is in general to get the other to stop, which is to say, to act upon their actions, even if this manipulation may pale in comparison to that of the perpetrator. Of course, we must distinguish between the intention implied in the act of power and the actual intention behind it: the action of saying "Stand up!" clearly implies that the wielder of power wants me to stand, but it is perfectly possible that there is some other agenda, that he is calculating enough to anticipate a resistant reaction-he may even want to provoke me into hitting him. He may want me to disobey so that he has a pretext to take further actions. Direct resistance is therefore not assured of effectuality.

#### This historical investigation presents us with the opportunity to be critical intellectuals, our method is essential to producing resistance across the spectrum of political struggles. Voting affirmative embraces the counter-art of being not governed quite so much. We aren’t promising anything radical, just a chance a different aesthetic of resistance.

**Kelly 2009** ( Lecturer in Philosophy at Middlesex University Mark The Political Philosophy of Michel Foucault p 129-131 )

Clearly, the role Foucault prescribes here for the philosopher is essentially critical. It is the exercise not of proposing solutions, nor of discovering anything new, but of examining what is already known. Now, this purely critical vision of philosophy is somewhat surprising in that I earlier portrayed Foucault as engaging in an exercise of conceptual construction, but these two go hand-in-hand for Foucault: "If we are not to settle for the ... empty dream of freedom, ... this historico-critical attitude must also be an experimental one" (EW1 316); the invention of concepts is helpful to criticism. Foucault's conceptual activity is about trying to invent new ways of thinking-precisely as opposed to discovering deep truths. This, for him, was a universal human activity, an essential resistance: It is not ideas that guide the world. But it is precisely because the world does have ideas (and because it continuously produces lots of them) that the world is not passively led by those who direct it or by those who would like to teach everyone what to think.4 Conceptual construction is however not the activity which Foucault assigns to philosophy, unlike for Deleuze and Guattari (1994). Rather, he charges philosophy with the historical investigation of the relationship between politics and truth. Critique is for Foucault not the function only of the philosophers, however. Simultaneously with his redefinition of philosophy, Foucault (FL 461) "reclaims" the term "intellectual," charging intellectuals, who presumably constitute a broader category than philosophers, with the same critical task as philosophy. Indeed, as early as 1971, Foucault (Foucault 1974,171) identifies the critique of the functioning of institutions as "the real political task in a society such as ours."5 This was thirty-seven years ago, but society is today in the relevant respects even more in need of criticism, critique becoming more vital the more sophisticated the integrative functions of the ensemble of power relations become (cf. EW1 317). Indeed, critique, in a general sense, is in fact essential in respect of any resistance movement, regardless of the configuration of forces. In "The Subject and Power," Foucault makes the even broader claim that "the analysis, elaboration, and bringing into question of power relations and the 'agonism' between power relations and the intransitivity of freedom is ... the political task that is inherent in all social existence" (EW3 343; emphasis added). This follows for him from the fact that power is inescapable, which "makes all the more politically necessary the analysis of power relations in a given society, their historical formation, the source of their strength or fragility, the conditions that are necessary to transform some or to abolish others" (EW3 343). Foucault is influenced by Kant's interpretation of the Enlightenment :IS, in Kant's own words, "man's release from his self-incurred tutelage. Tutelage is man's inability to make use of his understanding without direction from another" (PT 7). In this spirit, Foucault depicts critique as a specific counterpart to the modern art of government, as counter-art; in Foucault’s words, “the art of not being governed quite so much” (PT 29): Critique is the movement by which the subject gives itself the right to question truth on its power effects and question power on its discourses of truth; well! critique will be the art of voluntary insubordination, that of considered indocility.6 This self-conscious resistance Foucault identifies as a hallmark of modernity, qua the Enlightenment, as inaugural to "the attitude of modernity" (EW1 309). Indeed, critique is necessary to determine whether a given tactic is truly resistant or not. This is the defining point of David Couzens Hoy's Critical Resistance: that resistance can be either with or against "domination," but what he calls "critical resistance" is essentially against it, because "critique is what makes it possible to distinguish emancipatory resistance from resistance that has been co-opted by the repressive forces" (Hoy 2004, 2). This distinction can be understood, in Foucaultian terms, not as normative, but rather as tactical. In Foucault's study of governmentality qua the problematic of modern political thought, he points to a pair of opposites inaugurated simultaneously at the level of macro-practice: while the technology of government essentially implies the question, how should one govern?, there is a simultaneous counter-art in which the governed ask how they can not be governed in the way that they are being governed (PT 27-28). While Foucault does not condemn the macro-practice of government per se, he does refuse to engage in it qua intellectual, Foucault seeing intellectuals as obligated to resist power

#### This act of resistance is an ethical –political response – our refusal of the master-narrative of history is act of self-relation which produces a politics which is capable of ethical actions. Kelly 2009 (Lecturer in Philosophy at Middlesex University Mark The Political Philosophy of Michel Foucault p 150-151)

Now, Foucault (PE 377) in the same 1983 interview distinguishes ethos from ethics: "ethics is a practice; ethos is a manner of being." While our manner of being may avert catastrophe in the domain of personal political practice, it is not in itself a practice. Foucault effectively suggests combining the philosophical ethos with an ethics counterposed to another practice, politics. Apropos of then-recent events in Poland, the imposition of martial law and imprisonment of dissidents, ethics for Foucault means not accepting what was happening in Poland; despite there being nothing the government of France can do about it, hence no "political" solution, there is an ethical practice of non-acceptance of this state of affairs. This is not critique per se, but it is clearly related to Foucault's conception of critique as not limited by the need to propose an alternative-the difference is that this ethics can be a non-specialised, non-intellectual, mass practice. Critique is thus allied to an anti-political ethical practice: "The ethicopolitical choice we have to take every day is to determine which is the main danger" (EWI 256). Note that here we are trying to see the greatest danger, not the least of our arrayed evils: we are choosing what to combat, not what to endorse; the intellectual's critique is an indispensable aid to this everyday ethico-political judgement. The ethos and ethics of the critical intellectual belong with the practices we detailed in the previous chapter: the ethos is a manner of being which complements the critical practice of the intellectual and prevents him being pulled into nefarious politics; this ethics is the generalised practice in response to pervasive government by which all those who are governed, citizen-intellectual and citizen simpliciter alike, hold government to account. The notion of ethos here in particular, however, points in a different direction to that in which the intellectual critical practice points, towards the philosopher's self rather than her world. Although an ethos is not a practice, its inculcation points towards a practice oriented towards the self, towards "ethics" in a different sense of the word to the one we have just outlined. This is the ethics for which Foucault is generally known. In the introduction to the second volume of his History of Sexuality, The Use of' Pleasure, composed in the last years of his life and published only shortly before his death, Foucault defines this ethics as “ethics, understood as the elaboration of a form of self-relation that enables the individual to constitute himself as the subject of a moral conduct” (LP 274; cf. UP 251). While of course we can draw connections between this ethics of subjectivation and the ethics of permanent resistance-Bernauer and Mahon (1994, 144-45) indeed seem to cast the latter notion of ethics as a kind of formative stage of the former, and as we will see, Foucault thinks that effective resistance may ultimately depend on practices of ethical self-relation-they are not straightforwardly the same thing, i.e. Foucault uses the word "ethics" in at least two different senses in his later work. Ethics is here defined as similarly being a matter of self-relation and subject-constitution. Now, we have argued that the formation of the subject through self-relation is, in Foucaultian terms, "subjectivation," and that this first occurred with the Greeks, which is precisely the context in which Foucault comes to this definition of ethics, on the basis of his examination of ancient Greek ethical thought. This is not to say that ethics is synonymous with subjectivation, but it does seem to be the case historically that subjectivation was invented in the same moment as ethics. As Deleuze (1988, 100-101) puts it in his reading of Foucault, the Greeks "bent the outside, through a series of practical exercises." These practices were, in Greek terms, the tekhne tou biou, the "art of life," one form of which was the epimeleia heautou, the souci de soi, care/concern oflfor the self. They were a set of tools for exercising power over oneself, in a constructive manner. These practices are the armoury of both subjectivation and of ancient Greek ethics. The difference between ethics and self-formation simpliciter is that subjectivation does not logically of itself imply the existence of a moral code, although one might, via a Butlerian/ Lacanian psychoanalytical reading of Foucault, or indeed on the basis of a Nietzschean genealogy of morals, argue that there is a necessary connection between an external code and the formation of subjectivity. Ethics is, on Foucault's above definition, a matter of the articulation of forms of self-relation which mediate the code in producing "the ethical subject" (UP 27)

#### We must criticize our production of legalized subjects and objective legal prescriptions. Suspend the call to resolve legal blueprints – embrace our process of interrogating the affirmative’s normative presumptions.

Wendy Brown Poli Sci @ Berkeley and Janet Halley Law @ Harvard ‘2 *Left Legalism/Left Critique* Eds. Wendy Brown and Janet Halley p. 26-33

Although critique has at times presumed that a truth could be arrived at with regard to the constitutive nature and meaning of the premises of a given work or doctrine, it does not inevitably entail this particular Enlightenment conceit. Critique is not weakened by admitting its investments – consider Kant in *The Critique of Pure Reason*, or Marx in his *Critique of Hegel’s Philosophy of Right* or “On the Jewish Question” – because the aim of critique is to reveal subterranean structures or aspects of a particular discourse, not necessarily to reveal the truth of or about that discourse. What critique promises is not objectivity but perspective; indeed, critique is part of the arsenal of intellectual movements of the past two centuries that shatters the plausibility of objectivity claims once and for all. In the insistence on the availability of all human productions to critique, that is, to the possibility of being rethought through an examination of constitutive premises, the work of critique is potentially without boundary or end. So what is the value of critique, and why should the left in particular cherish it both intellectually and politically? Critique offers possibilities of analyzing existing discourses of power to understand how subjects are fabricated or positioned by them, what powers they secure (and disguise or veil), what assumptions they naturalize, what privileges they fix, what norms they mobilize, and what or whom these norms exclude. Critique is thus a practice that allows us to scrutinize the form, content, and possible reworking of our apparent political choices; we no longer have to take them as givens. Critique focuses on the workings of ideology and power in the production of existing political and legal possibilities. It facilitates discernment of how the very problem we want to solve is itself produced, and thus may help us avoid entrenching or reproducing the problem in our solutions. It aims to distinguish between symptoms and sources, as well as between effects of power and origins of power. It invites us to analyze our most amorphous and inchoate discontents and worries, indeed to let these discontents and worries themselves spirit the critique. And it invites us to dissect our most established maxims and shibboleths, not only for scholastic purposes, but also for the deeply political ones of renewing perspective and opening new possibility.¶ Let us admit forthrightly, however, that critique does not guarantee political outcomes, let alone political resolutions. Yet, rather than apologize for this aspect of critique, why not affirm it? For part of what it means to dissect the discursive practices that organize our lives is to embark on an inquiry whose outcome is unknown, and the process of which will be radically disorienting at times. To probe for its constituent elements discontent about a particular political aim or strategy is not to know immediately what might reform or replace that aim. Indeed, one of our worries about legalism pertains to its impulse to call the question too peremptorily. Marx’s early critiques of left Hegelianism worked closely with the texts and political formulations that he found dissatisfying, but they were not expressly organized by a clear alternative. It was *through* the process of subjecting political and philosophical idealism to critique that Marx found his way to dialectical materialism and political economy, but a careful reading of this early work makes clear that Marx did not know *in advance* where his critiques would take him, and that premature closure on the question would have stymied both the critique and the productive disorientation it achieved for him about left Hegelianism. Surely we should not disavow a left critique of the tensions and contradictions in affirmative action simply because that critique does not deliver in advance a blueprint or set of strategies for achieving racial, gender, or class justice in America. Not knowing what a critique will yield is not the same as suspending all political values while engaged in critique. It is possible to care passionately about offering richer educational opportunities to those historically excluded from them while subjecting to ruthless critique the institutional and discursive practices that have thus far organized that aim. It is possible to sustain a deep commitment to the vision of equality for sexual minorities in a heterosexual culture while subjecting to critique a range of techniques – from the campaign for gay marriage to the constitution of queers as genetically predetermined – advanced in the name of such equality. And even if critique reveals problematics that shake those commitments – for instance, by revealing maldistributions in education that lack the historical pedigree of racially marked ones but that strike us as urgently unjust, or by revealing that the idea of “sexual minorities” is at once so incoherent and so interpellative that it may belong under the heading “the problem” rather than the heading “the solution” – the resulting disorientation remains deeply *political*. And so, although political commitments may constitute both the incitement to critique and the sustaining impulse of it, these commitments themselves will almost inevitably change their shape in the course of its undertaking. Critique is worth nothing if it does not bring the very terms of such commitments under scrutiny, if it does not transform its content and the discourse in which it is advanced. In this volume, Judith Butler argues for just such a transformation when she warns that to remain within the existing terms of the gay kinship debates is to accept “an epistemological field structured by a fundamental loss, one that we can no longer name enough even to grieve.” ¶ So critique is risky. It can be a disruptive, disorienting, and at times destructive enterprise of knowledge. It can be vertiginous knowledge, knowledge that produces bouts of political inarticulateness and uncertainty, knowledge that bears no immediate policy outcomes or table of tactics. And it can include on its casualty list a number of losses – discarded ways of thinking and operating – with no clear replacements. But critique is risky in another sense as well, what might be called an affirmative sense. For critique hazards the opening of new modalities of thought and political possibility, and potentially affords as well the possibility of enormous pleasure – political, intellectual, and ethical. ¶ One of the preeminent pleasures of critique is its relief effect. Rather than suppressing or banishing our political anxieties or discontents, critique invites us to take them seriously and attend to them. Rather than wait out mutely a political campaign to which we feel we in some way ought to belong but whose terms are faintly or overtly untenable to us, critique allows us a form of engagement. Critique, in short, gives us something to do other than go home when the current aims and strategies of a constituency to which we feel some degree of belonging have choked us into silence. If, as Janet Halley argues, sex harassment law, which we as feminists once heralded as offering a crucial name and source of redress to one site of women’s subordination, now appears to be on a doctrinal path of heteronormativity and sexual moralism, critique enables interlocution with sex harassment regulation. If the recently passed federal Defense of Marriage Act and state versions such as the Knight Initiative in California, which prohibits recognition of out-of-state gay marriages, strikes some feminists, leftists, and queers as having been incited by a wrongheaded ambition on the part of gays to obtain access to an institution subject to critique from many angles, critique affords us something to do besides voting for “neither of the above.” Critique, in other words, offers relief from political double binds that may paralyze both action and speech, and this by itself can be an enormous source of pleasure. Indeed, there can be a kind of euphoria in being released to think critically about something that one experiences as constraining, limited, or gagging. Rather than simply live the double binds, we are enabled through critique to articulate them and, then, to begin to rework them. ¶ But there is more than relief at stake in the relationship of critique to double binds. For even as critique brings out the tensions, problems, or binds in a particular political formation, it also has the capacity to reconnect us to our aims and hopes, as it helps us to disengage from the twisted version of those aims and hopes in particular political or legal formations. If we care deeply about the struggle for racial justice in the United States, but we have grown wary of the exhaustive identification of that struggle with uninterrogated and tension-ridden affirmative action policies under siege, critique allows us to recover the kindling spirit of what has become a cynical or disingenuous relationship to those policies – the spirit that attached itself to racial justice in the first place. Here, we ask our fellow teachers: How many times have you grimaced with irony when your passionate desire to bring racial diversity to your institution got you assigned to make recruitment phone calls to the ten African American students admitted by your program (and by the counterparts to your program at every institution yours competes with)? How many times have you read an admissions file and wondered: Where did this student learn the diversity dance (“When my grandmother came to America, she never dreamed that I would be writing this essay”), and how is it hiding her real trajectory? How many times have you pondered whether the students of color you are admitting under the rubric of affirmative action are the ones most unfairly deprived of educational opportunity till now, or the ones whose lives would be most improved if they had a creamier slice of the higher-education pie? How many times have you watched an implicit requirement that your program admit the “right” number of blacks with respect to Latinos with respect to Native Americans displace the questions: Which of these students can benefit most from being her? Which have intellectual appetites that will most readily gain energy from the particular education we offer? How did this chilly, technocratic exercise in achieving “mix” become the object of our protracted labor to abrade the whiteness of our institutions and repair the injustice of race-based exclusions? And how many times, while reading with pain the work of a student of color who has radically disappointed your expectations, have you asked yourself: Sure, the stigma of being an “affirmative action baby” has been deployed by conservatives to delegitimate affirmative action, but what if we stopped denouncing the stigma as wholly illusory and dealt forthrightly with the demoralization – and alienated performance – it can produce? ¶ Critique begins by allowing such torments, worries, and questions – those surfacing from practice, from engagement, from experience, as well as from theoretical quandaries – to shape its pursuit. Katherine Franke’s anxiety about the overreach of sexuality as an analytical category of power and Wendy Brown’s distress about the regulatory dimensions of many feminist rights claims are examples of just such beginnings. The gesture can relieve these worries of their shadowy, traitorous, and often suppressed status as it crafts them into a project that insists on understanding by precisely what paths, mechanisms, and contingencies we have to come to a particular troubling pass. It embodies a will to knowledge, *it really wants to know* how things work and why, not just what principle we are supposed to uphold, what line we are supposed to toe, what side we are supposed to cheer. And in this work, it can free us from our all too frequently cynical or despairing relationships to our most deeply held values and rekindle the animating spirit of those values. Thus Brown details the contradictions that seemingly beset feminist identity-based rights claiming in order to argue that they are not double binds that should constrain feminist justice seeking, but rather paradoxes that can extend its diagnostic and utopian reach if we read and navigate them carefully. Drucilla Cornell offers a ruthless critique of liberal legalist bases for abortion access in order to arrive at politically more satisfying if in some ways also riskier arguments for abortion rights. As Halley and Ford seek to peel away cultural regulatory projects imported into the antidiscrimination regime when we made hostile environment, sexual harassment, and discrimination against “racial cultures” actionable, they aim in part to return priority to sex and race antidiscrimination. And David Kennedy shows how international law systematically captures renewal efforts so that he can illuminate the political stakes of a breakaway effort that engaged scholars and practitioners in agonized and ecstatic social practices of critique and professional engagement.¶ Critique offers another source of pleasure related to this one. It can interrupt the isolation of those silenced or excluded by the binds of current legal or political strategies; indeed, it can produce conversation in which alternative political formations might be forged. Far from being the isolated reproach of a malcontent, critique can conjure intellectual community where there was none, where the hegemonic terms of political discourse only set one for or against a particular issue or campaign but did not permit of alternatives. The relief effect, in other words, can be contagious, releasing from political and intellectual constraints not only the authors of critique but an audience interpellated by it. To consider this in terms of the concrete project of this book: if part of the reason the left feels so small and beleaguered today pertains to the fact that legalism has nearly saturated the entire political culture, thus making left projects nearly indistinguishable from more mainstream liberal ones, then critique of the sort this book features enables the possibility of discerning and reclaiming left projects within liberalism, thereby connecting with one another those who have a common concern with certain kinds of political problems, constraints, and ideals. In this light, critique bids to operate as the basis of the resuscitation of left communities; it can be formative and potentially connective, an image which stands in sharp contrast to the now conventional view of critique as either destructive or irrelevant. ¶ This discovery of others who share one’s worries and discontents with existing political practices or reform strategies, this opening of conversation outside the lines of existing practices also sketches a sensibility that itself might be worth cultivating both politically and intellectually. This is a sensibility extralegal in character, one that presses against limits in part to understand their binding force, one that is irreverent toward identity categories and other governing norms, and above all, one that is unattached to the intellectual suffering that attends intellectual isolation. It wants to re-cover the pleasure of connection in intellectual and political work; indeed, it casts pleasure as that which makes such work both rich and compelling.¶ Of course, there are those who would render this very valuation of pleasure an objection to the world: we are attempting to cultivate and promulgate, who would treat attention to suffering rather than pleasure as an index of the value of all intellectual and political work. There are those who not only cast progressive politics as necessarily hound to the relief of suffering but regard any pleasure taken in intellectual or political work with suspicion, as a sign that the work is not serious in its range or reach, that it is not committed to the downtrodden, that it does not depict the world from their point of view. In this hydraulic model of suffering and pleasure in politics, in which the presence of each signifies the absence of the other, pleasure is presumed to be indifferent to or to erase suffering. The sign of true political commitment is unstinting, self-effacing devotion to a cause of misery, and where there is misery, no pleasure can be had.¶ But what if pleasure is itself a crucial source of political motivation? The desire and energy to make a better world, one in which one really wants to live, cannot be easily generated from an ethos that casts pleasure as a luxury. Moreover, what if pleasure and the relief of suffering are not opposites? What if they can be intermixed in complex and productive ways? And what if the relief of suffering is not the sole basis of worthy political work? Some emancipatory and egalitarian visions may require more of us than the present demands. Some might even induce a certain suffering, for example, more intense involvement in the making of collective life, more responsibility for others, more limitations on wealth or in the use of the earth’s resources. Similarly, some of these projects may have little to do with what ordinarily qualifies as suffering but may pertain instead to challenging regimes of domination in which palpable suffering is largely imperceptible. Let us suppose for a moment that most people actually enjoy life under capitalism, that most women do not experience the unequal sexual division of labor as a source of pain, that most slaves were happy most of the time: Would that disable a left critique of capitalist regimes for the domination, alienation, inequality, and wasteful production that they entail? Would that preclude feminists from seeking to restructure a gendered political economy? Would that foreclose systematic critiques of sheer domination?¶ We wish to challenge yet another constraint on critique issued by, the suffer-mongerers. In the insistence that all political intellectual work must be directly addressed to suffering and its potential redress, there is a radical foreclosure of the very intellectual range and reach (hat we have been arguing for as that which is opened and pursued by critique. An intrepid inquiry into the discourses that organize suffering and political life more generally, or the genealogical, deconstructive, historical, or discourse analytical exercises that allow us to rethink the constitutive terms of particular political problems — this kind of work is often ruled out by presuppositions about what constitutes political work, what suffering is, and what its mandates are. So it is not simply that we wish to demote suffering from its pride of place as an organizing value for political intellectual work, not simply that we refuse the antinomy between suffering and pleasure, not simply that we want to recuperate the value and practice of pleasure in intellectual and political life, not simply that we want political thinking to be unrestricted by moralistic mandates unselfconscious about their own origins and energies. The cultivation of critique also upends the semiotic and political fixity and stability of suffering itself. ¶ If it seems we are simultaneously arguing for the politically enriching dimensions of critique and against the direct subordination of critique to politics – against a construction of the intellectual as a political service worker – then we have achieved precisely the tension we want. Critique potentially reinvigorates politics by describing problems and constraints anew, by attending to what is hidden, disavowed, or implicit, and by discerning or inventing new possibilities within it. But critique can do this only to the extent that it is unbridled from the terms of the political problem that animate it. Similarly, while political life requires responses according to its own contingencies and temporalities, critique cannot bear fruit if it is unilaterally submitted to that urgency, if seamless reconciliation of political and intellectual life is demanded, if we bestow the power of foreclosure on the questions Where is all this going? What are the political implications? What is to be done? Not only will the intellectual reach of critique be dramatically foreshortened by such demands, but both its political inventiveness and the richness of intellectual pleasure that it offers will be curtailed as well. In short, we want to affirm and articulate the important relation between critique and political work without identifying or collapsing the two projects.

#### The discourse of legal reform rationalizes oppression. Overturning Korematsu strengthens our ideological fantasy of a world ordered by normative legal criteria. The discourse of legal policy prescription systematically excludes alternatives to juridified life.

Robert Gordon Law @ Stanford ’87 UNFREEZING LEGAL REALITY: CRITICAL APPROACHES TO LAW 15 Fla. St. U.L. Rev. 195 L/N

Now a central tenet of CLS work has been that the ordinary discourses of law – debates over legislation, legal arguments, administrative and court decisions, lawyers’ discussions with clients, legal commentary and scholarship, etc. – all contribute to cementing this feeling, at once despairing and complacent, that things must be the way they are and that major changes could only make them worse. Legal discourse accomplishes this in many ways. First by endlessly repeating the claim that law and the other policy sciences have perfected a set of rational techniques and institutions that have come about as close as we are ever likely to get to solving the problem of domination in civil society. Put another way, legal discourse paints an idealized fantasy of order according to which legal rules and procedures have so structured relations among people that such relations may primarily be understood as instituted by their consent, their free and rational choices. Such coercion as apparently remains may be explained as the result of necessity – either natural necessities (such as scarcity or the limited human capacity for altruism) or social necessities. For example, in a number of the prevailing discourses, the ordinary hierarchies of workplace domination and subordination are explained: (1) by reference to the contractual agreement of the parties and to their relative preferences for responsibility versus leisure, or risk taking versus security; (2) by the natural distribution of differential talents and skills (Larry Bird earns more as a basketball player because he is better); and (3) by the demands of efficiency in production, which are said to require extensive hierarchy for the purposes of supervision and monitoring, centralization of investment decisions, and so forth. There are always some residues of clearly unhappy conditions – undeserved deprivation, exploitation, suffering – that cannot be explained in any of these ways. The discourses of law are perhaps most resourceful in dealing with these residues, treating them as, on the whole, readily reformable within the prevailing political options for adjusting the structures of ordinary practices – one need merely fine tune the scheme of regulation, or deregulation, to correct them. But the prevailing discourse has its cynical and worldly side, and its tragic moments, to offset the general mood of complacency. In this mood it resignedly acknowledges that beyond the necessary minimum and the reformable residues of coercion and misery there is an irreducible, intractable remainder – due to inherent limits on our capacity for achieving social knowledge, or for changing society through deliberate intervention, or for taking collective action against evil without suffering the greater evil of despotic power. ¶ These discourses of legal and technical rationality, of rights, consent, necessity, efficiency, and tragic limitation, are of course discourses of power – not only for the obvious reasons that law’s commands are backed by force and its operations can inflict enormous pain, but because to have access to these discourses, to be able to use them or pay others to use them on your behalf, is a large part of what it means to possess power. Further, they are discourses that – although often partially constructed, or extracted as concessions, through the pressure of relatively less powerful groups struggling from below – in habitual practice tend to express the interests and the perspectives of the powerful people who use them. The discourses have some of the power they do because some of their claims sound very plausible, though many do not. The claim, for example, that workers in health-destroying factories voluntarily “choose,” in any practical sense of the term, the risks of the workplace in return for a wage premium, is probably not believed by anyone save those few expensively trained out of the capacity to recognize what is going on around them. In addition, both the plausible and implausible claims are backed up in the cases of law and of economics and the policy sciences by a quite formidable-seeming technocratic apparatus of rational justification – suggesting that the miscellany of social practices we happen to have been born into in this historical moment is much more than a contingent miscellany. It has an order, even if sometimes an invisible one; it makes sense. The array of legal norms, institutions, procedures, and doctrines in force, can be rationally derived from the principles of regard for individual autonomy, utilitarian efficiency or wealth creation, the functional needs of social order or economic prosperity, or the moral consensus and historical traditions of the community.¶ There are several general points CLS people have wanted to assert against these discourses of power. First, the discourses have helped to structure our ordinary perceptions of reality so as to systematically exclude or repress alternative visions of social life, both as it is and as it might be. One of the aims of CLS methods is to try to dredge up and give content to these suppressed alternative visions. Second, the discourses fail even on their own terms to sustain the case for their relentlessly apologetic conclusions. Carefully understood, they could all just as well be invoked to support a politics of social transformation instead. Generally speaking, the CLS claims under this heading are that the rationalizing criteria appealed to (of autonomy, functional utility, efficiency, history, etc.) are far too indeterminate to justify any conclusions about the inevitability or desirability of particular current practices; such claims, when unpacked, again and again turn out to rest on some illegitimate rhetorical move or dubious intermediate premise or empirical assumption. Further, the categories, abstractions, conventional rhetorics, reasoning modes and empirical statements of our ordinary discourses in any case so often misdescribe social experience as not to present any defensible pictures of the practices that they attempt to justify. Not to say of course that there could be such a thing as a single correct way of truthfully rendering social life as people live it, or that CLS writers could claim to have discovered it. But the commonplace legal discourses often produce such seriously distorted representations of social life that their categories regularly filter out complexity, variety, irrationality, unpredictability, disorder, cruelty, coercion, violence, suffering, solidarity and self-sacrifice.