## 1nc

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

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

Army Officer School ‘04

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

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

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

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

Ericson ‘03

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

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

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

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

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

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

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

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

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

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

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

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

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

Harris, professor of law – UC Berkeley, ‘94

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

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

Engagement the law solves their impacts, even if bottom-up approaches are ultimately better

Andrews, associate professor of law – University of San Francisco, ‘3

(Rhonda V. Magee, 54 Ala. L. Rev. 483)

The following argument relies on a few important assumptions. The first is the assumption that legal rules have consequences that reach far beyond their intended application from the standpoint of legal analysis. Legal rules play an important part in shaping concrete and metaphysical aspects of the world that we know. Thus, the impact of equal protection doctrine on the meta-narrative of race in America is more than merely symbolic. The Supreme Court's pronouncements on race are presumptively to be followed by lower courts, and together these opinions and their consequences influence the representations of race in federal and state social policies, in the media, in literature, and in the arts. n18 As Justice Brennan noted from the bench, every decision of the court has "ripples" which impact society and social processes. n19 Perhaps in no other area is this basic sociological insight more demonstrably true than in the area of race law. In a very real sense, the history of American civil rights law is the history of America's socio-legal construction, deconstruction, and reconstruction of what it means to be a constitutionally protected human being. In the aftermath of the war required to preserve the Union itself, the architects of the First Reconstruction n20 took on [\*491] the task of reforming the Constitution to provide federal protection for newly "freed" Americans. The law they made not only created a new world in which the centuries-old institution of slavery was virtually **impossible**, n21 but perhaps more importantly, marked the beginning of the reshaping of American **thinking** about the very nature of humanity through the powerful symbolism and mechanisms of the law. n22 Thus, the continuing evolution of what it means to be a human being, and refinement of the state's obligations to human beings subject to its laws, are among the most significant of the unstated objectives of the reconstruction of post-slavery America, and the law itself will play a central role.

## 1nc

Thus, We advocate black liberation as strategic resistance to the regime of murder and assassination.

The term targeted killing makes the practice seem legitimate—inconsistent with a strategy of resistance

Small, 12

(Roundtable on Targeted Killing: Lawyering and Targeted Killing, http://www.jadaliyya.com/pages/index/4567/roundtable-on-targeted-killing\_lawyering-and-targe)

The practice now commonly termed “targeted killing” was, before the turn of the twenty-first century, referred to as “assassination.” Both terms refer to the lethal use of force in a surprise attack against an enemy or foe, whether by a sniper, a surgical-precision drone strike, or a magnetic bomb placed on a vehicle. There are, however, important legal and rhetorical differences between the two terms: Assassination is certainly illegal, whereas targeted killing, at least according to the Israeli High Court of Justice (HCJ), is neither legal nor illegal per se; the legality depends on the circumstances in which it is deployed. Assassination is part of our cultural landscape, the subject of countless fiction and non-fiction books, films, and documentaries. While some might take a certain pleasure in the fantasy of James Bond's “licence to kill,” in reality the transgressive and deathly nature of assassination is less spectacularly heroic, and far more gruesome. Because assassination is a form of extra-judicial execution, no state ever had admitted to conducting such a policy because it flies in the face of an individual’s right to life, and the right to due process. To admit to an assassination policy would be to disregard the separation of powers that lies at the heart of democracy; the state would be playing the role of judge and executioner. It came, therefore, as a great surprise to the international community when, in late 2000, Israel announced that it was (and had been for some time) “liquidating” enemy Palestinians. Twelve years later, it is still difficult to assess exactly why Israel chose that moment to acknowledge the policy, especially when such killings had been denied for so long. Speaking on behalf of the Israeli government just days after the initial announcement, Daniel Reisner, former head of the International Law Branch of the Israeli Defence Force (IDF), claimed that the second intifada was responsible. The intifada brought about a shift in Israeli rules of engagement which subsequently led to the declaration of the overt policy of targeted killing. “Prior to the second Intifada,” Reisner told the press, “Israeli soldiers were actually told to wait until they were fired upon, before responding.” But the change in “circumstances” had necessitated that “Israeli soldiers no longer are required to wait until they are actually shot at before they respond.” The second intifada was a game-changer, according to former Israeli Deputy Defense Minister Ephraim Sneh: “For sure, it is a signal. If the game is a guerrilla war, we are the champions of the world,” he told Associated Press. But perhaps more important than the announcement of the targeted killing policy was the fact that behind the scenes its architects had prepared what they regarded to be a compelling defense and justification. Israeli officials felt confident enough that targeted killings were so imperative to the nation’s security that they were, in fact, legal and legitimate. Because assassination is illegal, the crucial concern for Israel was to find a way to eliminate enemies without appearing to contravene the law. “Extra-judicial” killing had to be brought within the pale of law. This was no small task and involved nothing less than the “legalization” of assassination. Israel's ingenuity was both legalistic and rhetorical, and it is here that we witness the crucial difference between the terms “assassination” and “targeted killing.” A veritable legal and political armature underscored the move toward an overt assassination program. The CIA realized the essence of the problem as early as 1954, which is why it has always (notwithstanding some recent exceptions vis-a-vis the not-so-secret drone missions in Pakistan, Yemen and elsewhere) opted to keep covert missions covert. The training manual, A Study of Assassination, distributed to agents and operatives at the time of the agency's 1954 coup in Guatemala, noted that “No assassination instructions should ever be written or recorded,” adding, “Assassination can seldom be employed with a clear conscience. Persons who are morally squeamish should not attempt it.” The problem was that assassination was an unsavoury affair, particularly unpalatable for morally squeamish publics as well. For that reason, the practice was difficult to justify. The first thing that Israeli government lawyers had to do, therefore, was to change the language and terminology. How can assassination be made to sound legal and morally defensible? Israel immediately stopped using the word “assassination,” and dropped all terms which carry a negative and illegal connotation. In 2001, one year into the officially declared policy, Attorney General Elyakim Rubinstein pointed out that the term “liquidation” damages Israel's image and proposed that it was better to use the phrase “targeted killing” to describe the policy. Thus, a new, more neutral, less offensive term was coined. The change in terminology is immensely significant because it changes the act of killing from one that is always-already illegal to one that is, if not persuasively, then at least plausibly, legal and permissible.

Targeted killing is a euphemism that makes it more difficult for their strategy to be effective—sanitizes murder

Smith, 12

(1/22, “Sanitized Words,” http://ramblingtaoist.blogspot.com/2012/01/sanitized-words.html)

"Targeted killing" has become the euphemism du jour. Remember "harsh interrogation"? The conduct discussed in the killing memo was once simply referred to as assassination.

More and more people are pushing back against the policy. They are reacting, no doubt, to the fact that President Obama has authorized many times the killings that President Bush did. ~ from Why Obama's 'Targeted Killing' is Worse than Bush's Torture by Mary Ellen O'Connell ~ As George Orwell so eloquently showed, one of the chief tasks of modern government is to make bad things seem far more palatable. When words are used that make the people squeamish, then they often object to whatever it is the government desperately wants to do. So, benign euphemisms are created to lull the public to sleep and, as we all should know, it tends to work like a charm! As I have written about before, one of the euphemisms that irritates me to no end is the now-accepted usage of the term, Improvised Explosive Device (IED). In the days of yore, we used a much simpler word for an IED; we called it a bomb. Everyone knew that bombs can be deadly. They blow people up and apart. If you happen to be in the vicinity of where a bomb detonates, chances are great that either you will be killed or severely injured. Using the term Improvised Explosive Device sounds more like a science fair project your 16 year old son or daughter might dream up. Even worse, since the term itself is rarely used anymore, all we hear is IED. A good deal of the time I suspect that most people no longer comprehend what the letters stand for. It becomes that much easier to read a story which references an IED and not to grasp fully that it likely involves dismembered body parts. Another insidious term along these same lines is the oft used collateral damage. It sounds like something you might say when talking about a fender-bender your next door neighborhood was involved in recently. "You know, the front of Jack's car doesn't look so good, but not as bad as Mrs. Ferndale's front lawn! She sustained some collateral damage, if you know what I mean?" But the truth behind collateral damage is no laughing matter! This euphemism means the death and/or injury of innocent bystanders, whether by accident or callous disregard. While it can be applied to one solitary individual, it's usually uttered in reference to the deaths and/or injuries of a number of people; people just like you and I who were going about their daily affairs and then -- poof! -- they were no longer going about anything at all! And now, **we can add to the list "targeted killing." This euphemism confers a certain air of precision AND legitimacy.** Why would our government target people to be killed UNLESS they deserved it? They certainly wouldn't target innocent people, so the people they DO target must be really, really b-a-d. Some of them MAY be bad and some of them may not. Since all "targeted killing" really represents is a sanitized form of the word assassination, we should refresh ourselves of what the definition of assassination is. To wit, "To murder (a prominent person) by surprise attack, as for political reasons." Ooh, but murder has such a bad ring to it. It sounds illegal. It's the kind of action that lands many people in prison and some on death row. And to admit that you're killing people for political reasons doesn't sound very legitimate either. Isn't that what despots and authoritarian regimes do? Don't we criticize them when they assassinate people?

**This regime of sanitized language actively conceals the horror of totalitarianism---the language of euphemism clinically detaches people from any sense of ethical responsibility**

Davidson 03

Elias Davidsson, Centre for Research on Globalization, 2003 (<http://www.aldeilis.net/jus/econsanc/debate.pdf>)

In order to effectively describe a complex and highly politicized phenomenon, such as economic sanctions, the **utmost care in the choice of terminology is necessary**. Among the tools of politicians figure their creative use of language, including the invention of euphemisms and obfuscatory expressions. Discussing the role of euphemisms in political discourse, Stanley Cohen writes: The most familiar form of reinterpretation is the use of euphemistic labels and jargon. These are everyday devices for **masking, sanitising, and conferring respectability** by using **palliative terms** that **deny or misrepresent cruelty or harm**, giving them **neutral or respectable status**. Orwell's original account of the anaesthetic function of political language - how words **insulate their users and listeners** from **experiencing fully the meaning** of what they are doing - remains the classic source on the subject [28]. Judge Weeramantry, in his Separate Dissenting Opinion on The legality of nuclear weapons (International Court of Justice (Advisory Opinion) (1996)), castigates [...] the use of euphemistic language - the **disembodied language** of military operations and the **polite language of diplomacy**. They conceal the horror of nuclear war, diverting attention to intellectual concepts such as self-defence, reprisals, and proportionate damage which can have little relevance to a situation of total destruction. Horrendous damage to civilians and neutrals is described as collateral damage, because it was not directly intended; incineration of cities becomes "considerable thermal damage". One speaks of "acceptable levels of casualties", even if megadeaths are involved. Maintaining the balance of terror is described as "nuclear preparedness"; assured destruction as "deterrence", total devastation of the environment as "environmental damage". **Clinically detached** from their human context, such expressions **bypass the world of human suffering**, out of which humanitarian law has sprung.

**This cynical detachment authorizes the genocidal extermination of the planet---Orwellian mind control both enables and necessitates a tolerance for brutality and violence**

Mann 03

Halton Adler Mann, political writer for the Politix Group, 9/5/03 (http://www.politixgroup.com/comm180.htm)

In George Orwell's "1984", his Everyman, Winston Smith perceives the significant signs of his repressive, tyrannical times; constant war and the xenophobia and paranoia it fosters and constant lotteries to keep the proletariat **dumb, diverted and distracted**.  
If this dreadful scenario seems familiar, it is the result of a felonious assault on the collective American sensibility, yes, but also and perhaps **more inimical and insidious**, a cynical and unconscionable attempt to subvert the very freedoms Americans cherish and for which the sustained struggle against the terrorist scourge is being waged.  
No president wants to surrender the 75 percent apogee of his approval to a more earth-bound reality.  But when the attempt to retain such an artificial, unearned and anomalous figure includes a disgraceful equation of dissent with disloyalty by a de facto prime minister and the recruiting of a first lady to stand by her man then all Americans should be as concerned with the Bush administration's reaction to damning revelations of malfeasance regarding terrorism as to the terrorism itself.When Vice President Dick Cheney declared that criticizing the president in a time of war was an outrageous act of betrayal, he revealed his propagandist's soul and abysmal failure to comprehend the American ideal for which 3,000 innocents lived and died last September.  Would they want the national debate over their clearly preventable American tragedies proscribed or even prohibited by those scoundrels seeking "refuge" in the "patriotism" Samuel Johnson scorned so memorably two and a half centuries ago? "In war, **the first casualty is truth**" as Hiram Johnson said but there are other casualties as well when truth's a trespass upon the body politic. One by one, **every essential element of democracy can fall victim to the barbarism** that must be confronted and conquered:  Idealism, devotion, credibility, fulfillment, confidence, national spirit and the consuming conviction of that Dream known as distinctly American. It is sacred to the memory of all those millions who sought sanctuary in this Promised Land AND to those millions more who were denied it.As persecution, invasion, genocide and war consumed the European continent in the Thirties, America and the Western democracies were as complicit in their complacency as the Nazi barbarism that sentenced millions to a Fascist fate.  In Nazi Germany, a "willing" population of "executioners"--to employ Daniel Jonah Goldhagen's indictment-- was raised on racism and harvested with hate, hate that does not require reason for its sustenance.  So it is with every evil evolution, **every belligerent belief created in a crucible of death-affirming fanaticism, in an inferno of intolerance,** in a wanton world.  Now, with the history of hatred repeating its repulsive virulence, freedom and justice--like all the precious promises of democracy-- must be defended to be defined.  We do NOT have to understand the terrorist's hatred to know it exists, to know we must annihilate it if we are to survive.  The United States denied this maxim to its perpetual peril and then to its unthinkable, unspeakable horror. Isolationist no longer, complacency shaken from its shoulders, America has awakened, FINALLY, as it did six decades ago, to the tumult and tragedy of our time.  Now America must muster its indomitable will once again to defeat another scourge or be consumed by it.  Now America must recruit sentient sentinels to repulse the barbarians before its "Golden Door".There is no mystery to the pathetic pathology, to the history of hatred. It begins in ignorance and envy, is fomented by fanatical exploiters of its existence, subverts the unsuspecting who are sacrificed to its febrile doctrine and **ends in a cataclysm for all.** "**From fanaticism to barbarism is only one step**" Diderot wrote.  He could have written that from hatred to fanaticism, from demeaning a people to demonizing them is the same indistinct distance, the same simple synapse that sends murdered and murderer into the abyss.  "**If we believe absurdities, we shall commit atrocities**" Voltaire wrote 250 years before the Holocaust and the national trauma of September 11th.  
Unlike tyranny, it is impossible to impose freedom. It cannot be destroyed easily, certainly not by the terrorist's hand. Once realized, it is relished. The longer it is denied, the longer it will require to recover its voice. In theory, the greatest repudiation of terrorism would be to further unfurl the blessings of liberty, the glory of freedom's franchise. In reality, terrorism's manifest motive is to make us LESS free, to put limits on liberty, to make us reflexive in our repression and put our demand for security above and beyond our love of freedom and so, serve as an unwitting accomplice to the anarchist's creed, to the terrorist's hatred of democracy whose sole purpose is to destroy the coherence of coexistence and put asunder the sun of life, the love of living.  
Desperation does NOT produce suicidal terrorist murder nor should it produce suicidal "security" as its response. In our tenacious battle against terrorism, **we must NEVER deny dissent**, the hallowed hallmark of our freedom. Democratic dissent will NEVER devolve to anti-democratic depredations if it is given its free forum, its vibrant voice.

## 1nc

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.

“War powers authority” covers military operations—

Oxford International Encyclopedia of Legal History 2012

(Oxford University Press via Oxford Reference, Georgetown University library)

**The War Power in the Twenty-First Century**.

The presumption of a dual war-making role appears to have been eclipsed since 2001, during which time it has been argued by some that the president stands supreme in his war-making capacity as **commander in chief** and that he has no obligation to share such power with Congress. This view assumes that the president has all the requisite and necessary **authority to order whatever he deems necessary in terms of military operations** and that Congress can claim only the power to declare war; the resulting operational conduct is strictly a presidential prerogative. Opponents of this interpretation point to all the additional powers dealing with the military that are vested in Congress.

Prefer this:

1. Limits – Presidential authority could extend into every foreign policy issue

2. Ground – the core controversy is how the President can fight wars – it’s a military topic

3. Precision – we define war powers authority as a phrase – most predictable

Topicality is a voting issue, or the aff will read a new uncontested aff every debate

## case

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

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

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

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

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

Clark, professor of law – Catholic University, ‘95

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

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

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

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

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

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

Their thesis is wrong—dramatic change in living standards is possible despite racism

Alba 9

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Blurring the Color Line: The New Chance for a More Integrated America (Nathan I. Huggins Lectures)

Given such data, scholars who study ethnicity and race

incline toward the view that a durable ethno-racial order

exists in the United States, with whites occupying the top

position, African Americans at the bottom, and others

somewhere in between.10 One implication of such a

hierarchy is that many minority individuals find it difficult

to escape the social constraints imposed on the members of

their group, especially when they come from poor families

or those handicapped in other ways, as for instance by the

undocumented status of immigrant parents.

**Yet it may be a mistake to view our current ethno-racial**

**inequalities as enduring**. We know that fundamental

changes to ethno-racial cleavages can take place; this is

recorded in the history7 of assimilation, to which many

Americans point as proof of the ultimate openness of their

society. That such changes can occur even when racial

visibility is involved is indicated by the Asian-American

experience over the course of the twentieth century. When

the century opened, Asian Americans were racially

excluded from any meaningful participation in mainstream

American society. Asian immigrants were handicapped by

the racial bar in American citizenship law, which prevented

them from naturalizing as citizens; and legislation soon

blocked any further immigration from the "Orient." In

some states like California, marriages between Asian

Americans and whites were forbidden by

antimiscegenation laws. But during the second half of the

century7 Asian Americans broke free from their mooring in

a position of racial disadvantage and rose to high average

levels of education, occupational status, and income as well

as to widespread acceptability among white Americans.

Intermarriage rates, mainly with white American partners,

have soared to the point that about one of every7 two young

U.S.- born Asian Americans marries a non-Asian. This

change in status has not yet eclipsed all stereotypes about

Asian Americans, such as those of the "model minority,"

whose members are expected to be high achievers despite

their racial visibility, and of persons who are "forever

foreign" no matter how long their families have been in the

United States. But the changes have been profound,

nevertheless.11

In truth, the changes involved in assimilation can be

more radical than most Americans now appreciate, for

assimilation ultimately affects the way that group

differences are perceived. This sort of assimilation has had

an especially strong impact on some once-denigrated

European groups, such as Irish Catholics and those from

southern and eastern Europe. In order to appreciate the

magnitude of assimilatory change, which has caused the

distinctions based on different European origins to fade to

the point of near invisibility in much of social life, it is

important to recognize how our "eyes," our perceptions,

have been altered as a consequence. To view the

differences with the eyes of today is to view them

anachronistically because they have been reduced so

dramatically; we need to recover the perceptions of

witnesses of the time, if we are to have an appreciation of

what the distinctions meant, say, a century or more ago,

when the immigrations from Ireland or from southern and

eastern Europe were cresting. The historical record

provides abundant testimony that many native white

Americans saw the new immigrants as fundamentally

different kinds of human beings. The iconography that

visually represented these distinctions frequently depicted

the new immigrants as physically distinctive and

inherently inferior or undesirable. It depicted them, in

other words, as racially different.

Whiteness overtheorizes and underexplains political action – best historical analysis goes aff

**Kolchin 2**, Professor of History at Delaware University, (Peter, “ Whiteness Studies: The New History of Race in America,” The Journal of American History, Vol. 89, No. 1 (Jun., 2002), pp. 154-173, JSTOR)

The central question one must confront in evaluating whiteness studies is the salience of whiteness as an explanation for exploitation, injustice, and, more gener- ally, the American past. In addressing that question, the matter of context becomes crucial. Simply put, in making whiteness omnipresent, whiteness studies authors risk losing sight of contextual variations and thereby undermining the very understand- ing of race and whiteness as socially constructed.

Nonhistorians are particularly prone to deprive whiteness of historical context. As Roediger notes in pointing to "tensions" within the field of whiteness studies, "much cultural studies work in the area lacks historical grounding and ignores or miscon- ceives the emphasis on class relations common among historians of whiteness." In Scenes of Subjection, for example, the literary scholar Saidiya V. Hartman portrays white racism as a constant unaffected by any change in the social order, including "the nonevent of emancipation," and sees virtually everything done to or for African Americans as an expression of that racism. A similar inattention to context underlies Brodkin's attribution of American prejudice against Jews (their "temporary darken- ing") to the desire to exploit them as industrial laborers, without bothering to place that prejudice in the framework of the long European history of anti-Semitism-an anti-Semitism that was not always rooted in economic interest and did not always require that Jews be seen as nonwhite. Writing as if racism were a uniquely American illness, the American studies scholar George Lipsitz muses that "it must be the con- tent of our character.'19 But inattention to context bedevils many of the historians as well. In White Women's Rights, for example, one of the few historical works to examine the way whiteness shaped the experiences and behavior of women, Louise Michele Newman too often strays from her intriguing exploration of the impact on feminism of a par- ticular form of evolutionary racism and generalizes about the views of "white women," who resisted patriarchy for themselves but sought to impose it on "inferior" races. Pushing far beyond the sensible observation that most white feminists shared the racial prejudices common among whites in the late nineteenth and early twenti- eth centuries, she understates the range and complexity of feminist thought and argues that racism was "an integral, constitutive element" of feminism itself, or as she puts it, "feminism developed . .. as a racialized theory of gender oppression."20 Such overgeneralization is especially prevalent among historians who rely heavily on image, representation, and literary depiction. Grace Elizabeth Hale's densely writ- ten but fascinating book, Making Whiteness, has the rare advantage among whiteness studies works of dealing with that part of the country where race has most pervasively shaped social relations: the South. But Hale loses much of that advantage by paying virtually no attention to social relations and confusing what is southern with what is more generally American until the reader is unsure whether she is describing south- ern whiteness or American whiteness, or whether she thinks that it does not make any difference. The South, she concludes, "lies not south of anywhere but inside us." Never really explaining what she means by "whiteness" (which at times she equates with segregation) or whose interests it served, she is on equally slippery ground in confronting chronological context. "Whites [all? most? some?] created the culture of segregation," she proclaims, "in large part to counter black success." This thesis is perfectly plausible, if undemonstrated. But in arguing that the myths of the happy slave and of criminal Reconstruction were products of the late-nineteenth-century imagination, Hale largely ignores earlier versions of those myths propounded by pro- tagonists in the struggles over slavery and Reconstruction; the arguments that she treats as new were appropriations and modifications of arguments previously forged in real social relations. Indiscriminately mixing fiction and nonfiction as documenta- tion, she confuses description (at which she is very good) with explanation and almost totally ignores interest and politics in her delineation of the "making" of whiteness .21 Although Jacobson pays more attention to contextual variation, he too can paint with a very broad brush, in the process placing a heavy explanatory burden-I believe too heavy-on whiteness. His focus on image and representation makes it difficult to judge the prevalence of particular ideas, because in quoting extensively from racist stereotypes, he makes no effort to give equal time to the opponents of such views. Brilliantly exploring racial depictions of diverse immigrant groups that Americans would later consider ethnic rather than racial and thereby showing the subjective character of race, he too often blurs a crucial distinction between "race" on the one hand and "nation," "nationality," and "ethnicity" on the other. For if both race and nation are constructed (imagined) communities, they are differently con- structed: whereas race implies inherent, immutable characteristics, national and eth- nic identity can be conceived of as inherent but need not be. Throughout much of American history, Americans have promiscuously combined racial and nonracial thinking in differentiating among groups; sometimes they assumed that differences were inherent, sometimes not, and often they failed to articulate clear positions on the question (no doubt because they had not formulated such positions). Jacobson himself notes in passing that discrimination was not always based on color or race- "The loudest voices in the organized nativism of the 1 840s and 1 850s harped upon matters of Catholicism and economics, not race"-but he tends to assume the bio- logical nature of arguments that could as easily be interpreted as cultural. (See, for example, his citation of the assertion in the 191 1 publication A Dictionary of Races or Peoples that "'the savage manners of the last century are still met with amongst some Serbo-Croatians of to-day"' as evidence for emphasis on the "physical properties" of race.)22

The role of whiteness in this process of distinguishing among groups remains murky. On one hand, Jacobson portrays the 1840s-1920s as a period of "variegated whiteness" in which white Americans saw some whites as whiter than others, warns us not to "reify a monolithic whiteness," and speaks of a "system of 'difference' by which one might be both white and racially distinct from other whites." On the other, he speaks of the "process by which Celts or Slavs became Caucasians." The unresolved issue here is the extent to which Americans conceived of whiteness (rather than other criteria such as religion, culture, ethnicity, and class) as the main ingredi- ent separating the civilized from the uncivilized.23 There can be no doubt, for example, that many antebellum Americans viewed the Irish as a degraded and savage people, but whether they saw lack of whiteness as the key source of this inferior status is dubious; to most Americans, for whom Protestant- ism went hand in hand with both republicanism and Americanism, the Irish immi- grants' Catholicism was far more alarming than their color. Indeed, some abolitionists managed to combine a passionate belief in the goodness and intellectual potential of black people with an equally passionate conviction of the unworthiness of the Irish, and in the 1850s many nativists saw little difficulty in moving from the anti-Irish Know-Nothing party into the antislavery Republican party, a trajectory that would have been truly remarkable had their dominant perception of the Irish been that they were nonwhite. And as Jacobson points out, the 1790 law that limited naturalization to "free white persons" "allowed Irish immigrants entrance as 'white persons"'; in what sense, then, should one speak of their subsequently "becoming" white? This can make sense if whiteness is to be understood metaphorically, meaning "acceptable," but Jacobson and other whiteness studies authors clearly intend the term to serve as more than a metaphor; indeed, if it is understood only metaphori- cally, much of their analysis collapses.24

The overworking of whiteness is especially noteworthy in the work of David Roe- diger, for he professes greater interest in specific social relations than many whiteness studies authors. Nevertheless, his argument too often depends on blurring important distinctions among whites, thereby belying the commonality of the "wages of white- ness" he outlines. His starting point is promising: living in a slaveholding republic, white workers in the (northern) United States increasingly defined themselves by what they were not blacks, slaves. But defining oneself as not-black and as not-slave are not at all the same, and Roediger's fudging on that crucial point is especially strik- ing coming from someone who usually pays such careful attention to language. The "not-slave" formulation led to the elaboration of a "free-labor" ideology that com- bined an emphasis on the dignity of labor with a condemnation of chattel slavery as the antithesis of free, republican (that is, American) values; the "not-black" variation led to a racist denigration of nonwhites and the insistence that the United States was a "white man's country." The two views could go together, but often they did not, and Roediger's argument that whiteness was an essential element of free-labor ideol- ogy is unpersuasive. If some labor radicals took what amounted to the proslavery position that slaves in the South were better off than "free" white workers in the North, others did not, and the argument in any case rested less on the degree of whiteness than on the degree of exploitation. Similarly, Roediger's thesis that in rejecting the term "servant" in favor of "hired hand" and "help," workingmen were "becoming" white conflates two very different forms of resistance to dependence that could be, but were not always, combined. The uppity domestics who tormented Frances Trollope in Cincinnati expressed little or no concern for whiteness as they asserted their American equality, and they contrasted their rights, not with black dependence, but with that stemming from English hierarchy. Responding disdain- fully to Trollope's expectation that she would eat in the kitchen, one servant typically "turned up her pretty lip, and said, 'I guess that's 'cause you don't think I'm good enough to eat with you. You'll find that won't do here."'25

The question is not whether white racism was pervasive in antebellum America- it was-but whether it explains as much as Roediger and others maintain. In an argu- ment further developed by Ignatiev, Roediger asserts that "it was by no means clear that the Irish were white." They present little evidence, however, that most Ameri- cans viewed the Irish as nonwhite. (To establish this point one would have to analyze the "racial" thought of Americans about the Irish, a task that neither Roediger nor Ignatiev undertakes.) Indeed, the whiteness studies authors often display a notable lack of precision in asserting the nonwhite status of despised groups. Roediger sug- gests that Irish whiteness was "by no means clear"; Ignatiev speaks of "strong tenden- cies . . . to consign the Irish, if not to the black race, then to an intermediate race located between white and black"; Neil Foley, in discussing prejudice against poor whites in central Texas, proclaims that "not all whites . . . were equally white" and suggests that landlords felt that their tenants "lacked certain qualities of whiteness"; Brodkin states that "for almost half a century, [Jews] were treated as racially not- quite-white." What is at issue is not the widespread hostility to and discrimination against the Irish, Jews, poor whites, and multiple other groups, but the salience of whiteness in either explaining or describing such hostility and discrimination. The status of southern poor whites is especially telling, for despite persistent "racial" stereotypes of them as shiftless, slovenly, and degraded, such stereotypes did not usu- ally include denials of their whiteness. Americans have had many ways of looking down on people without questioning their whiteness.26

A brief consideration of the ideology of four prominent nineteenth-century Amer- icans-the Confederate vice president Alexander H. Stephens, Illinois's Democratic senator Stephen A. Douglas, Abraham Lincoln, and Ohio's Republican senator Ben- jamin F. Wade-illustrates the risk of overemphasizing whiteness. Like most white Americans, all four were in some sense committed to whiteness. In his famous speech hailing the secession of the southern states, Stephens boldly identified as the "corner- stone" of the new government "the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition." In the Lincoln-Douglas debates of 1858, Douglas mercilessly denounced his Republican challenger as a supporter of black equality and boasted that "this gov- ernment was made on the white basis.... It was made by white men, for the benefit of white men and their posterity for ever, and I am in favor of confining citizenship to white men." Lincoln responded that he did not favor "political and social equality between the white and black races"; noting the "physical difference" between the races, he proclaimed that "inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong, hav- ing the superior position." Upon his arrival in Washington, D.C., in 1851, Wade complained that "the Nigger smell I cannot bear," adding that the food was "all cooked by Niggers until I can smell and taste the Nigger."27

Yet any treatment of those four men that stopped at their common commitment to whiteness would be so incomplete as to be totally misleading. Stephens was an ardent Confederate whereas the other three were committed Unionists. Their differ- ences on slavery and black rights were even more notable. Stephens was a defender of slavery and black racial subordination. Douglas saw slavery as a minor issue whose fate should be left to local (white) control. Lincoln believed that slavery was morally wrong as well as socially degrading, eschewed the race-baiting that Douglas and many other white Americans took for granted, and in his debate with Douglas imme- diately qualified his support for white supremacy with the ringing assertion that whether or not "the negro" was equal in all respects, "in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal ofJudge Douglas, and the equal of every living man." Wade was an ardent opponent of slavery, who became one of the most enthusiastic proponents of a radical Reconstruc- tion policy designed to remake the South and provide equal rights for the former slaves, as well as a sturdy champion of the rights of women and of labor. In short, what is most significant about the careers of the four men lies, not in their shared expressions of whiteness, but in the sharply divergent positions they took on the major issues of their era. Whiteness turns out to be a blunt instrument for dissecting the nuances-or even the major outlines-of their political ideology and behavior.28

The invocation of social death as ontologically inevitable inscribes a pessimism towards politics which makes agency impossible and oversimplifies the history of resistance

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Specters of the Atlantic is a compellingly sophisticated study of the relation be- tween the epistemologies underwriting both modern slavery and modern capitalism, but the book’s discussion of the politics of anti-slavery is fundamentally incomplete. While Baucom brilliantly traces the development of “melancholy realism” as an op- positional discourse that ran counter to the logic of slavery and finance capital, he has very little to say about the enslaved themselves. Social death, so well suited to the tragic perspective, stands in for the experience of enslavement. While this heightens the reader’s sense of the way Atlantic slavery haunts the present, Baucom largely fails to acknowledge that the enslaved performed melancholy acts of accounting not unlike those that he shows to be a fundamental component of abolitionist and human rights discourses, or that those acts could be a basic element of slaves’ oppositional activities. In many ways, the effectiveness of his text depends upon the silence of slaves—it is easier to describe the continuity of structures of power when one down- plays countervailing forces such as the political activity of the weak. So Baucom’s deep insights into the structural features of Atlantic slave trading and its afterlife come with a cost. Without engagement with the politics of the enslaved, slavery’s history serves as an effective charge leveled against modernity and capitalism, but not as an uneven and evolving process of human interaction, and certainly not as a locus of conflict in which the enslaved sometimes won small but important victories.11

Specters of the Atlantic is self-consciously a work of theory (despite Baucom’s prodigious archival research), and social death may be largely unproblematic as a matter of theory, or even law. In these arenas, as David Brion Davis has argued, “the slave has no legitimate, independent being, no place in the cosmos except as an instrument of her or his master’s will.”12 But the concept often becomes a general description of actual social life in slavery. Vincent Carretta, for example, in his au- thoritative biography of the abolitionist writer and former slave Olaudah Equiano, agrees with Patterson that because enslaved Africans and their descendants were “stripped of their personal identities and history, [they] were forced to suffer what has been aptly called ‘social death.’ ” The self-fashioning enabled by writing and print “allowed Equiano to resurrect himself publicly” from the condition that had been imposed by his enslavement.13 The living conditions of slavery in eighteenth-century Jamaica, one slave society with which Equiano had experience, are described in rich detail in Trevor Burnard’s unflinching examination of the career of Thomas Thistle- wood, an English migrant who became an overseer and landholder in Jamaica, and who kept a diary there from 1750 to 1786. Through Thistlewood’s descriptions of his life among slaves, Burnard glimpses a “world of uncertainty,” where the enslaved were always vulnerable to repeated depredations that actually led to “significant slave dehumanization as masters sought, with considerable success, to obliterate slaves’ personal histories.” Burnard consequently concurs with Patterson: “slavery completely stripped slaves of their cultural heritage, brutalized them, and rendered ordinary life and normal relationships extremely difficult.”14 This was slavery, after all, and much more than a transfer of migrants from Africa to America.15 Yet one wonders, after reading Burnard’s indispensable account, how slaves in Jamaica or- ganized some of British America’s greatest political events during Thistlewood’s time and after, including the Coromantee Wars of the 1760s, the 1776 Hanover conspiracy, and the Baptist War of 1831–1832. Surely they must have found some way to turn the “disorganization, instability, and chaos” of slavery into collective forms of belonging and striving, making connections when confronted with alien- ation and finding dignity in the face of dishonor. Rather than pathologizing slaves by allowing the condition of social death to stand for the experience of life in slavery, then, it might be more helpful to focus on what the enslaved actually made of their

situation.

Among the most insightful texts to explore the experiential meaning of Afro- Atlantic slavery (for both the slaves and their descendants) are two recent books by Saidiya Hartman and Stephanie Smallwood. Rather than eschewing the concept of social death, as might be expected from writing that begins by considering the per- spective of the enslaved, these two authors use the idea in penetrating ways. Hart- man’s Lose Your Mother: A Journey along the Atlantic Slave Route and Smallwood’s Saltwater Slavery: A Middle Passage from Africa to American Diaspora extend social death beyond a general description of slavery as a condition and imagine it as an experience of self. Here both the promise and the problem with the concept are most fully apparent.16

Both authors seek a deeper understanding of the experience of enslavement and its consequences for the past, present, and future of black life than we generally find in histories of slavery. In Hartman’s account especially, slavery is not only an object of study, but also the focus of a personal memoir. She travels along a slave route in Ghana, from its coastal forts to the backcountry hinterlands, symbolically reversing the first stage of the trek now commonly called the Middle Passage. In searching prose, she meditates on the history of slavery in Africa to explore the precarious nature of belonging to the social category “African American.” Rendering her re- markable facility with social theory in elegant and affective terms, Hartman asks the question that nags all identities, but especially those forged by the descendants of slaves: What identifications, imagined affinities, mythical narratives, and acts of re- membering and forgetting hold the category together? Confronting her own alienation from any story that would yield a knowable genealogy or a comfortable identity, Hartman wrestles with what it means to be a stranger in one’s putative motherland, to be denied country, kin, and identity, and to forget one’s past—to be an orphan.17 Ultimately, as the title suggests, Lose Your Mother is an injunction to accept dis- possession as the basis of black self-definition.

Such a judgment is warranted, in Hartman’s account, by the implications of social death both for the experience of enslavement and for slavery’s afterlife in the present. As Patterson delineated in sociological terms the death of social personhood and the reincorporation of individuals into slavery, Hartman sets out on a personal quest to “retrace the process by which lives were destroyed and slaves born.”18 When she contends with what it meant to be a slave, she frequently invokes Patterson’s idiom: “Seized from home, sold in the market, and severed from kin, the slave was for all intents and purposes dead, no less so than had he been killed in combat. No less so than had she never belonged to the world.” By making men, women, and children into commodities, enslavement destroyed lineages, tethering people to own- ers rather than families, and in this way it “annulled lives, transforming men and women into dead matter, and then resuscitated them for servitude.” Admittedly, the enslaved “lived and breathed, but they were dead in the social world of men.”19 As it turns out, this kind of alienation is also part of what it presently means to be African American. “The transience of the slave’s existence,” for example, still leaves its traces in how black people imagine and speak of home:

We never tire of dreaming of a place that we can call home, a place better than here, wherever here might be . . . We stay there, but we don’t live there . . . Staying is living in a country without exercising any claims on its resources. It is the perilous condition of existing in a world in which you have no investments. It is having never resided in a place that you can say is yours. It is being “of the house” but not having a stake in it. Staying implies transient quarters, a makeshift domicile, a temporary shelter, but no attachment or affiliation. This sense of not belonging and of being an extraneous element is at the heart of slavery.20

“We may have forgotten our country,” Hartman writes, “but we haven’t forgotten our dispossession.”21

Like Baucom, Hartman sees the history of slavery as a constituent part of a tragic present. Atlantic slavery continues to be manifested in black people’s skewed life chances, poor education and health, and high rates of incarceration, poverty, and premature death. Disregarding the commonplace temporalities of professional historians, whose literary conventions are generally predicated on a formal distinction between past, present, and future, Hartman addresses slavery as a problem that spans all three. The afterlife of slavery inhabits the nature of belonging, which in turn guides the “freedom dreams” that shape prospects for change. “If slavery persists as an issue in the political life of black America,” she writes, “it is not because of an antiquated obsession with bygone days or the burden of a too-long memory, but because black lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago.”22

A professor of English and comparative literature, Hartman is in many respects in a better position than most historians to understand events such as the funeral aboard the Hudibras. This is because for all of her evident erudition, her scholarship is harnessed not so much to a performance of mastery over the facts of what hap- pened, which might substitute precision for understanding, as to an act of mourning, even yearning. She writes with a depth of introspection and personal anguish that is transgressive of professional boundaries but absolutely appropriate to the task. Reading Hartman, one wonders how a historian could ever write dispassionately about slavery without feeling complicit and ashamed. For dispassionate accounting—exemplified by the ledgers of slave traders—has been a great weapon of the powerful, an episteme that made the grossest violations of personhood acceptable, even necessary. This is the kind of bookkeeping that bore fruit upon the Zong. “It made it easier for a trader to countenance yet another dead black body or for a captain to dump a shipload of captives into the sea in order to collect the insurance, since it wasn’t possible to kill cargo or to murder a thing already denied life. Death was simply part of the workings of the trade.” The archive of slavery, then, is “a mortuary.” Not content to total up the body count, Hartman offers elegy, echoing in her own way the lamentations of the women aboard the Hudibras. Like them, she is concerned with the dead and what they mean to the living. “I was desperate to reclaim the dead,” she writes, “to reckon with the lives undone and obliterated in the making of human commodities.”23

It is this mournful quality of Lose Your Mother that elevates it above so many histories of slavery, but the same sense of lament seems to require that Hartman overlook small but significant political victories like the one described by Butter- worth. Even as Hartman seems to agree with Paul Gilroy on the “value of seeing the consciousness of the slave as involving an extended act of mourning,” she remains so focused on her own commemorations that her text makes little space for a consideration of how the enslaved struggled with alienation and the fragility of belonging, or of the mourning rites they used to confront their condition.24 All of the ques- tions she raises about the meaning of slavery in the present—both highly personal and insistently political—might as well be asked about the meaning of slavery to slaves themselves, that is, if one begins by closely examining their social and political lives rather than assuming their lack of social being. Here Hartman is undone by her reliance on Orlando Patterson’s totalizing definition of slavery. She asserts that “no solace can be found in the death of the slave, no higher ground can be located, no perspective can be found from which death serves a greater good or becomes any- thing other than what it is.”25 If she is correct, the events on the Hudibras were of negligible importance. And indeed, Hartman’s understandable emphasis on the personal damage wrought by slavery encourages her to disavow two generations of social history that have demonstrated slaves’ remarkable capacity to forge fragile com- munities, preserve cultural inheritance, and resist the predations of slaveholders. This in turn precludes her from describing the ways that violence, dislocation, and death actually generate culture, politics, and consequential action by the enslaved.26

This limitation is particularly evident in a stunning chapter that Hartman calls “The Dead Book.” Here she creatively reimagines the events that occurred on the voyage of the slave ship Recovery, bound, like the Hudibras, from the Bight of Biafra to Grenada, when Captain John Kimber hung an enslaved girl naked from the mizzen stay and beat her, ultimately to her death, for being “sulky”: she was sick and could not dance when so ordered. As Hartman notes, the event would have been unre- markable had not Captain Kimber been tried for murder on the testimony of the ship’s surgeon, a brief transcript of the trial been published, and the woman’s death been offered up as allegory by the abolitionist William Wilberforce and the graphic satirist Isaac Cruikshank. Hartman re-creates the murder and the surge of words it inspired, representing the perspectives of the captain, the surgeon, and the aboli tionist, for each of whom the girl was a cipher “outfitted in a different guise,” and then she puts herself in the position of the victim, substituting her own voice for the unknowable thoughts of the girl. Imagining the experience as her own and wistfully representing her demise as a suicide—a final act of agency—Hartman hopes, by this bold device, to save the girl from oblivion. Or perhaps her hope is to prove the impossibility of ever doing so, because by failing, she concedes that the girl cannot be put to rest. It is a compelling move, but there is something missing. Hartman discerns a convincing subject position for all of the participants in the events sur- rounding the death of the girl, except for the other slaves who watched the woman die and carried the memory with them to the Americas, presumably to tell others, plausibly even survivors of the Hudibras, who must have drawn from such stories a basic perspective on the history of the Atlantic world. For the enslaved spectators, Hartman imagines only a fatalistic detachment: “The women were assembled a few feet away, but it might well have been a thousand. They held back from the girl, steering clear of her bad luck, pestilence, and recklessness. Some said she had lost her mind. What could they do, anyway? The women danced and sang as she lay dying.”

Hartman ends her odyssey among the Gwolu, descendants of peoples who fled the slave raids and who, as communities of refugees, shared her sense of dispos- session. “Newcomers were welcome. It didn’t matter that they weren’t kin because genealogy didn’t matter”; rather, “building community did.” Lose Your Mother con- cludes with a moving description of a particular one of their songs, a lament for those who were lost, which resonated deeply with her sense of slavery’s meaning in the present. And yet Hartman has more difficulty hearing similar cries intoned in the past by slaves who managed to find themselves.27

Saltwater Slavery has much in common with Lose Your Mother. Smallwood’s study of the slave trade from the Gold Coast to the British Americas in the late seventeenth and early eighteenth centuries likewise redeems the experience of the people traded like so many bolts of cloth, “who were represented merely as ciphers in the political arithmetic,” and therefore “feature in the documentary record not as subjects of a social history but as objects or quantities.”28 Each text offers a penetrating analysis of the market logic that turned people into goods. Both books work with the concept of social death. However, Smallwood examines the problem of social death for the enslaved even more closely than Hartman does.29

Like Hartman, Smallwood sees social death as a by-product of commodification. “If in the regime of the market Africans’ most socially relevant feature was their exchangeability,” she argues, “for Africans as immigrants the most socially relevant feature was their isolation, their desperate need to restore some measure of social life to counterbalance the alienation engendered by their social death.” But Small- wood’s approach is different in a subtle way. Whereas for Hartman, as for others, social death is an accomplished state of being, Smallwood veers between a notion of social death as an actual condition produced by violent dislocation and social death as a compelling threat. On the one hand, she argues, captivity on the Atlantic littoral was a social death. Exchangeable persons “inhabited a new category of mar- ginalization, one not of extreme alienation within the community, but rather of ab- solute exclusion from any community.” She seems to accept the idea of enslaved commodities as finished products for whom there could be no socially relevant relationships: “the slave cargo constituted the antithesis of community.” Yet elsewhere she contends that captives were only “menaced” with social death. “At every point along the passage from African to New World markets,” she writes, “we find a stark contest between slave traders and slaves, between the traders’ will to commodify people and the captives’ will to remain fully recognizable as human subjects.”30 Here, I think, Smallwood captures the truth of the idea: social death was a receding ho- rizon—the farther slaveholders moved toward the goal of complete mastery, the more they found that struggles with their human property would continue, even into the most elemental realms: birth, hunger, health, fellowship, sex, death, and time.

If social death did not define the slaves’ condition, it did frame their vision of apocalypse. In a harrowing chapter on the meaning of death (that is, physical death) during the Atlantic passage, Smallwood is clear that the captives could have no frame of reference for the experience aboard the slave ships, but she also shows how des- perate they were to make one. If they could not reassemble some meaningful way to map their social worlds, “slaves could foresee only further descent into an endless purgatory.” The women aboard the Hudibras were not in fact the living dead; they were the mothers of gasping new societies. Their view of the danger that confronted them made their mourning rites vitally important, putting these at the center of the women’s emerging lives as slaves—and as a result at the heart of the struggles that would define them. As Smallwood argues, this was first and foremost a battle over their presence in time, to define their place among ancestors, kin, friends, and future progeny. “The connection Africans needed was a narrative continuity between past and present—an epistemological means of connecting the dots between there and here, then and now, to craft a coherent story out of incoherent experience.” That is precisely what the women on the Hudibras fought to accomplish.31

**Aff’s Shakur iconography gets coopted – Kills solvency**

James 99 Joy James Shadowboxing: Representations of Black Feminist Politics 1999 Presidential Professor of the Humanities and a professor in political science at Williams College Pg. Xiii

Chapter 4, "Radicalizing Feminisms from The Movement' Era." reviews the emergence and conflict! of feminism in the 1960s and 1970s. It offers working definitions of "radicalism" and "revolutionary" politics for contemporary struggles. Building Onthese definitions. "Revolution­ary Icons and 'Neoslave Narratives," chapter 5. examines several leaders in those movements, focusing on the radical Angela Davis, now public intellectual-academic, and the revolutionary Assata Shakur, currently in political exile in Cuba. In the 1970s, targeted for political activities but imprisoned on criminal charges, each woman mirrored archetypes shaped by Wells and Baker. At a time of mass, militant unrest, through bold confrontations with state authority, Davis and Shakur forged prototypes for I ate-twentieth-century black female radicalism. Rising public recognition for their contributions has led to a celebrity status— one that can transform the radical iconoclast into a deradicalized icon. The destruction or co-optation of radical movements was furthered by commodification and performative politics that simplistically reduced the revolutionary Malcolm X to an "X" insignia **on** apparel; the radicalism **of** the women's movement **to** bra-burning; and liberation politics to the slogans of stage personal. Since the 1970s, conservatism increasingly mainstreamed countermovements that challenged or dis-manded feminist and antiracist gains—ones modified and institutionalized by liberals—generated from the social upheavals engineered by militants. The rise of a commodified black female radicalism in popular iconography coexists with new forms of racial and economic contain­ment. As iconography deflects from contemporary repression and radical opposition, it promotes the disappearance of black female agency in political struggles.

The alt is IDENTITY but not POLITICS---failure to envision a future in which their identity claims will no longer be needed results in a reactionary politics that entrenches the status quo

**Bhambra 10**—U Warwick—AND—Victoria Margree—School of Humanities, U Brighton (Identity Politics and the Need for a ‘Tomorrow’, http://www.academia.edu/471824/Identity\_Politics\_and\_the\_Need\_for\_a\_Tomorrow\_)

The quotation with which this article begins comes from the end of the novel where the character Paul D is speak-ing to fellow former slave Sethe of the need to move be- yond the terms of **a past disﬁgured by slavery**. We begin with this for two reasons. First, it expresses the central problematic ad-dressed within this article: the question of the place of history in the present, and how this helps or hinders the opening up of future possibilities. Second, the novel addresses how the opening up of a new future can also be achieved by shifts in understand-ing which result from allowing **alternative interpretations of the past**. Speciﬁcally in Beloved , Paul D moves from a condemnation of Sethe for her alleged inhumanity in having killed her own child (“you got two legs, not four, Sethe” ((1987) 1997: 165)), to a new understanding of the “gendered division of labour on which slavery was built” (Mohanty 2000: 61) and thus to acceptance of the validity of her claims to have killed as a human being , and as a mother (to save her own child from becoming a slave like her-self, to refuse to be a reproducer of slaves). As such, Paul D arrives at a fuller understanding of their shared historical experience as slaves, and this new knowledge constitutes the basis for develop-ing the “tomorrow” of which he speaks.¶ In what follows we use the metaphor of “tomorrow” in order to address contemporary debates about “identity politics”. Recent years have witnessed a general backlash against identity politics both in the academy and the public sphere (Bickford 1997, Young1997, Farred 2000, Bramen 2002). Among the various pro-tagonists of this “backlash”, Bramen (2002) gives particular atten-tion to work by Wendy Brown (1995) on “wounded attachments”. This is her term for a condition in which politicised identities, based upon experiences of injustice and discrimination, begin to “fetishise” (Ahmed 2004) their own wounding. For Brown, this results in a **reactionary politics aimed at recrimination**, **instead of action to redress the injustice.** Our intention in the present article is to situate ourselves within this debate about the value of iden-tity politics as well as to engage with the speciﬁc issues raised by Brown’s work. We will argue that the objections to “identity “raised by Brown and others must be taken seriously, but that **this need not lead to a wholesale abandonment of the politics of identity.** Rather, we wish to demonstrate that **the problem with identity politics is the way in which the “identity”** very often **comes to replace the “politics”.** To avoid such a substitution, we argue that “identity” may be re-theorised as that which is continually pro-duced and reproduced by **political projects in the present**, and **on the basis of a shared vision of the future.** The argument of this article is thus that politicised identities might instead be thought of in terms of an explicit afﬁrmation of the **provisionality** **of a political identity** that is **oriented to a “tomorrow**” in which the identity will no longer be required. **In this way, the power of “identity” as a site of resistance is maintained, while ameliorating the conservative effects of the entrenched identities** that Brown criticises. As such, this article also addresses the wider contemporary debate in emancipatory politics, which concerns the proper orientation of radical politics in terms of the tense of political dis-course. The key issue here is that of the extent to which political discourse should be focused around the past – on origins, memory, history, trauma and so forth – or the extent to which it should be **future-oriented**. Critics such as Brown (1995) and Grosz (2000)have expressed a fear that too great a weight upon the past has proved **constraining** for radical movements, and that an emphasis upon the future – **the (more) just future that political action intends to bring about – is required** as a corrective to this (Ahmed2004). However, such a demand brings with it the vexed question of the place of memory, and speciﬁcally, the memorialising of pain and exclusion. As Brown’s own equivocation on the issue suggests, “the counsel of forgetting [...] seems inappropriate if not cruel”(p 74) for many oppressed groups who have yet to have their pain recognised, or to understand themselves the deferred effects of atraumatic past (Kilby 2002). The arguments presented in this paper are threefold. First, we argue for a rethinking of “politicised identities” in terms of a **commitment to a desired future**, as a corrective to the conservative effects that frequently accompany “identity” (here identiﬁed as “exclusionary politics” and “reiﬁcation of identities”). Second, we argue, however, that such an emphasis upon the future need not and should not entail an abandonment of the commitment to address traumatic pasts. Third, we argue that a productive identity politics is one which understands the identity of the political group-ing as **provisional**, since it is based on the need to respond to an existing injustice, and therefore, oriented to a future in which that injustice, and hence, the need for the identity claim, is no longer pre-sent. Central to the development of our thesis will be an engagement with work on experience and identity by Satya Mohanty, and com-munities and knowledge by Lynn Hankinson Nelson.

No social death – history proves

Vincent **Brown**, Prof. of History and African and African-American Studies @ Harvard Univ., December 20**09**, "Social Death and Political Life in the Study of Slavery," American Historical Review, p. 1231-1249

THE PREMISE OF ORLANDO PATTERSON’S MAJOR WORK, that enslaved Africans were natally alienated and culturally isolated, was challenged even before he published his influential thesis, primarily by scholars concerned with “survivals” or “retentions” of African culture and by historians of slave resistance. In the early to mid-twentieth century, when Robert Park’s view of “the Negro” predominated among scholars, it was generally assumed that the slave trade and slavery had denuded black people of any ancestral heritage from Africa. The historians Carter G. Woodson and W. E. B. Du Bois and the anthropologist Melville J. Herskovits argued the opposite. Their research supported the conclusion that while enslaved Africans could not have brought intact social, political, and religious institutions with them to the Americas, they did maintain significant aspects of their cultural backgrounds.32 Herskovits ex- amined “Africanisms”—any practices that seemed to be identifiably African—as useful symbols of cultural survival that would help him to analyze change and continuity in African American culture.33 He engaged in one of his most heated scholarly disputes with the sociologist E. Franklin Frazier, a student of Park’s, who empha- sized the damage wrought by slavery on black families and folkways.34 More recently, a number of scholars have built on Herskovits’s line of thought, enhancing our understanding of African history during the era of the slave trade. Their studies have evolved productively from assertions about general cultural heritage into more precise demonstrations of the continuity of worldviews, categories of belonging, and social practices from Africa to America. For these scholars, the preservation of distinctive cultural forms has served as an index both of a resilient social personhood, or identity, and of resistance to slavery itself. 35

Scholars of slave resistance have never had much use for the concept of social death. The early efforts of writers such as Herbert Aptheker aimed to derail the popular notion that American slavery had been a civilizing institution threatened by “slave crime.”36 Soon after, studies of slave revolts and conspiracies advocated the idea that resistance demonstrated the basic humanity and intractable will of the enslaved—indeed, they often equated acts of will with humanity itself. As these writ- ers turned toward more detailed analyses of the causes, strategies, and tactics of slave revolts in the context of the social relations of slavery, they had trouble squaring abstract characterizations of “the slave” with what they were learning about the en- slaved.37 Michael Craton, who authored Testing the Chains: Resistance to Slavery in the British West Indies, was an early critic of Slavery and Social Death, protesting that what was known about chattel bondage in the Americas did not confirm Patterson’s definition of slavery. “If slaves were in fact ‘generally dishonored,’ ” Craton asked, “how does he explain the degrees of rank found among all groups of slaves—that is, the scale of ‘reputation’ and authority accorded, or at least acknowledged, by slave and master alike?” How could they have formed the fragile families documented by social historians if they had been “natally alienated” by definition? Finally, and per- haps most tellingly, if slaves had been uniformly subjected to “permanent violent domination,” they could not have revolted as often as they did or shown the “varied manifestations of their resistance” that so frustrated masters and compromised their power, sometimes “fatally.”38 The dynamics of social control and slave resistance falsified Patterson’s description of slavery even as the tenacity of African culture showed that enslaved men, women, and children had arrived in the Americas bearing much more than their “tropical temperament.”

The cultural continuity and resistance schools of thought come together pow- erfully in an important book by Walter C. Rucker, The River Flows On: Black Re- sistance, Culture, and Identity Formation in Early America. In Rucker’s analysis of slave revolts, conspiracies, and daily recalcitrance, African concepts, values, and cul- tural metaphors play the central role. Unlike Smallwood and Hartman, for whom “the rupture was the story” of slavery, Rucker aims to reveal the “perseverance of African culture even among second, third, and fourth generation creoles.”39 He looks again at some familiar events in North America—New York City’s 1712 Coromantee revolt and 1741 conspiracy, the 1739 Stono rebellion in South Carolina, as well as the plots, schemes, and insurgencies of Gabriel Prosser, Denmark Vesey, and Nat Turner—deftly teasing out the African origins of many of the attitudes and actions of the black rebels. Rucker outlines how the transformation of a “shared cultural heritage” that shaped collective action against slavery corresponded to the “various steps Africans made in the process of becoming ‘African American’ in culture, orientation, and identity.”40

# 2nc

Engaging the law is key to transforming racist structures—our vision of inclusive debate incorporating policy reform doesn’t rely on a rationalist subjectivity, it doesn’t exclude alternative models of knowledge production, and it’s uniquely liberatory

Harris, professor of law – UC Berkeley, ‘94

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

Reacting to the nihilist threat, some writers have argued that postmodernism is antithetical to feminism and should be rejected by feminist theorists. n93 Race-crits could take a similar position, rejecting postmodernist philosophizing in favor of the certainties of universal truth and justice. In my view, however, this response would be a mistake for two reasons. First, postmodernism does not represent an independent alternative to modernism that can be accepted or rejected; it is the voice of modernism's discontents, and as such is not easily stilled. Second, part of the reason why race-crits have tried to distance themselves from traditional civil rights scholarship is precisely that the old verities, the old optimistic faith in reason, truth, blind justice, and neutrality, have not brought us to racial justice, but have rather left us "stirring the ashes." n94 History has shown that racism can coexist happily with formal commitments to objectivity, neutrality, and colorblindness. Perhaps what CRT needs is simply a redoubled effort to reach true objectivity and neutrality. But, then again, perhaps those concepts themselves need reexamination. [\*760] If race-crits can neither reject postmodernism nor accept it wholeheartedly without undermining the CRT project itself, what (to ask the legal scholar's perennial normative question) should we do? To talk as if one has the choice to "accept" or "reject" these world views is certainly misleading. We live in a political and legal world shaped by modernism; we cannot step out of it. Nor can we, as good modernist intellectuals, ignore modernism's discontents. As Anthony Cook and others have written, the task should not be to try to somehow resolve the philosophical tension between modernism and postmodernism, but rather consciously to inhabit that very tension. n95 This work requires both a commitment to modernism and a willingness to acknowledge its limits. At its best, it inspires a jurisprudence of reconstruction - the attempt to reconstruct political modernism itself in light of the difference "race" makes. Race-crits, along with other outsider scholars, have a distinctive contribution to make to this endeavor. The source of this contribution, I argue in this Section, is an engagement with "the politics of difference." Through their commitment both to anti-racism and to affirming the cultural "differences" that the concept of "race" has produced, race-crits bring a distinctive perspective to the jurisprudential "problem of the subject." n96 More broadly, this dual commitment to eliminating oppression and celebrating difference impels race-crits to live in the tension between modernism and postmodernism, transforming political modernism in the process. In this latter project, race-crits are part of a global movement by intellectuals in previously colonized nations, not to abandon the Enlightenment ideals of freedom and liberal democracy, but to make good on their promises. A. CRT and the Problem of the Subject Unlike crits, whose primary intellectual-political commitment is to criticism itself, race-crits hold a dual commitment to anti-racist critique and to maintaining the distinctive cultures formed in part by concepts of "race." This dual commitment engages CRT in what I call the "politics of difference." One notable characteristic about contemporary American left political movements is their obsession with issues of identity. n97 The second wave of [\*761] the women's movement and the Civil Rights Movement, for example, built their strength on reconceiving their constituents' collective identities; subsequent movements such as Gay Liberation and its contemporary descendants have similarly engaged in "identity politics." n98 In these movements, the construction of one's identity has been both a personal and a political act, linking the individual with a distinct social and political community. n99 Rather than supporting assimilation to the dominant culture, the new social movements have demanded a recognition of their members' "difference." This claim to equality based not on sameness but rather on difference is at the heart of the politics of difference. Intellectuals' engagement in the politics of difference has resulted in a rejection of the binary distinction between "same" and "different" itself. Instead, these scholars see "identity" as a complex and changing interaction between internal and external forces, between individual agency and structures of power. n100 For example, by complicating the notion of "female identity," feminist theorists have tried to move beyond the proposition that gender equality requires either "the same" treatment or "different" (usually meaning "special," and hence disfavored) treatment. n101 Instead, feminist theorists have explored how both "sameness" and "difference" are based on a non-neutral, male [\*762] standard. n102 Equality in this formulation demands transformation of the existing structure, not just tolerance of or remediation for those who are "different." Second-wave crits have argued that the reconstruction of political modernism in light of postmodernist critique requires addressing the problem of the subject. n103 Just whom is being spoken of when law review authors recommend that "we" do this or that? What issues are being avoided when legal writers seek to understand the legal system without asking how understanding changes the self? n104 Race-crits, like other intellectuals engaged in the politics of difference, are well situated to speak to "the problem of the subject." The language of race creates, maintains, and destroys subjects, both inside and outside the law. The study of race is in part the study of how individual personalities are melted down into collective subjects. It is also the study of how racialized subjects can be subjected to, yet not represented in, the law. In coming to terms with the long exclusion of people of color from full legal "belonging," race-crits seek not just to expand the subject "we the people," but to turn a critical eye on the legal subject itself. Just as feminist demands for equality require a transformation of traditional understandings of families and markets, n105 race-crit demands for equality under law require a transformation of traditional understandings of the legal subject. This task forces intellectuals to live in the conflict between modernism and postmodernism. The new social movements based on "difference" have renounced assimilation as the path toward equality and are suspicious of the old faith in integration. n106 At the same time, most of these movements are committed to seeking equality, justice, and pluralism within the nation rather than as separate political sovereigns. n107 This political task of [\*763] giving a new meaning to the phrase "e pluribus unum" thus demands both a commitment to political modernism and a deep skepticism of it. B. CRT and Resistance Culture For people of color, the politics of difference within the United States can be understood within the broader context of global post-colonialism. Edward Said has made a study of how the West justified colonialism, how colonized peoples resisted it, and how the cultural dialogue between colonizer and colonized is evident in the art and literature of each. n108 Since the end of formal colonialism, n109 Said argues, a distinctive "resistance culture" has emerged from formerly colonized peoples. Resistance culture, as Said describes it, consists of three projects. First is the reconstitution of the formerly colonized nation through consolidating a national language and national culture (a project that is always the product of invention rather than simple "recovery"). n110 Second is what Said calls "the voyage in": the "conscious effort to enter into the discourse of Europe and the West, to mix with it, transform it, to make it acknowledge marginalized or suppressed or forgotten histories." n111 Third, according to Said, resistance culture involves "a noticeable pull away from separatist nationalism toward a more integrative view of human community and human liberation." n112 Reading the history of "racial minorities" in the United States as part of the larger history of western colonialism, n113 race-crits are involved in the [\*764] project of "resistance culture" as well. Situated within the United States, where separatist nationalism has never been a viable alternative, n114 the domestic politics of difference has focused on Said's first and second projects: the constitution or reconstitution of the subordinated community and the transformation of the dominant community. Storytelling has contributed to much of the first project. Storytelling serves to create and confirm identity, both individual and collective. n115 As William Eskridge has argued, storytelling helps build new communities: stories of what it means to be gay and lesbian, for example, help individual gay and lesbian people locate themselves within a community and give the gay and lesbian community a collective sense of itself as an agent. n116 At the personal level, this community-building function is similar to what 1970s feminists termed "consciousness raising." n117 Storytelling in this sense is myth-making: the creation of a new collective subject with a history from which individuals can draw to shape their own identities. Literary and cultural critics have participated in the second aspect of resistance culture, the project of "writing back." For example, in the context of American literary studies, Toni Morrison argues that "Africanism" - the reference in literary works to an imaginary "Africa" has become, in the Eurocentric tradition that American education favors, both a way of talking about and a way of policing matters of class, sexual license, and repression, formations and exercises of power, and meditations on ethics and accountability. Through the simple expedient of demonizing and reifying the range of color on a palette, American Africanism makes it possible to say and not say, to inscribe and erase, to escape and engage, to act out and act on, to historicize and render timeless. It provides a way of contemplating [\*765] chaos and civilization, desire and fear, and a mechanism for testing the problems and blessings of freedom. n11 Morrison's project is to transform the reader's understanding of the American literary canon by calling her attention to how complexities within American social and political culture have been made into questions of "race." n119 Her effort, however, is not to throw certain works out of the canon and replace them with others, but rather to deepen the reader's understanding both of the works within and without the canon and of how and why canon formation itself takes place. Robert Williams is engaged in a similar task in his article in this Symposium. Williams points out that the history of the Encounter era in North America is not only one of conflict but also one of mutual accommodation. n120 In telling the story of the English-Iroquois Covenant Chain alliance, Williams does the historical work of adding back to the American legal and political tradition a story of Iroquois creativity and power that has been forgotten or suppressed. Williams engages in the transformational work of "exploring the commensurability of this North American indigenous vision of law and peace between different peoples with contemporary understandings of the problem of achieving human solidarity and accommodation in a multicultural world." n121 By recovering this and other neglected dialogues, race-crits can begin to reconstruct modern political theory. C. CRT as Reconstruction Jurisprudence Within legal studies, the attempt to use the dissonance between modernism and postmodernism creatively on behalf of people of color is what I call "reconstruction jurisprudence." Mari Matsuda, who coined this term, describes it as having a double meaning. n122 First, reconstruction jurisprudence is meant to distinguish CRT from CLS's project of deconstruction. Race-crits have rejected the project of "total critique" and are committed to transforming modernist paradigms as well as criticizing them. Second, the word "reconstruction" refers to the legacy of slavery in the New World and the unfinished revolutions of the First and Second Reconstructions. My third connotation for "reconstruction jurisprudence" is the project of "writing back" to white-dominated legal rules, reasoning, and institutions. The first step is the self-conscious formation of identity groups that [\*766] have been subject to racial oppression and now demand equality - a formation accomplished by collective myth-making. The second step involves the recovery and reworking of what has been lost or suppressed concerning "race" in legal doctrine and policy. The third step is the work of transforming existing jurisprudence and political theory.

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.

Authoritarianism da—permanent pessimism and passivity towards the law fractures social groups and allows white supremacy to mediate how laws are composed—that is WHY police get to be racist

Rejecting the state creates ineffective activism, undermining progressive forces

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

Both the practical failures and the fallacy of rigid boundaries generated by extralegal activism rhetoric permit us to broaden our inquiry to the underlying assumptions of current proposals regarding transformative politics — that is, attempts to produce meaningful changes in the political and socioeconomic landscapes. The suggested alternatives produce a new image of social and political action. This vision rejects a shared theory of social reform, rejects formal programmatic agendas, and embraces a multiplicity of forms and practices. Thus, it is described in such terms as a plan of no plan,211 “a project of projects,”212 “anti-theory theory,”213 politics rather than goals,214 presence rather than power,215 “practice over theory,”216 and chaos and openness over order and formality. As a result, the contemporary message rarely includes a comprehensive vision of common social claims, but rather engages in the description of fragmented efforts. As Professor Joel Handler argues, the commonality of struggle and social vision that existed during the civil rights movement has disappeared.217 There is no unifying discourse or set of values, but rather an aversion to any metanarrative and a resignation from theory. Professor Handler warns that this move away from grand narratives is self-defeating precisely because only certain parts of the political spectrum have accepted this new stance: “[T]he opposition is not playing that game . . . . [E]veryone else is operating as if there were Grand Narratives . . . .”218 Intertwined with the resignation from law and policy, the new bromide of “neither left nor right” has become axiomatic only for some.219 The contemporary critical legal consciousness informs the scholarship of those who are interested in progressive social activism, but less so that of those who are interested, for example, in a more competitive securities market. Indeed, an interesting recent development has been the rise of “conservative public interest lawyer[ing].”220 Although “public interest law” was originally associated exclusively with liberal projects, in the past three decades conservative advocacy groups have rapidly grown both in number and in their vigorous use of traditional legal strategies to promote their causes.221 This growth in conservative advocacy is particularly salient in juxtaposition to the decline of traditional progressive advocacy. Most recently, some thinkers have even suggested that there may be “something inherent in the left’s conception of social change — focused as it is on participation and empowerment — that produces a unique distrust of legal expertise.”222 Once again, **this conclusion reveals flaws** parallel **to the** original **disenchantment with legal reform**. Although the new extralegal frames present themselves as apt alternatives to legal reform models and as capable of producing significant changes to the social map, in practice they generate very limited improvement in existing social arrangements. Most strikingly, the cooptation effect here can be explained in terms of the most profound risk of the typology — that of legitimation. The common pattern of extralegal scholarship is to describe an inherent instability in dominant structures by pointing, for example, to grassroots strategies,223 and then to **assume** that specific instances of counterhegemonic activities translate into a more complete transformation. This celebration of multiple micro-resistances seems to rely on an aggregate approach — an idea that the multiplication of practices will evolve into something substantial. **In fact, the myth of engagement obscures the** actual lack of change being produced**, while the broader pattern of equating extralegal activism with social reform produces a** false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution. Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit.224 Unrelated efforts become related and part of a whole through mere reframing. At the same time, the elephant in the room — the rising level of economic inequality — is left unaddressed and comes to be understood as natural and inevitable.225 This is precisely the problematic process that critical theorists decry as losers’ self-mystification, through which marginalized groups come to see systemic losses as the product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality. The explorations of micro-instances of activism are often fundamentally performative, obscuring the distance between the descriptive and the prescriptive. The manifestations of **extralegal** **activism** — the law and organizing model; the proliferation of informal, soft norms and norm-generating actors; and the celebrated, separate nongovernmental sphere of action — all **produce a fantasy that change can be brought about through small-scale, decentralized transformation**. The emphasis is local, but the locality **is** described as a microcosm of the whole and the audience is national and global. In the context of the humanities, Professor Carol Greenhouse poses a comparable challenge to ethnographic studies from the 1990s, which utilized the genres of narrative and community studies, the latter including works on American cities and neighborhoods in trouble.226 The aspiration of these genres was that each individual story could translate into a “time of the nation” body of knowledge and motivation.227 In contemporary legal thought, a corresponding gap opens between the local scale and the larger, translocal one. In reality, although there has been a recent proliferation of associations and grassroots groups, few new local-statenational federations have emerged in the United States since the 1960s and 1970s, and many of the existing voluntary federations that flourished in the mid-twentieth century are in decline.228 There is, therefore, an absence of links between the local and the national, an absent intermediate public sphere, which has been termed “the missing middle” by Professor Theda Skocpol.229 New social movements have for the most part failed in sustaining coalitions or producing significant institutional change through grassroots activism. Professor Handler concludes that this failure is due in part to the ideas of contingency, pluralism, and localism that are so embedded in current activism.230 Is the focus on small-scale dynamics simply an evasion of the need to engage in broader substantive debate? **It is important for next-generation progressive legal scholars**, while maintaining a critical legal consciousness, to recognize that not all extralegal associational life is transformative. We must differentiate, for example, between inward-looking groups, which tend to be self-regarding and depoliticized, and social movements that participate in political activities, engage the public debate, and aim to challenge and reform existing realities.231 We must differentiate between professional associations and more inclusive forms of institutions that act as trustees for larger segments of the community.232 As described above, extralegal activism tends to operate on a more divided and hence a smaller scale than earlier social movements, which had national reform agendas. Consequently, **within critical discourse there is a need to recognize the limited capacity of small-scale action**. We should question the narrative that imagines consciousness-raising as directly translating into action and action as directly translating into change. Certainly not every cultural description is political. Indeed, it is questionable whether forms of activism that are opposed to programmatic reconstruction of a social agenda should even be understood as social movements. In fact, when groups are situated in opposition to any form of institutionalized power, they may be simply mirroring what they are fighting against and merely producing moot activism that settles for what seems possible within the narrow space that is left in a rising convergence of ideologies. The original vision is consequently coopted, and contemporary discontent is legitimated through a process of self-mystification.

‘Abandoning’ the law is impossible, but the attempt to do so produces ineffective social change

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

At first glance, the idea of opting out of the legal sphere and moving to an extralegal space using alternative modes of social activism may seem attractive to new social movements. We are used to thinking in binary categories, constantly carving out different aspects of life as belonging to different spatial and temporal spheres. Moreover, we are attracted to declarations about newness — new paradigms, new spheres of action, and new strategies that are seemingly untainted by prior failures.186 However, the critical insights about law’s reach must not be abandoned in the process of critical analysis. Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation, and just as **the “state” is not a single organism but a multiplicity of** legislative, administrative, and judicial **organs**, “nonstate arenas” are dispersed, multiple, and constructed. **The focus on action in a separate sphere broadly defined as civil society can be** self-defeatingprecisely because **it conceals the many ways in which law continues to play a crucial role** in all spheres of life. Today, the lines between private and public functions are increasingly blurred, forming what Professor Gunther Teubner terms “polycorporatist regimes,” a symbiosis between private and public sectors.187 Similarly, new economic partnerships and structures blur the lines between for-profit and nonprofit entities.188 Yet much of the current literature on the limits of legal reform and the crisis of government action is built upon a privatization/regulation binary, particularly with regard to social commitments, paying little attention to how the background conditions of a privatized market can sustain or curtail new conceptions of the public good.189 In the same way, legal scholars often emphasize sharp shifts between regulation and deregulation, overlooking the continuing presence of legal norms that shape and inform these shifts.190 These false dichotomies should resonate well with classic cooptation analysis, which shows how social reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives. Indeed, in the contemporary extralegal climate, and contrary to the conservative portrayal of federal social policies as harmful to the nonprofit sector, voluntary associations have flourished in mutually beneficial relationships with federal regulations.191 A dichotomized notion of a shift between spheres — between law and informalization, and between regulatory and nonregulatory schemes — therefore neglects the ongoing possibilities within the legal system to develop and sustain desired outcomes and to eliminate others. The challenge for social reform groups and for policymakers today is to identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality. Community empowerment requires ongoing government commitment.192 In fact, the most successful communitybased projects have been those which were not only supported by public funds, but in which public administration also continued to play some coordination role.193 At both the global and local levels, with the growing enthusiasm around the proliferation of new norm-generating actors, many envision a nonprofit, nongovernmental organization–led democratization of new informal processes.194 Yet this Article has begun to explore the problems with some of the assumptions underlying the potential of these new actors. Recalling the unbundled taxonomy of the cooptation critique, it becomes easier to identify the ways extralegal activism is prone to problems of fragmentation, institutional limitation, and professionalization. Private associations, even when structured as nonprofit entities, are frequently undemocratic institutions whose legitimacy is often questionable.195 There are problematic structural differences among NGOs, for example between Northern and Southern NGOs in international fora, stemming from asymmetrical resources and funding,1 9 6 and between large foundations and struggling organizations at the national level. Moreover, direct regulation of private associations is becoming particularly important as the roles of nonprofits increase in the new political economy. Scholars have pointed to the fact that nonprofit organizations operate in many of the same areas as for-profit corporations and government bureaucracies.197 This phenomenon raises a wide variety of difficulties, which range from ordinary financial corruption to the misrepresentation of certain partnerships as “nonprofit” or “private.”198 Incidents of corruption within nongovernmental organizations, as well as reports that these organizations serve merely as covers for either for-profit or governmental institutions, have increasingly come to the attention of the government and the public.199 Recently, for example, the IRS revoked the tax-exempt nonprofit status of countless “credit counseling services” because these firms were in fact motivated primarily by profit and not by the notfor-profit cause of helping consumers get out of debt.200 Courts have long recognized that the mere fact that an entity is a nonprofit does not preclude it from being concerned about raising cash revenues and maximizing profits or affecting competition in the market.201 In the application of antitrust laws, for example, almost every court has rejected the “pure motives” argument when it has been put forth in defense of nonprofits.202 Moreover, akin to other sectors and arenas, nongovernmental organizations — even when they do not operate within the formal legal system — frequently report both the need to fit their arguments into the contemporary dominant rhetoric and strong pressures to subjugate themselves in the service of other negotiating interests. This is often the case when they appear before international fora, such as the World Bank and the World Trade Organization, and each of the parties in a given debate attempts to look as though it has formed a well-rounded team by enlisting the support of local voluntary associations.203 One NGO member observes that “when so many different actors are drawn into the process, there is a danger that our demands may be blunted . . . . Consequently, we may end up with a ‘lowest common denominator’ which is no better than the kind of compromises the officials and diplomats engage in.”204 Finally, local NGOs that begin to receive funding for their projects from private investors report the limitations of binding themselves to other interests. Funding is rarely unaccompanied by requirements as to the nature and types of uses to which it is put.205 These concessions to those who have the authority and resources to recognize some social demands but not others are indicative of the sorts of institutional and structural limitations that have been part of the traditional critique of cooptation. In this situation, local NGOs become dependent on players with greater repeat access and are induced to compromise their initial vision in return for limited victories. The concerns about the nature of both civil society and nongovernmental actors illuminate the need to reject the notion of avoiding the legal system and opting into a nonregulated sphere of alternative social activism. When we understand these different realities and processes as also being formed and sustained by law, we can explore new ways in which legality relates to social reform. Some of these ways include efforts to design mechanisms of accountability that address the concerns of the new political economy. Such efforts include treating private entities as state actors by revising the tests of joint participation and public function that are employed in the state action doctrine; extending public requirements such as nondiscrimination, due process, and transparency to private actors; and developing procedural rules for such activities as standard-setting and certification by private groups.206 They may also include using the nondelegation doctrine to prevent certain processes of privatization and rethinking the tax exemption criteria for nonprofits.207 All of these avenues understand the law as performing significant roles in the quest for reform and accountability while recognizing that new realities require creative rethinking of existing courses of action. **Rather than opting out of the legal arena, it is possible to accept the need to** diversify modes of activism and legal categories while **using legal reform in ways that are responsive to new realities**. Focusing on function and architecture, rather than on labels or distinct sectors, requires legal scholars to consider the desirability of new legal models of governmental and nongovernmental partnerships and of the direct regulation of nonstate actors. In recent years, scholars and policymakers have produced **a body of literature**, rooted primarily in administrative law, describing ways in which the government can harness the potential of private individuals to contribute to the project of governance.208 These new insights develop the idea that administrative agencies must be cognizant of, and actively involve, the private actors that they are charged with regulating. These studies, in fields ranging from occupational risk prevention to environmental policy to financial regulation, draw on the idea that groups and individuals will better comply with state norms once they internalize them.209 For example, in the context of occupational safety, there is a growing body of evidence that focusing on the implementation of a culture of safety, rather than on the promulgation of rules, can enhance compliance and induce effective self-monitoring by private firms.210 Consequently, social activists interested in improving the conditions of safety and health for workers should advocate for the involvement of employees in cooperative compliance regimes that involve both top-down agency regulation and firmand industry-wide risk-management techniques. Importantly, in all of these new models of governance, the government agency and the courts must preserve their authority to discipline those who lack the willingness or the capacity to participate actively and dynamically in collaborative governance. Thus, unlike the contemporary message regarding extralegal activism that privileges private actors and nonlegal techniques to promote social goals, the new governance scholarship is engaged in developing a broad menu of legal reform strategies that involve private industry and **nongovernmental actors** in a variety of ways while maintaining the necessary role of the state to aid weaker groups in order to promote overall welfare and equity. **A responsive legal architecture has the potential to generate new forms of accountability and social responsibility and to link hard law with “softer” practices and normativities**. **Reformers can** potentially **use law to increase the power and access of vulnerable individuals and groups and to develop tools to increase fair practices and knowledge building** within the new market.

Demands for embodiment are dangerous and unrefutable

**SUBOTNIK 98**

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

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

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

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

"Precarious." "Obliterating." **These words will clearly invite responses only from fools and sociopaths; they will, by effectively precluding objection, disconcert and disunite others**. **"I hurt," in academic discourse, has three broad though interrelated effects**. First, **it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly** n75 **- destructive and, above all, self-destructive arti** [\*695] **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.

Should denotes an expectation the aff will be enacted

American Heritage Dictionary 2K

Used to express probability or expectation

Concludes state action is a good remedy

This Week In Blackness 13

("Drone Policy Is the Most Important Racism," <http://thisweekinblackness.com/2013/07/25/drone-policy-is-the-most-important-racism/>)

White critics insist that Obama addresses drone strikes above all other expressions of white supremacy, while claiming that they are the “true” soldiers against racism. They apparently believe that they get to decide which policies are “important-racist” and which ones are “unimportant-racist.” It must be a coincidence that the “unimportant-racist” policies are the ones that most directly validate white upper-class male privilege. Also, by arguing that drones exhibit “important racism,” these critics reinforce the narrative that killing Black people is “unimportant racism,” and not as valuable as executing white men’s philosophical priorities.

**[Wake’s card ends]**

Of course, Cornel West is not a white man, and his critiques center around Obama’s failure to end all expressions of white supremacy in the system, including drone strikes. West asks more of Obama than anyone could ever deliver. It’s simply not possible for one person to end the white supremacist system. And, if Obama tried, it would require him adopting a non-colonialist, non-interventionist foreign policy that bore no resemblance to any that had come before. The War on Terror, especially, does not support such a policy shift, and many Americans still consider a few civilian deaths in faraway countries an acceptable price for safeguarding American lives. On the other hand, the Zimmerman case shone a spotlight on discrete racist aspects of the justice system, and Obama’s statements contributed to the public energy around the effort to end them. Obama’s symbolic importance is far from the mere token that West describes: it is powerful enough for white men to start vomiting feelings all over everyone because the President, for once, isn’t talking about them. West’s statements lumping Obama and Zimmerman together discount the vastly different contexts in which both men operated, and dismiss Obama’s contributions to the effort against the stereotyping that pollutes outcomes of the justice system. West’s claims that Obama must clear out all the racism from the system before he can claim moral authority unreasonably holds a Black person responsible for ending white supremacy. As always, the people in the best position to end aggression are aggressors; white people must refuse or lose the ability to perpetuate their own supremacy before it will end.

Civil Rights and economic advancement prove that qualitative changes in blacks’ social condition is possible and can resist rollback—effective decision-making and engagement turn the case

Clark, professor of law – Catholic University, ‘95

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

Second Qualitative Leap Forward

The black-led, and white-supported, civil rights movement gathered momentum in the late 1950s and early 1960s through marches, "sit-ins"--which breached racial segregation in public establishments--and the development of **legal strategies** to provide cover and protection. White Americans were shocked by the vicious resistance of small pockets of rabid southern racists to the disciplined non-violent protests of blacks, and public opinion began to move toward support for racial equality. n63 Key whites in the media, especially television, influenced this shift in public opinion by portraying black grievances in a sympathetic and appealing light. n64 The movement culminated in 1960s legislation prohibiting racial segregation and discrimination in public accommodations, n65 employment, n66 voting rights, n67 and housing. n68 This was the next qualitative leap forward, and there has been no massive backsliding into the rank forms of segregation and discrimination that characterized the pre-1960 period.

Professor Bell treats the post-1960s claims of progress as an illusion: discrimination simply became more covert, but equally efficient. n69 The facts, however, viewed with a holistic perspective, largely refute this claim. n70

The most thorough analysis of black-American status since Gunnar Myrdal's An American Dilemma in 1944, is A Common Destiny--Blacks and American Society. n71 The report covers the period from 1940 through 1986, and is more comprehensive than the studies Professor Bell relied on in recent law review articles.

A Common Destiny answers Professor Bell's central question in Faces:

Contemporary views of the status of black-white relations in America vary widely. Perspectives range from optimism that the main problems have been solved, to the view that black progress is largely an illusion, to assessments that the nation is retrogressing and moving toward increased racial disparities. To some observers, the present situation is only another episode in a long history of recurring cycles of apparent improvement that are followed by new forms of dominance in changed contexts: the level of black status changes, it is said, but the one constant is blacks' continuing subordinate social position. To other observers, the opposite is correct: long-run progress is the dominant trend. n72

A Common Destiny, however, concludes that the overwhelming majority of black-Americans made substantial progress since 1940:

Over the 50-year span covered by this study, the social status of American blacks has on average improved dramatically, both in absolute terms and relative to whites. The growth of the economy and public policies promoting racial equality led to an erosion of segregation and discrimination, making it possible for a substantial fraction of blacks to enter the mainstream of American life. n73

Just five decades ago, most black Americans could not work, live, shop, eat, seek entertainment, travel where they chose. Even a quarter century ago--100 years after the Emancipation Proclamation of 1863--most blacks were effectively denied the right to vote. . . . Today the situation is very different. n74

The Committee acknowledged that "the great gulf that existed between black and white Americans in 1939 . . . has not closed," because one-third of blacks "still live in households with incomes below the poverty line." n75 Yet the study reported that 92% of blacks lived below the poverty line in 1939. n76 **A 60% drop in poverty is an astounding improvement**, by any measure, and is an even faster movement out of poverty than that of the white public that was also suffering from the ravages of the economic depression of the 1930s. n77 Some reduction of black poverty occurred when blacks secured higher paying jobs in defense industries during World War II. But the passage of the 1964 Civil Rights Act brought a significant reduction in racial employment discrimination. By 1984, blacks had $ 9 billion more per year in real income, adjusted for inflation, than they would have had if they had remained arrayed throughout the occupational spectrum as they were before the Act. n78 A new black economic elite developed through movement into higher paying employment in the private sector and away from employment in government, the clergy, and civil rights organizations; this new elite should sustain their progress and finance opportunities for their young. n79

The number of black elected officials increased from a few dozen in 1940 to 6,800 by 1988, and the number of black public administrators went from 1% in 1940 to 8% in 1980. n80 No white elected official has openly supported racial segregation since Governor Wallace in the early 1960s, a testament, in part, to the substantial increases in black voter registration and voting, due to the Voting Rights Acts of 1957, 1960, and 1965. n81

One could also show decreases in racial segregation in education, housing, and other aspects of American life, coupled with the virtual disappearance of racial exclusion in public accommodations--all due to enforcement of the new legislation. It is true, racial discrimination has not been totally eradicated. n82 But, Peter F. Drucker summarizes:

In the fifty years since the Second World War the economic position of African-Americans in America has improved faster than that of any other group in American social history--or in the social history of any country. Three-fifths of America's blacks rose into middleclass incomes; before the Second World War the figure was onetwentieth. n83

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Their view of irresolvable antagonism is easily coopted by the right—furthers oppression

Patterson 98

The Ordeal Of Integration:

Progress And Resentment In America's "Racial" Crisis

Orlando Patterson is a Jamaican-born American historical and cultural sociologist known for his work regarding issues of race in the United States, as well as the sociology of development

In the attempt to understand and come to terms with the problems of Afro-Americans and of their interethnic relations, the country has been ill served by its intellectuals, policy advocates, and leaders in recent years. At present, dogmatic ethnic advocates and extremists appear to dominate discourse on the subject, drowning out both moderate and other dissenting voices. A strange convergence has emerged between these extremists. On the left, the nation is misled by an endless stream of tracts and studies that deny any meaningful change in America's "Two Nations," decry "The Myth of Black Progress," mourn "The Dream Deferred," dismiss AfroAmerican middle-class status as "Volunteer Slavery," pronounce AfroAmerican men an "Endangered Species," and apocalyptically announce "The Coming Race War." On the right is complete agreement with this dismal portrait in which we are fast "Losing Ground," except that the road to "racial" hell, according to conservatives, has been paved by the very pQlicies intended to help solve the problem, abetted by "The Dream and the Nightmare" of cultural changes in the sixties and by the overbreeding and educational integration of inferior Afro-Americans and very policies intended to help solve the problem, abetted by "The Dream and the Nightmare" of cultural changes in the sixties and by the overbreeding and educational integration of inferior Afro-Americans and lower-class Euro-Americans genetically situated on the wrong tail of the IQ "Bell Curve." If it is true that a "racial crisis" persists in America, this crisis is as much one of perception and interpretation as of actual socioeconomic and interethnic realities. By any measure, the record of the past half century has been one of great achievement, thanks in good part to the suecess of the government policies now being maligned by the left for not having gone far enough and by the right for having both failed and gone too far. At the same time, there is still no room for complacency: because our starting point half a century ago was so deplorably backward, we still have some way to go before approaching anything like a resolution.

Demographic trends point to sustainable progress

Alba 9

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Blurring the Color Line: The New Chance for a More Integrated America (Nathan I. Huggins Lectures)

A pivotal concept in my account is that of a "social

boundary."^ The theoretical ideas surrounding the

concept invoke not just the social distinctions that are the

foundations for ethno-racial group inequalities, but the

social forces that create, maintain, and, when necessary7,

reinforce these distinctions and the hierarchies they entail.

But these ideas also yield insights into the circumstances

under which boundaries recede in salience and play a less

significant role in the lives of those positioned on their

disadvantaged side. Using these ideas, I critically examine

the most widely accepted explanation among historians of

white-ethnic assimilation, the so-called whiteness

perspective, and find it informative but ultimately

inadequate. This explanation depends on a

conceptualization of the disadvantaged positions of the

Irish, Italians, and Jews as inhering in their problematic

racial position as "in-between groups," to use the apt

characterization of James Barrett and David Roediger.20

In short, their membership in the white race was doubtful,

and the challenge they therefore confronted, according to

this perspective, was to gain full acceptance as whites.

Once that was attained, the barriers to their full

integration presumably fell away.

The whiteness perspective does help us to understand

the processes of social ascent by the descendants of

once-despised European immigrant groups like the Irish,

but it does not explain their mass assimilation in the

middle of the twentieth century7. This perspective suffers

from two blind spots: one is that these groups' ethno-racial

disadvantages cannot be understood solely in racial terms,

for they had important ethnic and religious elements. The

fading of these elements from our understanding of

potential sources of disadvantage and social cleavage is a

result of the process of mass assimilation, not its

precondition. The second problem becomes apparent once

we bring the boundary concept into the frame. A

sociological commonplace is that privileged groups defend

the boundaries that separate them from the less fortunate.

Why, then, did nativeborn white Protestants,

overwhelmingly of northern and western European

backgrounds, so easily accede to the mass assimilation of

previously disadvantaged religious minorities whose

ancestors were looked down upon because of their

countries of origin? Why didn't white Protestants protect

their privileged positions against these newcomers?

My answer is that the advance of these groups was

much less threatening than it might have otherwise been

because of what I call "nonzero-sum mobility." Such

mobility occurs when members of lowersituated groups

can move upward without affecting the life chances of the

members of well-established ones. (A zero-sum situation

exists, by definition, when the gains of some must come at

the expense of others.) The economic expansion after

World War II, in part a consequence of the global

dominance of the victorious and largely undamaged United

States, enabled the members of the rising groups to obtain

much more education and better jobs than their parents

had without any sacrifice on the part of native white

Protestants. In fact, many of the Protestant young people

were surpassing their parents, too.

Non-zero-sum mobility is key to a complex of factors

that I argue, on inductive and theoretical grounds, was

sufficient to bring about the massive incorporation of the

white ethnics; and it holds, I claim, a special significance in

general for the possibility of fundamental ethno-racial

change. Might a period of non-zero-sum mobility in the

near future allow changes to soften boundaries that we

currently see as rigidly racial, like those disadvantaging

African Americans and Hispanics?

I believe the answer is "yes." Pessimism about the

prospects for socioeconomic mobility in the near future is

rampant, largely premised on economic structural changes

that are thought to limit chances for minorities to move up

the ladder, to say nothing of the deep worldwide recession

at the end of the century's first decade.21 But the

departure of the massive baby-boom generation from the

labor market, which will occur during a roughly twenty-

five-year period through the early 2030s, has not been

factored into the picture. The baby boomers are heavily

wThite and wTell educated, and they dominate many of the

best-paying occupations. Their departure could open up

the labor market in a way that has not been true since the

middle of the twentieth century7.

The retirement of the baby boomers is a certainty, but

its consequences are not. One point of uncertainty is

whether other economic changes, for example, the

off-shoring of jobs now based in the United States, could

blunt the potential for upward mobility among African

Americans and Hispanics. No definitive answer exists when

such a sociologically and economically complex future is

being predicted, but I give reasons to think that the huge

magnitude of the job openings associated with the

departure of the baby boomers will make non-zero-sum

mobility a major opportunity for American society, as well

as for many Americans, in the near future.

Other difficult questions arise when we consider the

degree to which ethno-racial minorities will benefit from

future non-zero-sum mobility. I provide evidence that

minorities are already penetrating the top tiers of the U.S.

labor market in much larger numbers than in the past. In

this respect, an important process of integration is already

under way, driven largely by demographic shifts in the

cohorts of young adults entering the labor market.

However, when the correspondence between educational

attainment and labor-market position is taken into

account, as well as the earnings of individuals in different

occupations, it is apparent that white men remain very

privileged. Were minorities to be the primary beneficiaries

of non-zero-sum mobility, however, ethno-racial

inequalities on the top rungs of the labor market might be

very much reduced, according to the scenario I present.

But will they in fact be the primary beneficiaries? Among

the contingencies that must be considered are the other

groups—working-class whites, future high-skilled

immigrants, and white women—who might be able to take

advantage of the new opportunities. I argue that the

potential of the first two groups to fill the vacancies created

by the baby boomers' departure is modest. Women,

however, especially white women, in part because of their

recently attained educational edge over men, are likely to

be major beneficiaries of future mobility opportunities. Yet

according to my projections, they are quite unlikely to be

able to satisfy all of the demand for highly educated

workers. Hence the United States must look to young

minorities in order to satisfy future needs for highly skilled

workers and to fill the slots in the labor market coming

open because of the baby boomers' departure. Young

minorities stand out among the underutilized groups in the

population because their proportion among the young

adults entering the workforce will increase rapidly in the

decades to come. The non-zero-sum mobility of the near

future offers an unusual opportunity to repair some of the

worst injustices of American society.

Multiple statistical measures prove a trend towards equality---this isn’t to say that everything is OK, but that falsifiable claims matter for assessing impacts AND that engagement can be effective

Currie 8

<http://www.american.com/archive/2008/november-11-08/the-long-march-of-racial-progress/>

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Measuring racial progress is all about perspective. Since Appomattox, the struggle for racial equality has seen triumphs and setbacks alike. On balance, however, the story of race relations in America is one of extraordinary change and transformation. According to Princeton historian James McPherson, the rate of black illiteracy dropped from roughly 90 percent in 1865 to 70 percent in 1880 and to under 50 percent in 1900. “From the perspective of today, this may seem like minimal progress,” McPherson wrote in his 1991 book, Abraham Lincoln and the Second American Revolution (a collection of essays). “But viewed from the standpoint of 1865 the rate of literacy for blacks increased by 200 percent in fifteen years and by 400 percent in thirty-five years.” McPherson also noted that the share of school-age black children attending school jumped from 2 percent in 1860 to 34 percent in 1880. “During the same period,” he said, “the proportion of white children of school age attending school had grown only from 60 to 62 percent.” In 1908, 100 years before the election of America’s first black president, there was a bloody race riot in Springfield, Illinois, which began when an angry mob surrounded a prison where a black man falsely accused of rape was being held. As columnist George Will has observed, “The siege of the jail, the rioting, the lynching, and mutilating all occurred within walking distance of where, in 2007, Barack Obama announced his presidential candidacy.” Over the past century, the racial attitudes of white Americans have undergone a sea change. The shift toward greater racial tolerance was driven by many factors, including blacks’ participation in World War II, the integration of professional sports and the military, and the civil rights movement. “Even as Americans were voting more conservatively in the 1980s, their views on race were becoming more liberal,” Wall Street Journal senior editor Jonathan Kaufman wrote recently. “More than three quarters of whites in 1972 told pollsters that ‘blacks should not push themselves where they are not wanted.’ Two-thirds of whites that same year said they opposed laws prohibiting racial discrimination in the sale of homes. Forty percent said whites had the right to live in segregated neighborhoods.” However, “By the end of 1980s, all those numbers had fallen markedly and [they] continued to fall through the following decades.” As University of Michigan sociologist Reynolds Farley points out in a new paper, there are now 41 African Americans serving in the House of Representatives, compared to only six when the Kerner Commission issued its famous report on race and poverty in 1968. During the years following the Kerner Report, “The slowly rising incomes of black men and the more rapidly rising incomes of black women produced an important economic change for African Americans,” Farley writes. “In 1996, for the first time, the majority of blacks were in the economic middle class or above, if that means living in a household with an income at least twice the poverty line.” According to Farley, “Only three percent of African Americans could be described as economically comfortable in 1968. That has increased to 17 percent at present. This is an unambiguous sign of racial progress: one black household in six could be labeled financially comfortable.” He notes that the black-white poverty gap “is much smaller now” than it was in the late 1960s. Residential and marriage trends are also encouraging. “The trend toward less residential segregation that emerged in the 1980s and accelerated in the 1990s continues in this century,” says Farley. Meanwhile, interracial marriage rates have increased dramatically. “At the time of the Kerner Report, about one black husband in 100 was enumerated with a white spouse. By 2006, about 14 percent of young black husbands were married to white women.”

## at structural antagonism

Structural antagonism is disempowering and paternalistic—material progress through pragmatic reform is possible

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(Reginald Leamon, 53 Am. U.L. Rev. 1361)

Since the late 1980s, Race Crits have increasingly practiced n118 a standard methodology, through which they pursue justice and liberation. n119 With textbooks, n120 Race Crits have attempted to settle down what Angela P. Harris once described as an "eclectic, iconoclastic nature." n121 Nevertheless, Race Crits still experiment, perhaps encouraging Williams and Yamamoto to develop their antisubordination practices. In their writings, Race Crits have adopted modernism (or structuralism), allowing them to place faith in liberal ideas like rights, justice, and liberty, even though they deconstruct these legalisms so that they can unearth the truth. n122 Writing within this tension of modernism and postmodernism, these antisubordination practices suffer from the conceptual limits of this structuralist methodology, n123 one standing on the following themes: (1) an insistence on "naming our own reality"; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; [\*1381] (7) criticism of liberal legalisms; and (8) an interest in structural determinism - the ways in which legal tools and thought-structures can impede law reform. n124 Under CRT's modernist and postmodernist methodology, these themes divide two categories: (1) macro structuralism and (2) macro individual agency and social practices. Under macro structuralism, we find "an interest in structural determinism - the ways in which legal tools and thought-structures can impede law reform." n125 This feature forms a major set, within which we find its elements: "a readiness to question basic premises of moderate/incremental civil rights law;" "a more contextualized treatment of doctrine;" and "criticism of liberal legalisms." n126 Under macro individual agency and practices, we find an insistence on "naming our own reality," within which we find its elements: "the belief that knowledge and ideas are powerful;" "the borrowing of insights from social science on race and racism;" and "critical examination of the myths and stories powerful groups use to justify racial subordination." n127 Macro structuralism refers to structural forces. Macro individual agency purports to deconstruct these forces, suggesting that Race Crits can free themselves from white racism. Yet, the categories lack efficacy; they never recognize ordinary people as powerful reality creators, earthly gods who name and thus co-create their realities. Believing in rights and questioning how society recognizes these rights, Race Crits never ask if ordinary people currently name a reality that reinforces racism, the very experiences and realities against which they struggle. Rather, Race Crits simply take pity on these people, n128 viewing them as victims of white racism. Out of this view, they work to end white racism so that ordinary people like blacks can live as "free" blacks. If liberal society raced them, this mission belies real freedom. Escaping this tension requires Race Crits to reject a victimization theory, and they must ask: "what is reality?" Right now, these themes methodologically bracket [\*1382] Race Crits; they stunt them epistemologically. n129 By relying on these methodological themes, Race Crits can only imagine ordinary people as negated subjects victimized and dominated by white society. Can these ordinary people name their own reality? This question confesses another methodological contradiction. Race Crits like Williams and Yamamoto argue that structural forces rob ordinary people of their right to live as relatively unmediated citizens. These forces emit spirit-murdering stories that infect ordinary people. Whites consume these stories too, which convince them that worthy citizens benefit in a liberal society. If society mesmerizes ordinary people with these stories, are the authors immune? Using postmodernist tools, how do we remember our unmediated selves so that we can effectively violate these stories? Under structuralism, ordinary people cannot truly remember this Self, so on what source can ordinary people rely to name their own reality that helps recall that they have always been earthly gods? None. Ordinary people live as ever-questioning victims who are heartlessly mocked by liberal legalisms like Justice. By declaring that society mocks them and denies them Justice, ordinary people have effectively boiled their stories down to an oft-told sad tale of "structure" versus "agency," in a term: structural determinism. B. Structural Determinism As an antisubordination practice, Williams' Practice and Yamamoto's Praxis grow out of structural determinism. For didactic purposes, I divide this sociological concept into two parts: structuralism and determinism. Structuralism n130 directly links "words" and "reality." n131 It relates things to things. Speaker A talks of things, and even if ordinary people, the listeners, cannot actually "observe" these things, they become accustomed to experiencing the things as real, external forces. n132 Speaker A reveals how society's underlying structure shapes an individual's experience or group's life. n133 For Race Crits, an unseen thing like white racism limits and constrains how people believe, think, feel, and act. n134 [\*1383] Determinism states that a clear, narrow set of factors cause social events in a relatively predictable way. n135 Broadly speaking, determinism is any theory, like CRT, that explains the world (e.g., white racism) by definable factors. n136 This approach negates a host of other factors, including human agency. n137 As such, Race Crits can argue against the relative autonomy of ordinary people like blacks so that they can pursue other political ends. By so doing, Race Crits can say that things (or a set of things) cause ordinary people to be subtextual victims, thus explaining the moment-to-moment existence of, say, the black community. If these things victimize ordinary people, it follows that ordinary people lack meaningful human agency. In this way, determinism becomes a reductionist model, emphasizing a limited range of causal social factors that explains why ordinary people like Mexicans suffer racism and racial discrimination. n138 And so within the concept of structural determinism, Race Crits state that they "focus on ways in which the entire structure of legal thought, or at least of major doctrines like the First Amendment, influences its content, always tending toward maintaining the status quo." n139 Delgado and Stefancic go on to say that "once we understand how our categories, tools, and doctrines influence us, we may escape their sway and work more effectively for liberation." n140 That is, structural determinism represents a "concept that a mode of thought or widely shared practice determines significant social outcomes, usually without our conscious knowledge." n141 Yet, despite these determining factors, Delgado, like Williams and Yamamoto, suggests that the buried, negated subject will rise to act. Structural determinism informs not only CRT but also Practice and Praxis, in which the negated subject has only the power to identify structural forces that explain American Indian oppression and interracial conflicts. For example, Yamamoto declares that blacks can be victims and victimizers. n142 If they victimize, can they have agency? More broadly, does such victimizing of victims presuppose that blacks have always had agency, a kind of purposeful human action that sits astride core beliefs? Did Yamamoto mean that at the "borderlands" n143 blacks operate on false consciousness, a racist implant that destroys the respect and self-restraint they would otherwise express toward other blacks? Acting as duress, this [\*1384] implant prevents him from forming the criminal mind and volitional will to act criminally against other blacks. Should they be free from state prosecution? The mindset doctrine works seamlessly with structural determinism, thus suggesting that ordinary people cannot likewise name their own reality without reifying dominant values. Accordingly, Yamamoto insists that in the material inquiry, the consortium must reassess group cultural traits and re-articulate racial identities and relationships. n144 This reassessment and re-articulation vet structural forces like misogyny that turn black men against their lovers. n145 1. Macro structuralism In light of my critique, macro structuralism and macro individual agency and practices share common functions. Each major set reveals the degree to which white structural oppression works against ordinary people. Race Crits appear to use these themes to unearth invisible, deeply encrusted forms of structural injustice. n146 These hidden forms permit whites to control ordinary people and men to dominate women. By deconstructing elite white narratives, Race Crits must believe that a payoff exists. The payoff must be white guilt, consciousness raising, or the end of white oppression. n147 This expose should make visible the invisible privilege that whites unjustifiably enjoy, n148 and with real, sober analysis, n149 elite whites will suffer regime changing remorse. Feeling badly, they will condemn themselves as evil, greedy people. With heavy hearts and grieving minds, they will become better people. If CRT's political game is white guilt and black innocence, Race Crits cannot now surgically destroy the mindsets of ordinary people, implying that it is a locus for co-creating their personal experiences of white racism. From CRT's structural [\*1385] determinism perspective, ordinary people are simple, empty-headed sheep. Like other liberal subjects, ordinary people, having consumed ideas about limited autonomy, not only serve themselves up as meat for their keepers, but also fall easy prey to systemic predators. To this extent, Race Crits are academic priests who hope to redeem, not ordinary people who cannot control the next moments in their lives, but white elites who have structure-shaping agency. CRT's religious movement discounts ordinary people, seeking not to empower them, but to destroy white narratives, so that ordinary people like blacks can become the unabashedly raced people their parents train them to be! n150 Specifically, macro structuralism focuses on white structural oppression and how dominant narratives impact ordinary people. Let's consider public education. Blacks have struggled to educate their children and to break down artificial barriers to formal education. n151 Yet, during slavery and Jim Crow, blacks were educated, and they excelled academically. Do slavery and Jim Crow politics explain how ordinary people like blacks perform academically? If so, Race Crits must identify the specific historic markers that prevent ordinary people from academic excellence. If not, Race Crits must identify multiple factors, including parental role models, that perforce impact school-age children. n152 As such, structural forces alone cannot explain why blacks do not excel academically. By examining other factors, Race Crits would have to consider cultural practices, core beliefs, and emotions, including the power of thought. n153 This approach subjects ordinary people to attack, perhaps condemnation. Yet, if Race Crits give ordinary people like blacks a pass, thus suggesting that their core beliefs cannot govern academic performance, then they must blame structural forces. They must look to "out there" forces - the power elite and white oppressors. [\*1386] In this way, structural determinism is a proxy for mindsets. n154 It shapes and contours everything, displacing agency so that ordinary people serve ends beyond their known intentions. To bracket this liberal project, Race Crits convince themselves that they can discern the way language, culture, and practices operate against ordinary people and the public interest. Invariably, Race Crits start with slavery and Jim Crow politics. Proceeding **linearly to the present**, they question whether extant laws can cope with a history of racial discrimination. Logic thus mandates that slavery and Jim Crow must explain why ordinary people like blacks simply cannot keep up. Within the present effects of past discrimination, ordinary people and how they co-create are cast aside so that Race Crits can simply and gratuitously blame structural forces.

Structural antagonism thesis is historically wrong

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(Kimberly L., 33 T. Marshall L. Rev. 261)

In the first paragraph of Property Rights in Whiteness-Their Legal Legacy, Their Economic Costs, Derrick Bell says in regard to black Americans, "[W]e are shaped, molded, changed, from what we might have been into what we are." n88 He calls blacks the "invention" of white society. n89 This structurally deterministic framework places the minority at the command and within the control of a discrete majority will n90 and as a result wrongly disempowers minorities and perpetuates an unnecessary and damaging contextual disparity between races. Structuralism maintains that the present-day minority underclass is what it is because the white dominant structure decided it for them, and would reason that slaves were slaves because the structure imposed it upon them. This mentality makes people readers of the stories that are their lives, but does not make them authors. In this way, CRT's structuralist methodology disempowers the very people it could and should be helping. In the same way that CRT methodology takes away the power to control one's life, it takes away responsibility for one's actions. "It's not their fault," Race Crits say of poor minorities. n91 CRT posits that destitute black people are not answerable for their condition because oppression incapacitates them from making moral or rational decisions. The responsibility that CRT takes off the individual, however, is the same responsibility that could empower him or her. Only by taking responsibility can ordinary people turn into powerful reality creators. [\*278] Reginald Robinson explains that powerful reality creators are "earthly gods who name and thus co-create their realities." n92 He believes that ordinary people who consider themselves victims are denying their true nature as powerful reality creators. n93 The lives and work of slave artists are examples of powerful reality creators. By taking responsibility for the past, an action that CRT explicitly rejects, black people can generate the internal strength to create their own realities. They can do this by managing the filtering system by which they internalize their experiences. Under the ordinary consciousness theory proffered by Ornstein, each individual constructs his or her version of reality in order to create a stable, manageable environment. n94 The less inclined a person is to find his or her own way of thinking, the more his or her construction of reality will be based on the preexisting narrative designed by the white, dominant class. n95 Even if one cannot change the preexisting narrative and external aspects of his or her life, he or she can decide how to internalize that narrative and those experiences. n96 People are free to view their experiences in a light most favorable to fostering realization of conscious goals, both for themselves as individuals and for society as a whole. To view experiences in this empowering light, a person must consciously manage the system they use to internalize their experiences. Each person develops a sensory-filtering system in their formative years, and continues to use the same system throughout life to reinforce their belief systems. n97 These systems operate as mechanisms of self-affirmation, continuously validating previously held beliefs by interpreting experiences as corroboration of the beliefs. n98 Whatever kind of belief system a person develops, whether positive or negative, it will perpetuate itself. It is possible, however, to make an intentional, conscious change. The human being is a dynamic creature, and it is never too late to make the conscious changes necessary to create a better reality. Take Bill Traylor, for instance. Traylor was born into slavery on an Alabama cotton plantation [\*279] in 1854. n99 He lived there, working as a field hand and later a sharecropper, until he was eighty-two years old. n100 In the mid-1930s, following the death of his wife, he moved to Montgomery as an old man. n101 Bill Traylor had never been an artist. n102 Nonetheless, at the age of eighty-three, Traylor picked up a pencil stub and a stick for a straight edge. n103 He sat in a chair on Monroe Street, a thoroughfare for the city's black community, and began drawing on a scrap of cardboard. n104 Sketching at his "sidewalk studio" became a daily ritual for Traylor. n105 He hung his drawings on the fence to amuse the other locals and attract attention, n106 selling his artwork for nickels. n107 His friends from the country would come into the city on Saturdays and keep Traylor company there on the sidewalk. n108 [\*280] [figure] Traylor's drawing was a public event, and this is how he met the young photographer Charles Shannon. n109 Shannon befriended Taylor, visited him daily, and gave him art supplies. n110 In 1941, Shannon organized the first exhibition of Traylor's artwork. n111 Traylor had never learned to read or write. n112 In fact, a black man who would watch Traylor work showed him how to sign his name. n113 Many of his works feature this signature in a sprawling, looping script. n114 Over the course of four years, Traylor produced over 1,800 drawings on scraps of paper and cardboard of all the things he saw and remembered. n115 [\*281] [figure] The preexisting narrative which Race Crits would posit was designed for Traylor by the white majority would have left him on the plantation in Benton. Traylor spent over eighty years on that farm living the same way his slave parents had lived. Yet he became a powerful reality creator despite many years of servitude. He arrived in Montgomery and created his own destiny. Traylor learned to sign his name at the age of eighty-three. After eight decades of working within a subordinating system, Traylor stepped outside of it and completely changed his way of life. The record is not clear what prompted Traylor, so many years entrenched in a system explicitly designed to his detriment, to start expressing himself creatively and publicly. n116 With every drawing, he purged himself of his past and created for himself a better reality. The alternative to taking responsibility for oneself is to accept a reality of dominant structure and preexisting narrative. n117 That reality is rigid because it is pre-formed and derived from an external source. Experiences that are inconsistent with that construction will threaten its validity. This [\*282] threat will generate the intense emotional sensation of fear. n118 The people that Robinson calls "ordinary people," n119 those who deny responsibility for their lives, must live in a constant state of fear. The better alternative is to recognize that race consciousness and a preexisting narrative exist, and then to reject both entirely. A person can say, "That is not my reality. Race has nothing to do with me." But one must see the structure in order to reject it. By internally reconciling his or her role in the preexisting narrative, a person opens themselves to a world or possibilities and the opportunity to construct his or her personal reality. No external structure offers all of the possibilities that a person can offer him or herself. Augustus Washington is one man who saw possibilities that the preexisting narrative did not offer him. n120 As the son of a former slave and an Asian mother, n121 he was not a likely candidate when Dartmouth accepted him for admission in 1843. n122 He learned daguerreotyping to pay his way, and later opened a portrait studio in Hartford. n123 As a free person of color he persistently objected to his obligation to pay taxes because he was unable to vote. n124 After six years, Washington closed his studio and set sail for Liberia with his wife and children. n125 He said only in Africa would he "find a home." n126 Did the structure of 1821 create Augustus Washington? Or did he more likely create himself? This man was born of a slave and made himself into an [\*283] artist. He gave up what was considered a privileged life for a free person of color in order to sail toward the dream of finding a home. These are not the possibilities that the oppressive white structure provides for "ordinary people." n127 These are the possibilities that powerful reality creators make for themselves. These possibilities allow a person to create a flexible, dynamic reality (sometimes even a dream life) that serves one's individual, unique goals. Then, every experience can be internalized in a way that will serve personal aspirations instead of those of the dominant class. Every experience, even if negative, can help a person find triumph and enlightenment. The work and lives of slave artists demonstrate that personal reality creators born as slaves in the most dreadful period of America's early history could nonetheless become empowered and enlightened forces. They left tangible evidence of their humanity for us to consider. Their artwork shows us that they thought and felt things that the white dominant structure did not design for them to think and feel. They were more than victims of a superficially imposed system. CRT cannot account for people that create for themselves a beautiful life extending far beyond the role that the dominant structure gave them. However, a paradigm that emphasizes personal reality construction and individual responsibility can. This paradigm views peopleas unique and powerful in a way that CRT never will. And as long as some people are passionate, fearless, and indomitable, structural determinism is just an excuse for those that are not. Structural determinism cannot adequately account for the curious burial that archaeologist Maureen Basedow unearthed when excavating a late-eighteenth century slave cabin in North Carolina. n128 A young raccoon was buried in a ritual manner by the cabin's doorway. Basedow explained that to some Native Americans, the raccoon is sacred because of human traits like washing its food. And in Europe, there is a tradition of burying animals by the doorway to ward off evil. She explains, "So you've got an animal that holds special significance for Native Americans being buried in a European ritual manner by West Africans." n129 This type of burial was not part of a reality that was pre-formed, endorsed by the dominant structure. If the preexisting narrative were truly controlling, [\*284] then a slave would not have been able to conceive of and perform such a unique ritual, drawing from two cultures which were not his or her own. The lives of slaves were not mere composites of cybernetic responses to an oppressive dominant structure. Slaves were people with feelings. They were creators, existing not only in the life that white oppression designed for them, but also in their own reality. Slave artists had the power to change forms, shapes, and colors, making beauty on the canvas or in the object. This means they had the power to do the same thing in their own lives. Slave artists had virtue, imagination, talent, and skill. They were not entirely defeated and dehumanized by their experience with structurally endorsed oppression. Slave artists were not merely cogs in a big, white, deterministic machine.

Structural antagonism destroys progressivism and re-entrenches racism—we can acknowledge every problem with the status quo, but adopt a pragmatic orientation towards solutions

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

A Final Word

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

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

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

A people, black or white, are capable only to the extent they believe they are. Neither I, nor Professor Bell, have a crystal ball, but I do know that creativity and a drive for change are very much linked to a belief that they are needed, and to a belief that they can make a difference. The future will be shaped by past conditions and the actions of those over whom we have no control. Yet it is not fixed; it will also be shaped by the attitudes and energy with which we face the future. Writing about race is to engage in a power struggle. It is a non-neutral political act, and one must take responsibility for its consequences. Telling whites that they are irremediably racist is not mere "information"; it is a force that helps create the future it predicts. If whites believe the message, feelings of futility could overwhelm any further efforts to seek change. I am encouraged, however, that the motto of the most articulate black spokesperson alive today, Jesse Jackson, is, "Keep hope alive!" and that much of the strength of Martin Luther King, Jr. was his capacity to "dream" us toward a better place.

## 2nc no root cause

Whiteness demands empiricism and data—their authors can’t draw clear lines between racism and political oppression

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Others might challenge the distinction between ideological and structural causes of black disadvantage, on the grounds that we are rarely, if ever, able to so neatly separate these factors, an epistemic situation that is only made worse by the fact that these causes interact in complex ways with behavioral factors. These distinctions, while perhaps straightforward in the abstract, are difficult to employ in practice. For example, it would be difficult, if not impossible, for the members of a poor black community to determine with any accuracy whether their impoverished condition is due primarily to institutional racism, the impact of past racial injustice, the increasing technological basis of the economy, shrinking state budgets, the vicissitudes of world trade, the ascendancy of conservative ideology, poorly funded schools, lack of personal initiative, a violent drug trade that deters business investment, some combination of these factors, or some other explanation altogether. Moreover, it is notoriously difficult to determine when the formulation of putatively race-neutral policies has been motivated by racism or when such policies are unfairly applied by racially biased public officials.

There are very real empirical difficulties in determining the specific causal significance of the factors that create and perpetuate black disadvantage; nonetheless, it is clear that these factors exist and that justice will demand different practical remedies according to each factor's relative impact on blacks' life chances. We must acknowledge that our social world is complicated and not immediately transparent to common sense, and thus that systematic empirical inquiry, historical studies, and rigorous social analysis are required to reveal its systemic structure and sociocultural dynamics. There is, moreover, no mechanical or infallible procedure for determining which analyses are the soundest ones. In addition, given the inevitable bias that attends social inquiry, legislators and those they represent cannot simply defer to social-scientific experts.

We must instead rely on open public debate—among politicians, scholars, policy makers, intellectuals, and ordinary citizens—with the aim of garnering rationally motivated and informed consensus. And even if our practical decision procedures rest on critical deliberative discourse and thus live up to our highest democratic ideals, some trial and error through actual practice is unavoidable. These difficulties and complications notwithstanding, a general recognition of the distinctions among the ideological and structural causes of black disadvantage could help blacks refocus their political energies and self-help strategies. Attention to these distinctions might help expose the superficiality of theories that seek to reduce all the social obstacles that blacks face to contemporary forms of racism or white supremacy. A more penetrating, subtle, and empirically grounded analysis is needed to comprehend the causes of racial inequality and black disadvantage. Indeed, these distinctions highlight the necessity to probe deeper to find the causes of contemporary forms of racism, as some racial conflict may be a symptom of broader problems or recent social developments (such as immigration policy or reduced federal funding for higher education).

Whiteness is a useless methodology – no empirical support for their totalizing claims

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Nothing in the previous pages should suggest that issues of race, racial identity in general, and white racial identity in particular are not tremendously impor tant subjects deserving of the attention they have received and ought to receive in the future. Rather, what this essay has argued is that how one studies race and racial identity matters considerably and that many of the assumptions, interpre tive styles and techniques, and methodologies pursued by cultural historians of whiteness are highly problematic. "Provocative" as some whiteness studies are, concludes historian David W Stowe, "whiteness studies may be reaching a point of diminishing returns." Whiteness "risks dulling the historical imagination by obscuring the other equally important and generally more self-conscious cate gories?regional, familial, religious, occupational?through which people un derstand and situate themselves and others."102

Anthropologist John Hartigan, Jr., has recently explored what he calls the "class predicaments of whiteness" in the Detroit communities of Briggs, Cork town, and Warrendale and has offered a radically different means of approach ing the subject of racial identity. In contrast to the sweeping generalizations of most whiteness scholars, Hartigan prefers more nuanced understandings of local events. "In Detroit, white racialness is constituted, evaluated, and revised in numerous disparate settings," he argues. "Its structure and content are shaped by the centuries-long history of race in the United States, but its contours and quirks, which spring from the local versions and effects of that history, delineate a certain distance or remove from the shape of whiteness nationally." Hartigan's is perhaps the richest, most sensitive, and least didactic of whiteness studies to date; it also differs profoundly from other works in the genre in its impressive research, respect for the humanity of the subjects of the study, and its refusal to draw simplistic conclusions on the basis of only a little evidence. Whereas white ness scholars of the culturalist mold relish clever wordplay or consider a few ex amples to be sufficient evidence for making vast claims across much time and place, Hartigan's work abounds in anecdotes and verbal testimony of countless examples of racial encounters. He allows "ambiguities and ambivalences to come to the fore," refusing to resolve definitively many of them. His emphasis on neighborhood, family background, and class position leads him to stress the "heterogeneity of whites," which he acknowledges "muddies the clarity with which whiteness can be analyzed as a cultural construct." Ultimately, he con cludes, "the significance of white racialness can not be adequately comprehend ed by relying on abstractions that ignore the differences among whites."103

Its current popularity suggests that whiteness will retain its academic lease on life in a variety of disciplines. But historians, and especially historians of American labor, would do well to interrogate the concept, and the methodolo gies employed by those who invoke it, far more closely than they have. "Theo ry needs checking against the particularity and the sheer intractable messiness of any given example," film critic Richard Dyer has warned while calling atten tion to the frameworks that help apprehend cultural productions.104 Racial iden tity is too important a subject to receive nothing less than the most rigorous treatment at historians' hands. If whiteness is to endure as a critical concept, its scholars need to demonstrate that more than the historian's imagination or as pirations are involved. If they cannot, then it is time to retire whiteness for more precise historical categories and analytical tools.

Whiteness is an awful methodology for understanding race

**Arnesen 1**, University of Illinois at Chicato, (Eric, “Assessing Whiteness Scholarship: A Response to James Barrett, David Brody, Barbara Fields,Eric Foner, Victoria Hattam, and Adolph Reed,” International Labor and Working-Class History, No. 60 (Fall, 2001), pp. 81-92, JSTOR)

I confess that I have some difficulty in assessing what several of the com mentators believe the actual contribution of the whiteness scholarship has been. Hattam, for instance, tells us that the new immigration, race and labor, and African-American labor histories have "their limits and might be productively rethought in light of the theoretical moves taken by whiteness scholars." She ne glects, however, to mention any particular works, specify their limits, or tell us just what needs to be rethought. In the category of "class and identification," she offers no examples of those positive moves other than to state that whiteness his torians have broken with lingering materialism, something I still consider a straw man. Inclined to agree with portions of my critique of psychohistory, she insists on the importance of "theorizing identification," arguing that Roediger et al. have placed this "squarely on the table." Hattam neither defines what she means by "identification" nor explains why "theorizing identification" is something that is even needed. Hattam believes that a great contribution of the whiteness literature is its attention to "changes in racial classification over time" and to the "importance of historicizing our notions of race." Since Hattam disparages my claims that this is nothing new, my repeating the point that a generation of his torians have made this a central issue in American history is unlikely to persuade her. Acknowledging that discussions of how the Irish became white are often "too vague and inexact, and pay too little attention to questions of agency and counter discourses," she believes that "these limitations ought not lead us to set aside the project as a whole." Hattam here only gets my argument half right: In addition to noting the problems just mentioned, I conclude that the claim that the Irish became white is dead wrong. The Irish, I argue, were not considered "non-white," and hence did not "become white"; they were already white, a point with which Foner concurs. In this instance, the very question posed by whiteness scholars is based upon a false premise.

Whiteness is too reductive—makes resistance impossible and marginalizes critical material progress

Andersen, 3

(Sociology & Womens Studies Prof-University of Delaware, “Whitewashing Race: A Critical Perspective on Whiteness,” in White Out: The Continuing Significance of Racism, ed Doane & Bonilla-Silva, p. 30-32)

Even those who acknowledge the material basis of race and racism (and most do in passing) **retreat to essentialized notions of whiteness as the thing that holds everything together**—as though if white people were to abandon whiteness and change their minds, it would go away. Thus, for example, Giroux argues that "deconstructing whiteness" is the basis for a new democratic practice. He writes that rather than eradicating the concept of race, we should "renegotiate" whiteness, by which he means considering the differences in whiteness and the political possibilities that can be opened up through a "discourse of whiteness." This will "articulate new forms of identity, new possibilities for democratic practices, and new processes of cultural exchange" (1997:265). Whiteness, according to Giroux, promotes race-based hierarchies, and racial identity structures the struggle over cultural and political resources. He writes: "Whiteness' in this context becomes less a matter of creating a new form of identity politics than an attempt to rearticulate 'whiteness' as part of a broader project of cultural, social, and political citizenship" (1997:295). Giroux explicitly advocates "a pedagogy of whiteness" as going beyond identifying whiteness as an ideology of privilege and domination, which he sees as making "white" monolithic and therefore not generating good antiracist politics. Instead he suggests that whites should "understand and struggle against the legacy of white racism while using the particularities of'their own culture as a resource for resistance, reflection, and empowerment'" (1997:310)—a quote he borrows from Stuart Hall, who in the original used it to refer to black Americans (Hall 1991). The role of people of color in whiteness studies then becomes not only nonexistent, but appropriated. What about the implications of whiteness studies for classroom pedagogy? Should teachers use their time to teach about whiteness, or docs this supplant other efforts for multicultural/multiracial education? Sheets argues that whiteness studies centers the dialogue on white identity rather than on multicultural/multiracial classroom practices and teacher-student relationships (Sheets 2000). Some even say that whiteness studies appropriates the pain of people of color and changes the goal of multicultural education into the transformation of white people, not the education of students of color or the education of whites about the experience of people of color. Seen in this way, people of color become invisible once again as whites become the center of attention. Such critics ask: Is not the goal of multicultural education learning about the experience of others? For whose purposes and to whose benefit does whiteness studies work? Finally, what kind of politics and social policies does whiteness studies suggest? The political/pragmatic implications of this literature arc that we should create instability in racial categories. Is that enough? Two directions are suggested in the literature: abolishing whiteness and transforming/rearticulating whiteness. Thus, in the journal Race Traitor, Noel Ignatiev and John Garvey argue: "The key to solving the social problems of our age is to abolish the white race. Until that task is accomplished, every partial reform will prove elusive, because white influence permeates every issue of U.S. society, whether domestic or foreign" (1993-1994:10). They distinguish this from antiracism, claiming that "antiracism admits the natural existence of'races'" (1993-1994:10) and saying instead that "the way to abolish the white race is to disrupt that conformity. If enough people who look white violate the rules of whiteness, their existence cannot be ignored. If it becomes impossible for the upholders of white rule to speak in the name of all who look white, the white race will cease to exist" (1993-1994:36). There is debate about this position within the whiteness literature, but one cannot help but wonder: If "whiteness" disappeared, would we not still have racial subordination? Or if white people no longer thought of themselves as white, would not capitalism continue to produce a racially segregated and divided society? Whiteness scholars see whiteness as subject to redefinition resistance and change. Hence Dyer writes: "A crucial political, cultural, and ultimately educational project is to make whiteness strange" (1997:4). Michael Apple notes that there are dangers, because this can have contradictory effects and can **"run the risk of lapsing into progressive individualism**" (Apple 1998:xi). He continues: "We must be on guard to ensure that a focus on whiteness doesn't become one more excuse to **recenter dominant voices and to ignore the voices** and testimony of those groups of people whose dreams, hopes, lives, and very bodies are shattered by current relations of exploitation and domination" (I998:xi). Whether whiteness studies can provide the grounds for a racially progressive movement is highly questionable. As David Stowe (1996) asks: How many political movements have succeeded based on a renunciation of privilege? In the end, the whiteness literature seems to give whites a place in antiracist politics but **does not well articulate a politics of change**. If we disrupt the ideology of race and its effects on our interactions and relationships, do we necessarily destabilize white privilege in the material sense? Particularly since this body of literature seldom deals with the material reality of racial segregation and discrimination, this seems unlikely.

## AT: Mills

Mills isn’t advocating revolutionary change – liberal democratic capitalism

Ferguson 4

RACIAL CONTRACT THEORY: A CRITICAL INTRODUCTION by Stephen C. Ferguson II Submitted to the Department of Philosophy and the Faculty of the Graduate School of the University of Kansas in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Racial contract theory: A critical introduction

by Ferguson, Stephen C., Ii, Ph.D., UNIVERSITY OF KANSAS, 2004, 210 pages; 3153181

The outcome of The Racial Contract is quite simply what I have termed, Racial Contract Theory (RCT). There are five main components to RCT. First, to subject contractarianism to an ideological critique and expose the racist presuppositions of contract theorists from Thomas Hobbes through John Rawls. Second, to identify the origins of white supremacy as a political system in a Racial Contract between whites against non-whites. The third component, therefore, is an argument to show that being white - under the white supremacist polity - entails being endowed with white privilege, that is, material and psychological benefits. The fourth component of Mills' project is to demonstrate that race is a social construction created for the purpose of political rule over non-whites. And, lastly, Mills argues that the only historically feasible solution to the problem of white supremacy is liberal democratic capitalism.

There’s no racial contract – this is an ideological projection of Mills

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The third chapter, "Contracting In: The Problem of Consent in the Racial Contract," examines the problem of consent in the Racial Contract, specifically the extent to which all whites have consented to the white supremacist polity. Although Mills is hard pressed to find an actual moment in which all whites have given their explicit consent to the Racial Contract, I suggest that Mills ultimately relies upon a notion of tacit consent Moreover, I argue that Mills - by relying on tacit consent has not provided sufficient evidence to support his claim that all whites benefit from the white supremacist polity. Given the determining role of race in the Racial Contract, in the fourth chapter, "The Metaphysics of Race: Racial Constructivism as Philosophical Anthropology," 1 examine the philosophical anthropology which grounds the Racial Contract, that is, a conventionalist epistemology of race. Race, from Mills' perspective, is a creation, an invention, an artifact that is solely a product of an act of will(s). More specifically, the reality of race is the result of an intersubjective agreement amongst whites. A conventionalist epistemology of race does not adequately capture the objective character of race. Mills does not, in my estimation, see that race is an objective social category because it is a reflection of and embedded in social relations, institutions and practices. Ultimately, for Mills, race functions as a transcendental category; race - with the emergence of the Racial Contract - functions as an a priori form of consciousness (similar to space and time in Kant's critical philosophy) which is not a feature of objective reality, but rather an element of our subjective (cognitive) constitution.

## 2nc iconography

It’s bad politics—coopts the aff—takes out the next level

James 99 Joy James Shadowboxing: Representations of Black Feminist Politics 1999 Presidential Professor of the Humanities and a professor in political science at Williams College Pg. 122

Progressive icons are significant because they function to popularize political movements and struggles. However, this popularization partly reflects selective political memory and representations skewed toward elite leadership and symbolism. Selective memory, masked by an uncritical valorization of icons, shields the contradictions of black political leadership from scrutiny while it deflects attention from revolutionary politics and rank-and-file leadership.45 Those who welcome the chiseling of a marble pantheon of (black) political celebrities likely believe any chipping away at reification to be icon vandalism; yet that "crime" is continuously perpe­trated within a racial state indifferent to or implicit in black impoverish­ment, one that meets political "resistance" with repression. Contemporary progressive culture is a consequence of past move­ment battles; yet it does not prevent the public from distancing those it wishes to claim as celebrated political insurgents from those who cannot or will not be mainstreamed. Every neoslave narrative is a freedom story. The diversity of politics within such narratives—whose ideologies range from neoliberal to revolutionary—suggests that revolutionary personas could be as mercurial and impermanent as fixed sites for freedom.

It obscures everyday radicalism which turns their case

James 99 Joy James Shadowboxing: Representations of Black Feminist Politics 1999 Presidential Professor of the Humanities and a professor in political science at Williams College Pg. 99-100

Although the Deacons of Defense protected nonviolent civil rights organizers in the 1950s and 1960s, few in the United States belonged to any organization that publicly advocated armed self-defense against racist violence before they joined the Black Panther Party (originally named the Black Panther Parry for Self-Defense in view of the fact that police brutality and killings of African Americans inspired its formation). The Panther party captured the national imagination (and its paranoia). The most celebrated African American women achieved their international iconic stature as revolutionaries through the militancy of their racial not their gender politics—and their real or symbolic connections to armed struggle (which poses an interesting dilemma for mainstream feminism). Their iconography so overshadows die tedious, mundane tasks of nonelite activists shaping political realities and history that it inevitably eclipses the stories of rank-and-file organizers- Paradoxically, some women activists who were reconstructed into political celebrities and identified with the Black Panthers spent comparatively short periods of time with its grass-roots constituency: urban, impoverished African Americans. American cultural focus remains concentrated on the masculinized insurgent as warrior soldier. Consequently, the average American political spectator—black or white, red or brown or yellow—is more captivated by the Black Panthers' stance on armed self-defense and their battles with police—and resulting male martyrs—than with the social service programs largely organized and run by women. Thousands of women worked with and served in the Black Panther Party, comprising the rank and file that implemented the medical, housing, clothing, and Free Breakfast and education programs. Female activists among the Panther ranks displayed an agency that reshaped American politics, although their stories recede in popular political culture before the narratives of elites who have become icons. (Before being forced underground. Assata Shakur routinely worked in the rank and file.) Iconic imagery and symbolism filter political history and memory so that what is often recalled is the image, not the specificity, of militancy. Without diminishing the contributions of past activists in radical movements, the problematic aspects by which past activism becomes personified, and consequently distorted, in representations of elites can be highlighted. A select, elite group of African American women served with their male counterparts in the "central committees' that comprised Panther leadership before, during, and after the factionalism and infiltration, as well as state violence, that led to the pony's demise as a revolutionary organization. The deradicalizing tendencies of iconography mask the diverse and significant contributions "Panther women" made under considerable difficulty and hardship. These contributions stemmed from the rank and file who in anonymity shared the risks of police persecution and bore the brunt of party discipline and organization. selling party newspapers on street comers for revenue, and delivering social services to impoverished and under resourced black communities. The elite (largely Oakland-based) leadership suffered state violence as they focused on representing the party, disseminating political ideology, and engaged in decision making. For iconic and rank-and-file women, the weight of representation would include sexualization.

Celebration of black radical idols silences internal criticism and kills solvency

James 99 Joy James Shadowboxing: Representations of Black Feminist Politics 1999 Presidential Professor of the Humanities and a professor in political science at Williams College Pg. 101-102

The construction of elite black female radicals in the Black Panther Party as "revolutionary sweethearts" fueled their popularity with both males and females, particularly in segments of the culture that tended to idolize, and continues to revere, rather than critically engage with black radical heroes and heroines. Henry Louis Gates Jr.'s 1998 PBS Frontline documentary on class stratification and African Americans. The Two Nations of Black America, which often no gender analysis, used archival footage to ridicule and disparage male Panthers. (Gates reports that when he was a student, the Panthers used him and other Yalies as 'cannon fodder" in their battles with police around the New Haven Panther trial.) Yet the documentary sexualizes the young Angela Davis and Kathleen Cleaver and resists demonizing them. While the narrator Gates confides that Martin Luther King Jr., and the southern civil rights movement held little attraction for him as a youth, the film flashes archival images of the "sexier" Black Panther Party, replete with the faces, bodies, and youthful beauty of Davis and Cleaver.1 Paradoxically both women by virtue of their past activism, bring a "left" credibility to the neoliberal politics of a documentary hostile toward the organization that helped to propel them into the national and international spotlight (Davis also had the international platform of the Communist Parry). In much of the popular and academic discourse concerning gender politics and the Black Panther Party, discussions vacillate among female apologias protecting the reputations of male radicals, criticisms of an allegedly uniform sexism and misogyny, and feminist revisionism safe- guarding the emergent iconic suture of "Panther women." Iconography remains central to most representations of the Panthers. For instance, a recent anthology, The Black Panther Party [Reconsidered}, features on its jacket only one female image—the cover of The Black Panther newspaper carrying a photo of Angela Davis, taken when she was not a member of (he party. (Rejecting photographs of the lesser-known Brown and Cleaver or unknown rank-and-file women the book follows the American tradition of using female images for advertising.) The anthology's section entitled "Gender Dynamics" explores the roles of women in the party; except for an autobiographical essay by a former Panther in which the author recounts sexual harassment within the parry, the issues of domestic violence by revolutionary or cultural nationalist leaders and the normative silence about battery and rape are not significantly explored.10 (For example, there is no discussion of how the Oakland-based leadership broke that silence on domestic violence by publishing a photograph of Kathleen Cleaver's battered face in (he party newspaper. However, this potentially feminist message was undermined by an ulterior motive; Huey Newton sought to discredit and "purge" Eldridge Cleaver from the party.) The issue of female abuse and battery by male leaders and the rank and file in the Black Panther Party, led by Newton and Eldridge Cleaver before the split, and its rival organization Us, headed by Maulana (Ron) Karenga, remains somewhat of a taboo among African Americans. In addition, the issue of black women's complicity in violence and destabilization of a radical political group appears to generate little interest.1 The counterfeminist and anti-Revolutionary aspects of female Panther leaders represented by former Black Panther Party Chair Elaine Brown go unexplored in her reconstruction as a "feminist" within the anthology.

## Wounded Attachments

The alt is IDENTITY but not POLITICS---failure to envision a future in which their identity claims will no longer be needed results in a reactionary politics that entrenches the status quo

**Bhambra 10**—U Warwick—AND—Victoria Margree—School of Humanities, U Brighton (Identity Politics and the Need for a ‘Tomorrow’, http://www.academia.edu/471824/Identity\_Politics\_and\_the\_Need\_for\_a\_Tomorrow\_)

The quotation with which this article begins comes from the end of the novel where the character Paul D is speak-ing to fellow former slave Sethe of the need to move be- yond the terms of **a past disﬁgured by slavery**. We begin with this for two reasons. First, it expresses the central problematic ad-dressed within this article: the question of the place of history in the present, and how this helps or hinders the opening up of future possibilities. Second, the novel addresses how the opening up of a new future can also be achieved by shifts in understand-ing which result from allowing **alternative interpretations of the past**. Speciﬁcally in Beloved , Paul D moves from a condemnation of Sethe for her alleged inhumanity in having killed her own child (“you got two legs, not four, Sethe” ((1987) 1997: 165)), to a new understanding of the “gendered division of labour on which slavery was built” (Mohanty 2000: 61) and thus to acceptance of the validity of her claims to have killed as a human being , and as a mother (to save her own child from becoming a slave like her-self, to refuse to be a reproducer of slaves). As such, Paul D arrives at a fuller understanding of their shared historical experience as slaves, and this new knowledge constitutes the basis for develop-ing the “tomorrow” of which he speaks.¶ In what follows we use the metaphor of “tomorrow” in order to address contemporary debates about “identity politics”. Recent years have witnessed a general backlash against identity politics both in the academy and the public sphere (Bickford 1997, Young1997, Farred 2000, Bramen 2002). Among the various pro-tagonists of this “backlash”, Bramen (2002) gives particular atten-tion to work by Wendy Brown (1995) on “wounded attachments”. This is her term for a condition in which politicised identities, based upon experiences of injustice and discrimination, begin to “fetishise” (Ahmed 2004) their own wounding. For Brown, this results in a **reactionary politics aimed at recrimination**, **instead of action to redress the injustice.** Our intention in the present article is to situate ourselves within this debate about the value of iden-tity politics as well as to engage with the speciﬁc issues raised by Brown’s work. We will argue that the objections to “identity “raised by Brown and others must be taken seriously, but that **this need not lead to a wholesale abandonment of the politics of identity.** Rather, we wish to demonstrate that **the problem with identity politics is the way in which the “identity”** very often **comes to replace the “politics”.**

To avoid such a substitution, we argue that “identity” may be re-theorised as that which is continually pro-duced and reproduced by **political projects in the present**, and **on the basis of a shared vision of the future.** The argument of this article is thus that politicised identities might instead be thought of in terms of an explicit afﬁrmation of the **provisionality** **of a political identity** that is **oriented to a “tomorrow**” in which the identity will no longer be required. **In this way, the power of “identity” as a site of resistance is maintained, while ameliorating the conservative effects of the entrenched identities** that Brown criticises. As such, this article also addresses the wider contemporary debate in emancipatory politics, which concerns the proper orientation of radical politics in terms of the tense of political dis-course. The key issue here is that of the extent to which political discourse should be focused around the past – on origins, memory, history, trauma and so forth – or the extent to which it should be **future-oriented**. Critics such as Brown (1995) and Grosz (2000)have expressed a fear that too great a weight upon the past has proved **constraining** for radical movements, and that an emphasis upon the future – **the (more) just future that political action intends to bring about – is required** as a corrective to this (Ahmed2004). However, such a demand brings with it the vexed question of the place of memory, and speciﬁcally, the memorialising of pain and exclusion. As Brown’s own equivocation on the issue suggests, “the counsel of forgetting [...] seems inappropriate if not cruel”(p 74) for many oppressed groups who have yet to have their pain recognised, or to understand themselves the deferred effects of atraumatic past (Kilby 2002). The arguments presented in this paper are threefold. First, we argue for a rethinking of “politicised identities” in terms of a **commitment to a desired future**, as a corrective to the conservative effects that frequently accompany “identity” (here identiﬁed as “exclusionary politics” and “reiﬁcation of identities”). Second, we argue, however, that such an emphasis upon the future need not and should not entail an abandonment of the commitment to address traumatic pasts. Third, we argue that a productive identity politics is one which understands the identity of the political group-ing as **provisional**, since it is based on the need to respond to an existing injustice, and therefore, oriented to a future in which that injustice, and hence, the need for the identity claim, is no longer pre-sent. Central to the development of our thesis will be an engagement with work on experience and identity by Satya Mohanty, and com-munities and knowledge by Lynn Hankinson Nelson.

#### resistance/empowerment via the ballot can only instill an adaptive politics of being and effaces the institutional constraints that reproduce structural violence

Brown 95—prof at UC Berkely (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 otherworldly plane vis-a-vis social and political power. In this regard, despite its apparent locution of resistance to subjection, contem- porary discourses of empowerment partake strongly of liberal solipsism—the radical decontextualization of the subject characteristic of¶ 23¶ liberal discourse that is key to the fictional sovereign individualism of liberalism. Moreover, in its almost exclusive focus on subjects’ emotionalbearing and self-regard, empowerment is a formulation that converges with a regime’s own legitimacy needs in masking the power of the regime.¶ This is not to suggest that talk of empowerment is always only illusion or delusion. It is to argue, rather, that while the notion of empowerment articulates that feature of freedom concerned with action, with being more than the consumer subject figured in discourses of rights and eco- nomic democracy, contemporary deployments of that notion also draw so heavily on an undeconstructed subjectivity that they risk establishing a wide chasm between the (experience of) empowerment and an actual capacity to shape the terms of political, social, or economic life. Indeed, the possibility that one can “feel empowered”