## 1NC

### 1

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

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

Army Officer School ‘04

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

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

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

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

Ericson ‘03

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

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

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

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

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

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

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

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

That means the military

Random House Dictionary 2013

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

commander in chief

noun, plural commanders in chief.

1.

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

2.

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

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

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

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

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

Mellor, European University Institute Graduate Student, 13

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

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

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

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2

Starting politics from the standpoint of an excluded identity-group is a vengeful politics of resentment—it can only position itself reactively against a universal like white supremacy, inevitably re-instantiating the terms of oppression.

Bhambra ‘10

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

2 The Reification of Identity

We wish to turn now to a related problem within identity politics that can be best described as the problem of the reification of politicised identities. Brown (1995) positions herself within the debate about identity politics by seeking to elaborate on “the wounded character of politicised identity’s desire” (ibid: 55); that is, the problem of “wounded attachments” whereby a claim to identity becomes over-invested in its own historical suffering and perpetuates its injury through its refusal to give up its identity claim. Brown’s argument is that where politicised identity is founded upon an experience of exclusion, for example, **exclusion** itself **becomes perversely valorised** in the continuance of that identity. In such cases, group activity operates to **maintain and reproduce** the identity created by injury (exclusion) **rather than** – and indeed, often in opposition to – **resolving the injurious** **social relations** **that generated claims around that identity in the first place**. If things have to have a history in order to have a future, then the problem becomes that of how history is constructed in order to make the future. To the extent that, for Brown, identity is associated primarily with (historical) injury, the future for that identity is then **already determined by the injury “as both bound to the history that produced it and as a reproach to the present which embodies that history**” (ibid 1995: 73). Brown’s suggestion that as it is not possible to undo the past, the focus backwards entraps the identity in reactionary practices, is, we believe, too stark and we will pursue this later in the article. Politicised identity, Brown maintains, “emerges and obtains its unifying coherence through the politicisation of exclusion from an ostensible universal, as a protest against exclusion” (ibid: 65). Its continuing existence **requires** both **a belief in** the **legitimacy of the universal ideal** (for example, ideals of opportunity, and reward in proportion to effort) and enduring exclusion from those ideals. Brown draws upon Nietzsche in arguing that such identities, produced in **reaction** to conditions of disempowerment and inequality, then **become invested in their own impotence through practices of**, for example, **reproach, complaint, and revenge**. These are “reactions” in the Nietzschean sense since they are s ubstitutes for actions or can be seen as negative forms of action. Rather than acting to remove the cause(s) of suffering, that suffering is instead ameliorated (to some extent) through “the **establishment of suffering** as the measure of social virtue” (ibid 1995: 70), and is compensated for by the **vengeful pleasures of recrimination**. Such practices, she argues, stand in sharp distinction to – in fact, provide obstacles to – **practices that would seek to dispel the conditions of exclusion.** Brown casts the dilemma discussed above in terms of a choice between past and future, and adapting Nietzsche, exhorts the adoption of a (collective) will that would become **the “redeemer of history”** (ibid: 72) through its focus on the possibilities of creating different futures. As Brown reads Nietzsche, the one thing that the will cannot exert its power over is the past, the “it was”. Confronted with its impotence with respect to the events of the past, the will is threatened with becoming simply **an “angry spectator”** mired in bitter recognition of its own helplessness. The one hope for the will is that it may, instead, achieve a kind of mastery over that past such that, although “what has happened” cannot be altered, the past can be denied **the power** of continuing to determine the present and future. It is only this **focus on the future**, Brown continues, and the capacity to make a future in the face of human frailties and injustices that **spares us** **from** a rancorous **decline into despair**. Identity politics structured by ressentiment – that is, by suffering caused by past events – can **only** break out of the cycle of “slave morality” by remaking the present **against the terms of the past**, a remaking that requires a “forgetting” of that past. An act of liberation, of self-affi rmation, this “forgetting of the past” requires an “overcoming” of the past that offers identity in relationship to suffering, in favour of a future in which identity is to be defi ned differently. In arguing thus, Brown’s work becomes aligned with a position that sees the way forward for emancipatory politics as residing in a movement away from a “politics of memory” (Kilby 2002: 203) that is committed to articulating past injustices and suffering. While we agree that investment in identities premised upon suffering can function as an obstacle to alleviating the causes of that suffering, we believe that Brown’s argument as outlined is problematic. First, following Kilby (2002), we share a concern about any turn to the future that is fi gured as a complete abandonment of the past. This is because for those who have suffered oppression and exclusion, the injunction to give up articulating a pain that is still felt may seem cruel and impossible to meet. We would argue instead that the “turn to the future” that theorists such as Brown and Grosz call for, to revitalise feminism and other emancipatory politics, need not be conceived of as a brute rejection of the past. Indeed, Brown herself recognises the problems involved here, stating that [since] erased histories and historical invisibility are themselves such integral elements of the pain inscribed in most subjugated identities [then] the counsel of forgetting, at least in its unreconstructed Nietzschean form, seems inappropriate if not cruel (1995: 74). She implies, in fact, that the demand exerted by those in pain may be no more than the demand to exorcise that pain through recognition: “all that such pain may long for – more than revenge – is the chance to be heard into a certain release, recognised into self-overcoming, incited into possibilities for triumphing over, and hence, losing itself” (1995: 74-75). Brown wishes to establish the political importance of remembering “painful” historical events but **with a crucial caveat**: that the purpose of remembering pain is to enable its release. The challenge then, according to her, is to create a political culture in which this project does not mutate into one of **remembering pain for its own sake**. Indeed, if Brown feels that this may be “a pass where we ought to part with Nietzsche” (1995: 74), then Freud may be a more suitable companion. Since his early work with Breuer, Freud’s writings have suggested the (only apparent) paradox that remembering is often a condition of forgetting. The hysterical patient, who is doomed to repeat in symptoms and compulsive actions a past she cannot adequately recall, is helped to remember that traumatic past in order then to move beyond it: she must remember in order to forget and to forget in order to be able to live in the present.7 This model seems to us to be particularly helpful for the dilemma articulated by both Brown (1995) and Kilby (2002), i nsisting as it does that “forgetting” (at least, loosening the hold of the past, in order to enable the future) cannot be achieved without first remembering the traumatic past. Indeed, this would seem to be similar to the message of Beloved, whose central motif of haunting (is the adult woman, “Beloved”, Sethe’s murdered child returned in spectral form?) dramatises the tendency of the unanalysed traumatic past to keep on returning, constraining, as it does so, the present to be like the past, and thereby, disallowing the possibility of a future different from that past. As Sarah Ahmed argues in her response to Brown, “in order to break the seal of the past, in order to move away from attachments that are hurtful, we must first bring them into the realm of political action” (2004: 33). We would add that the task of analysing the traumatic past, and thus opening up the possibility of political action, is unlikely to be achievable by individuals on their own, but that this, instead, **requires** **a “community” of participants** dedicated to the serious epistemic work of remembering and interpreting the objective social conditions that made up that past and continue in the present. The “pain” of historical injury is not simply an individual psychological issue, but stems from **objective social conditions which perpetuate**, for the most part, forms of **injustice and inequality into the present.**

Black liberation’s endless revolution causes permanent passivity towards structural oppression, which turns the case—only beginning from a politics of black redemption can effectuate change.

Andrews ‘10

Kehinde, PhD, University of Birmingham, “Back to Black: Black Radicalism and the Supplementary School Movement”

Black redemption vs. Black liberation

Over the course of conducting the present research study a fault line in Black radical theory and practice has become apparent. What separates Black radicalism from the Black liberal tradition is the rejection of the mainstream and the resultant embracing of Blackness. However, in embracing Blackness there has historically been a split between cultural nationalists on the one hand and Black radicals on the other (Newton, 1974; Ngozi-Brown, 1997). In today‘s society this split is manifest in the difference between **Black redemption** and **Black liberation.** Black redemption is the politics of ‗**loving Blackness**‘ (hooks, 1995; pg.146). Reclaiming Black pride through a process of embracing Blackness has been central to a Black radical critique, embodied in Garvey‘s slogan ‗the Black skin is not a badge of shame but rather a glorious symbol of greatness‘ (Cronon: 1969: pg.4). The redemptive work through which Blackness has been reclaimed has primarily been psychological and cultural. Cross (1971) talked of the Negro-to-Black conversion where people moved through stages of ignorance of Blackness to adopting with a positive, revolutionary Black identity; whilst Rastafarianism is based on returning the mind and body to Africaness (McFarlane, 1998). The politics of redemption is perhaps best summed up in the slogan ―**Black is beautiful**‖ and was a necessary step for Black people due to the destruction of Blackness during enslavement and colonialism. Black redemption is a **central and fundamental** **force** of Black radicalism. Within the Lumumba school the politics of Black redemption were highly evident. The impact of stepping into the classroom has been noted in Chapter Seven, with the positive images of Africa and strong representations of Blackness. A lot of emphasis was placed on redeeming Blackness in the sessions, when Kamili or Kemi would tell the students to take pride in being Black and find strength within it. The Black history lessons too, formed a redemptive politics where we would teach the history of Black people to instil pride in the students (Graham, 2001). It is also not just for the benefit of the young, with Black studies also being run for adults to engage in their history. The Black-led nature of the learning environment could be seen as redemptive politics, in that it allowed for the students to see Black people in positions of power and therefore redeem Blackness. A major feature of the Uhuru Organisation is connecting Blackness back to Africa and this can be seen in the celebration of Kwanzaa. Kwanzaa has been discussed in Chapters Three and Six. In the Lumumba school there was no focus on Christmas, rather Kwanzaa and its seven principles. I also attended a Kwanzaa event organised by the Uhuru Organisation in the local community. Chapter Six detailed a discussion between myself and Henry about the effectiveness and purpose of the Kwanzaa celebration. Henry used to be involved with Uhuru and explained that the staunch Black nationalism of the organisation in the past had rejected Kawanzaa outright. Henry had distanced himself from Uhuru precisely because of their shift towards what he perceived as a more cultural nationalist position. It was, therefore, surprising that after the event Henry was so positive about Kwanzaa. Seeing Black people come together in a positive acclamation of each other was a moving experience for him. It is here where we can see the evolution of the debate towards notions of Black redemption and liberation, and see the need for a combination of the two. Black liberation refers to the active movement of the community toward changing material conditions. Black liberation is the call for politics and action necessary to destroy the structures of racism**, or at least to shield ourselves from them**. Revolution is the only logical endpoint of Black liberation. However, the radical claim for Black revolution in the West has been all but rescinded, crushed by the reality that such demands are never going to be met. This represents the fundamental challenge to Black radicalism, the seeming impossibility of the task. Black radical theory of capitalist oppression and racism as inherent to the system, can be akin to **staring into an abyss**. **The problem is so large that it can seem as if there is nothing we can do about it.** CRT‘s approach to this has been to almost bury its head in the sand and say we should march on singing into the fire. Black redemption offers us salvation of the self **by taking pride in and expressing our Blackness.** In talking to people about Black radicalism they are often turned off by what they perceive as the negativity of it all. When we argue that society is racist, and things have not necessarily changed for the better over the last four decades, people see us stuck in the past and blaming ―Whitey‖ for our problems. They do not see any hope of redemption, let alone prospects for liberation. The problem with much of the Black radical movement is that we have neglected **the difficult questions** of how to change society and instead relied on the panacea of a redemptive cultural politics. Black redemption is absolutely necessary to any project of Black liberation, but it cannot be all that we do. There is no use ‗loving Blackness‘ if we do nothing to improve the lives and futures of Black people. The biggest success of Black radicalism has been the reclamation of Blackness and finding redemption in who we are. The challenge for the future is how to use this redemption to create a movement that can bring significant changes to the position of Black people across the globe.

Ballots are not productive currency—the aff turns them into palliatives that displace positive political projects in favor of the existing system

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

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

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

Enns 12

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

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

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

Bhambra ‘10

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

1 Exclusionary Politics

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

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

Brown ‘95

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

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

with the mantle of truth worn by identity-based speech. Moreover, post identity political positions and conversations potentially replace a politics of **difference** with a politics of **diversity**—differences grasped from a perspective larger than simply one point in an ensemble. Postidentity public positioning **requires** an outlook that discerns structures of dominance within diffused and disorienting orders of power, thereby stretching toward a more politically potent analysis than that which our individuated and fragmented existences can generate. In contrast to Di Stefano's claim that 'shared identity” may constitute a more psychologically and politically reliable basis for “attachment and motivation on the part of potential activists,” I am suggesting that **political conversation oriented toward diversity and the common**, **toward world rather than self**, and involving a conversion of ones knowledge of the world from a situated (subject) position into a public idiom, offers us the greatest possibility of countering postmodern social fragmentations and political disintegrations.¶ Feminists have learned well to identify and articulate our "subject positions —we have become experts at politicizing the “I” that is produced through multiple sites of power and subordination. **But the very practice so crucial to making these elements of power visible** **and subjectivity political** may be partly at odds with the requisites for developing political conversation **among a complex and diverse “we.”** We may need to learn public speaking and the pleasures of public argument not to overcome our situatedness, but in order **to assume responsibility for our situations and to mobilize a collective discourse that will expand them**. For the political making of a feminist future that does not reproach the history on which it is borne, we may need to loosen our attachments to subjectivity, identity, and morality and to redress our underdeveloped taste for political argument.

## 2NC

### subotnik

Their specific form of advocacy SHUTS DOWN DEBATE – starting with personal experiential narratives makes it IMPOSSIBLE to NEGATE—their insistence that we do respond is exactly the wounded attachment we criticize

SUBOTNIK 98

Professor of Law, Touro College, Jacob D. Fuchsberg Law Center.

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

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

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

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

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

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

### 2nc ov

Vote neg on presumption---successful identity politics necessarily unravel.

Brown ‘95

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

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

### 2nc alt

People’s power movement proves the alt is key—different identities can unite for a common purpose—the aff precludes that.

Dolan ‘91

Ronald, hilippines: A Country Study. Washington: GPO for the Library of Congress, 1991., “From Aquino's Assassination to People's Power,” <http://countrystudies.us/philippines/29.htm>

The People's Power movement, which bore fruit in the ouster of Marcos on February 25, 1986, **was broad-based** but primarily, although not exclusively, urban-based, indeed the movement was commonly known in Manila as the EDSA Revolution. People's Power encompassed members of the **Roman Catholic hierarchy**, **the business elite**, and a faction of the armed forces. Its millions of rural, working-class, middle-class, and professional supporters were united not by ideology or class interests, but by their esteem for Aquino's widow, Corazon, and their disgust with the Marcos regime. After her husband's assassination, Corazon Aquino assumed first a symbolic and then a substantive role as leader of the opposition. A devout Catholic and a shy and self-styled "simple housewife," Mrs. Aquino inspired trust and devotion. Some, including top American policy makers, regarded her as inexperienced and naive. Yet in the events leading up to Marcos's ouster she displayed unexpected shrewdness and determination.

Structural antagonism thesis completely misreads the history of Philippine resistance-the key to success was mediated democratic dialogue among groups

Bermeo ‘97

Nancy, Associate Professor in the Department of Politics at Princeton University. “The Power of the People”

The transition from dictatorship in the Philippines shows how an electoral democracy can be constructed in a state **with a much larger guerrilla presence**. The "People's Power" movement which toppled the Marcos dictatorship was a coalition of moderate forces drawn from all classes of Philippino society. But the coalition was forged at a time when a decidedly non-moderate group, the New People’s Army, was expanding rapidly. The NPA was founded in 1968 as the armed wing of the Communist Party of the Philippines. Its ultimate goal, from its inception, has been the overthrow of Philippine capitalist state. Its method, like that of Sendero Luminoso’s is the armed mobilization of the rural poor in preparation for an assault on the cities. The NPA did not waver in its commitment to armed struggle when the possibility of a peaceful ouster of Marcos presented itself. The Communist Party of the Philippines boycotted the February 1986 presidential elections declaring that dictators could not be ousted through the polls and that Corazon Aquino was not significantly different from Marcos anyway.65 The NPA had proved remarkably successful RXWVLGH of any coalition of moderate groups and had few organizational incentives to change course. The group had grown ten fold since martial law was declared in 197266 and had won the loyalty of some 23,000 rebels by 1986. Most importantly, the NPA was not confined to a single region of the country. Its fifty-odd guerrilla units had penetrated a full 32% of the nation’s EDUDQJD\V.67 In 1984, the NPA claimed responsibility for 3,000 acts of violence. In 1985, as the moderate movement for democracy was taking shape, the NPA launched 5,000 violent incidents.68 The NPA was clearly an "extremist" force as the Marcos regime entered its final crisis. It was also a relatively powerful force in that US intelligence experts believed that it could actually take control of the Philippino state by 1990.69 Yet **moderate**, **pro-democratic political actors managed to forge an electoral democracy** anyway. The existence of uncompromising forces in the opposition did not weaken soft-liners and did not lead to the triumph of reaction.

### 2nc link—ballot

Their use of ballot is a palliative and it makes no sense because you can’t win the game in order to make yourself an enemy of it

Enns 12

Professor of Philosophy at McMaster University (Dianne, The Violence of Victimhood, 28-30)

Guilt and Ressentiment We need to think carefully about what is at stake here. Why is this perspective appealing, and what are its effects? At first glance, the argument appears simple: white, privileged women, in their theoretical and practical interventions, must take into account the experiences and conceptual work of women who are less fortunate and less powerful, have fewer resources, and are therefore more subject to systemic oppression. The lesson of feminism's mistakes in the civil rights era is that this “mainstream” group must not speak for other women. But such a view must be interrogated. Its effects, as I have argued, include a veneration of the other, moral currency for the victim, and an insidious competition for victimhood. We will see in later chapters that these effects are also common in situations of conflict where the stakes are much higher. ¶ We witness here a twofold appeal: otherness discourse in feminism appeals both to the guilt of the privileged and to the resentment, or ressentiment, of the other. Suleri's allusion to “embarrassed privilege” exposes the operation of guilt in the misunderstanding that often divides Western feminists from women in the developing world, or white women from women of color. The guilt of those who feel themselves deeply implicated in and responsible for imperialism merely reinforces an imperialist benevolence, polarizes us unambiguously by locking us into the categories of victim and perpetrator, and blinds us to the power and agency of the other. Many fail to see that it is embarrassing and insulting for those identified as victimized others not to be subjected to the same critical intervention and held to the same demands of moral and political responsibility. Though we are by no means equal in power and ability, wealth and advantage, we are all collectively responsible for the world we inhabit in common. The condition of victimhood does not absolve one of moral responsibility. I will return to this point repeatedly throughout this book.¶ Mohanty's perspective ignores the possibility that one can become attached to one's subordinated status, which introduces the concept of ressentiment, the focus of much recent interest in the injury caused by racism and colonization. Nietzsche describes ressentiment as the overwhelming sentiment of “slave morality,” the revolt that begins when ressentiment itself becomes creative and gives birth to values. 19 The sufferer in this schema seeks out a cause for his suffering—“ a guilty agent who is susceptible to suffering”— someone on whom he can vent his affects and so procure the anesthesia necessary to ease the pain of injury. The motivation behind ressentiment, according to Nietzsche, is the desire “to deaden, by means of a more violent emotion of any kind, a tormenting, secret pain that is becoming unendurable, and to drive it out of consciousness at least for the moment: for that one requires an affect, as savage an affect as possible, and, in order to excite that, any pretext at all.” 20 In its contemporary manifestation, Wendy Brown argues that ressentiment acts as the “righteous critique of power from the perspective of the injured,” which “delimits a specific site of blame for suffering by constituting sovereign subjects and events as responsible for the ‘injury’ of social subordination.” Identities are fixed in an economy of perpetrator and victim, in which revenge, rather than power or emancipation, is sought for the injured, making the perpetrator hurt as the sufferer does. 21¶ 30¶ Such a concept is useful for understanding why an ethics of absolute responsibility to the other appeals to the victimized. Brown remarks that, for Nietzsche, the source of the triumph of a morality rooted in ressentiment is the denial that it has any access to power or contains a will to power. Politicized identities arise as both product of and reaction to this condition; the reaction is a substitute for action— an “imaginary revenge,” Nietzsche calls it. Suffering then becomes a social virtue at the same time that the sufferer attempts to displace his suffering onto another. The identity created by ressentiment, Brown explains, becomes invested in its own subjection not only through its discovery of someone to blame, and a new recognition and revaluation of that subjection, but also through the satisfaction of revenge. 22¶ The outcome of feminism's attraction to theories of difference and otherness is thus deeply contentious. First, we witness the further reification reification of the very oppositions in question and a simple reversal of the focus from the same to the other. This observation is not new and has been made by many critics of feminism, but it seems to have made no serious impact on mainstream feminist scholarship or teaching practices in women's studies programs. Second, in the eagerness to rectify the mistakes of “white, middle-class, liberal, western” feminism, the other has been uncritically exalted, which has led in turn to simplistic designations of marginal, “othered” status and, ultimately, a competition for victimhood. Ultimately, this approach has led to a new moral code in which ethics is equated with the responsibility of the privileged Western woman, while moral immunity is granted to the victimized other. Ranjana Khanna describes this operation aptly when she writes that in the field of transnational feminism, the reification of the other has produced “separate ethical universes” in which the privileged experience paralyzing guilt and the neocolonized, crippling resentment. The only “overarching imperative” is that one does not comment on another's ethical context. An ethical response turns out to be a nonresponse. 23 Let us turn now to an exploration of this third outcome.

### at perm

Wounded attachments DA—

This causes passivity by turning politics into reaction, rather than preemptive movement

Brown ‘95

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

Enter politicized identity, now conceivable in part as both product of and reaction to this condition, where "reaction" acquires the meaning Nietzsche ascribed to it: namely, an effect of domination that reiterates impotence, **a** **substitute for action**, for power, for self-affirmation that reinscribes incapacity, powerlessness, and rejection. For Nietzsche, ressentiment itself is rooted in reaction-the substitution of reasons, norms, and ethics for deeds-and he suggests that not only moral systems but **identities** themselves **take their bearings in this reaction**. As Tracy Strong reads this element of Nietzsche's thought: identity ... does not consist of an active component, but is reaction to something outside; action in itself, with its inevitable self-assertive qualities, **must** then **become something evil**, since it is identified with that against which one is reacting. The will to power of slave morality must constantly reassert that which gives definition to the slave: the pain he suffers by being in the world. Hence any attempt to escape that pain will merely result in the reaffirmation of painful structures2 8 If the "cause" of ressentiment is suffering, its "creative deed" is the reworking of this pain into a negative form of action, the ''imaginary revenge" of what Nietzsche terms "natures denied the true reaction, that of deeds. "2'i This revenge is achieved through the imposition of suffering "on whatever does not feel wrath and displeasure as he does"30 (accomplished especially through the production of guilt), through the establishment of suffering as the measure of social virtue, and through casting strength and good fortune ("**privilege**," as we say today) as self-recriminating, **as its own indictment in a culture of suffering**: "it is disgraceful to be fortunate, there is too much misery. "~ 1 But in its attempt to displace its suffering, **identity structured by ressentiment** at the same time **becomes invested in its own subjection**.' This investment lies not only in its discovery of a site of blame for its hurt will, not only in its acquisition of recognition through its history of subjection (a recognition predicated on injury, now righteously revalued), but also in the satisfactions of revenge, **which ceaselessly reenact** **even as they redistribute the injuries of marginalization and subordination in a liberal discursive order** that alternately denies the very possibility of these things and blames those who experience them for their own condition. Identity politics structured by ressentiment reverse without subverting this blaming structure: they do not subject to critique the sovereign subject of accountability that liberal individualism presupposes, nor the economy of inclusion and exclusion that liberal universalism establishes. Thus, **politicized identity that presents itself as** a **self-affirmation** **now appears as the opposite,** as predicated on and requiring its sustained rejection by a "hostile external world. "32 Insofar as what Nietzsche calls slave morality produces identity in reaction to power, insofar as identity rooted in this reaction achieves its moral superiority by reproaching power and action themselves **as evil,** identity structured by this ethos becomes **deeply invested in its own impotence**, even while it seeks to assuage the pain of its powerlessness through its **vengeful moralizing**, through its **wide distribution of suffering**, through its reproach of power as such. Politicized identity, **premised on exclusion** and fueled by the humiliation and suffering imposed by its historically structured impotence in the context of a discourse of sovereign individuals, is as likely to seek generalized political paralysis, to **feast on generalized political impotence**,

as it is to seek its own or collective liberation through empowerment. Indeed, it is more likely to punish and reproach-"punishment is what revenge calls itself; with a hypocritical he it creates a good conscience for itself"33 than to find venues of selfaffirming action, But contemporary politicized identity's desire is not only shaped by the extent to which the sovereign will of the liberal subject, articulated ever more nakedly by disciplinary individuation and capitalist disinternments, is dominated by late-twentieth-century configurations of political and economic powers. It is shaped as well by the contemporary problematic of history itself by the late modern rupture of history as a narrative, history as ended because it has lost its end-a rupture that paradoxically gives history an immeasurable weight. As the grim experience of reading Discipline and Punish makes clear, there is a sense in which the gravitational force of history is multiplied at precisely the moment that history's narrative coherence and objectivist foundation is refuted. As the problematic of power in history is resituated from subject positioning to subject construction; as power is seen to operate spatially, infiltrationally, "microphysically" rather than only temporally, permeating every heretofore designated "interior" space in social lives and individuals; as eroding historical metanarratives take with them both laws of history and the futurity such laws purported to assure; as the presumed continuity of history is replaced with a sense of its violent, contingent, and ubiquitous even as history becomes that which has weight but no trajectory, mass but no coherence, force but no direction: it is war without ends or end. Thus, the extent to which "the tradition of all the dead generations weighs like a nightmare on the brain of the living"34 is today unparalleled, even as history itself disintegrates as a coherent category or practice. We know ourselves to be saturated by history, we feel the extraordinary force of its determinations; we are also steeped in a discourse of its insignificance, and, above all, we know that history will no longer (always already did not) act as our redeemer. I raise the question of history because in thinking about late modern politicized identity's structuring by ressentiment, I have thus far focused on its foundation in the sufferings of a subordinated sovereign subject. Bur Nietzsche's account of the logic of ressentiment is also linked to that feature of the will that is **stricken by history**, that rails against time itself, **that cannot "will backwards,"** that cannot exert its power over the past either as a specific set of events or as time itself. Willing liberates; but what is it that puts even the liberator himself in fetters? "It was"-that is the name of the will's gnashing of teeth and most secret melancholy. Powerless against what has been done, he is an angry spectator of all that is past. .. He cannot break time and time's covetousness, that is the will's loneliest melancholy.35 Although Nietzsche appears here to be speaking of the will as such, Zarathustra's own relationship to the will as a "redeemer of history" makes clear that this "angry spectatorship" can with great difficulty be reworked as a perverse kind of mastery, a mastery that triumphs over the past by reducing its power, **by remaking the present against the terms of the past**-in short, **by a project of self-transformation that arrays itself against its own genealogical consciousness**. In contrast with the human ruin he sees everywhere around him-"fragments and limbs and dreadful accidents"-it is Zarathustra's own capacity to discern and to make a future that spares him from a rancorous sensibility, from crushing disappointment in the liberatory promise of his will: The now and the past on earth-alas, my friends, that is what 1 find most unendurable; and I should not know how to live if I were not also a seer of that which must come. A seer, a wilier, a creator, a future himself and a bridge to the future-and alas, also, as it were, a cripple at this bridge: all this is Zarathustra. 3'· Nietzsche here discerns both the necessity and the near impossibility the extraordinary and fragile achievement-of formulating oneself as a creator of the future and a bridge to the future in order to appease the otherwise inevitable rancor of the will against time, in order to redeem the past by lifting the weight of it, by reducing the scope of its determinations. "And how could I bear to be a man if man were not also a creator and guesser of riddles and redeemer of accidents'"37 Of course, Zarathustra's exceptionality in what he is willing to confront and bear, in his capacities to overcome in order to create, is Nietzsche's device for revealing us to ourselves. The ordinary will, steeped in the economy of slave morality, devises means "to get rid of his melancholy and to mock his dungeon," means that reiterate the cause of the melancholy, that continually reinfect the narcissistic wound to its capaciousness inflicted by the past. "Alas," says Nietzsche, "every prisoner becomes a fool; and the imprisoned will redeems himself foolishly. " 3 ~ From this foolish redemption-foolish because it does not resolve the will's rancor but only makes a world in its image-is born the wrath of revenge: "that which was" is the name of the stone [the will] cannot move. And so he moves stones out of wrath and displeasure, and he wreaks revenge on whatever does not feel wrath and displeasure as he does. Thus the will, the liberator took to hurting; and on all who can suffer he wreaks revenge for his inability to go backwards. This is what revenge is: the will's ill will against time and its "it was. ''39 Revenge as a "reaction," **a substitute for the capacity to act**, produces identity as **both bound to** **the history that produced it and as a reproach to the present which embodies that history**. The will that "took to hurting'' in its own impotence against its past becomes (in the form of an identity whose very existence is due to heightened consciousness of the immovability of its "it was," its history of subordination) a will that makes not only a **psychological but a political practice of revenge**, a practice that reiterates the existence of an identity whose present past is one of insistentlv unredeemable injury. This past cannot be redeemed unless the identity ceases to be invested in it, **and it cannot cease to be invested in it without giving up its identity as such,** thus giving up its economy of avenging and at the same time perpetuating its hurt-"when he then stills the pain of the wound he at the same time infects the w01md. "41.• In its emergence as a protest against marginalization or subordination, politicized identity thus becomes attached to its own exclusion both because it is premised on this exclusion for its very existence as identity and because the formation of identity at the site of exclusion, as exclusion, **augments** or "alters the direction of the **suffering**" **entailed in subordination or marginalization by finding a site of blame for it**. But in so doing, it installs its pain over its unredeemed history in the very foundation of its political claim, in its demand for recognition as identity. In locating a site of blame for its powerlessness **over its past-a past of injury**, a past as a hurt will-and locating a "reason" for the "unendurable pain" of social powerlessness in the present, **it converts this reasoning into an ethicizing politics,** a politics of recrimination **that seeks to avenge the hurt** even while it reaffirms it, discursively codifies it. Politicized identity thus enunciates itself, makes claims for itself, **only by entrenching, restating, dramatizing, and inscribing its pain in politics**; it can hold out no future-for itself or others-that triumphs over this pain. The loss of historical direction, and with it the loss of futurity characteristic of the late modern age, is thus homologically refigured in the structure of desire of the dominant political expression of the age: identity politics. In the same way, the generalized political impotence produced by the ubiquitous yet discontinuous networks of late modern political and economic power is **reiterated** in the investments of late modern democracy's primary oppositional political formations.

Black revolution DA—

That turns the case

hooks ‘12

bell, *Writing Beyond Race: Living Theory and Practice*, Routledge

To **refuse victimization** we must exercise the healing power of the mind. In his work on decolonization. Ivan Van Sertima continually insisted that both our minds and our imaginations have been colonized. This colonization of mind and imagination has been one of the **primary reasons** many black folks remain wedded to white supremacist thought and practice. There are so few psychological texts, self-help books, and or mental health therapies that teach disempowered black folks of all classes how to discipline the mind. When anyone embraces victimization, **they surrender control**. They have given their minds over to a system of thought and practice that will keep suffering alive. When an individual sees themselves as always and only a victim, they are often beset by intense and powerful emotions. In his book The Art of Happiness: A Handbook for Living, the Dalai Lama teaches: "We also often add to our pain and suffering by being overly sensitive, overreacting to minor things, and sometimes taking things too personally. We tend to take small things too seriously and blow them up out of proportion, while at the same time we often remain indifferent to the really important things, those things which have profound effects on our lives and long-term consequences and implications." Certainly, when we ponder why so many young black folk, many of whom come from affluent families where they received emotional care, have poor self-esteem and destructive habits of being, we need look no farther than the mind. **When any black person embraces the notion** that **the "white" world** **is an** all-powerful constant enemy, **they lose the will to live fully**. Let's be clear that **this thought is an aspect of white supremacist thinking.** Without mental programs that help black people decolonize and discipline the mind there **will be continued psychological confusion and suffering**. Holocaust survivors, survivors of genocidal attacks all over the world have identified the role the mind can play in allowing us to be self-actualized, to be compassionate, to find inner strength, to be peaceful. It is no accident that many citizens of our nation have looked to different spiritual paths, such as Buddhism, to teach us how to eliminate negative states of mind. Buddhism has helped me move beyond all politics of blame. It has offered a spiritual path to awakening that enables me to connect compassionately with myself and with other sentient beings.

### structural antagonism

On T they read Dillon which says blacks are structurally opposed to the state—that cuts out potential political progress in favor of apathy

Hooks ‘96

Bell, prof English at CUNY, Killing Rage: Ending Racism 249-250

Unitary representations of black identity **do not** reflect the real lives of African Americans who struggle to create self and identity. **Psychoanalytically**, it is clear that the unitary self is sustained **only by acts of coercive control and repression**. Collectively African Americans fear the loss of a unitary representation of blackness because they feel we will lose a basis for organized resistance. In retheorizing black subjectivity we have to also revise our understanding of the conditions that are needed for black folks to join together in a politics of solidarity that can effectively oppose white supremacy. Breaking with **essentialist thinking** that insists all black folks inherently realize that we have something positive to gain by resisting white supremacy allows us to **collectively acknowledge** that radical politiciza-tion is a process—that revolutionary black thinkers and activists are **made**, **not born**. **Progressive education** for critical consciousness then is automatically understood to be necessary to **any construction of radical black subjectivity**. Whether the issue is construction of self and identity or radical politici-zation, African-American subjectivity is always in process. Fluidity means that our black identities are **constantly changing** § Marked 00:11 § as we respond to circumstances in our families and communities of origin, and as we interact with a larger world. Only by privileging the reality of that **changing black identity** will we be able to engage a prophetic discourse about subjectivity that will be **liberatory and transformative**.

## 1NR

### dissent skills

Begs the question of skills for whom – their model destroys dialogue because it devolves into an uncontested lecture

Hanghoj 8

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

Thorkild Hanghøj, Copenhagen, 2008

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professor.

According to Eugene Matusov, classroom examples of authoritative discourse also include “intolerance, speaking for others, an unwillingness to listen to and genuinely question others, the failure to test one’s own ideas and assumptions, and the desire to impose one’s own views on others” (Matusov, 2007: 231). Internally persuasive discourse, in contrast, refers to language use directed towards mutual communication and the mutual construction of knowledge: “In the everyday rounds of our consciousness, the internally persuasive word is half-ours and halfsomeone- else's” (Bakhtin, 1981: 345). In this way, internally persuasive discourse marks a creative border zone based on the impossibility of any word ever being final, and for this reason it is “able to reveal ever newer ways to mean” (Bakhtin, 1981: 346). But internally persuasive discourse cannot be reduced to the mere “appropriation” of the ideas and words of others, as it requires the ability to be involved in and embody how “diverse voices collide with each other in a dialogue that tests these ideas” (Matusov, 2007: 230). Thus, internally persuasive discourse always requires some form of dialogical and critical exposure that can be supported by the interplay of different voices in a classroom setting. The application of Bakhtin’s terms to classroom contexts can be quite problematic as the two terms easily end up as an unproductive dichotomy between authoritative (“bad”) and persuasive (“good”) discourse. Bakhtin scholar Gary Saul Morson has tried to further elaborate the two concepts and argues that internally persuasive discourse cannot be sustained in a classroom without authority (Morson, 2004).21 Quite simply, it is impossible to create shared classroom attention solely on the basis of internally persuasive discourse.

### hedrick

Law itself is not bad, it can be violent and it can restrain violence but skills are key either way – especially when it’s topical to restrict TK!!!

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

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

### dillon

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

Dillon 12

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

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

**[Wake’s card ends]**

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

### dsrb

Arguing that a current government policy is bad is not roleplaying

Scott Harris, Director of Debate, Kansas University, 2013, This Ballot, http://www.cedadebate.org/forum/index.php?topic=4762.0

While this ballot has meandered off on a tangent I’ll take this opportunity to comment on an unrelated argument in the debate. Emporia argued that oppressed people should not be forced to role play being the oppressor. This idea that debate is about role playing being a part of the government puzzles me greatly. While I have been in debate for 40 years now never once have I role played being part of the government. When I debated and when I have judged debates I have never pretended to be anyone but Scott Harris. Pretending to be Scott Harris is burden enough for me. Scott Harris has formed many opinions about what the government and other institutions should or should not do without ever role playing being part of those institutions. I would form opinions about things the government does if I had never debated. I cannot imagine a world in which people don’t form opinions about the things their government does. I don’t know where this vision of debate comes from. I have no idea at all why it would be oppressive for someone to form an opinion about whether or not they think the government should or should not do something. I do not role play being the owner of the Chiefs when I argue with my friends about who they should take with the first pick in this year’s NFL draft. I do not role play coaching the basketball team or being a player if I argue with friends about coaching decisions or player decisions made during the NCAA tournament. If I argue with someone about whether or not the government should use torture or drone strikes I can do that and form opinions without ever role playing that I am part of the government. Sometimes the things that debaters argue is happening in debates puzzle me because they seem to be based on a vision of debate that is foreign to what I think happens in a debate round.

### fairness

Predictability maintains meaningful politics and empathy even if their DA is correct

Massaro, Prof Law – Florida, ’89

(Toni M, 87 Mich. L. Rev. 2099)

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice. 52 Some even question the whole notion of justifying a legal [\*2111] decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and experience. 53 I do not intend to enter this important jurisprudential debate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations. My first thought is that the rule-of-law model is only a model. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable. 54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly open-ended. "Relevance," "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" -- to name only a few legal concepts -- hardly admit of precise definition or consistent, predictable application. Rather, they represent a weaker, but still constraining sense of the rule-of-law model. Most rules are guidelines that establish spheres of relevant conversation, not mathematical formulas. Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles. 55 As a practical matter, therefore, our rules often are ambiguous and fluid standards that offer substantial room for varying interpretations. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -- including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization [\*2112] of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers, 56 all of which may go unstated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal. Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant. 57 The solution to this "empathy gap" was legislative action to make the law more specific -- more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations. 58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers -- in this example, women -- and hence most vulnerable to unempathetic ad hoc rulings. A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some procedural regularity -- "law for law's sake" -- because it lends stasis and structure to our often chaotic lives. Even within our most intimate relationships, we both establish "rules," and expect the other [\*2113] party to follow them. 59 Breach of these unspoken agreements can destroy the relationship and hurt us deeply, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create expectations, and their consistent application fulfills the expectations. The modest predictability that this sort of "formalism" provides actually may encourage human relationships. 60