# 1nc

### 1nc

#### a. Interpretation and violation---the affirmative should defend the desirability of topical action related to war powers

#### Statutory restriction means controlled by legislation and Judicial restriction means limited by judicial action

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

#### Presidential War power authority is the ability of the President to make chain of command decisions over the Armed Forces

Bajesky 13 (2013¶ Mississippi College Law Review¶ 32 Miss. C. L. Rev. 9¶ LENGTH: 33871 words ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers NAME: Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami.)

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n25) In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n26)¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n27) Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n28) because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n29) However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. [n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n30) Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n31) The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n32)

#### Now first if they meet this interp, you should prioritize plan focus --- any alternative is extra-topical and disproves the benefit of the resolution and forces the neg to go for T or read a CP to get back to square one ---- and this is our DA to the topic

#### The sanctions bill won’t pass now – Democrats are supporting Obama but continued capital is key to keep them aligned with the base

Voice of America 1/23/14 ("Support Slipping for Iran Sanctions in US Senate")

CAPITOL HILL — More Democratic senators are quietly signaling their opposition to a bill that spells out new sanctions against Iran if negotiations to limit the country’s nuclear program do not yield a final accord. ¶ The bill retains bipartisan support in both houses of Congress, but passage is seen as increasingly unlikely in the Democratic-led Senate amid an intense lobbying effort by the Obama administration to hold off on sanctions while international negotiations proceed. ¶ Senators Patty Murray and Elizabeth Warren are the latest Democrats to announce their opposition to the Iran sanctions bill currently before Congress. ¶ In a letter to constituents in Washington state, Murray said “the administration should be given time to negotiate a strong verifiable comprehensive agreement” on Iran’s nuclear program. At the same time, she pledged to work “to swiftly enact sanctions” if the talks ultimately fail.¶ Similarly, a spokeswoman for Warren says the Massachusetts senator “does not support imposing additional sanctions through new legislation while diplomatic efforts to achieve a long-term agreement are ongoing.”¶ The sanctions bill has 16 Democratic co-sponsors, near-unanimous support among Republicans, and the backing of politically potent pro-Israeli U.S. lobbying groups. But 11 Senate committee chairs, including Murray, currently oppose the bill. ¶ Among Democrats who signed on to the measure late last year, some have grown less vocal in their defense and promotion of the measure in recent weeks. Senate Majority Leader Harry Reid has neither explicitly promised a vote on the bill, nor ruled it out. Congressional expert William Galston of the Brookings Institution says pressure from President Barack Obama appears to be swaying a growing number of Democratic lawmakers. “The White House is determined to prevent this from happening," he said. "The administration believes in the marrow of its bones that the executive branch is the lead negotiator in the matter and that it deserves a chance to conduct its own foreign policy."

#### PC is stopping veto-proof bill

Kampeas 1/14/14 (Ron, The Times of Israel, "Iran Sanctions Have Senate Majority But Veto Looms")

WASHINGTON (JTA) — More than half the United States Senate has signed on to a bill that would intensify sanctions against Iran. But in a sign of the so-far successful effort by the White House to keep the bill from reaching a veto-busting 67 supporters, only 16 Democrats are on board. The number of senators cosponsoring the bill, introduced by Sens. Mark Kirk (R-Illinois) and Robert Menendez (D-New Jersey), reached 59 this week, up from just 33 before the Christmas holiday break.

#### Plan wrecks PC

Douglas L. Kriner 10, Assistant Professor of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 68-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."¶ While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.60¶ In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61¶ When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Incentivizes Israel to strike

**Perr, 12/24/13 –** B.A. in Political Science from Rutgers University; technology marketing consultant based in Portland, Oregon. Jon has long been active in Democratic politics and public policy as an organizer and advisor in California and Massachusetts. His past roles include field staffer for Gary Hart for President (1984), organizer of Silicon Valley tech executives backing President Clinton's call for national education standards (1997), recruiter of tech executives for Al Gore's and John Kerry's presidential campaigns, and co-coordinator of MassTech for Robert Reich (2002).(Jon, “Senate sanctions bill could let Israel take U.S. to war against Iran” Daily Kos, [http://www.dailykos.com/story/2013/12/24/1265184/-Senate-sanctions-bill-could-let-Israel-take-U-S-to-war-against-Iran#](http://www.dailykos.com/story/2013/12/24/1265184/-Senate-sanctions-bill-could-let-Israel-take-U-S-to-war-against-Iran)

As 2013 draws to close, the negotiations over the Iranian nuclear program have entered a delicate stage. But in 2014, the tensions will escalate dramatically as a bipartisan group of Senators brings a new Iran sanctions bill to the floor for a vote. As many others have warned, that promise of new measures against Tehran will almost certainly blow up the interim deal reached by the Obama administration and its UN/EU partners in Geneva. But Congress' highly unusual intervention into the President's domain of foreign policy doesn't just make the prospect of an American conflict with Iran more likely. As it turns out, the Nuclear Weapon Free Iran Act essentially empowers Israel to decide whether the United States will go to war against Tehran. On their own, the tough new sanctions imposed automatically if a final deal isn't completed in six months pose a daunting enough challenge for President Obama and Secretary of State Kerry. But it is the legislation's commitment to support an Israeli preventive strike against Iranian nuclear facilities that almost ensures the U.S. and Iran will come to blows. As Section 2b, part 5 of the draft mandates: If the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence. Now, the legislation being pushed by Senators Mark Kirk (R-IL), Chuck Schumer (D-NY) and Robert Menendez (D-NJ) does not automatically give the President an authorization to use force should Israel attack the Iranians. (The draft language above explicitly states that the U.S. government must act "in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force.") But there should be little doubt that an AUMF would be forthcoming from Congressmen on both sides of the aisle. As Lindsey Graham, who with Menendez co-sponsored a similar, non-binding "stand with Israel" resolution in March told a Christians United for Israel (CUFI) conference in July: "If nothing changes in Iran, come September, October, I will present a resolution that will authorize the use of military force to prevent Iran from developing a nuclear bomb." Graham would have plenty of company from the hardest of hard liners in his party. In August 2012, Romney national security adviser and pardoned Iran-Contra architect Elliott Abrams called for a war authorization in the pages of the Weekly Standard. And just two weeks ago, Norman Podhoretz used his Wall Street Journal op-ed to urge the Obama administration to "strike Iran now" to avoid "the nuclear war sure to come." But at the end of the day, the lack of an explicit AUMF in the Nuclear Weapon Free Iran Act doesn't mean its supporters aren't giving Prime Minister Benjamin Netanyahu de facto carte blanche to hit Iranian nuclear facilities. The ensuing Iranian retaliation against to Israeli and American interests would almost certainly trigger the commitment of U.S. forces anyway. Even if the Israelis alone launched a strike against Iran's atomic sites, Tehran will almost certainly hit back against U.S. targets in the Straits of Hormuz, in the region, possibly in Europe and even potentially in the American homeland. Israel would face certain retaliation from Hezbollah rockets launched from Lebanon and Hamas missiles raining down from Gaza. That's why former Bush Defense Secretary Bob Gates and CIA head Michael Hayden raising the alarms about the "disastrous" impact of the supposedly surgical strikes against the Ayatollah's nuclear infrastructure. As the New York Times reported in March 2012, "A classified war simulation held this month to assess the repercussions of an Israeli attack on Iran forecasts that the strike would lead to a wider regional war, which could draw in the United States and leave hundreds of Americans dead, according to American officials." And that September, a bipartisan group of U.S. foreign policy leaders including Brent Scowcroft, retired Admiral William Fallon, former Republican Senator (now Obama Pentagon chief) Chuck Hagel, retired General Anthony Zinni and former Ambassador Thomas Pickering concluded that American attacks with the objective of "ensuring that Iran never acquires a nuclear bomb" would "need to conduct a significantly expanded air and sea war over a prolonged period of time, likely several years." (Accomplishing regime change, the authors noted, would mean an occupation of Iran requiring a "commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.") The anticipated blowback? Serious costs to U.S. interests would also be felt over the longer term, we believe, with problematic consequences for global and regional stability, including economic stability. A dynamic of escalation, action, and counteraction could produce serious unintended consequences that would significantly increase all of these costs and lead, potentially, to all-out regional war.

#### Sanctions treat individuals as means to a political end and devalue the lives of those sanctioned – this is immoral and must be rejected

Joy Gordon, professor of philosophy at Fairfield University, 1999, Ethics and International Affairs, Vol. 13, “A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions,” http://www.ciaonet.org/olj/cceia/cceia\_99goj01.html

In addition to viewing sanctions within the ethical framework offered by just war doctrine, we should also examine them from a deontological perspective. I refer here to Kant’s ethical theory, which holds that all rational beings are characterized by “dignity,” the inherent worth of a person that makes him or her irreplaceable and that stands in contrast to those material things with a price, which can be exchanged for other things of equal or greater price without loss. This is the basis for Kant’s claim that all rational beings have autonomy, the right and the capacity to rule themselves. In Grounding for the Metaphysics of Morals, Kant says that it is a categorical imperative, an unconditional moral mandate binding on all rational beings, to “act in such a way that you treat humanity, whether in your own person or in the person of another, always as an end and never simply as a means.” 8 This ethical framework would arguably have had little to offer in the debate over sanctions at the time that Article 16 of the Covenant of the League of Nations was being set forth as a mechanism of enforcement. The articulated purpose of sanctions was quite narrow: it was to stop military aggression. In that context, there were two innocent populations involved—the nonpolitical/nonmilitary population of the aggressor nation and the entire population of the nation under attack. Because deontological ethics enjoins us to treat all human beings as ends in themselves and not solely as means, it would not offer much guidance in the situation where some innocent population (or at least a sector of the population) will be harmed, and where the issue is whether the innocents who are harmed will be the civilian population of the aggressor nation upon whom sanctions are imposed, or the civilian population of the attacked nations who are the objects of military aggression. In this case, either one population is the means to the military victory of the aggressor, or the other population is the means to interdict the aggressor. But deontological arguments do offer guidance in situations where military aggression is not at issue, and where the choice therefore is not which innocent population suffers harm, but whether an innocent population may be harmed in the service of the political interests of a foreign state, or for the interest of the international community in enforcing norms. Where sanctions impose suffering on innocent sectors of the target country population for an objective other than preventing the deaths of other innocent persons, this is clearly incompatible with deontological ethics, since in these situations, to use Kantian language, human beings are reduced to nothing more than a means to an end, where that end is something less than the lives of other human beings.

#### Second, if they don’t meet this, it proves why you need to have a predictable stable locus of a 1AC for a well-prepared aff

#### 1 – Predictable Limits – the affirmative justifies ignoring any word in the resolution, applying any metaphor to debate –predictable affirmative based in the topic is essential to determine if the affirmative is TRUTHFUL to begin with – without a well-prepared opponent one cannot engage in effective questions as to how to proceed in the debate

**Shively‘2K**

(Ruth Lessl, Assistant Prof Political Science – Texas A&M U., Partisan Politics and Political Theory, p. 181-2)

The requirements given thus far are primarily negative. The ambiguists must say "no" to-they must reject and limit-some ideas and actions. In what follows, we will also find that they must say "yes" to some things. In particular, they must say "yes" to the idea of rational persuasion. This means, first, that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake that the ambiguists make here is a common one. The mistake is in thinking that agreement marks the end of contest-that consensus kills debate. But this is true only if the agreement is perfect-if there is nothing at all left to question or contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the *starting* condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no argument except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, we cannot argue about something if we are not communicating: if we cannot agree on the topic and terms of argument or if we have utterly different ideas about what counts as evidence or good argument. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if **one's target audience simply thinks everyone is resting** or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is meaningless if there is a lack of agreement or communication about what is being contested. Resisters, demonstrators,and **debaters** **must** have some **shared ideas** about the subject and/or the terms of their disagreements. The participants and the target of a sit-in must share an understanding of the complaint at hand. And a demonstrator's audience must know what is being resisted. In short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony. But, again, the response to the ambiguist must be that the practice of questioning and undermining rules, like all other social practices, **needs a certain order**. **The subversive needs rules to protect subversion**. And when we look more closely at the rules protective of subversion, we find that they are roughly the rules of argument discussed above. In fact, the rules of argument are roughly the rules of democracy or civility: the delineation of boundaries necessary to protect speech and action from violence, manipulation, and other forms of tyranny.

#### 2. Decisionmaking is the most portable skill—key to all facets of life and advocacy – a WELL prepared opponent helps one to learn to thinl 3 steps ahead which is useful no matter if one is a lawyer, thinker, activist or politician

Steinberg 8 (lecturer of communication studies – University of Miami, and Freeley, Boston based attorney who focuses on criminal, personal injury and civil rights law,

(David L. and Austin J., Argumentation and Debate: Critical Thinking for Reasoned Decision Making p. 9-10)

After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military\* action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition. Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. 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 seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making homes 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 make many decisions even- 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 CO vote for. paper or plastic, all present lis 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? Tlie 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, TIMI: 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. You Tube. Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople. academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? 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. 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. Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place 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 oiler, 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 out product, or a vote for our favored political candidate.

#### 3. Extra Topicality – Going beyond the resolution proves the resolution alone is insufficient to address the problem at hand – it also allows the affirmative to claim advantages that are far beyond the scope of the resolution

#### 4 - Tailoring identity claims to common topics for deliberation is possible and desirable---the 1ac’s failure to affirm topical action impedes that kind of argumentation

Amanda Anderson 6, Andrew W. Mellon Professor of Humanities and English at Brown University, Spring 2006, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, p. 281-290

MY RECENT BOOK, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain unquestioned legitimacy, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that argument is a form of respect, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be protected from debate, that argument is somehow injurious to persons if it does not honor their desire to have their basic beliefs and claims and solidarities accepted without challenge, is strenuously opposed. As is the notion that any attempt to ask people to agree upon processes of reason-giving argument is somehow necessarily to impose a coercive norm, one that will disable the free expression and performance of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced-if misconceived-criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement-the internal dynamic in argument that imagines argument might be the beginning of a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is a complacent-and in some versions, even celebratory-attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to justify their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society.

One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos-specifically, an appeal to Foucault's style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers-was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book's central arguments, though one certainly gets an incremental sense of the book's claims from Bruce Robbins. Because I don't assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.)

The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one's pre-given forms of identity or the norms of one's community, both so as to talk across differences and to articulate one's claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity-race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of contingency-recommendations that get elevated into full-fledged exemplary personae in Richard Rorty's notion of the "ironist" or Barbara Herrnstein Smiths portrait of the "postmodern skeptic." These examples-and the larger claim they support-are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument. Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is "potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument." What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite "debaterly" This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies-to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference.

YOU SHOULD MARK HERE

More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the question of disagreement about what counts as argument. In the opening essay, "Debatable Performances," I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a wide variety of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist-and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics-that when they have an effect, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the very form of reasoned analysis that their champions sometimes imagine they must refuse in order to liberate other modes of being (the affective, the narrative, the performative, the nonrational). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be affirmed and communicated and also can be used to justify political positions and legislative agendas.

#### 5. Policy Education is critical to challenging anti-blackness – it is not ontological –

Jamelle Bouie 13, staff writer at The American Prospect, Making and Dismantling Racism, http://prospect.org/article/making-and-dismantling-racism

Over at The Atlantic, Ta-Nehisi Coates has been exploring the intersection of race and public policy, with a focus on white supremacy as a driving force in political decisions at all levels of government. This has led him to two conclusions: First, that anti-black racism as we understand it is a **creation of explicit policy choices—**the decision to exclude, marginalize, and stigmatize Africans and their descendants has as much to do with racial prejudice as does any intrinsic tribalism. And second, that it's possible to **dismantle this prejudice using public policy**. Here is Coates in his own words: Last night I had the luxury of sitting and talking with the brilliant historian Barbara Fields. One point she makes that very few Americans understand is that racism is a creation. You read Edmund Morgan’s work and actually see racism being inscribed in the law and the country changing as a result. If we accept that racism is a creation, then we must then accept that it can be destroyed. And if we accept that it can be destroyed, we must then accept that it can be destroyed by us and that it likely must be destroyed by methods kin to creation. Racism was created by policy. It will likely only be ultimately destroyed by policy. Over at his blog, Andrew Sullivan offers a reply: I don’t believe the law created racism any more than it can create lust or greed or envy or hatred. It can encourage or mitigate these profound aspects of human psychology – it can create racist structures as in the Jim Crow South or Greater Israel. But it can no more end these things that it can create them. A complementary strategy is finding ways for the targets of such hatred to become inured to them, to let the slurs sting less until they sting not at all. Not easy. But a more manageable goal than TNC’s utopianism. I can appreciate the point Sullivan is making, but I'm not sure it's relevant to Coates' argument. It is absolutely true that "Group loyalty is deep in our DNA," as Sullivan writes. And if you define racism as an overly aggressive form of group loyalty—basically just prejudice—then Sullivan is right to throw water on the idea that the law can "create racism any more than it can create lust or greed or envy or hatred." But Coates is making a more precise claim: That **there's nothing natural about the black/white divide that has defined American history**. White Europeans had contact with black Africans well before the trans-Atlantic slave trade **without the emergence of an anti-black racism**. It took particular choices made by particular people—in this case, plantation owners in colonial Virginia—to make black skin a stigma, to make the "one drop rule" a defining feature of American life for more than a hundred years. By enslaving African indentured servants and allowing their white counterparts a chance for upward mobility, colonial landowners began the process that would **make white supremacy the ideology of America**. The position of slavery generated a stigma that then justified continued enslavement—blacks are lowly, therefore we must keep them as slaves. Slavery (and later, Jim Crow) **wasn't built to reflect racism as much as it was built in tandem with it**. And later policy, in the late 19th and 20th centuries, further entrenched white supremacist attitudes. Block black people from owning homes, and they're forced to reside in crowded slums. Onlookers then use the reality of slums to deny homeownership to blacks, under the view that they're unfit for suburbs. In other words, create a prohibition preventing a marginalized group from engaging in socially sanctioned behavior—owning a home, getting married—and then blame them for the adverse consequences. Indeed, in arguing for gay marriage and responding to conservative critics, Sullivan has taken note of this exact dynamic. Here he is twelve years ago, in a column for The New Republic that builds on earlier ideas: Gay men--not because they're gay but because they are men in an all-male subculture--are almost certainly more sexually active with more partners than most straight men. (Straight men would be far more promiscuous, I think, if they could get away with it the way gay guys can.) Many gay men value this sexual freedom more than the stresses and strains of monogamous marriage (and I don't blame them). But this is not true of all gay men. Many actually yearn for social stability, for anchors for their relationships, for the family support and financial security that come with marriage. To deny this is surely to engage in the "soft bigotry of low expectations." They may be a minority at the moment. But with legal marriage, their numbers would surely grow. And they would function as emblems in gay culture of a sexual life linked to stability and love. [Emphasis added] What else is this but a variation on Coates' core argument, that society can create stigmas by using law to force particular kinds of behavior? Insofar as gay men were viewed as unusually promiscuous, it almost certainly had something to do with the fact that society refused to recognize their humanity and sanction their relationships. The absence of any institution to mediate love and desire encouraged behavior that led this same culture to say "these people are too degenerate to participate in this institution." If the prohibition against gay marriage helped create an anti-gay stigma, then lifting it—as we've seen over the last decade—has helped destroy it. There's no reason racism can't work the same way.

#### 6. This process of simulation is essential for students who engage in discussions that interact with questions of national security

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.

## Case

### Impact Calc

#### Decisions should be shaped by their consequences

Isaac 2 (Jeffrey, Professor of PoliSci @ Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD Yale, “Ends, Means, and Politics,” Dissent Magazine Vol 49 Issue 2)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law [it] can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### Case proper

#### ANTI BLACKNESS is not an effective paradigm

#### A> Anti-blackness is not an ontological antagonism---conflict is inevitable in politics, but does not have to be demarcated around whiteness and blackness---the alt’s ontological fatalism recreates colonial violence

Peter Hudson 13, Political Studies Department, University of the Witwatersrand, Johannesburg , South Africa, has been on the editorial board of the Africa Perspective: The South African Journal of Sociology and Theoria: A Journal of Political and Social Theory and Transformation, and is a member of the Johannesburg Workshop in Theory and Criticism, The state and the colonial unconscious, Social Dynamics: A journal of African studies, 2013

Thus the self-same/other distinction is necessary for the possibility of identity itself. There always has to exist an outside, which is also inside, to the extent it is designated as the impossibility from which the possibility of the existence of the subject derives its rule (Badiou 2009, 220). But although the excluded place which isn’t excluded insofar as it is necessary for the very possibility of inclusion and identity may be universal (may be considered “ontological”), its content (what fills it) – as well as the mode of this filling and its reproduction – are contingent. In other words, the meaning of the signifier of exclusion is not determined once and for all: the place of the place of exclusion, of death is itself over-determined, i.e. the very framework for deciding the othe , , , , , , ,,,,r and the same, exclusion and inclusion, is nowhere engraved in ontological stone but is political and never terminally settled. Put differently, the “curvature of intersubjective space” (Critchley 2007, 61) and thus, the specific modes of the “othering” of “otherness” are nowhere decided in advance (as a certain ontological fatalism might have it) (see Wilderson 2008). The social does not have to be divided into white and black, and the meaning of these signifiers is never necessary – because they are signifiers. To be sure, colonialism institutes an ontological division, in that whites exist in a way barred to blacks – who are not. But this ontological relation is really on the side of the ontic – that is, of all contingently constructed identities, rather than the ontology of the social which refers to the ultimate unfixity, the indeterminacy or lack of the social. In this sense, then, the white man doesn’t exist, the black man doesn’t exist (Fanon 1968, 165); and neither does the colonial symbolic itself, including its most intimate structuring relations – division is constitutive of the social, not the colonial division. “Whiteness” may well be very deeply sediment in modernity itself, but respect for the “ontological difference” (see Heidegger 1962, 26; Watts 2011, 279) shows up its ontological status as ontic. It may be so deeply sedimented that it becomes difficult even to identify the very possibility of the separation of whiteness from the very possibility of order, but from this it does not follow that the “void” of “black being” functions as the ultimate substance, the transcendental signified on which all possible forms of sociality are said to rest. What gets lost here, then, is the specificity of colonialism, of its constitutive axis, its “ontological” differential. A crucial feature of the colonial symbolic is that the real is not screened off by the imaginary in the way it is under capitalism. At the place of the colonised, the symbolic and the imaginary give way because non-identity (the real of the social) is immediately inscribed in the “lived experience” (vécu) of the colonised subject. The colonised is “traversing the fantasy” (Zizek 2006a, 40–60) all the time; the void of the verb “to be” is the very content of his interpellation. The colonised is, in other words, the subject of anxiety for whom the symbolic and the imaginary never work, who is left stranded by his very interpellation.4 “Fixed” into “non-fixity,” he is eternally suspended between “element” and “moment”5 – he is where the colonial symbolic falters in the production of meaning and is thus the point of entry of the real into the texture itself of colonialism. Be this as it may, whiteness and blackness are (sustained by) determinate and contingent practices of signification; the “structuring relation” of colonialism thus itself comprises a knot of significations which, no matter how tight, can always be undone. Anti-colonial – i.e., anti-“white” – modes of struggle are not (just) “psychic” 6 but involve the “reactivation” (or “de-sedimentation”)7 of colonial objectivity itself. No matter how sedimented (or global), colonial objectivity is not ontologically immune to antagonism. Differentiality, as Zizek insists (see Zizek 2012, chapter 11, 771 n48), immanently entails antagonism in that differentiality both makes possible the existence of any identity whatsoever and at the same time – because it is the presence of one object in another – undermines any identity ever being (fully) itself. Each element in a differential relation is the condition of possibility and the condition of impossibility of each other. It is this dimension of antagonism that the Master Signifier covers over transforming its outside (Other) into an element of itself, reducing it to a condition of its possibility.8 All symbolisation produces an ineradicable excess over itself, something it can’t totalise or make sense of, where its production of meaning falters. This is its internal limit point, its real:9 an errant “object” that has no place of its own, isn’t recognised in the categories of the system but is produced by it – its “part of no part” or “object small a.”10 Correlative to this object “a” is the subject “stricto sensu” – i.e., as the empty subject of the signifier without an identity that pins it down.11 That is the subject of antagonism in confrontation with the real of the social, as distinct from “subject” position based on a determinate identity.

#### B> Wilderson’s notion of libidinal violence is overly reductive---he has no way to explain historical resistance to anti-blackness because his theory pigeon holes all oppression into the non-falsifiable register of psychoanalysis

Saër Maty Bâ 11, prof of film at Portsmouth University, The US Decentred, http://epress.lib.uts.edu.au/journals/index.php/csrj/article/view/2304/2474

As we shall see below, blacks in the US cannot and do not have ontology, or so Wilderson argues, denying with the same breath the workability of analogy as a method, because analogy can only be a ruse. Thus, what he calls ‘the ruse of analogy’ grants those who fall for it, for example, ‘Black film theorists’ or Black academics, an opportunity to reflect on (black) cinema only after some form of structural alteration. (38) Analogy does seem tricky if one follows Wilderson’s line of thought, that is, the Holocaust/Jews and slavery/Africans. Jews entered and came out of Auschwitz as Jews whereas Africans emerged from the slave ships as Blacks.2 Two types of holocaust: the first ‘Human’, the second ‘Human and metaphysical’, something which leads to Wilderson saying that ‘the Jews have the Dead ... among them; the Dead have the Black among them’. (38) It bears reiterating that for Wilderson, blacks are socially and ontologically dead in the sense that the black body has been violently turned into flesh, ‘ripped apart literally and imaginatively’, that it is a body vulnerably open, ‘an object made available (fungible) for any subject’ and ‘not in the world’ or civil society the way white bodies are. (38)¶ Furthermore, Wilderson argues that differences between black and white ethical dilemmas separate them dialectically into incompatible zones. As illustration Wilderson reflects on black women suffering in US prisons in the 1970s and then juxtaposes the suffering with white women’s concurrent public preoccupations in civil society. For example, the violence and neglect underwent by Safya Bukhari‐ Alston3 in solitary confinement at the Virginia Correctional Center for Women is linked to the similar plight of another black woman, Dorothy, in Haile Gerima’s Bush Mama (1977) before Wilderson questions what both situations mean in relation to images of ‘[w]hite women burning bras in Harvard Square ... marching in ... Manhattan campaigning for equal rights’. (135) Wilderson’s answer is that the images of female black pain and white activism are irreconcilable precisely because they cannot be read against one another without such an exercise appearing intellectually sloppy. However, he does not develop this point, preferring instead to examine suffering through ‘a libidinal economy’ (131) leading, predictably, to the conclusion that white radicalism, white political cinema and white supremacy are one and the same thing. Most unfortunate though inevitable is the reason Wilderson gives to justify this: a so‐called ‘anti‐Blackness’ that, ¶ [wilderson quote begins]¶ as opposed to white apathy, is necessary to White political radicalism and to White political cinema because it sutures affective, emotional, and even ethical solidarity between the ideological polar extremes of Whiteness. This necessary anti‐Blackness erects a structural prohibition that one sees in White political discourse and in White political cinema. (131) [wilderson quote ends]¶ undamentally, the first three chapters of Red, White and Black are concerned with what it takes to think blackness and agency together ethically, or to permit ourselves intellectual mindful reflections upon the homicidal ontology of chattel slavery. Wilderson posits ways through which ‘the dead’ (blacks) reflect on how the living can be put ‘out of the picture’. (143) There seems to be no let off or way out for blacks (‘The Slave’) in Wilderson’s logic, an energetic and rigorous, if unforgiving and sustained, treadmill of damning analysis to which ‘Indians’ (‘The “Savage”’/‘The Red’) will also be subjected, first through ‘“Savage” film’ analysis.¶ <cont>¶ And yet Wilderson’s highlighting is problematic because it overlooks the ‘Diaspora’ or ‘African Diaspora’, a key component in Yearwood’s thesis that, crucially, neither navel‐gazes (that is, at the US or black America) nor pretends to properly engage with black film. Furthermore, Wilderson separates the different waves of black film theory and approaches them, only, in terms of how a most recent one might challenge its precedent. Again, his approach is problematic because it does not mention or emphasise the inter‐connectivity of/in black film theory. As a case in point, Wilderson does not link Tommy Lott’s mobilisation of Third Cinema for black film theory to Yearwood’s idea of African Diaspora. (64) Additionally, of course, Wilderson seems unaware that Third Cinema itself has been fundamentally questioned since Lott’s 1990s’ theory of black film was formulated. Yet another consequence of ignoring the African Diaspora is that it exposes Wilderson’s corpus of films as unable to carry the weight of the transnational argument he attempts to advance. Here, beyond the US‐centricity or ‘social and political specificity of [his] filmography’, (95) I am talking about Wilderson’s choice of films. For example, Antwone Fisher (dir. Denzel Washington, 2002) is attacked unfairly for failing to acknowledge ‘a grid of captivity across spatial dimensions of the Black “body”, the Black “home”, and the Black “community”’ (111) while films like Alan and Albert Hughes’s Menace II Society (1993), overlooked, do acknowledge the same grid and, additionally, problematise Street Terrorism Enforcement and Prevention Act(STEP) policing. The above examples expose the fact of Wilderson’s dubious and questionable conclusions on black film.¶ Red, White and Black is particularly undermined by Wilderson’s propensity for exaggeration and blinkeredness. In chapter nine, ‘“Savage” Negrophobia’, he writes ¶ [wilderson quote begins]¶ The philosophical anxiety of Skins is all too aware that through the Middle Passage, African culture became Black ‘style’ ... Blackness can be placed and displaced with limitless frequency and across untold territories, by whoever so chooses. Most important, there is nothing real Black people can do to either check or direct this process ... Anyone can say ‘nigger’ because anyone can be a ‘nigger’. (235)7¶ [wilderson quote ends] ¶ Similarly, in chapter ten, ‘A Crisis in the Commons’, Wilderson addresses the issue of ‘Black time’. Black is irredeemable, he argues, because, at no time in history had it been deemed, or deemed through the right historical moment and place. In other words, the black moment and place are not right because they are ‘the ship hold of the Middle Passage’: ‘the most coherent temporality ever deemed as Black time’ but also ‘the “moment” of no time at all on the map of no place at all’. (279)¶ Not only does Pinho’s more mature analysis expose this point as preposterous (see below), I also wonder what Wilderson makes of the countless historians’ and sociologists’ works on slave ships, shipboard insurrections and/during the Middle Passage,8 or of groundbreaking jazz‐studies books on cross‐cultural dialogue like The Other Side of Nowhere (2004). Nowhere has another side, but once Wilderson theorises blacks as socially and ontologically dead while dismissing jazz as ‘belonging nowhere and to no one, simply there for the taking’, (225) there seems to be no way back. It is therefore hardly surprising that Wilderson ducks the need to provide a solution or alternative to both his sustained bashing of blacks and anti‐ Blackness.9 Last but not least, Red, White and Black ends like a badly plugged announcement of a bad Hollywood film’s badly planned sequel: ‘How does one deconstruct life? Who would benefit from such an undertaking? The coffle approaches with its answers in tow.’ (340)

#### C. You should use optimism as your starting point – their pessimistic account obscures history to justify the black body as dispossessed

Moten 8 (Fred, Helen L. Bevington Prof. of Modern Poetry @ Duke U., “Black Op,” Proceedings of the Modern Language Association of America, pp. 1745)

\*Paleonymic is the deconstruction term for creating new words for old terms

All this—which was always so essentially and authentically clear in its wrought, inventive, righteous obscurity—now often suffers being revealed and reviled in critique that advances by way of what is supposed to be the **closure of authenticity**, essence, **and experience**, all of which continue to be made to share the most precise and predictably easy-to-dismiss name, local habitation, and communal form of life. That blackness is often profiled and found wanting what it is and has, in work that involuntarily falls under the admittedly imprecise rubric of African American studies, is also unsurprising and is due not so much to chauvinistic reactions to real or perceived chauvinism but to the fact that blackness’s **distinction from a specific set of things that are called black remains largely unthought**. **Paraontological resistance** to this particular brand of orthodoxy requires a **paleonymic relation to blackness**, which is not in need of a highlight it already has or an extrachromatic saturation it already is or a rampant internal differentiation it already bears. As such, it need not be uncoupled from the forms that came to stand (in) for blackness, to which they could not be reduced and which could not be reduced to them. What is often **overlooked in blackness** is bound up with what **has often been overseen**. Certain experiences of being tracked, managed, cornered in seemingly open space are inextricably bound to an aesthetically and politically dangerous supplementarity, an **internal exteriority** waiting to get out, as if the prodigal’s return were to leaving itself. Black studies’ concern with what it is to **own one’s dispossession**, to mine what is held in having been possessed, makes it more possible to embrace the underprivilege of being sentenced to the gift of constant escape. The strain of black studies that **strains against this** interplay of itinerancy and identity—whether in the interest of putting down roots or disclaiming them—could be said, also, to constitute a departure, though it may well be into a **stasis more severe** than the one such work **imagines (itself to be leaving).** In contradistinction to such skepticism, one might plan, like Curtis Mayfield, to stay a believer and therefore to avow what might be called a kind of **metacritical optimism**. Such optimism, **black optimism**, is bound up with what it is to claim blackness and the appositional, runaway, phonoptic black operations—expressive of an autopoetic organization in which flight and inhabitation modify each other—that have been thrust upon it. The burden of this paradoxically aleatory goal is our historicity, animating the reality of escape in and the possibility of escape from.

#### Korean Exclusion

#### The narrative of White domination over black renders the KOREAN invisible – this exclusion is exactly what is used to justify colonial domination and mass violence against Koreans

Kim 2008 – Associate Professor of Sociology at Loyola Marymount University (Nadia Y. *Imperial Citizens: Koreans and Race from Seoul to LA*, p. 78-79)

Korean immigrants’ invisibility in the United States was familiar to South Koreans given its counterpart on the peninsula. That is, not only does U.S. dominance normalize their inferiority but also their partial presence in their own home. After a long history of being reduced to a Japanese colony, Koreans had to endure U.S. land infraction, soldiers’ unpunished murders of Koreans, the Kwangju Massacre, sexual violence against women, and so on. All of these acts of power have sent the message that Koreans are not fully present in their country. Although the U.S. state depicts South Korea as an ally, connoting equality, its actions have betrayed a view of South Korea as a subordinate pawn for American gain—as bodies and land to be exploited. For one, the Yongsan Base and USFK headquarters (recall minisuburbs, golf courses, hotels, etc.) occupied one of the choicest pieces of real estate in Seoul while Koreans had to compete for high-priced housing and live in over-crowded conditions (Moon 1997:31) was told by several student activists in 1992 that complex infrastructure (e.g., webs of underground pipes) needed to support Yongsan Base has made subway construction there impossible and thus made life very difficult for many Seoul residents. In addition, South Koreans have long been restricted access to the military bases as well as to the camptowns that surround them (unless they work there or have special authorization). Camptown bars/clubs post signs above their entries that read: “Korean Nationals Prohibited: This club is registered according to the Tourism Business Law Article 21. Only UN forces and other foreigners are permitted patronage. The establishment offers tax-free liquor; Korean nationals are therefore denied entry.—Chairman, Korea Special Tourist Association” (Moon 1997:31). For Americans to deny Koreans access to parts of their own country certainly shores up feelings of not being fully present in one’s own “home.”

Another manifestation of the U.S. state’s sense of superiority was a lack of concern for learning or educating military personnel about South Korea. This lack of respect in part accounts for Korea’s weak visibility across the globe. In fact, Americans who had traveled to South Korea in the wake of the U.S. military’s arrival readily admitted their long-term ignorance about it. Journalist Richard Lauterbach (1947:14) confessed, “And like most Americans, I had the scantiest kind of information about Korea and most of it turned out to be shockingly inaccurate.” Another American named E. Grant Meade (1951:51) wrote, “I received nine months of instruction at two military schools … During this entire period [I] heard a single one-hour lecture on Korea.” Despite the U.S. occupation of Korea, the specter of invisibility would continue to haunt the people. A decade since the first shots of the Korean War, there was only one professional Korean historian at a reputable American university and the literature on Korean history in Western languages was almost nil (Palais 1995). In addition, the LA unrest further enlightened Korean Americans about their weak recognition and visibility in the United States. Koreans therefore navigate the paradox of being dominated by the United States “at home” yet being unknown to most of the American public and the world. In other words, although South Koreans have been told that the United States is their “ally,” they enjoy no halo effect from this “partnership” and suffer discrimination and invisibility in White-over-Black America. The paradox only affirmed that the United States, also within its own boundaries, positioned Koreans as subordinates more so than “equals.” Part of the reason, of course, is the U.S. state’s deliberate desire to keep Korea invisible so as to cover up the imperialist dimensions of its presence in South Korea and during the “Forgotten War.” In 1946, journalist Gayn (1981:433) wrote of Korea as “the blackest, the most depressing story I have ever covered. As an American I was ashamed of the facts that I kept digging up … of the concerted effort to prevent the American public could remain ignorant, the last thing South Koreans could do was “forget” the “Forgotten War.”

#### **This also fosters racial discrimination against non-black minorities**

Alcoff 3 [LINDA MARTÍN ALCOFF, Syracuse University Department of Philosophy, LATINO/AS, ASIAN AMERICANS, AND THE BLACK–WHITE BINARY The Journal of Ethics 7: 5–27]

The discourse of social justice in regard to issues involving race has been dominated in the U.S. by what many theorists name the "black/white paradigm," which operates to govern racial classifications and racial politics in the U.S., most clearly in the formulation of civil rights law but also in more informal arenas of discussion. Juan Perea defines this paradigm as the conception that race in America consists, either exclusively or primarily, of only two constituent racial groups, the Black and White ... In addition, the paradigm dictates that all other racial identities and groups in the United States are best understood through the Black/White binary paradigm.5 He argues that this paradigm operates even in recent anti-racist theory such as that produced by Andrew Hacker, Cornel West, and Toni Morrison, though it is even clearer in works by liberals such as Nathan Glazer. Openly espousing this view, Mary Francis Berry, former chair of the U.S. Civil Rights Commission, has stated that the U.S. is comprised of "three nations, one Black, one White, and one in which people strive to be something other than Black to avoid the sting of White Supremacy."6 To understand race in this way is to assume that racial discrimination operates exclusively through anti-black racism. Others can be affected by racism, on this view, but the dominance of the black/white paradigm works to interpret all other effects as "collateral damage" ultimately caused by the same phenomena, in both economic and psychological terms, in which the given other, whether Latino/a, Asian American, or something else, is placed in the category of "black" or "close to black." In other words, there is basically one form of racism, and one continuum of racial identity, along which all groups will be placed. The black/white paradigm can be understood either descriptively or prescriptively (or both): as making a descriptive claim about the fundamental nature of racializations and racisms in the U.S., or as prescribing how race shall operate and thus enforcing the applicability of the black/white paradigm.7 Several Latino/a and Asian American theorists, such as Elaine Kim, Gary Okihiro, Elizabeth Martinez, Juan Perea, Frank Wu, Dana Takagi, and community activists such as Bong Hwan Kim have argued that the black/white paradigm is not adequate, certainly not sufficient, to explain racial realities in the U.S. They have thus contested its claim to descriptive adequacy, and argued that the hegemony of the black/white paradigm in racial thinking has had many deleterious effects for Latino/as and Asian Americans.8 In this paper, I will summarize and discuss what I consider the strongest of these arguments and then develop two further arguments. It is important to stress that the black/white paradigm does have some descriptive reach, as I shall discuss, even though it is inadequate when taken as the whole story of racism. Asian Americans and Latino/as are often categorized and treated in ways that reflect the fact that they have been positioned as either "near black" or "near white," but this is not nearly adequate to understanding their ideological representation or political treatment in the U.S. One might also argue that, although the black/white paradigm is not descriptively adequate to the complexity and plurality of racialized identities, it yet operates with prescriptive force to organize these complexities into its bipolar schema. Critics, however, have contested both the claim of descriptive adequacy as well as prescriptive efficacy. That is, the paradigm does not operate with effective hegemony as a prescriptive force. I believe these arguments will show that continuing to theorize race in the U.S. as operating exclusively through the black/white paradigm is actually disadvantageous for all people of color in the U.S., and in many respects for whites as well (or at least for white union households and the white poor).

#### 4. Essentialism

#### A) LINK—their assumption of ontological blackness essentializes blackness as a racial category subservient to whiteness

Welcome 2004 – completing his PhD at the sociology department of the City University of New York's Graduate Center (H. Alexander, "White Is Right": The Utilization of an Improper Ontological Perspective in Analyses of Black Experiences, Journal of African American Studies, Summer-Fall 2004, Vol. 8, No. 1 & 2, pp. 59-73)

In many of the studies of blacks, the experiences of whites, not blacks, are used as the backing for the construction of the warrants/rules that are employed to evaluate black experiences, delimiting the "concepts and relationships that can exist" in the black community. The life histories of whites are used as the standard against which black experiences are measured and as the goals to which blacks are encouraged to strive. The employment of this ontology fallaciously limits the range of black agency, producing deceitful narratives where the navigation of the social environment by blacks is dictated by either a passive response to, or a passive adoption of, white scripts. This ontology erroneously limits descriptions and evaluations of black experiences, excluding viable causal determinants of the socio-economic status of blacks and constructing restricted descriptions of black agency. The utilization of whiteness to determine and/or evaluate blackness begins when whiteness and white life histories come to represent what is "right." "White is right" is a sarcastic phrase that was an extremely popular slur during the Black Power movement in the mid-1960s to the early 1970s; the utilization of this phrase represents a form of social critique that takes exception to both the privileging of white biographies as accurate descriptions of history and the reconstitution of these histories as a template that blacks and other people of color should follow for navigating social environments and achieving positive social mobility. Part of the prominence of the "white is right" perspective comes from the numerical superiority of whites. As a group, whites have been in the majority throughout the history of the United States and the prominence of the white experience has been used to argue that white experiences should be used as a social template. It has been used as such in the works of Robert Park (1939) and Gunnar Myrdal (1944), both of whom suggested that by copying the patterns of whites, blacks would achieve positive social mobility. However, use of the numerical superiority of whites to support claims about the "rightness" of white experiences relies on the equation of quantitative dominance with qualitative dominance and the employment of the fallacious argumentum ad populum. The actual source of the dominance of the "white is right" perspective lies in the dynamics of power. The location of the origins of the dominant ideology in power relations is conceptualized in the work of Michel Foucault (1980), who theorized that power is imbricated with discourse: We must make allowance for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling-block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it (p. 101). Key to the deployment of discourses is an underlying strategy. As such, the prominence of the "white is right" perspective can be traced to attempts to create an "order,"or a way of thinking. Foucault's theoretical lens supports the hypothesis that the privileging of white experiences and the use of these experiences as an ontological framework for the analyses of black experiences is an effect of power imbalances.

#### B) Turns Case – essentialism makes true insurrection impossible

Newman 3, Postdoctoral fellow:University of Western Australia, conducting research in the area of contemporary political and social though, 2003

(Saul, “Stirner and Foucault,” Postmodern Culture)

The idea of transgressing and reinventing the self--of freeing the self from fixed and essential identities--is also a central theme in Stirner's thinking. As we have seen, Stirner shows that the notion of human essence is an oppressive fiction derived from an inverted Christian idealism that tyrannizes the individual and is linked with various forms of political domination. Stirner describes a process of subjectification which is very similar to Foucault's: rather than power operating as downward repression, it rules through the subjectification of the individual, by defining him according to an essential identity. As Stirner says: "the State betrays its enmity to me by demanding that I be a man . . . it imposes being a man upon me as a duty" (161). Human essence imposes a series of fixed moral and rational ideas on the individual, which are not of his creation and which curtail his autonomy. It is precisely this notion of duty, of moral obligation--the same sense of duty that is the basis of the categorical imperative--thatStirner finds oppressive. For Stirner, then, the individual must free him- or herself from these oppressive ideas and obligations by first freeing himself from essence--fromthe essential identitythat is imposed on him. Freedom involves, then, a transgression of essence, a transgression of the self. But what form should this transgression take? Like Foucault, Stirner is suspicious of the language of liberation and revolution--it is based on a notion of an essential self that supposedly throws off the chains of external repression. For Stirner, it is precisely this notion of human essence that is itself oppressive. Therefore, different strategies of freedom are called for--ones that abandon the humanist project of liberation and seek, rather, to reconfigure the subject in new and non-essentialist ways. To this end, Stirner calls for an insurrection: Revolution and insurrection must not be looked upon as synonymous. The former consists in an overturning of conditions, of the established condition or status, the state or society, and is accordingly a political or social act; the latter has indeed for its unavoidable consequence a transformation of circumstances, yet does not start from it but from men's discontent with themselves, is not an armed rising but a rising of individuals, a getting up without regard to the arrangements that spring from it. The revolution aimed at new arrangements; insurrection leads us no longer to let ourselves be arranged, but to arrange ourselves, and sets no glittering hopes on "institutions." It is not a fight against the established, since, if it prospers, the established collapses of itself; it is only a working forth of me out of the established. (279-80) So while a revolution aims at transforming existing social and political conditions so that human essence may flourish, an insurrection aims at freeing the individual from this very essence. Like Foucault's practices of freedom, the insurrection aims at transforming the relationship that the individual has with himself. The insurrection starts, then, with the individual refusing his or her enforced essential identity: it starts, as Stirner says, from men's discontent with themselves. Insurrection does not aim at overthrowing political institutions. It is aimed at the individual, in a sense transgressing his own identity--the outcome of which is, nevertheless, a change in political arrangements. Insurrection is therefore not about becoming what one is--becoming **human**, becoming man--but about becoming what one is not.This ethos of escaping essential identities through a reinvention of oneself has many important parallels with the Baudelarianaestheticization of the self that interests Foucault. Like Baudelaire's assertion that the self must be treated as a work of art, Stirner sees the self--or the ego--as a "creative nothingness," a radical emptiness which is up to the individual to define: "I do not presuppose myself, because I am every moment just positing or creating myself" (135). The self, for Stirner, is a process, a continuous flow of self-creating flux--it is a process that eludes the imposition of fixed identities and essences: "no concept expresses me, nothing that is designated as my essence exhausts me" (324). Therefore, Stirner's strategy of insurrection and Foucault's project of care for the self are both contingent practices of freedom that involve a reconfiguration of the subject and its relationship with the self. For Stirner, as with Foucault, freedom is an undefined and open-ended project in which the individual engages. The insurrection, as Stirner argues, does not rely on political institutions to grant freedom to the individual, but looks to the individual to invent his or her own forms of freedom. It is an attempt to construct spaces of autonomy within relations of power, by limiting the power that is exercised over the individual by others and increasing the power that the individual exercises over himself. The individual, moreover, is free to reinvent himself in new and unpredictable ways, escaping the limits imposed by human essence and universal notions of morality. The notion of insurrection involves a reformulation of the concept of freedom in ways that are radically post-Kantian. Stirner suggests, for instance, that there can be no truly universal idea of freedom; freedom is always a particular freedom in the guise of the universal. The universal freedom that, for Kant, is the domain of all rational individuals, would only mask some hidden particular interest. Freedom, according to Stirner, isan ambiguous and problematic concept, an "enchantingly beautiful dream" that seduces the individual yet remains unattainable, and from which the individual must awaken. Furthermore, freedom is a limited concept. It is only seen in its narrow negative sense. Stirner wants, rather, to extend the concept to a more positive freedom to. Freedom in the negative sense involves only self-abnegation--to be rid of something, to deny oneself. That is why, according to Stirner, the freer the individual ostensibly becomes, in accordance with the emancipative ideals of Enlightenment humanism, the more he loses the power he exercises over himself. On the other hand, positive freedom--or ownness--is a form of freedom that is invented by the individual for him or herself. Unlike Kantian freedom, ownness is not guaranteed by universal ideals or categorical imperatives. If it were, it could only lead to further domination: "The man who is set free is nothing but a freed man [...] he is an unfree man in the garment of freedom, like the ass in the lion's skin" (152). Freedom must, rather, be seized by the individual. For freedom to have any value it must be based on the power of the individual to create it. "My freedom becomes complete only when it is my--might; but by this I cease to be a merely free man, and become and own man" (151). Stirner was one of the first to recognize that the true basis of freedom is power. To see freedom as a universal absence of power is to mask its very basis in power. The theory of ownness is a recognition, and indeed an affirmation, of the inevitable relation between freedom and power. Ownness is the realization of the individual's power over himself--the ability to create his or her own forms of freedom**,**which are not circumscribed by metaphysical or essentialist categories. In this sense, ownness is a form of freedom that goes beyond the categorical imperative. It is based on a notion of the self as a contingent and open field of possibilities, rather than on an absolute and dutiful adherence to external moral maxims.

#### C) Rejection Key – mark of ontological blackness makes real world change impossible

Pinn 2004 – Professor of Religious Studies at Macalester College in St. Paul, Minnesota (Anthony B., ‘‘Black Is, Black Ain’t’’: Victor Anderson, African American Theological Thought, and Identity, Dialog: A Journal of Theology . Volume 43, Number 1)

Applied to African Americans, the grotesque embodies the full range of African American life—all expressions, actions, attitudes, and behavior. With a hermeneutic of the grotesque as the foci, religio-cultural criticism is free from the totalizing nature of racial apologetics and the classical Black aesthetic. By extension, Black theology is able to address both issues of survival (Anderson sees their importance.) and the larger goal of cultural fulfillment, Anderson’s version of liberation. That is to say, placing ‘‘blackness’’ along side other indicators of identity allows African Americans to define themselves in a plethora of ways while maintaining their community status. This encourages African Americans to see themselves as they are— complex and diversified—no longer needing to surrender personal interests for the sake of monolithic collective status.

# Block

### Blackwhite

#### Intersectionality is a better way to explain the world ---- Need alliance building---- it short-circuits their case

bell hooks 96, Killing Rage: Ending Racism, Google Books, 263-67

Many citizens of these United States still long to live in a society where beloved community can be formed—where 264 loving ties of care and knowing bind us together in our differ ences. We cannot surrender that longing—if we do we will never see an end to racism. These days it is an untalked about longing. Most folks in this society have become so cynical about ending racism, so convinced that solidarity across racial differences can never be a reality, that they make no effort to build community. Those of us who are not cynical, who still cherish the vision of beloved communliy, sustain our conviction that we need such bonding not because we cling to utopian fantasies but because we have strugled all our lives to create this community. In my black- ness I have struggled together with white comrades in the segregated South. Sharing that struggle we came to know deeply, intimately, with all our minds and hearts that we can all divest of racism and white supremacy if we so desire. We divest through our commitment to and engagement with anti-racist struggle. Even though that commitment was first made in the mind and heart, it is realized by concrete action, by anti-racist living and being.

Over the years my love and admiration for those black and white southerners in my hometown who worked together to realize racial justice deepens, as does their love of me. We have gone off from that time of legalized segregation to cre ate intimate lives for ourselves that include loving engage ment with all races and ethnicities. The small circles of love we have managed to form in our individual lives represent a concrete realistic reminder that belored cvmmunity is not a dream, that ¡t already exists for those of us who have done the work of educating ourselves for critical consciousness in ways that enabled a letting go of white supremacist assump tions and values. The process of decolonization (unlearning white supremacy by divesting of white privilege if we were white or vestiges of internalized racism if we were black) transformed our minds and our habits of being.

265In the segregated South those black and white folks who struggled together for racial justice (many of whom grounded their actions not in radical politics but in religious coniction) were bound by a shared belief in the transformative power of love. Understanding that love was the antithesis of the will to dominate and subjugate, we allowed that longing to know love, to love one another, to radicalize us politically. That love was not sentimental. It did not blind us to the reality that racism was deeply systemic and that only by real izing that love in concrete political actions that might involve sacrifice, even the surrender of one’s life, would white su premacy be fundamentally challenged. We knew the sweet ness of beloved community.

What those of us who have not died now know, that gener ations before us did not grasp, was that beloved community is formed not by the eradication of difference but by its affirmation, by each of us claiming the identities and cultural legacies that shape who we are and how we live in the world. To form beloved community we do not surrender ties to precious origins. We deepen those bondings by connecting them with an anti-racist struggle which is at heart always a movement to disrupt that clinging to cultural legacies that demands investment in notions of racial purity. authenticity. nationalist fundamentalism. The notion that differences of skin color, class background, and cultural heritage must be erased for justice and equality to prevail is a brand of popular false consciousness that helps keep racist thinking and action intact. Most folks are threatened by the notion that they must give up allegiances to specific cuLtural legacies in order to have harmony. Such suspicion is healthy. Unfortunately, as long as our society holds up a vision of democracy that requires the surrender of bonds and ties to legacies folks hold dear, challenging racism and white supremacy will seem Like an action that diminishes and destabilizes.

266The misguided idea that one must give cultura) allegiance to create harmony positively emerged from religious freedom fighters whose faith urged them to let go attachment to the things of this world (status, ethnicity, national allegiances) in order to be one th Cod. Negatively, it has been appropriated by the enemies of anti-racist struggle to further tensions be tween different racial groups, to breed fundamentalist and na tionalistic feelings and support for racial separatism. Since the notion that we should all forsake attachment to race and! or cultural identity and be “just humans” within the frame work of white supremacy has usually meant that subordinate groups must surrender their identities, beliefs, values and assimilate by adopting the values and beliefs of privileged- class whites, rather than promoting racial hannony this thinking has created a fierce cultural protectionism. That conservative force that sees itself as refusing assimilation expresses itself in the call for cultural nationalism, for disenfranchised groups to embrace separatism. This is why black leaders who es pouse black separatism are gaining political power. Many black people fear that white commodification and appropriation of blackness is a neo-colonial strate’ of cultural geno cide that threatens to destroy our cultural legacy. That fear is not ungrounded. Black people, however, are misguided in thinking that nationalist fundamentalism is the best or only way to either preserve our heritage or to make a meaningful political response to ending racism.

In actuality, the growth of nationalist separatist thinking among black people is an extreme expression of collective cynicism about ending white supremacy. The assumption that white folks will never cease to be racist represents a refusal to privilege the history of those whites (however few) who have been willing to give their lives to the struggle for racial justice over that of white folks who maintain racist thinking

267sometimes without even knowing that they hold racist as sumptions. Since white supremacist attitudes and values per meate eveiy aspect of the culture, most white folks are unconsciously absorbing the ideolo’ of white supremacy. Since they do not realize this socialization is taking place, many of them feel that they are not racist. When these feel ings are rooted in denial, the first stage of anti-racist struggle has to be breaking that denial. This is one of the primary distinctions betwen the generation of white folks who were raised in the midst of white supremacist apartheid, who wit nessed firsthand the brutal dehumanization of black people and who knew that “racism” permeated the cuLture, and this contemporaly generation that either engages in historical am nesia or does not remember. Prior to desegregation, few whites would have been as arrogantly convinced that they are not racists as are most whites today, some of whom never come into contact with black people. During civil rights struggle, It was commonly understood that whites seeking to Live in an anti-racist world measured their progress and their commitment by their interactions with black people. How can a white person assume he or she is not racist if that assumption has not been concretely realized in interaction? It was precisely the astute recognition on the part of freedom fighters working for racial justice that anti-racist habits of being were best cultivated in situations of interaction that was at the heart of eveiy vision of non-racist community.

#### **Their attempt to elevate black consciousness homogenizes immigrant communities into universal notions of “blackness” to solidify control of urban communities --- this renders further violence even against Black immigrants**

Kim 1999 – Professor of Sociology at Western Illinois University (Kwang Chung, *Koreans in the Hood: Conflict with African Americans* p. 103-107)

Black Empowerment and the "Africanization" of New Black Immigrants

A key underlying process in this black-black conflict is the ethnic empowerment of blacks for political purposes. This refers to the process through which blacks in urban America attempt to increase their power- be it economic or political—by racializing and ethnicizing new black im­migrants as a group. It is the social process of ethnogenesis and group formation with the goal of gaining power on the basis of ethnicity (Pitts 1974; Taylor 1979; Mason 1982; Roosens 1989). In this process, blacks are constantly reminded by other blacks of the racially defined meanings of "being black in America." Black consciousness and identity are stressed, and group boundaries are redefined and reinforced because ethnicity brings people "strategic advantages" when it is "politicized" (Roosens 1989: 14). Ethnicity, as Joseph Rothschild observes in his book Ethnopoli- tics, "in certain historical and socioeconomic circumstances, is readily politicized" (1981: 1). Modern American society in general, and urban America in particular, have produced fertile circumstances under which the ethnicity among blacks can be readily politicized.

The problem is that black ethnicity cannot be taken for granted any­more in America. Black society in the 1990s is much more diverse and heterogeneous than it was in the 1960s. Black people are diverse in their culture, religion, language, national origin, class, and, most of all, in their approaches to the fundamental problems that blacks face in America. It is apparent, as James Blackwell points out, that blacks in America can no longer be treated "as a monolithic undifferentiated mass" (1985: 344). The real challenge for "Black Powerists" and black "political entrepreneurs" now is to generate and reinforce ethnic solidarity among diverse blacks in America and to construct and reconstruct blacks as a racial-ethnic group in order to politicize it as a power group.

Among the diverse subgroups of blacks, one significant division is that between native blacks and recent black immigrants. Ethnic diversity between them seems to be as important as the diversity between different racial groups. During the Church Avenue boycott, for example, the ethnic differences among blacks were often emphasized by Caribbean Ameri­cans, who were pursuing different interests. They were regularly heard saying "All blacks are not the same," and many even showed contempt toward the African American boycott leaders. English-speaking Carib­bean immigrants also did not seem to feel strong ethnic attachments, as blacks, to Haitian immigrants; some openly expressed ethnic prejudice against Haitians. Black diversity, different interests among diverse black subgroups, and power relations among these subgroups are important structural elements we must consider in our discussion of the process of black empowerment.

The primary task of the Black Power Movement in the 1960s was to attach a sense of pride to being black among the native blacks. In the 1990s, the task is not only to enhance black consciousness among the na­tive blacks but also to overcome black diversity by inculcating the social meaning of blackness in America to new black immigrants such as Hai­tians, Jamaicans, or Trinidadians—recent immigrants who are more likely to identify themselves by their homeland rather than simply as "blacks." As a speaker at a black power rally stated, "Black solidarity is essential for black power."

During the boycott there was a constant effort to "Africanize" new black immigrants as "African Americans," not only to conduct an effec­tive boycott against the Korean stores but also to achieve unity among diverse blacks in order to enhance the political power of blacks in urban America. To reach these ends, the issues were formulated, and the con­flict was intensified.

One important function of black unity rallies and marches for the boycott was to make these new black immigrants realize that, regardless of their personal heritage, in America they would be categorically treated as blacks. Speaker after speaker during the rallies stressed, "We are one people." One speaker asked the crowd, "Can you tell the difference be­tween Haitian black and Jamaican black?" After hearing from the crowd the expected "no," he continued: "I don't care if she is a Haitian woman. She is black. She can be my mother."

By identifying with the alleged victim and characterizing the inci­dent as a racial one, the boycott leaders were racializing new ethnic blacks and redefining the group boundary in order to expand their race- based political power. By emphasizing the same racial distinctiveness rather than ethnic differences, the native blacks attempted to expand their group boundaries and thereby increase their social bases of power in American society.

The Boycott as a Strategy for Black Empowerment: A Black Dilemma

A Korean merchant who owned a store at Church Avenue and whose business was badly hurt because of the boycott sarcastically asked, "Black Power? Fine. But why against Korean merchants?" Is the black boycott of Korean stores an effective strategy for black empowerment? This is a relevant question because the likelihood of more black boycotts of Korean stores depends on whether the black-Korean conflict will provide favor­able political opportunities for black activists or political entrepreneurs.

The effectiveness of such boycotts as a strategy for black empower­ment, however, is questionable. First of all, attendance at the marches on the streets of Brooklyn, the rallies, and the picketing in front of stores clearly indicated that boycott leaders failed to mobilize black residents for a mass movement. Moreover, the black-Korean conflict gradually turned into a black-black conflict between the black boycotters and the black shoppers. In addition to the complications of black diversity, there was also a fundamental black dilemma in boycotting the stores owned by Korean merchants—who themselves were identified as a racial minority in America.

Blacks and Koreans are racial minorities in America in terms of their relative group positions against the dominant whites in the ethnic strat­ification system of America. But their "degrees of minority status" are different and inconsistent in various ways (Marger 1991: 66). Despite the higher rate of business ownership among Korean immigrants and their greater degree of integration into suburban white communities,6 blacks are numerically, organizationally, and politically more powerful than Ko­reans in urban America. Blacks in the United States, in short, are a racial minority, but in urban America they are a dominant group among racial minorities.

#### The invocation of their case’s impact framing perpetuates the nativist racism against non-blacks or non-whites

KIM 1999 – J.D., Yale Law; Yale Human Rights & Development Law Journal; scholarship focuses on criminal law theory and race and the law (Kim, Janine Young, “Are Asians black? The Asian-American civil rights agenda and the contemporary significance of the black/white paradigm” http://www.thefreelibrary.com/Are+Asians+black%3F+The+Asian-American+civil+rights+agenda+and+the...-a055251760

Another notable aspect of the black/white paradigm is the vitality of its vocabulary in race discourse. The exchange between the Judge and Steve Biko, as transcribed in Donald Woods's Biko (and quoted in the epigraph to Part III), illustrates the hermeneutics of the words "black" and "white." In attempting to understand the way in which Biko uses the word "black," the Judge suggests that "black" is an inaccurate description of the physical appearance of Africans.(77) Biko's reply demonstrates that, in fact, the words "black" and "white" are pregnant with negative and positive meanings, respectively.(78) Biko asserts that his embrace of the word "black" is aimed at the black man so that the word may be "elevate[d] ... to a position where we can look upon ourselves positively; because even if we [Blacks] choose to be called `brown,' there will still be reference to `blacks' in an inferior sense in literature and in speeches by white racists in our society."(79) ¶ Biko's response reveals three crucial insights. The first is that "black" and "white" have developed in opposition to each other in our language. This is not limited to political or racist language; as Biko observed, it exists in literary language. Examples abound: One of the more obvious would be Joseph Conrad's Heart of Darkness, where "black" stands for the sinister and unknowable.(80) Setting aside whatever political views Conrad might have had, his novella could be interpreted as the story of a man whose descent into madness (and finally death) is caused by his liminal racial position in the jungles of the Congo. In this sense, the pairing of "black" and "white" is almost poetic; its apparent simplicity is, in fact, so expressive of difference and opposition that it approaches the visual.

¶ The second insight is that the black/white paradigm is not one that we can escape through our own will. This indicates not only that we are raced but also that we are raced in specific terms, whether those terms be "black" and "white" or "Black" and "White." This has particular applicability to Asian Americans demanding a third category (perhaps "yellow") that would capture their sense of difference from the black and the white. As Steve Biko observed, we can call ourselves "brown" or "yellow" until we are blue in the face, but it is unlikely that those terms will be adopted or will displace the vocabulary of the black/white paradigm successfully.(81) ¶ Moreover, it is naive to assume that we can fully control the content of the words that we choose. This leads to Biko's third insight: Rather than attempting to create a parallel racial vocabulary, it may be more effective to undermine the content of the words white racism has chosen. This is a tactic that not only contains the element of surprise, but also explodes the assumptions embedded in the current, dominant vocabulary of race. Such explosions happen when Asians in England call themselves "black."(82) They also happen when Asians, Whites, and multiracials in South Africa call themselves "black."(83) This tactic may also explain why the term "African American" is fading out of discourse: "Black" includes West Indians and Muslim Blacks who do not fit neatly under the category of "African American" but share similar experiences and feelings of solidarity.(84)

¶ F. The Subversive Dimension ¶ The discussion on the linguistic dimension of the black/white paradigm hints at the rich possibility of subversion. Subversion is, in my view, the only way that racialization will progress beyond the black/white paradigm to a discourse that will not only be more inclusive, but also more rational. Each of the different dimensions I have discussed in this Note contains this element of subversion.

¶ The descriptive dimension of the paradigm serves as the foundation for the process of subversion. Scholars such as Omi, Winant, Haney Lopez, and Wu have eloquently argued that race is a social and legal construction, and that race groups in the United States have been defined in relation to blackness and whiteness. This process has been most evident for Asian Americans, whose racial status has shifted from basically-" black" to almost-" white" over time. The black/white paradigm determines social status and denies free self-definition; this aspect of the paradigm is the most insidious because it creates a self-perpetuating race hierarchy in which the goal is to maintain the status quo for those situated at the top. Understanding the black/white paradigm in this way means that Asian Americans can begin to grapple with both how racial identity is constructed and how it can be reconstructed. Such a step requires a critical analysis of the black/white paradigm as a mechanism that situates various racial groups within a structure that restricts access to privileges such as citizenship, education, and employment.

¶ Recognition of the black/white paradigm as an iteration of race hierarchy brings into focus the overarching strategy of domination over all those categorized as "others." But even as the paradigm oppresses, it betrays a small opening for political counteraction in the form of Professor Iijima's "reverse discourse"(85) and through the paradigm's inherent caricature of race relations within its descriptive dimension. This also leads to the possibility of coalition among people of color who share the antisubordination agenda. Moreover, the paradigm contextualizes the civil rights agenda, reminding us not only of historical race oppression but also of historical resistence against oppression, especially salient to those who share a sense of intersecting civil rights histories.

¶ In at least one sense, Asian Americans possess greater opportunities to subvert race hierarchy and become agents of change than other people of color. Because Asian Americans have been situated as the model minority, they enjoy greater opportunities in education and occupation. Yet the model-minority status is problematic, especially as it contributes to the maintenance of racist polarity.(86) In the same way that racial categories become destabilized when Asians call themselves black, a rejection of the model-minority status destabilizes racial relationships. This means first that Asian Americans who have achieved financial or political success through the black/white paradigm (and its own unofficial affirmative action) also have the means to effect change by using their position. Second, Asians can subvert race hierarchy by refusing to adopt the politically conservative views that are imputed to the model minority. Both of these decisions require a deep understanding of the black/white paradigm.

¶ V. THE ASIAN-AMERICAN CIVIL RIGHTS AGENDA: IDENTIFYING THE DIFFERENCES ¶ Banishing the black/white paradigm from legal scholarship disconnects it from Asian-American civil rights activism. On the other hand, confrontation with, as well as redeployment of, the paradigm by legal scholars has the potential to contribute to activism and further the civil rights agenda. Existing scholarship challenges this notion and argues that the black/white paradigm does not fit the Asian-American experience or that community's goals.(87) First, they argue that the discrimination experienced by Asian Americans follows not a color axis but a "foreigner axis." That is, whereas Blacks deal with second-class citizenship, a status repugnant to principles of American democracy, Asian Americans are viewed as outsiders to whom access is rightly denied.(88) The assumption is that because Blacks are assumed to be American citizens, the demand for equal rights, opportunities, and privileges appears more legitimate than when immigrants demand those same things. Second, they argue that some of the most pressing civil rights issues concerning Asian Americans either do not concern Black Americans or affect them differently.(89) The logical conclusion to this statement is that a race paradigm that fits the Black civil rights agenda may not necessarily fit the Asian-American agenda.

¶ A. Racism or Nativism? ¶ Angelo Ancheta's uses the term "foreigner axis" to explain subordination based on "racial" origin. (90) Therefore, Asian Americans, Latinos, and Arab Americans are categorized as foreigners and immigrants, regardless of actual citizenship status or place of birth. Ancheta calls this mechanism "outsider racialization."(91) Outsider racialization closely resembles "nativism," a distinctive type of racism aimed at groups like Asian Americans, Latinos, and Arab Americans. Nativistic arguments about Asian Americans or Latinos are prevalent in political discourse--the controversy over Asian American contributions to the Democratic National Committee in 1996,(92) Proposition 187 in California,(93) the English-only movement,(94) and the myth of the Japanese takeover(95) exemplify the power of nativistic sentiments in the American social and political consciousness. Nativism has, as Professor Chang notes, a certain allure because it tends to express racism and oppression in seemingly race-neutral terms such as "immigrants" and "foreigners."(96)

¶ Although nativism is one of the most salient aspects of Asian American experience, Professor Ancheta's argument that Asian Americans are not affected by the color axis seems overstated since nativistic arguments are aimed at those who are classified as non-White.(97) This is why I believe that the term "outsider racialization" is superior to "nativism": It successfully conveys that race and national origin have been combined for discriminatory purposes. Thus, it is curious that Professor Ancheta denies the effect of the color axis in favor of the foreigner axis alone. The assumption of nativist-racists is that the United States is a White nation(98) and that anyone who is not (or does not look) White is a foreigner. As Pat Chew has observed: "Like African Americans, Asian Americans' skin color and other facial features physically distinguish them.... As Justice Sutherland noted in United States v. Bhagat Singh Thind,(99) `it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry.'"(100) Thus, nativism properly can be seen as a refined derivative of discrimination based on the color axis.(101)

¶ Notwithstanding the significance of the color axis, the question remains whether outsider racialization "fits" within the black/white paradigm. The role of outsider racialization within the black/white paradigm can be more clearly discerned by examining the way "reverse nativism" is used to discriminate against Black Americans. There is evidence that Blacks who have accents, and are thereby identified as immigrants or foreigners, are treated with less overt discrimination than Blacks who do not have accents. Malcolm Gladwell argues that the success of West Indians in New York, whom he compares to Korean and Chinese immigrants, is "one last, vicious twist" in the discrimination against Black Americans.(102) He explains that:¶ Their advantage depends on their remaining outsiders.... There is already¶ some evidence that the considerable economic and social advantages that¶ West Indians hold over American blacks begin to dissipate by the second¶ generation, when the island accent has faded, and those in positions of¶ power who draw distinctions between good blacks and bad blacks begin to¶ lump West Indians with everyone else.¶ In the new racism, as in the old, somebody always has to be the¶ nigger.(103)¶ While reinforcing the idea that "black" within the paradigm is not race-specific, reverse nativism sheds light on the interaction between outsider racialization and the black/white paradigm. Comparing the way in which outsider racialization is articulated against Black Americans in New York and against Korean Americans in Los Angeles, it becomes clear that it is deployed opportunistically between poles of blackness and whiteness. The treatment of Black Americans in New York also suggests that the history of White-on-Black oppression, as well as the accumulation of its signs, may inform the treatment of immigrant groups. It is also plausible to conclude from this example that the treatment of immigrants, in turn, informs the treatment of Black Americans. ¶ Thus, to the extent that racial foreignness contains attributes of whiteness or of blackness, the paradigm captures the subordinated status not only of actual foreigners, but more aptly of permanent residents and citizens who happen to be people of color. This is the mode of analysis employed by Professor Iijima in his analysis of the Los Angeles riots,(104) and it can also be usefully employed to examine Proposition 187 in California.(105) Nonetheless, outsider racialization perhaps does not achieve a perfect "fit" with the black/white paradigm because despite theoretical consistency, the application of the black/white paradigm to the foreigner axis aspect of outsider racialization in the Asian American context remains somewhat counterintuitive. ¶ B. Items on the Asian-American Civil Rights Agenda ¶ The Asian-American civil rights agenda encompasses issues such as immigration, welfare, affirmative action, education, and suffrage. Although some of these issues (education, suffrage) coincide with those of the traditional civil rights movement, others (affirmative action, immigration) present newer challenges to civil rights activists.

¶ 1. Affirmative Action and the Model-Minority Myth ¶ Asian Americans play a strange and contorted role in the affirmative action debate. Those who would eliminate affirmative action use the Asian-American population to exemplify how affirmative action disadvantages non-Whites as well as Whites. This is especially true for affirmative action in higher education, where some Asian Americans have been told--and have come to believe--that the program hurts Asian-American students' chances of attending certain universities. Newt Gingrich's warning that "Asian Americans are facing a very real danger of being discriminated against" has been heeded by many Asian Americans as evidenced in their voting pattern on this issue.(106) ¶ Asian-American scholars have expressed concerns about the deployment of Asian Americans as the "example that defeats affirmative action."(107) Frank Wu vigorously attacks the notion that banning affirmative action would actually help Asian Americans:¶ The real risk to Asian Americans is that they will be squeezed out to¶ provide proportionate representation to whites, not due to the marginal¶ impact of setting aside a few spaces for African Americans. The linkage of¶ Asian Americans and affirmative action ... is an intentional maneuver by¶ conservative politicians to provide a response to charges of racism.(108)¶ The discussion of affirmative action is most often bundled with the myth of the "model minority," which has been used to describe Asians in American society. Somewhat reminiscent of Edna Bonacich's groundbreaking sociological theory of the middleman minority,(109) the model-minority myth works to divide the interests of subordinated racial groups. At the same time, it debilitates Asian Americans as individuals (Asians are brainy but lack personality) and as a political entity (Asians are successful and therefore not discriminated against). ¶ The model-minority myth can be fruitfully analyzed within the framework of the black/white paradigm. As I have argued above, situating Asian Americans as a buffer between black and white does not position Asian Americans outside of the black/white paradigm, but rather in a vulnerable place where they can be manipulated to serve the interests of the dominant group. This is most likely what occurred in California when a large percentage of Asian Americans voted to eliminate affirmative action programs in the controversial Civil Rights Initiative of 1996. The myth also ultimately leads to further subordination of Asian Americans, especially by thwarting political mobilization, not only within the Asian-American population, but also across racial lines. The black/white paradigm can be used to help deconstruct the myth and clarify the subordinated position of Asian Americans in the race hierarchy. Only then can Asian Americans make informed political decisions and meaningfully pursue a civil rights agenda. ¶ 2. Immigration ¶ The question of immigration is an especially volatile issue within the Asian American community. Although Gabriel Chin has argued that the immigration amendments of 1965 equalized immigration opportunities for Asians as compared with immigrants from the Western hemisphere,(110) the resulting visible increase in the number of immigrants in the United States has precipitated a backlash from White Americans who seek to preserve Anglo-American "culture."(111) Demographic anxiety has increased in the face of a growing number of people of color. According to a poll reported in the New York Times, White Americans believe that the population of Blacks, Asians, and Latinos in the United States is over twice as large (50.1%) as it actually is (24.4%).(112) ¶ Demographic anxiety among White Americans can be relieved in two possible ways: The first is to restrict immigration of people of color, and the second is to oppress those people of color who are already in the country.(113) Although both reactions stem from racism, they are distinct phenomena. Therefore, when Asian Americans speak of "immigration," a distinction must be made between immigration rights and immigrants' rights.(114) The treatment of immigrants presents some serious civil rights issues because under equal protection doctrine, the recent laws that affect immigrants may violate the Constitution.(115) One example of such laws is the welfare reform law of 1996, which denies many forms of federal assistance to legal immigrants and their children.(116) Another example is Proposition 187 in California,(117) a measure that denies public education and all non-emergency medical care to undocumented aliens.

¶ Proposition 187 provides fertile ground for analysis using the black/white paradigm. An initiative that was quite obviously directed against illegal immigrants from Mexico, Proposition 187 preyed upon nativist sentiments. Thus, much of the rhetoric of Proposition 187 focused on the idea that illegal immigrants were foreigners taking American jobs and benefits, entitlements belonging to legal residents only.(118) According to John Park:¶ Among people of color, the resentment toward undocumented immigrants was¶ especially acute. Kevin Ross, an Inglewood deputy district attorney and¶ political action chairman of the NAACP chapter of Los Angeles, noted that¶ "[f]orty percent of African American youth are unemployed. When the¶ assertion is made that illegal immigrants do the jobs others wouldn't do in¶ the first place, the black community is offended."(119)¶ This reaction was not limited to African Americans; many Asian Americans and Latinos voted in support of Proposition 187.(120) The strategy behind Proposition 187 successfully positioned legal residents as "white" relative to illegal immigrants because legal residents possessed the rights to work, to go to school, and to receive medical care. ¶ Proposition 187 should also be understood as a case of outsider racialization against more than just the illegal immigrant community in California, although that community is certainly the law's primary target. The "xenophobic climate" created by Proposition 187 also affects entire Latino and Asian-American communities because of its tendency for over-inclusiveness. As many civil rights workers and scholars have already noted, one major problem with Proposition 187 is its "unintended" effects on all people of color who look or sound foreign.(121) ¶ But extremist propaganda in support of the Proposition also makes it clear that the issue was not limited to illegal immigration but intertwined with race and white supremacy:¶ Two days before the November 1994 elections ... flyers were distributed ...¶ depicting an image of a machine gun firing bullets at a dark skinned man.¶ The flyer reads: "How's this for a new slogan for the U.S. Border Patrol?¶ `If it ain't white WASTE IT!' Remember, it's stop the Mudslide ... or¶ drown! 187 Yes! We need a real border. First we get the spics, then the¶ gooks, and at last we get the niggers. They're all going home."(122)¶ There can hardly be a clearer representation of the active dichotomy that informs race discourse today. ¶ VI. CONCLUSION ¶ The increasing visibility of people of color and the much-discussed demographic predictions for the next millenium have led to increased debate about race, law, and resources in the United States. And it is probably safe to conclude that the call for a more complex theory of race relations--one that better incorporates various people of color--has been heeded by the mainstream. This is most lately exemplified by President Clinton's race initiative.

¶ This Note, however, has sought to demonstrate that the black/white paradigm is a complex theory of race relations and should be recognized as such. An understanding of the paradigm's six dimensions (and there may be more) reveals its capacity both to contextualize race discourse and to express a clear antisubordination agenda. Moreover, the paradigm's persistence in race relations and discourse attests to its continuing relevance and growing complexity. Asian-American scholars must resist the temptation to oversimplify or underestimate the paradigm's ability to perpetuate and refine itself by erasing histories, manipulating racial status, and dividing political alliances. Indeed, an alternative theory cannot emerge unless people of color dismantle the current organization and vocabulary of race, which have been articulated through the black/white paradigm.

### A2 Flashpoint Warfare Ignores Black Body

#### rejecting flashpoint focus causes further violence

Friedberg 2k – Professor of Politics and International Affairs, Princeton (Aaron, Will Europe's Past Be Asia's Future?, Survival 42.3)

But there are reasons too to be wary of placing too much faith in the collective human capacity for learning, still less common sense. At the turn of this century, many sensible Europeans believed that war was idiotic, outmoded, even obsolete, and they were optimistic about the enormous benefits to be gained from permanent peace. Their good sense and sound judgment on this question was not enough to stamp out the anxieties, jealousies and hatreds that resulted eventually in the tragedy of World War I. Twenty-five years later, with the evidence of war's folly still fresh before them, the European powers were unable to prevent another catastrophe. Indeed, looking back, it seems clear that it was the very eagerness of the liberal democratic powers to learn the lessons and to avoid the mistakes of the past that caused them to stumble again into war. Had they been more attentive to the realities of power, more alert to the dangers of aggression by ambitious states, and less convinced of the pacifying effects of trade, institutions and conciliatory diplomacy, they might have done better at securing their interests and preserving the peace.

### A2 View From Nowhere

#### Their arguments about the view from nowhere bites back against every single identity category that they didn't mention -- by their logic, the fact that the 1AC didn't mention ableist privilege or nonveteran privilege or ageist privilege ACTIVELY wrenders each of those groups invisible and enacts a discursive violence against them -- this cannot be a contest to see who can acknowledge MORE marginalized groups and the search for a discursive starting point in race is violent. Treat this as an independent disad to voting aff and a total solvency take-out

Evelyn **Hammonds**, Professor of History at Harvard, **1994**

A Journal of Feminist Cultural Studies 6.2+3 http://www.humanities.wisc.edu/programs/downloads/hammonds\_wholes.pdf.

Despite the presence of writers of color, the authors of the essays in the differences volume avoid interrogating their own practices with respect to the issue of difference. That is to say to differences of race, ethnicity, and representation in analyzing subjectivity, desire, and the use of the psychoanalytic in gay and lesbian theory. Only Ekua Omosupe explicitly addresses the issue of black female subjectivity, and her essay foregrounds the very issue that queer theory ostensibly is committed to addressing. Omosupe still sees the need to announce her skepticism at the use of the term lesbian without the qualifier, “black,” and addresses the lack of attention to race in gay and lesbian studies in her analysis of Adrienne Rich’s work (108). For her, the term “lesbian” without the racial qualifier is simply to be read as “white” lesbian. Despite her criticism, however, she too avoids confronting difference within the category of black lesbian, speaking of “the” black lesbian without attention to or acknowledgment of a multiplicity of identities or subject positions for black women. She notes that the title of Audre Lorde’s collected essays is Sister Outsider, which she argues is “an apt metaphor for the Black lesbian’s position in relation to the white dominant political cultures and to her own Black community as well” (106). But metaphors reveal as much as they conceal and Omosupe cannot tell us what kind of outsider Lorde is, that is to say what sexual practices, discourses, and subject positions within her black community she was rebelling against. As with the Hull and McDowell essays, Omosupe’s article acknowledges silence, erasure, and invisibility as crucial issues in the dominant discourses about black female sexuality, while the essay and the volume as a whole continue to enact this silence.

### A2 fanon

#### Their reliance on the universal psyche eliminates any attempt at a radical break - it cannot truly know the human experience

Brickman ‘3 [Celia (Center for Religion and Psychotherapy of Chicago, PhD in Religion and the Human Sciences at the University of Chicago); Aboriginal Populations in the Mind: Race and Primitivity in Psychoanalysis; Columbia University Press; New York; p. 206-7 //nick]

When psychoanalysis supplies a phylogenetic content to the unconscious, it dictates a universal, ahistorical, and precultural stratum of the human mind, repressed or repudiated since infantile or “primitive” times, as the cost for the inauguration of an enculturated subjectivity. Although there may always be some exclusions brought into being through the inauguration of subjectivity, these exclusions would vary with culture and history, and therefore be open to some degree of alteration. 22 To assert that we already know the contents (phylogenetic or otherwise) of the unconscious in all cases and in all cultures denies the risk of the unknown that a true encounter with the other always poses to our own certainties of knowledge. In addition, the formulation of subjectivity as predicated on a repudiation of a universal, precultural primitivity reinforces the binarism of nature and culture, since it understands our entry into culture as condemning us to be forever and inescapably alienated from the “natural”—primitive——part of ourselves (and thus from those peoples identified as part of nature), setting the scene for the analyst as the authority who can inform us about the contents of this inaccessible part of ourselves. (As we have seen, it is not only the patient who falls into the trap of believing that the analyst is “the subject who is supposed to know.”)23But if the unconscious can be released from a developmental framework in which subjectivity is premised exclusively on repudiation or separation, then it need not be imagined as an abjected, inaccessible primitivity. Then the emergence of unconscious contents in the analytic encounter need not be insctibed as a regression back down the developmental scale but can be seen as the emergence of dimensions of experience whose existence has been obscured by, but is nonetheless coeval with, the preoccupations of consciousness. The encounter with the unconscious is a return to moments of the past simply insofar as it allows us to dc-sediment the identifications that have contributed to subjectivity; insofar as it allows us, as Cornelius Castoriadis has suggested, to consider subjectivity from the vantage point of its contingency, from the vantage point of how it became fixed or essentialized as that which it now is.24 The analytic relationship need not be about the imposition of authoritative knowledge nor about disabusing the analysand of the fantasy of the analyst’s authority. It can be a way of coming to know oneself, of becoming capable of feeling more fully alive, and of engaging more fully with the world through being with—rather than being dominated by, or fearing domination by—another. The interminability of analysis, rather than due to a bedrock of resistance to a primitivity that can never be overcome, would then have to do with the fact that the unconscious always exceeds our capacity to understand it: no analysis can ever exhaust it and thus truly come to an end.

### Policy Making Skills

#### Turn – locked up

Stephen Lendman (Research Associate of the Center for Research on Globalization) July 19, 2013 “US Courts Approve Indefinite Detention and Torture” http://www.mathaba.net/news/?x=633237

Fundamental freedoms are illusory. They're vanishing. They lie in history's dustbin. National Defense Authorization Act (NDAA) provisions let federal troops arrest and imprison US citizens and foreign nationals. They can do it at home or abroad. They can do it anywhere. They can be held indefinitely uncharged and untried. They can be tortured. They can be forced to admit crimes they didn't commit. They can be murdered on Obama's say. Police state lawlessness rules. It's the law of the land. Obama's a tinpot despot. He's judge, jury and executioner. Fundamental rights are gone. They don't apply. Anyone can be arrested, imprisoned, held indefinitely and tortured for doing the right thing. Protesting imperial lawlessness, social injustice, corporate crime, government corruption, or political Washington run of, by and for rich elites can be criminalized. So can free speech, assembly, religion, or anything challenging America's right to kill, destroy and pillage with impunity

. It's official. Tyranny rules. America's unsafe to live in. There's no place to hide. Challenging diktat power's criminalized. Police state ruthlessness targets anyone trying. Military dungeons or secret FEMA concentration camps await victims. America's no democracy. It's not beautiful. It's a battleground. It's nightmarish for countless numbers affected. Law Professor Jonathan Turley called NDAA authority ruthlessness "that would have horrified the Framers." "Indefinitely detaining citizens is something (they) were intimately familiar with and expressly sought to bar in the Bill of Rights." Other legal experts agree. Habeas, due process, and other fundamental rights are too precious to lose. They're now quaint artifacts. They're gone. They lie in history's dustbin. Tyranny replaced them. America's no different from other totalitarian states. It's ruthless. It's militarized for control. It's concentrated money power running things. It's fascism writ large. It's wrapped in the American flag. It's scapegoating challengers. It's out-of-control militarism. It's national security justification to brutalize and oppress. It's controlling the message. It's convincing people fundamental rights are abolished for their own good. It's getting most people to believe it. It's stripping off America's mask. It's showing its true face. It's menacing, cruel and unjust. Federal court decisions explain. In 2012, Hedges et al v. Obama challenged NDAA provisions. Last September, Southern District of New York federal Judge Katherine B. Forrest blocked Obama's indefinite detention law. She's the exception, not the rule. She called it "facially unconstitutional: it impermissibly impinges on guaranteed First Amendment rights and lacks sufficient definitional structure and protections to meet the requirements of due process." She added that: "If, following issuance of this permanent injunctive relief, the government detains individuals under theories of ‘substantially or directly supporting’ associated forces, as set forth in” the National Defense Authorization Act, “and a contempt action is brought before this court, the government will bear a heavy burden indeed." At issue is section 1021 of the 2012 National Defense Authorization Act (NDAA). It states in part: "Congress affirms that the authority of the president to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (AUMF) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war." "Covered persons" are defined as: Anyone "who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces." Plaintiffs argued that broad, ambiguous language like "substantially supported," "associated forces" and "directly supported" leaves them and others vulnerable to lawless indefinite detention. Legally meeting someone rightly or wrongly called a terrorist, staying in their homes, inviting them to speak at conferences or in panel discussions, interviewing them, or socializing with them can be called dealing with the enemy. So can writing anti-imperial articles, exposing and/or discussing US crimes of war and against humanity, and participating in anti-war protests. Hedges et al won. Obama officials appealed. On Wednesday, the New York Second Circuit Court of Appeals overturned Judge Forrest's ruling. Three judges did so unanimously. They did it shamelessly. They called indefinite detention uncharged and untried OK. They said Hedges et al lacked standing. It's because federal law "says nothing at all about the president's authority to detain American citizens." False! NDAA covers everyone. US citizens are as vulnerable as foreign nationals. Appeals Court Judge Lewis Kaplan said non-citizens "failed to establish standing because they have not shown a sufficient threat that the government will detain them." Plaintiffs' lawyer Carl Mayer said "(w)e're reviewing what our options are, but I strongly suspect that we will appeal to the Supreme Court." The ruling came on the same day the District of Columbia Court of Appeals overturned a lower court ruling. At issue are oppressive Guantanamo prisoner genital area searches. District Court Judge Royce Lamberth ordered them stopped. Appeals Court judges overruled him. They authorized what's conducted to degrade, harass and humiliate. They're unrelated to security. Separately on July 16, Washington, DC District Court Judge Rosemary Collyer ruled against three Guantanamo hunger strikers. They sued to stop force-feeding. It's lawless. It's medically unethical. It's excruciatingly painful. It's torture as international law defines it. Collyer supports it. Her ruling ignored inviolable laws. She's contemptuously dismissive. She said: "There is nothing so shocking or inhumane in the treatment of petitioners - which they can avoid at will - to raise a constitutional concern that might otherwise necessitate review." "Although framed as a motion to stop feeding via nasograstric tube, Petitioners' real complaint is that the United States is not allowing them to commit suicide by starvation." According to the World Federation of Right to Die Societies: "All competent adults - regardless of their nationalities, professions, religious beliefs, and ethical and political views - who are suffering unbearably from incurable illnesses should have the possibility of various choices at the end of their life." "Death is unavoidable. We strongly believe that the manner and time of dying should be left to the decision of the individual, assuming such demands do not result in harm to society other than the sadness associated with death." Brutalizing indefinite Guantanamo detention constitutes an "incurable disease." It includes hopelessness and unbearable suffering. It prevents any chance for freedom. It denies all rights. Death's unavoidable. It'll come sooner, not later. Dying with dignity's excluded. Permitting it is fundamentally right. Not according to kangaroo federal court justice. Collyer's ruling replicated Judge Glady Kessler's July 10 decision. On the one hand, she called force-feeding "painful, humiliating and degrading." On the other, she abstained from ruling responsibly. She wrongfully claimed federal courts have no authority over Guantanamo. Obama alone has "authority to address the issue," she said. False! Kessler doesn't know the law. Maybe she does but spurned it. She ignored High Court rulings. In Rasul v. Bush (June 2004), the Supreme Court held that Guantanamo detainees may challenge their detention in civil court. In response, Congress enacted the 2005 Detainee Treatment Act. It subverted the ruling. In Hamdan v. Rumsfeld (June 2006), the High Court held that federal courts retain jurisdiction over habeas cases. It ruled against military commissions. It said they lack "the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions." In response, Congress passed the 2006 Military Commissions Act (MCA). In updated form, it's the law of the land. Supreme Court justices can challenge it. They can strike it down. They haven't done so. Perhaps a future court will. In Boumediene v. Bush (June 2008), it affirmed habeas rights for Guantanamo detainees. It let them petition for release from lawlessly imposed custody. Justice Anthony Kennedy wrote the majority opinion. He said America maintains complete jurisdiction over Guantanamo regardless of its offshore location. He opposed political branches "govern(ing) without legal restraint." He expressed concerns about usurping "power to switch the Constitution on or off at will." Doing so "lead(s) to a regime in which they, not this Court, say 'what the law is.' " "Even when the United States acts outside its borders, its powers are not 'absolute and unlimited' but are subject 'to such restrictions as are expressed in the Constitution.' " He called habeas "an indispensable mechanism for monitoring the separation of powers." "The test for determining (its) scope must not be subject to manipulation by those whose power it is designed to restrain." This bedrock right has no adequate substitute. It doesn't matter. Justice in America no longer exists. Diktat power replaced it. Perhaps NDAA enactment was when freedom in America died. Post-9/11, it's been on the chopping block for elimination altogether. Tyranny's the law of the land. It's institutionalized. Fundamental rights don't matter. Democracy's a four-letter word. Out-of-control power runs things. It's unaccountable. Nonbelievers aren't tolerated. The worst is yet to come.

#### Turn - prison

(<http://www.itj-pdn.org/mission.php>, Mission Statement - The Institute for Tsunamic Justice was formed to support the development of the People's Defense Network, a grassroots mobilization of impacted Black communities to counter police abuse and violence, malicious prosecutions, and the racism of the American judiciary. In doing so, we contribute to the dismantling of systems of oppression and the global struggle for justice.)

The Institute for Tsunamic Justice was founded and established in 1998 by three social justice worker-activist who sought to serve as a research and planning source for mass struggle, a grassroots think tank. ITJ has worked and made critical contributions to the struggle to end political imprisonment, against mass incarceration, and generally to fight the general racist, corrupt, and unworkable system. ¶ The Institute for Tsunamic Justice is an organic revolutionary formation of the Black struggle for justice and to end oppression, working to build Umoja (Unity) in thought, action, and spirit around strategic tactical initiatives

.¶ The Institute for Tsunamic Justice is a think/action tank of, by, and for those directly impacted by systemic racist injustice in the U.S. and its European partners who violate our right to Kujichagulia (self-determination).¶ The Institute for Tsunamic Justice is committed to Ujima, building opportunities to advance collective work that makes it all our responsibility to liberate ourselves .¶ The Institute for Tsunamic Justice supports economic development that benefits all people equally, that exploits no person or animal, that respects Mother Earth, based on Ujamaa (cooperative economics).¶ The Institute for Tsunamic Justice is a membership based organization powered from the bottom-up with the overriding purpose (Nia) to work toward the total liberation of Black people and all people ultimately. ¶ The Institute for Tsunamic Justice uses every resource at its disposal to help create (Kuumba) a genuine liberation movement. ¶ The Institute for Tsunamic Justice has and maintains faith (Imani) in the righteousness of the struggles and the ultimate victory of all oppressed peoples over their oppressors. I am Kwasi Seitu. I am a true Black Native born and raised in the impoverished and segregated black working class communities of George Washington's Dentention Center (Washington , D.C. and all of America). I am not an "African-American," I am off the chain, so that makes me an Afrikan in AmeriKKKa. ¶ I am fifth-generation great grandson of Frederick Douglass, I am the father of three, the grandfather of four, and struggling with the continous truama inflicted by this system of perfecting aparthied. I am the uncle to many near and far, blood and spirit, a brother, and a Revolutionary; and ain't afraid to say it.¶ I am a former political prisoner of the war on black people , I was held for over a decade in Misissippi, behind demanding justice in the police murder of a young pregnat black woman named Dorothy Brown. I found myself confronted not only with a hostile white-dominated southern police force, but the local Klan and racist powers that be, including the "State Soverienty Commission." ¶ While held, I educated, encouraged, and organized; which earned me a total 7 1/2 years in the hole, including a six-month stint on death row., the "white boy" tier (yep, death row was still racially segregated). I did not have a formal death sentence, this was a state move to have me assassinated, which evidently completely failed and I was not afrain to come out of my cage - they were. I was eventually discharged straignt from deep within a supermax unti to the street with $50 .¶ However, I also left with a wealth of knowledge and experience not only of law and American jurisprudence, but a keen understanding of the system from the state court all the way to the "Supreme" court. For over a decade I was allowed to test the system not only on my own behalf, but others because the state did not want to provide atorneys for "post-conviction" actions. I had to learn how to investigate between he lines, think outside the box, and that is where I would find the truth.¶ The "truth" is that the American judicial system is no less racist, corrupt, and unworkable than the rest of the American government. It has no more legitimacy as a moral authority than the rest of the white-settler aparthied nation-state. Thus, II quickly came to understand that my great grandfather was no different from Dred Scott¶ different story when it came to experiencing Kwasia founder and the lead of ITJ. He is a former political prisoner with a long history of work in the Black struggle for justice and liberty. ¶ Kwasi Seitu has worked on issues of systemic racial injustice in ten states and DC from political imprisonment to environmental justice. His work has long made him a specified target of efforts by the government to suppress and repress resistance to injustice.Kwasi Seitu is available as a presenter for panels, to conduct workshop Affordable Services to Individuals¶ case assessments¶ legal research¶ Investigative assistance ¶ legal coaching ¶ trial prep counseling ¶ document preparation¶ Pro Se Instruction¶ strategic case planning OUR HISTORY ¶ Beginning in 2001, ITJ has experienced a number of set backs and government attacks, including the repeat kidnapping and hostage holding of a key founder by the government designed and intended to disrupt, discredit, and destroy the work and membership.¶ The government has never terminated the Counter Intelligents Program (COINTELPRO), which was created and implemented beginning in the 1960s for the purpose of waging low intensity warfare against progressive social change organizations and leadership primarily within the Black movement. Today, COINTELPRO has been incorporated into the Patriot Act.¶

### AT: Law making bad

#### Disenchanted view works

Angela P Harris, self described race and feminist scholar who teaches law at UC Davis in 1994 (**Angela P. Harris** (born c. 1959) is a [legal scholar](http://en.wikipedia.org/wiki/Law_professor) at [UC Davis School of Law](http://en.wikipedia.org/wiki/UC_Davis_School_of_Law), in the fields of [critical race theory](http://en.wikipedia.org/wiki/Critical_race_theory), [feminist legal scholarship](http://en.wikipedia.org/wiki/Feminist_legal_theory), and [criminal law](http://en.wikipedia.org/wiki/Criminal_law). She held the position of Professor of Law at [UC Berkeley School of Law](http://en.wikipedia.org/wiki/UC_Berkeley_School_of_Law), joining the faculty in 1988. In 2009, Professor Harris joined the faculty of the [State University of New York at Buffalo](http://en.wikipedia.org/wiki/University_at_Buffalo,_The_State_University_of_New_York) Law School as a Visiting Professor. In 2010, she also assumed the role of Acting Vice Dean for Research & Faculty Development.[[1]](http://en.wikipedia.org/wiki/Angela_P._Harris#cite_note-1) In 2011, she accepted an offer to join the faculty at the [UC Davis School of Law](http://en.wikipedia.org/wiki/UC_Davis_School_of_Law), and began teaching as a Professor of Law in the 2011-2012 academic year.[[2]](http://en.wikipedia.org/wiki/Angela_P._Harris#cite_note-2)California Law Review¶ July, 1994¶ 82 Calif. L. Rev. 741¶ LENGTH: 21949 words Foreword: The Jurisprudence of Reconstruction NAME: Angela P. Harris BIO: Professor of Law, University of California, Berkeley, Boalt Hall School of Law. My thanks to Sheila Foster, Ed Rubin, Marjorie Shultz, and Jan Vetter for their helpful comments on previous versions of this essay. Thanks also to the editors at the California Law Review for their patience and persistence. Last, but not least, thanks to Jorge Sanchez for exemplary research assistance and thoughtful, searching commentary. All mistakes, misunderstandings, and misjudgments, of course, are mine. A picture of her can be found here <http://law.scu.edu/socialjustice/women-law-stories-book-chapter-one/>)

B. Jurisprudence and Disenchantment ¶ In the previous Section, I identified the development of a theory of the racialized subject as one way in which a jurisprudence of reconstruction might aspire toward a more sophisticated modernism. Another message of the clash between modernism and its discontents, however, is that a jurisprudence of reconstruction should aspire to disenchantment. Both the postmodern critique and the history of "race relations" cast doubt on the ability of newer and more enlightening theories to vanquish racism. In their commitment to anti-subordination, race-crits should not abandon rationalist reason; but rationalism may come to represent just one among many tools of social change.¶ Disenchantment also entails giving up a certain romanticism about the rhetorical apparatus of modernism: the belief in liberation, in the efficacy of "revolution," [n184](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n184) and in racial communities as unproblematic, harmonious "homes." A disenchanted jurisprudence of reconstruction focuses instead on the moment to moment struggles to alleviate suffering and alienation.¶ 1. The Disenchanted Intellectual ¶ One response to the postmodernist reduction of knowledge to power is a new - and disenchanted - attention to the function of professional intel [\*779] lectuals as a class. The post-colonialist theorist Gayatri Spivak, for example, is careful to examine the double effects of her own intellectual practices. Writing about a conference of humanist scholars that she attended, Spivak comments, "I thought the desire to explain might be a symptom of the desire to have a self that can control knowledge and a world that can be known." [n185](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n185) The scholar's zeal for providing explanations is itself a modernist symptom: "the possibility of explanation carries the presupposition of an explainable (even if not fully) universe and an explaining (even if imperfectly) subject. These presuppositions assure our being." [n186](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n186) In this way, Spivak calls attention to the conflict between postmodernist intellectual theories and modernist intellectual practices.¶ Spivak goes on to argue that the academic humanist project of providing explanations for everything serves a particular function in contemporary capitalist society: "Our role is to produce and be produced by the official explanations in terms of the powers that police the entire society, emphasizing a continuity or a discontinuity with past explanations, depending on a seemingly judicious choice permitted by the play of this power." [n187](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n187) Spivak's response is to propose that the pedagogy of the humanities become self-critical and enter "the arena of cultural explanations that questions the explanations of culture." [n188](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n188)¶ This awareness of the role of universities and professional academics in keeping a particular set of political and economic relations in place is one effect of postmodernist disenchantment, and it brings us back to the critique of normativity. As Gerald Wetlaufer has noted, the pressure of legal normativity - the demand that legal academics propose solutions that can be implemented within the existing legal system - impels legal scholars to take the law as their client. [n189](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n189) A disenchanted jurisprudence of reconstruction would not conclude that providing legal answers to legal questions is therefore futile or "counterrevolutionary"; but as Spivak suggests, it would put on the agenda the need to keep in mind the larger political and economic context of law professing as race-crits continue their theory-building.¶

One consequence might be a reconsideration of the "race for theory" itself. If the price for admission to the academy (say, the admission by Richard Posner that CRT really does have an idea or two to offer, after all) [n190](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n190) is a hyperabstract theorizing that makes a public debate about race and racism impossible, race-crits may want to hold assimilation into the [\*780] bureaucracy of the university at arm's length. Here CRT's engagement in the politics of difference may help keep it suspended in creative balance. A jurisprudence of reconstruction cannot afford to become enchanted with either "theory" or "practice"; its work instead is to refuse that dichotomy.¶ 2. The Politics of Joy ¶ Another symptom of disenchantment might be a healthy recognition of rationalism's limitations in anti-racist struggle. One consequence of this recognition is an appreciation of scholarship as an aesthetic practice, and the positive role that emotion, joined with reason, can play in intellectual work. A second consequence of recognizing rationalism's limitations is a greater focus on empowerment as a goal in itself, rather than simply a step toward emancipation. The third and broadest consequence of greater attention to the limitations of rationalism might be a greater acknowledgement of the importance of spirituality in human life generally and in racial struggle in particular. Cornel West has argued that despite the conflicts between modernism and postmodernism, both the "bourgeois" and the "Foucaultian" models of intellectual life keep intellectuals safely away from insurgent change. [n191](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n191) West urges black intellectuals to reject this self-image, and instead to articulate "a new "regime of truth' linked to, yet not confined by, indigenous institutional practices permeated by the kinetic orality and emotional physicality, the rhythmic syncopation, the protean improvisation and the religious, rhetorical and antiphonal repetition of African American life." [n192](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n192)¶ One way to unpack this statement is to read West as blurring the traditional line between mind and body: between intellectuals, who work only "in the head," and artists, who are sensitive to the needs of emotions, the body, and the spirit. [n193](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n193) A serious disenchantment with rationalism might mean an expansion of what it means to be an "intellectual," to embrace music, art, dance, and preaching as equally honorable as traditional "theorizing."¶ Legal storytelling contains possibilities for this kind of expansion. Part of the power of storytelling lies in its capacity to create pleasure and other emotions. Stories can be told that do more than inform the reader of "what really happened," or challenge the reader's assumptions about truth [\*781] and objectivity. As Martha Nussbaum has argued, literature is prized not only because of the rational information it imparts, but because it speaks to the emotions and to the soul. [n194](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n194) Legal storytelling thus has the capacity not just to engage the rational faculty, but other faculties as well. [n195](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n195)¶ The concept of empowerment is a second avenue to disenchantment with reason. A key word within the politics of difference has been "empowerment": a shift of focus away from conceptions of "power" as power over someone toward power as ability or capacity, the power to do something. [n196](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n196) Barbara Christian argues that "one must distinguish the desire for power from the need to become empowered - that is, seeing oneself as capable of and having the right to determine one's life." [n197](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n197)¶ Empowerment is crucial within the politics of difference because of its function in resisting what Cornel West calls nihilism: "the lived experience of coping with a life of horrifying meaninglessness, hopelessness, and (most important) lovelessness." [n198](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n198) Legal concepts such as rights "empower" at least in part by creating and reinforcing a collective subject, an action through which subordinated groups resist their subordination. [n199](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n199) Through collective action in the name of the law and through literature, individuals who are members of subordinated groups can come to understand that they are not crazy, that they are not alone, that they have the capacity to act in the world. Empowerment in this context is an end in itself, not a way station on the path to modernist emancipation. The search [\*782] for empowerment thus draws not only on the capacity for reason, but also on the capacity for joy. [n200](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n200)¶ A third possible outcome of a disenchanted jurisprudence of reconstruction is an acknowledgement of the role of spirituality in human life. Anthony Cook argues that CRT can avoid "the charybdis of postmodern nihilism and the scylla of modern universalism" by drawing on the legacy of Dr. Martin Luther King, Jr. [n201](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n201) Cook calls for theory that is inspired by "prophetic vision" and that in particular draws on humility and love, arguing that these qualities enable intellectuals to draw on postmodernist critique without being overwhelmed by it, and to draw on modernist conceptions while still being aware of their flaws. [n202](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n202)¶ Cook argues that humility is a postmodernist value: "The arrogance and potential dominance associated with knowing the right answer and knowing what is best for the oppressed must be tempered with the postmodern contingency, relativity and potential deconstruction of our own foundations of knowledge." [n203](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n203) Love, however, is a value that transcends both modernism and postmodernism. Love in the sense of the Greek term agape, "the responsibility that accompanies being our brother's keeper," [n204](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n204) is the necessary ingredient for reconstructive transformation.¶ CRT for Cook, and for West, is part of a larger movement toward spiritual wholeness for the self and for the beloved community, a movement that cannot be ultimately achieved by human effort and struggle alone. This movement toward wholeness, however, is not a conventionally religious one reserved for Christians. Rather, as Cook explains:¶ Spirituality is the sincere striving for unalienated and unfractured human connection. Spirituality is understanding the limits of our knowledge and allowing the humility fostered by such understanding to open us to the possibilities of knowledge once impeded by the arrogance of our self-contained worlds. The spirituality that flows from a critical and open engagement with the hyphenated space is one that focuses our attention and concern on those less fortunate - [\*783] the least of these, the wretched of the earth, the despised, dejected, and downtrodden. In understanding our own marginality, we are prompted to understand the marginality of others who, because they are not forgotten in our critiques, are not forgotten in our visions of a better tomorrow. [n205](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n205) ¶ Here both the promise and the peril of "disenchantment" are stark. The history of religious intolerance reminds us that the arrogance of modernism in presuming that rationalist reason is superior to every other human faculty can easily reappear in an arrogance that presumes one's actions to be sanctified by one's spirituality. Mindful of this danger, Cook insists that King's humility and willingness to revise his own beliefs demonstrates that spirituality need not entail demagoguery or tyranny. [n206](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n206) It remains to be seen, however, whether race-crits will adopt Dr. King's particular Christian spirituality along with his concern for social justice.¶ 3. The End of the Innocence? ¶ Finally, one aspect of a disenchanted jurisprudence of reconstruction is a disenchantment with the romance of "race" itself. One of the comforts of belonging to a racially subordinated community has often been the sense of being "home," the sense that everyone in the community shares a unified perspective on the world. Modernist narratives that speak of "people of color" or subgroups thereof as a unified force draw on this powerful yearning for home. In a postmodern world, however, it is clear that no such unity exists. How, then, can race-crits and others speak of racial communities in ways that acknowledge this disunity?¶ Regina Austin's disenchanted vision of the black community provides one glimpse. Austin consistently places the phrase "the black community" in quotes, in a postmodernist acknowledgement that to speak of one unified community is problematic. As she points out, "though the ubiquitous experience of racism provides the basis for group solidarity, differences of gender, class, geography, and political affiliations keep blacks apart." [n207](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n207)¶ Nevertheless, Austin does not reject the concept of the black community altogether. Rather, she asserts that though there may not be one black community, there are black communities, consisting of "blacks who are bound by shared economic, social, and political constraints, and who pursue their freedom through affective engagement with each other." [n208](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n208) Even these bonds do not create an automatic utopia of racial harmony. Rather, the members of black communities must practice a "politics of identification." Quoting Stuart Hall, Austin describes the politics of identification as [\*784] ¶ [a] politics ... which works with and through difference, which is able to build those forms of solidarity and identification which make common struggle and resistance possible but without suppressing the real heterogeneity of interests and identities, and which can effectively draw the political boundary lines without which political contestation is impossible, without fixing those boundaries for eternity. [n209](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n209) ¶ Practicing a politics of identification recognizes that the dream of perfect unity is only a dream. It also emphasizes that racial communities, like other human communities, are the products of invention, not discovery. There are no "people of color" waiting to be found; we must give up our romance with racial community. [n210](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n210) Abandoning romance, however, does not mean ending commitment. If any lesson of the politics of difference can yet be identified, it is that solidarity is the product of struggle, not wishful thinking; and struggle means not only political struggle, but moral and ethical struggle as well.¶ Conclusion ¶ In Derrick Bell's book, Faces at the Bottom of the Well, Bell adopts the position that "racism is a permanent component of American life." [n211](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n211) Surprisingly, however, Bell does not intend to counsel despair to anti-racist activists. Rather, he looks to African American slavery as a model for the attitude he wishes us to adopt. "Knowing there was no escape, no way out, the slaves nonetheless continued to engage themselves. To carve out a humanity. To defy the murder of selfhood. Their lives were brutally shackled, certainly - but not without meaning despite being imprisoned." [n212](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n212)¶ Similarly, Bell urges contemporary anti-racists to struggle against racism in order to make their lives meaningful rather than in the hope of someday magically sweeping racism away. The logic Bell uses in this argument is not the familiar "either/or" logic, but a "both and" logic:¶ It is not a matter of choosing between the pragmatic recognition that racism is permanent no matter what we do, or an idealism based on the long-held dream of attaining a society free of racism. Rather, it is a question of both, and. Both the recognition of the futility of action - where action is more civil rights strategies destined to fail - and the unalterable conviction that something must be done, that action must be taken. [n213](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n213) [\*785] ¶ Bell's urgings fit with the religious orientation of Anthony Cook and Cornel West. They also fit with the reconstruction jurisprudence I have been imagining in this Foreword. Reconstructing modernism requires both sophistication and disenchantment - both a commitment to building intellectual structures that are strong, complex, capacious, and sound, and a knowledge that reason and logic alone will never end racism, that words alone can never break down the barrier between ourselves and those we set out to persuade. [n214](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n214) The jurisprudence of reconstruction, like the world the slaves made, is only one of meaning - neither magic nor the abyss.