# Legal Realism Aff V2.0

## AC

### PART 1 IS THE SLAVE

#### America is built on anti-blackness, while other forms of oppression may exist; the very structure of life in American civil society is predicated on the slave and its perfection. Africans were taken from Africa and came out in America as Blacks which is an inherently dead identity defined by slavery.

**Pak 12**

Yumi Pak (Prof of Phil), "Outside Relationality: Autobiographical Deformations and the Literary Lineage of Afro-Pessimism in 20th and 21st Century African American Literature.”

Because the four authors I examine focus intensively on untangling and retangling the nexus of race, gender, and sexuality in autobiographical narratives, this project originally relied most heavily on the frameworks provided by queer theory and performance studies, as the structural organization and methodology behind both disciplines offered the characteristic of being “‘inter’ – in between… intergenric [sic], interdisciplinary, intercultural – and therefore inherently unstable” (“What is Performance Studies Anyway?” 360). My abstract ideation of the dissertation was one which conceptualized the unloosening of the authors’ respective texts from the ways in which they have been read in particular genres. Yet the investigative progression of my  research redirected me to question the despondency I found within Toomer, Himes, Baldwin and Jones’ novels, a despondency and sorrow that seemed to reach beyond the individual and collective purportedly represented in these works. What does it mean, they seem to speculate, to suffer beyond the individual, beyond the collective, and into the far reaches of paradigmatic structure? What does it mean to exist beyond “social oppression” and veer instead into what Frank B. Wilderson, III calls “structural suffering” (Red, White & Black 36)? Briefly, Wilderson utilizes what he calls Frantz Fanon’s splitting of “the hair[s] between social oppression and structural suffering”; in other words, Wilderson refutes the possibility of analogizing blackness with any other positionality in the world. Others may be oppressed, indeed, may suffer experientially, but only the black, the paradigmatic slave, suffers structurally. Afro-pessimism, the theoretical means by which I attempt to answer this query, provides the integral term and parameters with which I bind together queer theory, performance studies, and autobiography studies in order to propose a re-examination of these authors and their texts. The structural suffering of blackness seeps into all elements of American history, culture, and life, and thus I begin my discussion with an analysis of Hortense Spillers’ concept of an American grammar in “Mama’s Baby, Papa’s Maybe: An American Grammar Book.” To theorize blackness is to begin with the slave ship, in a space that is in actuality no place. 7 In discussing the transportation of human cargo across the Middle Passage, Spillers writes that this physical theft of bodies was “a willful and violent (and unimaginable from this distance) severing of the captive body from its motive will, its active desire” (Spillers 67). She contends here that in this mass gathering and transportation, what becomes illuminated is not only the complete and total deracination of native from soil, but rather the evisceration of subjectivity from blackness, the evacuation of will and desire from the body; in other words, we see that even before the black body there is flesh, “that zero degree of social conceptualization that does not escape concealment under the brush of discourse, or the reflexes of iconography” (67). Black flesh, which arrives in the United States to be manipulated and utilized as slave bodies, is “a primary narrative” with its “seared, divided, ripped-apartness, riveted to the ship’s hole, fallen, or ‘escaped’ overboard” (67). These markings – “lacerations, woundings, fissures, tears, scars, openings, ruptures, lesions, rendings, punctures of the flesh” – are indicative of the sheer scale of the structural violence amassed against blackness, and from this beginning Spillers culls an “American grammar” that grounds itself in the “rupture and a radically different kind of cultural continuation,” a grammar that is the fabric of blackness in the United States (67, 68). As Wilderson observes, “Africans went into the ships and came out as Blacks” (Red, White & Black 38). In other words, in the same moment they are (re)born as blacks, they are doomed to death as slaves. This rupture, I argue, is evident in the definitions of slavery set forth by Orlando Patterson in his seminal volume, Slavery and Social Death: natal alienation, general dishonor and openness to gratuitous violence. The captive body, which is constructed with torn flesh, is laid bare to any and all, and it is critical to note here that Patterson, in line with Afro-pessimists, does not align slavery with labor. The slave can – and did – work, but what defines him/her as such is that as a dishonored and violated object, the master’s whims for him/her to work, or not work, can be carried out without ramifications. Rather, the slave’s powerlessness is heightened to the greatest possible capacity, wherein s/he is marked by social death and the “permanent, violent domination” of their selves (Patterson 13). Spillers’ “radically different kind of cultural continuation” finds an articulation of the object status of blackness in the United States, one which impugns the separation of “slave” and “black.” As Jared Sexton and Huey Copeland inquire, “[h]ow might it feel to be… a scandal to ontology, an outrage to every marker of the human? What, in the final analysis, does it mean to suffer?” (Sexton and Copeland 53). Blackness functions as a scandal to ontology because, as Wilderson states, **black suffering forms the** ethical **backbone** **of civil society**. He writes, [c]hattel slavery did not simply reterritorialize the ontology of the African. It also created the Human out of cultural disparate identities from Europe to the East… Put another way, through chattel slavery the world gave birth and coherence to both its joys of domesticity and to its struggles of political discontent, and with these joys and struggles, the Human was born, but not before it murdered the Black, forging a symbiosis between the political ontology of Humanity and the social death of Blacks. (Red, White & Black 20 – 21) Again, the African is made black, and in this murder both ontological and physical, humanity gains its coherence. It is not my intention (nor of other Afro-pessimists) to argue that violence has only ever been committed against black individuals and communities in the United States, or in the world, but rather that the structural suffering that defines blackness, the violence enacted against blackness to maintain its positioning outside of civil society, that demarcates the black as slave, has no horizontal equivalent and, indeed, provides the logical ethos of existence for all othered subjectivities; by this I mean that all other subjects (and I use this word quite intentionally) retain a body and not the zero degree of flesh. As Sexton writes, “we might say of the colonized: you may lose your motherland, but you will not ‘lose your mother’ (Hartman 2007)” (“The Curtain of the Sky” 14). This is precisely why Sexton offers the succinct definition of Afro-pessimism as “a political ontology dividing the Slave from the world of the Human in a constitutive way” (“The Social Life of Social Death” 23). Furthermore, Afro-pessimists contest the idea that the modern world is one wherein the price of labor determines the price of being equally for all people. In this capitalistic reading of the world, we summon blacks back into civil society by utilizing Marxism to assume “a subaltern structured by capital, not by white supremacy” (“Gramsci’s Black Marx” 1). While it is undeniable, of course, that black bodies and labor were used to aid in the economic growth of the United States, we return again to the point that what defines enslavement is accumulation and fungibility, alongside natal alienation, general dishonor, and openness to gratuitous violence; the slave, then, is not constituted as part of the class struggle. 8 While it is true “that labor power is exploited and that the worker is alienated in it,” it is also true that “workers labor on the commodity, they are not the commodity itself is, their labor power is” (Red, White & Black 50). The slave is, then, invisible within this matrix, and, to a more detrimental effect, invisible within the ontology of lived subjects entirely. The slave cannot be defined as loss – as can the postcolonial subject, the woman, or the immigrant – but can only be configured as lack, as there is no potential for synthesis within a rubric of antagonism. Wilderson sets up the phrase “rubric of antagonism” in opposition to “rubric of conflict” to clarify the positionality of blacks outside relationality. The former is “an irreconcilable struggle between entities, or positions, the resolution of which is not dialectical but entails the obliteration of one of the positions,” whereas the latter is “a rubric of problems that can be posed and conceptually solved” (Red, White & Black 5). He continues, “[i]f a Black is the very antithesis of a Human subject… then his or her paradigmatic exile is not simply a function of repressive practices on the part of institutions” (9). Integrating Hegel and Marx, and returning to Spillers, Wilderson argues that within this grammar of suffering, the slave is not a laborer but what he calls “antiHuman, against which Humanity establishes, maintains, and renews its coherence, its corporeal integrity” (11). In contrast to imagining the black other in opposition to whiteness, Wilderson and other Afro-pessimists theorize blackness as being absent in the dialectic, as “anti-Human.”

#### Abstract philosophical frameworks fail to account for the erasure of the Black body—our starting point must be a critique of white supremacy

**Yancy 5**

George Yancy 2k5 [Prof of Philosophy @ Duquesne University] “Black Bodies, White Gazes THE CONTINUING SIGNIFICANCE OF RACE”

I write out of a personal existential context. This context is a profound source of knowledge connected to my "raced'' body. I theorize from a place of lived embodied experience, a site of exposure. In philosophy, the only thing we learn to "expose" (and to do so brutally) is a weak argument, a fallacy, or someone's "inferior" reasoning power. The embodied self is bracketed and deemed irrelevant to theory, superfluous and cumbersome in one's search for truth. It is best, or so we are told, to reason from nowhere. The white male philosopher/author presumes to speak for all of "us" without the slightest mention of his raced (or gendered) identity. Self-consciously writing as a. white male philosopher, Crispin Sartwell observes: Left to my own devices, I disappear as an author. That is the "whiteness" of my authorship. This whiteness of authorship is, for us, a form of authority; to speak (apparently) from nowhere, for everyone, is empowering, though one wields power here only by becoming lost to oneself. But such an authorship and authority is also pleasurable: it yields the pleasure of self-forgetting or apparent transcendence of the mundane and the particular, and the. pleasure of power expressed in the Comprehension" of a range of materials. To theorize the Black body one must "turn to the [Black] body as the radix for interpreting racial experience." This particular strategy also functions as a lens through which to theorize and critique whiteness; for the Black body's "racial" experience is fundamentally linked to the oppressive modalities of the raced white body. However, there is no denying that my own racial experiences or the social performances of whiteness can become objects of critical reflection. In this chapter, I describe and theorize a variety of instances in which the Black body is reduced to instantiations of the white imaginary, resulting in what I refer to as "the phenomenological return of the Black body." These instantiations are embedded within and evolve out of the complex social and historical interstices of whites' efforts at self-construction through complex acts of erasure and denigration of Black people. These acts of self-construction are myths or ideological constructions predicated upon maintaining white power. As James Snead explained, ''Mythification is the replacement of history with a surrogate ideology of [white] elevation or [Black] demotion along a scale of human value. " I do not hold the view that Blacks only offer experiences while whites provide the necessary theoretical framing of those experiences. Consistent with my own theorizations on the subject, Lewis Gordon recognizes the historical impetus of this move toward experience and how such a move as such is not problematic. "After all," as Gordon argues, "for a long time there was the denial of black inner life, of black subjectivity; the notion of a black person's point of view suggested consciousness of the world, which would call for dynamics of reciprocal recognition." Of course, the objectives are 1} to avoid reducing Blacks to experience and 2) to avoid making whites the oracle intetpretative voices of Black experiences. By implication, it is important to avoid a relationship of dependency and to assert an agential Black exegetical role in rendering their experiences meaningful.

#### Educational systems have historically excluded Black thought to sustain White supremacy. Your role as a judge and educator is to reverse that – interjecting Black thought is the only ethical orientation for debate.

Schnyder 8

Damien Michael Schnyder (PhD, University of California’s President’s Postdoctoral Fellow) "First Strike," [https://www.lib.utexas.edu/etd/d/2009/schnyderd25688/schnyderd25688.pdf](https://www.lib.utexas.edu/etd/d/2009/schnyderd25688/schnyderd25688.pdf-https:/www.lib.utexas.edu/etd/d/2009/schnyderd25688/schnyderd25688.pdf)

Ms. Fox’s clear disregard for her students belies a racist logic that dehumanizes Blackness while also reifying white supremacy. At the crux of this logic is that Black students are destructive to civil society. As argued by Frank Wilderson, III, “There is something organic to Black positionality that makes it essential to the destruction of civil society. There is nothing willful or speculative in this statement, for one could just as well state the claim the other way around: There is something organic to civil society that makes it essential to the destruction of the Black body” (Wilderson III, 2003, 18). Given that the basis of Western society has been predicated upon particular notions of work/labor, the construction of civil society is predicated upon forced labor. The function of society as dictated by capitalist interest is the production of workers. For even as a worker, the threat to the system is merely reformist. For as Wilderson comments, “The worker demands that productivity be fair and democratic” (Wilderson III, 2003, 22). Contrast to the position of the worker, Wilderson argues, “The slave demands that production stop, without recourse to its ultimate democratization. Work is not an organic principle forthe slave” (Wilderson III, 2003, 22). Black bodies, through their collective experiences of subjugated Blackness, become a threat to the very function of civil society. Blackness has to be contained and managed in order to protect white supremacy. Crucial to Wilderson’s argument is that white supremacy needs the reproduction of social relations of power (i.e. the identification of the worker) in order to maintain its subjective advantage with respect to Blackness.45 It is at this moment - when Blackness becomes identified as antithetical to the notions of work –that white supremacy is able to unleash it’s fury upon the Black body. For it is within this space that the Black body can have anything and everything done to protect the order of civil society.46 Thus in order to contain the threat of Blackness, the Herculean managers of the hydra-like attack upon society are teachers (Linebaugh & Rediker, 2000).47 Within the development of civil society, the function of teachers is to both categorize states of being and enclose Blackness. The categorization is clear by the actions of Ms. Fox while processes of enclosure are exemplified in Mr. Keynes’ classroom. Students are prevented from interjecting alternative versions of economic systems within the framework of the discussion. Students must perform the perfunctory duty of work (basic memorization and recitation skills) not to only to be awarded with a passing grade, but not to be penalized. The result is a silencing of Black voices whose life experiences are in direct contradiction with hegemonic constructions of economy (i.e. supply and demand) that was taught by Mr. Keynes. There was no space to analyze the racial structure that frames economic modes of relation, nor was there opportunity to engage in dialogue with regards to the economics of why many of the students had to work to support their families. Mr. Keynes’ classroom management and pedagogical style exemplifies the need of white supremacy to control, define and enclose racialized subjects. The primary objective of Mr. Keynes in addition to Mr. Davis and Ms. Fox was to socialize the students as productive workers in order to fit within the hierarchal confines of civil society. The main thrust behind this socialization effort was to define the students as subjects and remove the possibility for self-identification that was not located within a white supremacist conception of being – for a self-assertion outside of these parameters is the greatest threat to white supremacist modes of social (re)production.48The veil of nobility and morality that cloaks the teaching profession has to be understood as a tool utilized by the state to maintain its power. Inside of the walls of SCHS, teachers operated within a genealogy of Black subjugation that seeks to enclose all sites of Black self-expression and thought/action and as stated by Wilderson ultimately “destroy the Black body.” In it’s current manifestation, the process of Black subjugation functions within the logic of the prison regime as outlined by Dylan Rodríguez. Within this logic, teachers serve as agents of dissemination, discipline and socialization in order to preserve the economic, political, racial, sexual and gendered hierarchies established by the United States nation project. Further, during times of economic “crises” Ruth Wilson Gilmore notes that the veil of white privilege is removed as the logic of white supremacy that frames American nationalism is fully revealed (Gilmore, 1993).49 In order to untangle the multifaceted issues within public education, it is incumbent to analyze the root causes of inequality and inequity. In agreement with scholars such as Erica R. Meiners who advocate that white supremacy is the root cause, even teachers with the best of intentions have to realize that their role is vital to the maintenance of state domination of Black subjects.

#### This ethical orientation starts with recognizing that the rule of law is a myth. The law is not neutral but inherently political; acceptance of the rule of law makes you complicit in the state’s oppression

**Hasnas 95**

John Hasnas (associate professor, McDonough School of Business, Georgetown University). “The Myth of the Rule of Law.” Wisconsin Law Review. 1995. http://faculty.msb.edu/hasnasj/GTWebSite/MythWeb.htm

In his novel 1984, George Orwell created a nightmare vision of the future in which an all-powerful Party exerts totalitarian control over society by forcing the citizens to master the technique of "doublethink," which requires them "to hold simultaneously two opinions which cancel[] out, knowing them to be contradictory and believing in both of them." (3) Orwell's doublethink is usually regarded as a wonderful literary device, but, of course, one with no referent in reality since it is obviously impossible to believe both halves of a contradiction. In my opinion, this assessment is quite mistaken. Not only is it possible for people to believe both halves of a contradiction, it is something they do every day with no apparent difficulty. Consider, for example, people's beliefs about the legal system. They are obviously aware that the law is inherently political. The common complaint that members of Congress are corrupt, or are legislating for their own political benefit or for that of special interest groups demonstrates that citizens understand that the laws under which they live are a product of political forces rather than the embodiment of the ideal of justice. Further, as evidenced by the political battles fought over the recent nominations of Robert Bork and Clarence Thomas to the Supreme Court, the public obviously believes that the ideology of the people who serve as judges influences the way the law is interpreted. This, however, in no way prevents people from simultaneously regarding the law as a body of definite, politically neutral rules amenable to an impartial application which all citizens have a moral obligation to obey. Thus, they seem both surprised and dismayed to learn that the Clean Air Act might have been written, not to produce the cleanest air possible, but to favor the economic interests of the miners of dirty-burning West Virginia coal (West Virginia coincidentally being the home of Robert Byrd, who was then chairman of the Senate Appropriations Committee) over those of the miners of cleaner-burning western coal. (4) And, when the Supreme Court hands down a controversial ruling on a subject such as abortion, civil rights, or capital punishment, then, like Louis in Casablanca, the public is shocked, shocked to find that the Court may have let political considerations influence its decision. The frequent condemnation of the judiciary for "undemocratic judicial activism" or "unprincipled social engineering" is merely a reflection of the public's belief that the law consists of a set of definite and consistent "neutral principles" (5) which the judge is obligated to apply in an objective manner, free from the influence of his or her personal political and moral beliefs. I believe that, much as Orwell suggested, it is the public's ability to engage in this type of doublethink, to be aware that the law is inherently political in character and yet believe it to be an objective embodiment of justice, that accounts for the amazing degree to which the federal government is able to exert its control over a supposedly free people. I would argue that this ability to maintain the belief that the law is a body of consistent, politically neutral rules that can be objectively applied by judges in the face of overwhelming evidence to the contrary, goes a long way toward explaining citizens' acquiescence in the steady erosion of their fundamental freedoms. To show that this is, in fact, the case, I would like to direct your attention to the fiction which resides at the heart of this incongruity and allows the public to engage in the requisite doublethink without cognitive discomfort: the myth of the rule of law. I refer to the myth of the rule of law because, to the extent this phrase suggests a society in which all are governed by neutral rules that are objectively applied by judges, there is no such thing. As a myth, however, the concept of the rule of law is both powerful and dangerous. Its power derives from its great emotive appeal. The rule of law suggests an absence of arbitrariness, an absence of the worst abuses of tyranny. The image presented by the slogan "America is a government of laws and not people" is one of fair and impartial rule rather than subjugation to human whim. This is an image that can command both the allegiance and affection of the citizenry. After all, who wouldn't be in favor of the rule of law if the only alternative were arbitrary rule? But this image is also the source of the myth's danger. For if citizens really believe that they are being governed by fair and impartial rules and that the only alternative is subjection to personal rule, they will be much more likely to support the state as it progressively curtails their freedom. In this Article, I will argue that this is a false dichotomy. Specifically, I intend to establish three points: 1) there is no such thing as a government of law and not people, 2) the belief that there is serves to maintain public support for society's power structure, and 3) the establishment of a truly free society requires the abandonment of the myth of the rule of law.

#### The rule of law is the new plantation, the illusion of Black equality is codified in the law therefore we must break the law. The only way to solve anti-blackness is anarchic logic and burn it all.

**Farley 5:**

Anthony Paul Farley (Associate Prof @ Boston College Law school), “Perfecting Slavery” pg 235-238, January 27 2005.

What is to be done? Two hundred years ago, when the slaves in Haiti rose up, they, of necessity, burned everything: They burned San Domingo flat so that at the end of the war it was a charred desert. Why do you burn everything? asked a French officer of a prisoner. We have a right to burn what we cultivate because a man has a right to dispose of his own labour, was the reply of this unknown anarchist. 48 The slaves burned everything because everything was against them. Everything was against the slaves, the entire order that it was their lot to follow, the entire order in which they were positioned as worse than senseless things, every plantation, everything. 49 “**Leave nothing white behind you**,” said Toussaint to those dedicated to the end of white-overblack. 50 “God gave Noah the rainbow sign. No more water, the fire next time.” 51 The slaves burned everything, yes, but, unfortunately, they only burned everything in Haiti. 52 Theirs was the greatest and most successful revolution in the history of the world but the failure of their fire to cross the waters was the great tragedy of the nineteenth century. 53 At the dawn of the twentieth century, W.E.B. Du Bois wrote, “The colorline belts the world.” 54 Du Bois said that the problem of the twentieth century was the problem of the colorline. 55 The problem, now, at the dawn of the twenty-first century is the problem of the colorline. The colorline continues to belt the world. Indeed, the slave power that is the United States now threatens an entire world with the death that it has become and so the slaves of yesterday, today, and tomorrow, those with nothing but their chains to lose, must, if they would be free, if they would escape slavery, win the entire world. VIII. TRAINING We begin as children. We are called and we become our response to the call. Slaves are not called. What becomes of them? What becomes of the broken-hearted? The slaves are divided souls, they are brokenhearted, the slaves are split asunder by what they are called upon to become. The slaves are called upon to become objects but objecthood is not a calling. The slave, then, during its loneliest loneliness, is divided from itself. This is schizophrenia. The slaves are not called, or, rather, the slaves are called to not be. The slaves are called unfree but this the living can never be and so the slaves burst apart and die. The slaves begin as death, not as children, and death is not a beginning but an end. There is no progress and no exit from the undiscovered country of the slave, or so it seems. We are trained to think through a progress narrative, a grand narrative, the grandest narrative, that takes us up from slavery. There is no up from slavery. The progress from slavery to the end of history is the progress from white-over-black to white-over-black to white-overblack. The progress of slavery runs in the opposite direction of the pastpresent-future timeline. The slave only becomes the perfect slave at the end of the timeline, only under conditions of total juridical freedom. It is only under conditions of freedom, of bourgeois legality, that the slave can perfect itself as a slave by freely choosing to bow down before its master. The slave perfects itself as a slave by offering a prayer for equal rights. The system of marks is a plantation. The system of property is a plantation. The system of law is a plantation. These plantations, all part of the same system, hierarchy, produce white-overblack, white-over-black only, and that continually. The slave perfects itself as a slave through its prayers for equal rights. The plantation system will not commit suicide and the slave, as stated above, has knowing non-knowledge of this fact. **The slave finds its** **way back from the undiscovered country only by burning down every plantation**. When the slave prays for equal rights it makes the free choice to be dead, and it makes the free choice to not be. Education is the call. We are called to be and then we become something. We become that which we make of ourselves. We follow the call, we pursue a calling. Freedom is the only calling—it alone contains all possible directions, all of the choices that may later blossom into the fullness of our lives. We can only be free. Slavery is death. How do slaves die? Slaves are not born, they are made. The slave must be trained to be that which the living cannot be. The only thing that the living are not free to be is dead. The slave must be trained to follow the call that is not a call. The slave must be trained to pursue the calling that is not a calling. The slave must be trained to objecthood. The slave must become death. Slavery is white-over-black. White-over-black is death. White-over-black, death, then, is what the slave must become to pursue its calling that is not a calling.

### PART 2 IS JURY NULLIFICATION

#### Jury nullification rejects the rule of law wholesale—the aff’s endorsement of Black legal realism is key to recognizing legalistic democracy’s failure to liberate the oppressed – the history of Blacks and the law proves

**Spohn and Hemmens 12 bracketed for clarity**

Cassia Spohn (Arizona State University) and Craig Hemmens (Missouri State University). Courts: A Text/Reader. Chapter 4, Second Edition, SAGE Publications, 2012. Google Books. Pgs. 284 and 285.

1. African-Americans and the “Betrayal” of Democracy There is no question that jury nullification is subversive of the rule of law. It appears to be the antithesis of the view that courts apply settled, standing laws and do not “dispense justice in some ad hoc, case-by-case basis.” To borrow a phrase from the D.C. Circuit, jury nullification “betrays rather than furthers the assumptions of viable democracy.” Because the Double Jeopardy Clause makes this power part-and-parcel of the jury system, the issue becomes whether black jurors have any moral right to “betray democracy” in this sense. I believe that they do for two reasons that I borrow from the jurisprudence of legal realism and critical race theory: First, the idea of “the rule of law” is more mythological than real, and second, “democracy,” as practiced in the United States, has betrayed [Blacks] far more than they could ever betray it. Explication of these theories has consumed legal scholars for years, and is well beyond the scope of this essay. I describe the theories below not to persuade the reader of their rightness, but rather to make the case that a reasonable juror might hold such beliefs, and thus be morally justified in subverting democracy through nullification. 2. The Rule of Law as Myth The idea that “any result can be derived from the preexisting legal doctrine” either in every case or many cases, is a fundamental principle of legal realism (and, now, critical legal theory). The argument, in brief, is that law is indeterminate and incapable of neutral interpretation. When judges “decide” cases, they “choose” legal principles to determine particular outcomes. Even if a judge wants to be neutral, she cannot, because, ultimately, she is vulnerable to an array of personal and cultural biases and influences; she is only human. In an implicit endorsement of the doctrine of jury nullification, legal realists also suggest that, even if neutrality were possible, it would not be desirable, because no general principle of law can lead to justice in every case. It is difficult for [a Black] knowledgeable of the history of her people in the United States not to profess, at minimum, sympathy for legal realism. Most blacks are aware of countless historical examples in which [Blacks] were not afforded the benefit of the rule of law: Think, for example, of the existence of slavery in a republic purportedly dedicated to the proposition that all men are created equal, or the law’s support of state-sponsored segregation even after the Fourteenth Amendment guaranteed blacks equal protection. That the rule of law ultimately corrected some of the large holes in the American fabric is evidence more of its malleability than of its virtue; the rule of law had, in the first instance, justified the rules. The Supreme Court’s decisions in the major “race” cases of the last term underscore the continuing failure of the rule of law to protect African-Americans through consistent application. Dissenting in a school desegregation case, four Justices states that “[t]he Court’s process of orderly adjudication has broken down in this case.” The dissent noted that the majority opinion “effectively…overrule[d] a unanimous constitutional precedent of 20 years standing, which was not even addressed in argument, was mentioned merely in passing by one of the parties, and discussed by another of them only in a misleading way.” Similarly, in a voting rights case, Justice Stevens, in dissent, described the majority opinion as a “law-changing decision.” And in an affirmative action case, Justice Stevens began his dissent by declaring that, “[i]nstead of deciding this case in accordance with controlling precedent, the Court today delivers a disconcerting lecture about the evils of governmental racial classifications.” At the end of his dissent, Stevens argued that “the majority’s concept of stare decisis ignores the force of binding precedent.” If the rule of law is a myth, or at least is not applicable to African-Americans, the criticism that jury nullification undermines it loses force. The black juror is simply another actor in the system, using her power to fashion a particular outcome; the juror’s act of nullification—like the act of the citizen who dials 911 to report Ricky but not Bob, or the police officer who arrests Lisa but not Mary, or the prosecutor who charges Kwame but not Brad, or the judge who finds that Nancy was illegally entrapped but Verna was not—exposes the indeterminacy of law, but does not create it.

#### Jury nullification is key to erode the State from within and bring it crashing down—the rule of law should not be the baseline for what is moral because that historically serves to make genocide moral and give further coherence to anti-blackness

**Danilo 14**

Danilo (practitioner of Eastern Healing arts with degrees in Acupuncture and Chinese medicinal herbs, I have always questioned the status quo, a path which led me to peaceful anarchism). “Jury Duty and Jury Nullification.” Peaceful Anarchism. May 14th, 2014. <http://peacefulanarchism.com/jury-duty-and-jury-nullification/>

As Voluntaryists we often resist participating in any way “within the system” to effect any meaningful change. However “Jury Nullification” is one of the most effective means by which everyday citizens can throw a monkey wrench into a corrupt system. If enough monkey wrenches are thrown at the machine, hopefully it will bring the stagnant status quo crashing down into the pile of mephitic toxic waste that it is. “Juries in criminal cases are generally, as a rule, required to reach a unanimous verdict, while juries in civil cases typically have to reach a majority on some level. If a defendant has been found guilty of a capital offense (one that could result in the death penalty if the person is eligible) then the opinion of the jury must be unanimous if the defendant is to be sentenced to death. Currently, two states, Oregon and Louisiana, do not require unanimous verdicts in criminal cases.” In these states a verdict of 10-2 is sufficient for conviction. Since the majority of states require a unanimous decision among the jurors, just one dissenting juror can result in a “Hung Jury” where a deadlock is reached and movement cannot be made forward in the trial. This is unbelievably empowering for those who oppose the State. Whilst complete dissolution of the State is a noble goal, it is also the most extreme of goals. It may be helpful to retain this objective whilst simultaneously eroding the foundations of the State from within through education and the practice of Jury Nullification. Everyone who serves on a jury must understand the principle “If there’s no victim, there’s no crime.” If we use legality as the yardstick, by which to measure what is right, then the Holocaust, Apartheid, Chain Slavery, Stalin’s Great Purge, Mao’s Great Leap Forward, Pol Pot’s genocide etc were all legal and therefore were all right. There comes a point at which every person must decide whether to obey one’s moral compass or obey one’s conscience. They are mutually exclusive actions. Most sane people know and understand that theft, rape, assault, and murder are all morally wrong and therefore do not use violence to solve problems in their daily lives. This moral principle applies ever more importantly in the realm of “government”. For if it is wrong for one person to murder, that breach of morality is not magically altered when murder is done on a grand scale, to the sound of trumpets, waving pieces of colored cloths, and chanting a fictitious deity.

#### Anarchist movements are key to Black liberation, ceding authority always risks whiteness coopting it.

**Alston 03**

Ashanti Alston (Black Anarchist who was in the Black Panthers and the Black Liberation Army) “Black Anarchism” Speech given at Hunter College. October 24, 2003. http://weblog.liberatormagazine.com/2008/07/black-anarchism.html

So, here I am, in the United States fighting for Black liberation, and wondering: how can we avoid situations like that? Anarchism [gives] me a way to respond to this question by insisting that we put into place, as we struggle now, structures of decision-making and doing things that continually bring more people into the process, and not just let the most “enlightened” folks make decisions for everyone else. The people themselves have to create structures in which they articulate their own voice and make their own decisions. I didn’t get that from other ideologies: I got that from anarchism. I also began to see, in practice, that anarchistic structures of decision-making are possible. For example, at the protests against the Republican National Convention in August 2000 I saw normally excluded groups—people of color, women, and queers—participate actively in every aspect of the mobilization. We did not allow small groups to make decisions for others and although people had differences, they were seen as good and beneficial. It was new for me, after my experience in the Panthers, to be in a situation where people are not trying to be on the same page and truly embraced the attempt to work out our sometimes conflicting interests. This gave me some ideas about how anarchism can be applied. It also made me wonder: if it can be applied to the diverse groups at the convention protest, could I, as a Black activist, apply these things in the Black community? Some of our ideas about who we are as a people hamper our struggles. For example, the Black community is often considered a monolithic group, but it is actually a community of communities with many different interests. I think of being Black not so much as an ethnic category but as an oppositional force or touchstone for looking at situations differently. Black culture has always been oppositional and is all about finding ways to creatively resist oppression here, in the most racist country in the world. So, when I speak of a Black anarchism, it is not so tied to the color of my skin but who I am as a person, as someone who can resist, who can see differently when I am stuck, and thus live differently.