# Legal Realism Aff

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#### 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.

#### **Objectivity within the law is impossible; the idea that we can ever reach a sound conclusion based on the law alone is wishful thinking**

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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

What Professor Kingsfield knows is that the legal world is not like the real world and the type of reasoning appropriate to it is distinct from that which human beings ordinarily employ. In the real world, people usually attempt to solve problems by forming hypotheses and then testing them against the facts as they know them. When the facts confirm the hypotheses, they are accepted as true, although subject to reevaluation as new evidence is discovered. This is a successful method of reasoning about scientific and other empirical matters because the physical world has a definite, unique structure. It works because the laws of nature are consistent. In the real world, it is entirely appropriate to assume that once you have confirmed your hypothesis, all other hypotheses inconsistent with it are incorrect. In the legal world, however, this assumption does not hold. This is because unlike the laws of nature, political laws are not consistent. The law human beings create to regulate their conduct is made up of incompatible, contradictory rules and principles; and, as anyone who has studied a little logic can demonstrate, any conclusion can be validly derived from a set of contradictory premises. This means that a logically sound argument can be found for any legal conclusion. When human beings engage in legal reasoning, they usually proceed in the same manner as they do when engaged in empirical reasoning. They begin with a hypothesis as to how a case should be decided and test it by searching for a sound supporting argument. After all, no one can "reason" directly to an unimagined conclusion. Without some end in view, there is no way of knowing what premises to employ or what direction the argument should take. When a sound argument is found, then, as in the case of empirical reasoning, one naturally concludes that one's legal hypothesis has been shown to be correct, and further, that all competing hypotheses are therefore incorrect. This is the fallacy of legal reasoning. Because the legal world is comprised of contradictory rules, there will be sound legal arguments available not only for the hypothesis one is investigating, but for other, competing hypotheses as well. The assumption that there is a unique, correct resolution, which serves so well in empirical investigations, leads one astray when dealing with legal matters. Kingsfield, who is well aware of this, knows that Arnie and Ann have both produced legitimate legal arguments for their competing conclusions. He does not reveal this knowledge to the class, however, because the fact that this is possible is precisely what his students must discover for themselves if they are ever to learn to "think like a lawyer." IV. Imagine that Arnie and Ann have completed their first year at Harvard and coincidentally find themselves in the same second-year class on employment discrimination law. During the portion of the course that focuses on Title VII of the Civil Rights Act of 1964, (8) the class is asked to determine whether § 2000e-2(a)(1), which makes it unlawful "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin," permits an employer to voluntarily institute an affirmative action program giving preferential treatment to African-Americans. Perhaps unsurprisingly, Arnie strongly believes that affirmative action programs are morally wrong and that what the country needs are color-blind, merit-based employment practices. In researching the problem, he encounters the following principle of statutory construction: When the words are plain, courts may not enter speculative fields in search of a different meaning, and the language must be regarded as the final expression of legislative intent and not added to or subtracted from on the basis of any extraneous source. (9) In Arnie's opinion, this principle clearly applies to this case. Section 2000e-2(a)(1) prohibits discrimination against any individual because of his race. What wording could be more plain? Since giving preferential treatment to African-Americans discriminates against whites because of their race, Arnie concludes that § 2000e-2(a)(1) prohibits employers from voluntarily instituting affirmative action plans. Perhaps equally unsurprisingly, Ann has a strong belief that affirmative action is moral and is absolutely necessary to bring about a racially just society. In the course of her research, she encounters the following principle of statutory construction: "It is a familiar rule, that a thing may be within the letter of [a] statute and yet not within the statute because not within its spirit, nor within the intention of its makers"'; (10) and that an interpretation which would bring about an end at variance with the purpose of the statute must be rejected. (11) Upon checking the legislative history, Ann learns that the purpose of Title VII of the Civil Rights Act is to relieve "the plight of the Negro in our economy" and "open employment opportunities for Negroes in occupations which have been traditionally closed to them." (12) Since it would obviously contradict this purpose to interpret § 2000e-2 to make it illegal for employers to voluntarily institute affirmative action plans designed to economically benefit African-Americans by opening traditionally closed employment opportunities, Ann concludes that § 2000e-2 does not prohibit such plans. The next day, Arnie presents his argument for the illegality of affirmative action in class. Since Ann has found a sound legal argument for precisely the opposite conclusion, she knows that Arnie's position is untenable. However, having gotten to know Arnie over the last year, this does not surprise her in the least. She regards him as an inveterate reactionary who is completely unprincipled in pursuit of his conservative (and probably racist) agenda. She believes that he is advancing an absurdly narrow reading of the Civil Rights Act for the purely political end of undermining the purpose of the statute. Accordingly, she volunteers, and when called upon, makes this point and presents her own argument demonstrating that affirmative action is legal. Arnie, who has found a sound legal argument for his conclusion, knows that Ann's position is untenable. However, he expected as much. Over the past year he has come to know Ann as a knee-jerk liberal who is willing to do anything to advance her mushy-headed, left-wing agenda. He believes that she is perversely manipulating the patently clear language of the statute for the purely political end of extending the statute beyond its legitimate purpose. Both Arnie and Ann know that they have found a logically sound argument for their conclusion. But both have also committed the fallacy of legal reasoning by assuming that under the law there is a uniquely correct resolution of the case. Because of this assumption, both believe that their argument demonstrates that they have found the objectively correct answer, and that therefore, the other is simply playing politics with the law. The truth is, of course, that both are engaging in politics. Because the law is made up of contradictory rules that can generate any conclusion, what conclusion one finds will be determined by what conclusion one looks for, i.e., by the hypothesis one decides to test. This will invariably be the one that intuitively "feels" right, the one that is most congruent with one's antecedent, underlying political and moral beliefs. Thus, legal conclusions are always determined by the normative assumptions of the decisionmaker. The knowledge that Kingsfield possesses and Arnie and Ann have not yet discovered is that the law is never neutral and objective. V. I have suggested that because the law consists of contradictory rules and principles, sound legal arguments will be available for all legal conclusions, and hence, the normative predispositions of the decisionmakers, rather than the law itself, determine the outcome of cases. It should be noted, however, that this vastly understates the degree to which the law is indeterminate. For even if the law were consistent, the individual rules and principles are expressed in such vague and general language that the decisionmaker is able to interpret them as broadly or as narrowly as necessary to achieve any desired result. To see that this is the case, imagine that Arnie and Ann have graduated from Harvard Law School, gone on to distinguished careers as attorneys, and later in life find, to their amazement and despair, that they have both been appointed as judges to the same appellate court. The first case to come before them involves the following facts: A bankrupt was auctioning off his personal possessions to raise money to cover his debts. One of the items put up for auction was a painting that had been in his family for years. A buyer attending the auction purchased the painting for a bid of $100. When the buyer had the painting appraised, it turned out to be a lost masterpiece worth millions. Upon learning of this, the seller sued to rescind the contract of sale. The trial court granted the rescission. The question on appeal is whether this judgment is legally correct. Counsel for both the plaintiff seller and defendant buyer agree that the rule of law governing this case holds that a contract of sale may be rescinded when there has been a mutual mistake concerning a fact that was material to the agreement. The seller claims that in the instant case there has been such a mistake, citing as precedent the case of Sherwood v. Walker. (13) In Sherwood, one farmer sold another farmer a cow which both farmers believed to be sterile. When the cow turned out to be fertile, the seller was granted rescission of the contract of sale on the ground of mutual mistake. (14) The seller argues that Sherwood is exactly analogous to the present controversy. Both he and the buyer believed the contract of sale was for an inexpensive painting. Thus, both were mistaken as to the true nature of the object being sold. Since this was obviously material to the agreement, the seller claims that the trial court was correct in granting rescission. The buyer claims that the instant case is not one of mutual mistake, citing as precedent the case of Wood v. Boynton. (15) In Wood, a woman sold a small stone she had found to a jeweler for one dollar. At the time of the sale, neither party knew what type of stone it was. When it subsequently turned out to be an uncut diamond worth $700, the seller sued for rescission claiming mutual mistake. The court upheld the contract, finding that since both parties knew that they were bargaining over a stone of unknown value, there was no mistake. (16) The buyer argues that this is exactly analogous to the present controversy. Both the seller and the buyer knew that the painting being sold was a work of unknown value. This is precisely what is to be expected at an auction. Thus, the buyer claims that this is not a case of mutual mistake and the contract should be upheld. Following oral argument, Arnie, Ann, and the third judge on the court, Bennie Stolwitz, a non-lawyer appointed to the bench predominantly because the governor is his uncle, retire to consider their ruling. Arnie believes that one of the essential purposes of contract law is to encourage people to be self-reliant and careful in their transactions, since with the freedom to enter into binding arrangements comes the responsibility for doing so. He regards as crucial to his decision the facts that the seller had the opportunity to have the painting appraised and that by exercising due care he could have discovered its true value. Hence, he regards the contract in this case as one for a painting of unknown value and votes to overturn the trial court and uphold the contract. On the other hand, Ann believes that the essential purpose of contract law is to ensure that all parties receive a fair bargain. She regards as crucial to her decision the fact that the buyer in this case is receiving a massive windfall at the expense of the unfortunate seller. Hence, she regards the contract as one for an inexpensive painting and votes to uphold the trial court's decision and grant rescission. This leaves the deciding vote up to Bennie, who has no idea what the purpose of contract law is, but thinks that it just doesn't seem right for the bankrupt guy to lose out, and votes for rescission. Both Arnie and Ann can see that the present situation bodes ill for their judicial tenure. Each believes that the other's unprincipled political manipulations of the law will leave Bennie, who is not even a lawyer, with control of the court. As a result, they hold a meeting to discuss the situation. At this meeting, they both promise to put politics aside and decide all future cases strictly on the basis of the law. Relieved, they return to court to confront the next case on the docket, which involves the following facts: A philosophy professor who supplements her academic salary during the summer by giving lectures on political philosophy had contracted to deliver a lecture on the rule of law to the Future Republicans of America (FRA) on July 20, for $500. She was subsequently contacted by the Young Socialists of America, who offered her $1000 for a lecture to be delivered on the same day. She thereupon called the FRA, informing them of her desire to accept the better offer. The FRA then agreed to pay $1000 for her lecture. After the professor delivered the lecture, the FRA paid only the originally stipulated $500. The professor sued and the trial court ruled she was entitled to the additional $500. The question on appeal is whether this judgment is legally correct. Counsel for both the plaintiff professor and defendant FRA agree that the rule of law governing this case holds that a promise to pay more for services one is already contractually bound to perform is not enforceable, but if an existing contract is rescinded by both parties and a new one is negotiated, the promise is enforceable. The FRA claims that in the instant case, it had promised to pay more for a service the professor was already contractually bound to perform, citing Davis & Co. v. Morgan (17) as precedent. In Davis, a laborer employed for a year at $40 per month was offered $65 per month by another company. The employer then promised to pay the employee an additional $120 at the end of the year if he stayed with the firm. At the end of the year, the employer failed to pay the $120, and when the employee sued, the court held that because he was already obligated to work for $40 per month for the year, there was no consideration for the employer's promise; hence, it was unenforceable. (18) The FRA argues that this is exactly analogous to the present controversy. The professor was already obligated to deliver the lecture for $500. Therefore, there was no consideration for the FRA's promise to pay an additional $500 and the promise is unenforceable. The professor claims that in the instant case, the original contract was rescinded and a new one negotiated, citing Schwartzreich v. Bauman-Basch, Inc. (19) as precedent. In Schwartzreich, a clothing designer who had contracted for a year's work at $90 per week was subsequently offered $115 per week by another company. When the designer informed his employer of his intention to leave, the employer offered the designer $100 per week if he would stay and the designer agreed. When the designer sued for the additional compensation, the court held that since the parties had simultaneously rescinded the original contract by mutual consent and entered into a new one for the higher salary, the promise to pay was enforceable. (20) The professor argues that this is exactly analogous to the present controversy. When the FRA offered to pay her an additional $500 to give the lecture, they were obviously offering to rescind the former contract and enter a new one on different terms. Hence, the promise to pay the extra $500 is enforceable. Following oral argument, the judges retire to consider their ruling. Arnie, mindful of his agreement with Ann, is scrupulously careful not to let political considerations enter into his analysis of the case. Thus, he begins by asking himself why society needs contract law in the first place. He decides that the objective, nonpolitical answer is obviously that society needs some mechanism to ensure that individuals honor their voluntarily undertaken commitments. From this perspective, the resolution of the present case is clear. Since the professor is obviously threatening to go back on her voluntarily undertaken commitment in order to extort more money from the FRA, Arnie characterizes the case as one in which a promise has been made to pay more for services which the professor is already contractually bound to perform, and decides that the promise is unenforceable. Hence, he votes to overturn the trial court's decision. Ann, also mindful of her agreement with Arnie, is meticulous in her efforts to ensure that she decides this case purely on the law. Accordingly, she begins her analysis by asking herself why society needs contract law in the first place. She decides that the objective, nonpolitical answer is obviously that it provides an environment within which people can exercise the freedom to arrange their lives as they see fit. From this perspective, the resolution of the present case is clear. Since the FRA is essentially attempting to prevent the professor from arranging her life as she sees fit, Ann characterizes the case as one in which the parties have simultaneously rescinded an existing contract and negotiated a new one, and decides that the promise is enforceable. Hence, she votes to uphold the trial court's decision. This once again leaves the deciding vote up to Bennie, who has no idea why society needs contract law, but thinks that the professor is taking advantage of the situation in an unfair way and votes to overturn the trial court's ruling. Both Arnie and Ann now believe that the other is an incorrigible ideologue who is destined to torment him or her throughout his or her judicial existence. Each is quite unhappy at the prospect. Each blames the other for his or her unhappiness. But, in fact, the blame lies within each. For they have never learned Professor Kingsfield's lesson that it is impossible to reach an objective decision based solely on the law. This is because the law is always open to interpretation and there is no such thing as a normatively neutral interpretation. The way one interprets the rules of law is always determined by one's underlying moral and political beliefs. VI. I have been arguing that the law is not a body of determinate rules that can be objectively and impersonally applied by judges; that what the law prescribes is necessarily determined by the normative predispositions of the one who is interpreting it. In short, I have been arguing that law is inherently political. If you, my reader, are like most people, you are far from convinced of this. In fact, I dare say I can read your thoughts. You are thinking that even if I have shown that the present legal system is somewhat indeterminate, I certainly have not shown that the law is inherently political. Although you may agree that the law as presently constituted is too vague or contains too many contradictions, you probably believe that this state of affairs is due to the actions of the liberal judicial activists, or the Reaganite adherents of the doctrine of original intent, or the self-serving politicians, or the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (feel free to fill in your favorite candidate for the group that is responsible for the legal system's ills). However, you do not believe that the law must be this way, that it can never be definite and politically neutral. You believe that the law can be reformed; that to bring about an end to political strife and institute a true rule of law, we merely need to create a legal system comprised of consistent rules that are expressed in clear, definite language. It is my sad duty to inform you that this cannot be done. Even with all the good will in the world, we could not produce such a legal code because there is simply no such thing as uninterpretable language. Now I could attempt to convince you of this by the conventional method of regaling you with myriad examples of the manipulation of legal language (e.g., an account of how the relatively straightforward language of the Commerce Clause giving Congress the power to "regulate Commerce . . . among the several States" (21) has been interpreted to permit the regulation of both farmers growing wheat for use on their own farms (22) and the nature of male-female relationships in all private businesses that employ more than fifteen persons (23)). However, I prefer to try a more direct approach. Accordingly, let me direct your attention to the quiz you completed at the beginning of this Article. Please consider your responses.

#### Consensus of legal opinion doesn’t prove objectivity but instead shows how conservative and ideologically narrow the typical judge is; accepting the “stability” of the rule of law makes radical change impossible

**Hasnas 95**

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I have been arguing that the law is inherently indeterminate, and further, that this may not be such a bad thing. I realize, however, that you may still not be convinced. Even if you are now willing to admit that the law is somewhat indeterminate, you probably believe that I have vastly exaggerated the degree to which this is true. After all, it is obvious that the law cannot be radically indeterminate. If this were the case, the law would be completely unpredictable. Judges hearing similar cases would render wildly divergent decisions. There would be no stability or uniformity in the law. But, as imperfect as the current legal system may be, this is clearly not the case. The observation that the legal system is highly stable is, of course, correct, but it is a mistake to believe that this is because the law is determinate. The stability of the law derives not from any feature of the law itself, but from the overwhelming uniformity of ideological background among those empowered to make legal decisions. Consider who the judges are in this country. Typically, they are people from a solid middle- to upper-class background who performed well at an appropriately prestigious undergraduate institution; demonstrated the ability to engage in the type of analytical reasoning that is measured by the standardized Law School Admissions Test; passed through the crucible of law school, complete with its methodological and political indoctrination; and went on to high-profile careers as attorneys, probably with a prestigious Wall Street-style law firm. To have been appointed to the bench, it is virtually certain that they were both politically moderate and well-connected, and, until recently, white males of the correct ethnic and religious pedigree. It should be clear that, culturally speaking, such a group will tend to be quite homogeneous, sharing a great many moral, spiritual, and political beliefs and values. Given this, it can hardly be surprising that there will be a high degree of agreement among judges as to how cases ought to be decided. But this agreement is due to the common set of normative presuppositions the judges share, not some immanent, objective meaning that exists within the rules of law. In fact, however, the law is not truly stable, since it is continually, if slowly, evolving in response to changing social mores and conditions. This evolution occurs because each new generation of judges brings with it its own set of "progressive" normative assumptions. As the older generation passes from the scene, these assumptions come to be shared by an ever-increasing percentage of the judiciary. Eventually, they become the consensus of opinion among judicial decisionmakers, and the law changes to reflect them. Thus, a generation of judges that regarded "separate but equal" as a perfectly legitimate interpretation of the Equal Protection Clause of the Fourteenth Amendment (31) gave way to one which interpreted that clause as prohibiting virtually all governmental actions that classify individuals by race, which, in turn, gave way to one which interpreted the same language to permit "benign" racial classifications designed to advance the social status of minority groups. In this way, as the moral and political values conventionally accepted by society change over time, so too do those embedded in the law. The law appears to be stable because of the slowness with which it evolves. But the slow pace of legal development is not due to any inherent characteristic of the law itself. Logically speaking, any conclusion, however radical, is derivable from the rules of law. It is simply that, even between generations, the range of ideological opinion represented on the bench is so narrow that anything more than incremental departures from conventional wisdom and morality will not be respected within the profession. Such decisions are virtually certain to be overturned on appeal, and thus, are rarely even rendered in the first instance. Confirming evidence for this thesis can be found in our contemporary judicial history. Over the past quarter-century, the "diversity" movement has produced a bar, and concomitantly a bench, somewhat more open to people of different racial, sexual, ethnic, and socio-economic backgrounds. To some extent, this movement has produced a judiciary that represents a broader range of ideological viewpoints than has been the case in the past. Over the same time period, we have seen an accelerated rate of legal change. Today, long-standing precedents are more freely overruled, novel theories of liability are more frequently accepted by the courts, and different courts hand down different, and seemingly irreconcilable, decisions more often. In addition, it is worth noting that recently, the chief complaint about the legal system seems to concern the degree to which it has become "politicized." This suggests that as the ideological solidarity of the judiciary breaks down, so too does the predictability of legal decisionmaking, and hence, the stability of the law. Regardless of this trend, I hope it is now apparent that to assume that the law is stable because it is determinate is to reverse cause and effect. Rather, it is because the law is basically stable that it appears to be determinate. It is not rule of law that gives us a stable legal system; it is the stability of the culturally shared values of the judiciary that gives rise to and supports the myth of the rule of law.

#### The state wants you to believe in the so-called “rule of law” so that it can ensure its authority is unquestioned—this props up an oppressive power structure where state violence is conducted in the name of “impartial application of the law”

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IX. It is worth noting that there is nothing new or startling about the claim that the law is indeterminate. This has been the hallmark of the Critical Legal Studies movement since the mid-1970s. The "Crits," however, were merely reviving the earlier contention of the legal realists who made the same point in the 1920s and 30s. And the realists were themselves merely repeating the claim of earlier jurisprudential thinkers. For example, as early as 1897, Oliver Wendell Holmes had pointed out: The language of judicial decision is mainly the language of logic. And the logical method and form flatter that longing for certainty and for repose which is in every human mind. But certainty generally is illusion, and repose is not the destiny of man. Behind the logical form lies a judgment as to the relative worth and importance of competing legislative grounds, often an inarticulate and unconscious judgment, it is true, and yet the very root and nerve of the whole proceeding. You can give any conclusion a logical form. (32) This raises an interesting question. If it has been known for 100 years that the law does not consist of a body of determinate rules, why is the belief that it does still so widespread? If four generations of jurisprudential scholars have shown that the rule of law is a myth, why does the concept still command such fervent commitment? The answer is implicit in the question itself, for the question recognizes that the rule of law is a myth and like all myths, it is designed to serve an emotive, rather than cognitive, function. The purpose of a myth is not to persuade one's reason, but to enlist one's emotions in support of an idea. And this is precisely the case for the myth of the rule of law; its purpose is to enlist the emotions of the public in support of society's political power structure. People are more willing to support the exercise of authority over themselves when they believe it to be an objective, neutral feature of the natural world. This was the idea behind the concept of the divine right of kings. By making the king appear to be an integral part of God's plan for the world rather than an ordinary human being dominating his fellows by brute force, the public could be more easily persuaded to bow to his authority. However, when the doctrine of divine right became discredited, a replacement was needed to ensure that the public did not view political authority as merely the exercise of naked power. That replacement is the concept of the rule of law. People who believe they live under "a government of laws and not people" tend to view their nation's legal system as objective and impartial. They tend to see the rules under which they must live not as expressions of human will, but as embodiments of neutral principles of justice, i.e., as natural features of the social world. Once they believe that they are being commanded by an impersonal law rather than other human beings, they view their obedience to political authority as a public-spirited acceptance of the requirements of social life rather than mere acquiescence to superior power. In this way, the concept of the rule of law functions much like the use of the passive voice by the politician who describes a delict on his or her part with the assertion "mistakes were made." It allows people to hide the agency of power behind a facade of words; to believe that it is the law which compels their compliance, not self-aggrandizing politicians, or highly capitalized special interests, or wealthy white Anglo-Saxon Protestant males, or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (fill in your favorite culprit). But the myth of the rule of law does more than render the people submissive to state authority; it also turns them into the state's accomplices in the exercise of its power. For people who would ordinarily consider it a great evil to deprive individuals of their rights or oppress politically powerless minority groups will respond with patriotic fervor when these same actions are described as upholding the rule of law. Consider the situation in India toward the end of British colonial rule. At that time, the followers of Mohandas Gandhi engaged in nonviolent civil disobedience by manufacturing salt for their own use in contravention of the British monopoly on such manufacture. The British administration and army responded with mass imprisonments and shocking brutality. It is difficult to understand this behavior on the part of the highly moralistic, ever-so-civilized British unless one keeps in mind that they were able to view their activities not as violently repressing the indigenous population, but as upholding the rule of law. The same is true of the violence directed against the nonviolent civil rights protestors in the American South during the civil rights movement. Although much of the white population of the southern states held racist beliefs, one cannot account for the overwhelming support given to the violent repression of these protests on the assumption that the vast majority of the white Southerners were sadistic racists devoid of moral sensibilities. The true explanation is that most of these people were able to view themselves not as perpetuating racial oppression and injustice, but as upholding the rule of law against criminals and outside agitators. Similarly, since despite the . 60s rhetoric, all police officers are not "fascist pigs," some other explanation is needed for their willingness to participate in the "police riot" at the 1968 Democratic convention, or the campaign of illegal arrests and civil rights violations against those demonstrating in Washington against President Nixon's policies in Vietnam, or the effort to infiltrate and destroy the sanctuary movement that sheltered refugees from Salvadorian death squads during the Reagan era or, for that matter, the attack on and destruction of the Branch Davidian compound in Waco. It is only when these officers have fully bought into the myth that "we are a government of laws and not people," when they truly believe that their actions are commanded by some impersonal body of just rules, that they can fail to see that they are the agency used by those in power to oppress others. The reason why the myth of the rule of law has survived for 100 years despite the knowledge of its falsity is that it is too valuable a tool to relinquish. The myth of impersonal government is simply the most effective means of social control available to the state.

#### Even if we could have some definitive, consistent body of rules that are impartially applied, why should we? Embracing law’s indeterminacy is the only way to ensure justice and fairness

**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

Let us assume that I have failed to convince you of the impossibility of reforming the law into a body of definite, consistent rules that produces determinate results. Even if the law could be reformed in this way, it clearly should not be. There is nothing perverse in the fact that the law is indeterminate. Society is not the victim of some nefarious conspiracy to undermine legal certainty to further ulterior motives. As long as law remains a state monopoly, as long as it is created and enforced exclusively through governmental bodies, it must remain indeterminate if it is to serve its purpose. Its indeterminacy gives the law its flexibility. And since, as a monopoly product, the law must apply to all members of society in a one-size-fits-all manner, flexibility is its most essential feature. It is certainly true that one of the purposes of law is to ensure a stable social environment, to provide order. But not just any order will suffice. Another purpose of the law must be to do justice. The goal of the law is to provide a social environment which is both orderly and just. Unfortunately, these two purposes are always in tension. For the more definite and rigidly- determined the rules of law become, the less the legal system is able to do justice to the individual. Thus, if the law were fully determinate, it would have no ability to consider the equities of the particular case. This is why even if we could reform the law to make it wholly definite and consistent, we should not. Consider one of the favorite proposals of those who disagree. Those who believe that the law can and should be rendered fully determinate usually propose that contracts be rigorously enforced. Thus, they advocate a rule of law stating that in the absence of physical compulsion or explicit fraud, parties should be absolutely bound to keep their agreements. They believe that as long as no rules inconsistent with this definite, clearly-drawn provision are allowed to enter the law, politics may be eliminated from contract law and commercial transactions greatly facilitated. Let us assume, contrary to fact, that the terms "fraud" and "physical compulsion" have a plain meaning not subject to interpretation. The question then becomes what should be done about Agnes Syester. (25) Agnes was "a lonely and elderly widow who fell for the blandishments and flattery of those who" ran an Arthur Murray Dance Studio in DesMoines, Iowa. (26) This studio used some highly innovative sales techniques to sell this 68-year-old woman 4,057 hours of dance instruction, including three life memberships and a course in Gold Star dancing, which was "the type of dancing done by Ginger Rogers and Fred Astair only about twice as difficult," (27) for a total cost of $33,497 in 1960 dollars. Of course, Agnes did voluntarily agree to purchase that number of hours. Now, in a case such as this, one might be tempted to "interpret" the overreaching and unfair sales practices of the studio as fraudulent (28) and allow Agnes to recover her money. However, this is precisely the sort of solution that our reformed, determinate contract law is designed to outlaw. Therefore, it would seem that since Agnes has voluntarily contracted for the dance lessons, she is liable to pay the full amount for them. This might seem to be a harsh result for Agnes, but from now on, vulnerable little old ladies will be on notice to be more careful in their dealings. Or consider a proposal that is often advanced by those who wish to render probate law more determinate. They advocate a rule of law declaring a handwritten will that is signed before two witnesses to be absolutely binding. They believe that by depriving the court of the ability to "interpret" the state of mind of the testator, the judges' personal moral opinions may be eliminated from the law and most probate matters brought to a timely conclusion. Of course, the problem then becomes what to do with Elmer Palmer, a young man who murdered his grandfather to gain the inheritance due him under the old man's will a bit earlier than might otherwise have been the case. (29) In a case such as this, one might be tempted to deny Elmer the fruits of his nefarious labor despite the fact that the will was validly drawn, by appealing to the legal principle that no one should profit from his or her own wrong. (30) However, this is precisely the sort of vaguely-expressed counter-rule that our reformers seek to purge from the legal system in order to ensure that the law remains consistent. Therefore, it would seem that although Elmer may spend a considerable amount of time behind bars, he will do so as a wealthy man. This may send a bad message to other young men of Elmer's temperament, but from now on the probate process will be considerably streamlined. The proposed reforms certainly render the law more determinate. However, they do so by eliminating the law's ability to consider the equities of the individual case. This observation raises the following interesting question: If this is what a determinate legal system is like, who would want to live under one? The fact is that the greater the degree of certainty we build into the law, the less able the law becomes to do justice. For this reason, a monopolistic legal system composed entirely of clear, consistent rules could not function in a manner acceptable to the general public. It could not serve as a system of justice.

#### Ignoring the rule of law’s violent underside fuels Western imperialism and the violence that comes with it

**Dossa 99**

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a brute, recurring fact. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But law's rhetoric on its own behalf systematically scants law's violent, dark underside, it skillfully masks law's commerce with destruction and death. None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, despite empirical evidence to the contrary.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other.

#### Jury nullification subverts the rule of law and exposes its indeterminacy—the aff’s endorsement of 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**

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 African-Americans 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 an African-American 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 African-Americans 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.

#### (IF TIME) Jury null is key to erode the State from within and bring it crashing down—jurors must follow their conscience because the rule of law should not be the baseline for what is moral

**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.

#### The role of the ballot is to endorse the debater who best exposes the inner workings of power – this is best for intellectuals

Steele 10:

Brent Steele (Associate Professor of Political Science at the University of Kansas), Defacing Power: The Aesthetics of Insecurity in Global Politics pg 130-132, dml) [gender/ableist language modified with brackets]

When facing these dire warnings regarding the manner in which academic-intellectuals are seduced by power, what prospects exist for parrhesia? How can academic-intellectuals speak “truth to power”? It should be noted, first, that the academic-intellectual’s primary purpose should not be to re-create a program to replace power or even to develop a “research program that could be employed by students of world politics,” as Robert Keohane (1989: 173) once advised the legions of the International Studies Association. Because academics are denied the “full truth” from the powerful, Foucault states, we must avoid a trap into which governments would want intellectuals to fall (and often they do): “Putyourself in our place **and tell us what you would do**.” This is **not a question** in which one has to answer. To make a decision on any matter requires a knowledge of the facts **refused us**, an analysis of the situation we aren’t allowed to make. There’s the trap. (2001: 453) 27 This means that any alternative order we might provide, this hypothetical “research program of our own,” will also become imbued with authority and **used for mechanisms of control**, a matter I return to in the concluding chapter of this book. When linked to a theme of counterpower, academic-intellectual parrhesia suggests, instead, that the academic should use his or her pulpit, their position in society, to be a “friend” “who plays the role of a parrhesiastes, of a truth-teller” (2001: 134). 28 When speaking of then-president Lyndon Johnson, Morgenthau gave a bit more dramatic and less amiable take that contained the same sense of urgency. What the President needs, then, is an intellectual ~~father~~-confessor, who dares to remind him[/her] of **the brittleness of power**, of its arrogance and ~~blindness~~ [ignorance], of its **limits** and **pitfalls**; who tells him[/her] how empires rise, decline and fall, how power turns to folly, empires to ashes. He[/she] ought to **listen to that voice** and **tremble**. (1970: 28) The primary purpose of the academic-intellectual is therefore not to just effect a moment of counterpower through parrhesia, let alone stimulate that heroic process whereby power realizes the error of its ways. So those who are skeptical that academics ever really, regarding the social sciences, make “that big of a difference” are **miss**ing **the point**. As we bear witness to what unfolds in front of us and collectively analyze the testimony of that which happened before us, the purpose of the academic is to “**tell the story**” of what actually happens, to document and faithfully capture both history’s events and context. “The intellectuals of America,” Morgenthau wrote, “can do only one thing: live by the standard of truth that is their peculiar responsibility as intellectuals and by which men of power will ultimately be judged as well” (1970: 28). This will take time, 29 but if this happens, if we seek to uncover and practice telling the truth free from the “tact,” “**rules**,” and seduction that constrain its telling, then, as Arendt notes, “humanly speaking, no more is required, and no more can reasonably be asked, for this planet to remain a place fit for human habitation” ([1964] 2006: 233).

### 1AR v ADAM

**Order: case, kritik, DA**

#### Case

1. Extend Steele - The Role of the Ballot means that we not only have to identify power but how it operates – the AC does this by calling for retaliation against the myth of the rule of law, the means by which the state sustains support of oppressive politics towards “undesirable” groups
2. The rule of law is a myth, even if it’s good, it doesn’t exist so there’s no neg offense on rule of law
   1. Hasnas’ example of the relative killing for a will formed through a legal agreement displays how the law can produce something good (i.e. the will) but even those goods result in subjective evils before the law (i.e. the killing)
   2. If the rule of law is a myth, all of your advantages are just palliatives to stop change, that is a case turn to the neg under the role of the ballot.
3. Even if it exists, determinant rule of law is bad
   1. Static conceptions of rules undermines our ability to attend to the particulars of each case – that kills fair treatment of defendents and undermines the basis of “nonarbitrariness” that the neg defends
   2. invoking the rule of law is what’s enable oppressive state institutions to conceal their violence against oppressed communities, how civil rights movement protesters were hosed by police in the name of “social stability” proves – that’s Spohn and Hemmens

**Line-by-Line**

1. AC Outweighs - For every Kim Davis there’s many more racially sentenced under laws that don’t equally apply to them because the law has been interpreted against them – Hasnas and DA proves. They also claim this is key to non-arbitrariness however the AC proves that normative application without attention to case particulars *is* arbitrary because the question of the specificities in a case is never answered
2. AT Williams – Hasnas’ critique of judges proves that your “impartial legal framework” is dominated by privileged judges who manipulate interpretable law to their will, that’s not impartial
3. Their Rose evidence claims rule of law is a prereq to social movements however this is categorically false when the AC shows how jurors can simply just nullify to subvert power in the squo. Also their claims that the law limits government is only true insofar as it isn’t the government making those laws which is the squo.

#### Kritik

1. No Link – I only endorse the ideology of the myth of the rule of law, not Hasnas’ entire political compass
2. Not a palliative – it being a palliative assumes that society knows there’s a problem and that the aff seemingly solves it, Hasnas is very clear that the majority of the public uses embedded doublethink to justify the rule of law, the aff is the methodology needed to expose that there is a problem in the first place.
3. Perm do the aff then the alt – Mclaren says we need to “understand the systemic nature of exploitation”, Hasnas’ critique of judges is based on how they’re structurally fed to the criminal justice system from the upper class, the aff is an epistemic prereq to the perm because it informs the proletariat as to how they’re exploited – this is also a no link argument because Hasnas is very specific about class privileges certain actors in the CJS
4. Alt Alone Fails – alt has no method just says we should theorize and “search for the cracks in the edifice of capital” we searched and found it, it’s the aff
5. And if the aff solves the k this begs the question of why the hell they’re reading rule of law good even if it’s condo – condo is a voting issue under the role of the ballot because they aren’t actually trying to determine how power operates, they just want to win the round with contradictory arguments. Their Rose evidence says rule of law is key to limited government, the same type of government that refuses to restrict the free market that oppresses workers. They’re McLaren evidence says pedagogical spaces are key, I agree, you should not endorse contradictory views on the law because their call for change isn’t genuine.

#### DA

1. No Link - Jury Nullification can’t sentence anyone, JN only leads to acquittals so their impacts are nonunique
2. Turn – racist death sentences are prescribed by racist judges, the AC reveals the indeterminacy behind their racialized logic grounded in “impartial” laws
   1. This is why I outweigh under the role of the ballot, the NC can only point to oppression but can never stop it, the AC is an interrogation of the means by which powerful actors enforce themselves

### Framing Issues

1. The rule of law is a myth, even if it’s good, it doesn’t exist so there’s no neg offense on rule of law
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### Extra

#### Ignoring the rule of law’s violent underside fuels Western imperialism and the violence that comes with it

**Dossa 99**

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a brute, recurring fact. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But law's rhetoric on its own behalf systematically scants law's violent, dark underside, it skillfully masks law's commerce with destruction and death. None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, despite empirical evidence to the contrary.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other.

### AT Anarchy

#### Jury null is key to erode the State from within and bring it crashing down—jurors must follow their conscience because the rule of law should not be the baseline for what is moral

**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/>

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#### The government’s imposition of a uniform legal code is a flawed form of one-size-fits-all rule-making—rules should arise organically out of local communities

**Hasnas 8**

John Hasnas. "The Obviousness of Anarchy." Anarchism/Minarchism: Is a Government Part of a Free Country?. Ed. Roderick Long & Tibor Machan. : Ashgate Press, 2008: 111-131

Uniformity Supporters of government claim that government is necessary to ensure that there is one law for all and that the law applies equally to all citizens. If the government does not make the law, they contend, there would be no uniform code of laws. People in different locations or with different cultural backgrounds or levels of wealth would be subject to different rules of law. The proper response to this is probably the one Woody Allen made to Diane Keaton in Annie Hall when she complained that her apartment had bad plumbing and bugs, which was: “You say that as though it is a negative thing.” How persuasive is the following argument? Government is necessary to ensure that there is one style of dress for all and that all citizens are equally clothed. If the government does not provide clothes, there would be no uniform mode of dress. People in different locations or with different cultural backgrounds or levels of wealth would be clothed in garments of different styles and quality. Why would anyone think that uniformity in law is any more desirable than uniformity in dress? The quest for uniformity leads us to treat the loving husband who kills his terminally ill wife to relieve her suffering the same way we treat Charles Manson, to apply the same rules of contracting to sophisticated business executives purchasing corporations and semi-literate consumers entering into installment contracts, and to act as though the slum lord in the Bronx and the family letting their spare room in Utica should be governed by the same rules of property law. There are, of course, certain rules that must apply to all people; those that provide the basic conditions that make cooperative behavior possible. Thus, rules prohibiting murder, assault, theft, and other forms of coercion must be equally binding on all members of a society. But we hardly need government to ensure that this is the case. These rules always evolve first in any community; you would not even have a community if this were not the case. The idea that we need government to ensure a uniform rule of law is especially crazy in the United States, in which the federal structure of the state and national governments is designed to permit legal diversity. To the extent that the law of the United States can claim any superiority to that produced by other nations, it is at least partially due the fact that it was generated by the common law process in the “laboratory of the states.” Allowing the development of different rules in different states teaches us which rules most effectively resolve disputes. To the extent that the conditions that give rise to disputes are the same across the country, the successful rules tend to be copied by other jurisdictions and spread. This creates a fairly uniform body of law.10 To the extent that the conditions that give rise to disputes are peculiar to a particular location or milieu, they do not spread. This creates a patchwork of rules that are useful where applied, but would be irrelevant or disruptive if applied in other settings. One of the beauties of the common law process is that it creates a body of law that is uniform where uniformity is useful and diverse where it is not. This is the optimal outcome. Government legislation, in contrast, creates uniformity by imposing ill-fitting, one-size-fits-all rules upon a geographically and ethnically diverse population. Once again, not only is government not necessary to the creation of a well-functioning body of law, it is a significant impediment to it. Please consider this the next time you find yourself wondering why all businesses must be closed on Sunday in the Orthodox Jewish sections of Brooklyn.

#### Anarchy is obvious! Rules can develop out of spontaneous human interaction and do not need to be imposed from the top-down

**Hasnas 8**

John Hasnas. "The Obviousness of Anarchy." Anarchism/Minarchism: Is a Government Part of a Free Country?. Ed. Roderick Long & Tibor Machan. : Ashgate Press, 2008: 111-131

Introduction In this chapter, I have been asked to present an argument for anarchy. This is an absurdly easy thing to do. In fact, it is a task that can be discharged in two words – look around. However, because most of us, like Dr. Watson, see without observing the significance of what we see, some commentary is required. Anarchy refers to a society without a central political authority. But it is also used to refer to disorder or chaos. This constitutes a textbook example of Orwellian newspeak in which assigning the same name to two different concepts effectively narrows the range of thought. For if lack of government is identified with the lack of order, no one will ask whether lack of government actually results in a lack of order. And this uninquisitive mental attitude is absolutely essential to the case for the state. For if people were ever to seriously question whether government is really productive of order, popular support for government would almost instantly collapse. The identification of anarchy with disorder is not a trivial matter. The power of our conceptions to blind us to the facts of the world around us cannot be gainsaid. I myself have had the experience of eating lunch just outside Temple University’s law school in North Philadelphia with a brilliant law professor who was declaiming upon the absolute necessity of the state provision of police services. He did this just as one of Temple’s uniformed private armed guards passed by escorting a female student to the Metro stop in this crime-ridden neighborhood that is vastly underserved by the Philadelphia police force. A wise man once told me that the best way to prove that something is possible is to show that it exists. This is the strategy I shall adopt in this chapter. I intend to show that a stable, successful society without government can exist by showing that it has, and to a large extent, still does. Defining Terms and Limitations I am presenting an argument for anarchy in the true sense of the term; that is, a society without government, not a society without governance. There is no such thing as a society without governance. A society with no mechanism for bringing order to human existence is oxymoronic; it is not “society” at all. One way to bring order to society is to invest some people with the exclusive power to create and coercively enforce rules which all members of society must follow; that is, to create a government. Another way to bring order to society is to allow people to follow rules that spontaneously evolve through human interaction with no guiding intelligence and may be enforced by diverse agencies. This chapter presents an argument for the latter approach; that is, for a spontaneously ordered rather than a centrally planned society. In arguing for anarchy, I am arguing that a society without a central political authority is not only possible but desirable. That is all I am doing, however. I am not arguing for a society without coercion. I am not arguing for a society that abides by the libertarian non-aggression principle or any other principle of justice. I am not arguing for the morally ideal organisation of society. I am not arguing for utopia. What constitutes ideal justice and the perfectly just society is a fascinating philosophical question, but it is one that is irrelevant to the current pursuit. I am arguing only that human beings can live together successfully and prosper in the absence of a centralised coercive authority. To make the case for anarchy, that is all that is required. An additional limitation on my argument is that I do not address the question of national defense. There are two reasons for this. One is the logical one that a society without government is a society without nations. In this context, “national” defense is a meaningless concept. If you wish, you may see this as an assertion that an argument for anarchy is necessarily an argument for global anarchy. I prefer to see it merely as the recognition that human beings, not nations, need defense. The more significant reason, however, is that I regard the problem of national defense as trivial for reasons I will expand upon subsequently.

**Anarchist movements are key to Black liberation, ceding authority always risks whiteness coopting it. Alston 03:**

Ashanti Alston (Black Anarchist) “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.

#### The AC doesn’t result in anarchy; our specific approach only expands and promotes existing forms of communitarian justice.

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So, what would a free market in legal services be like? As Sherlock Holmes would regularly say to the good doctor, "You see, Watson, but you do not observe." Examples of nonstate law are all around us. Consider labor-management collective bargaining agreements. In addition to setting wage rates, such agreements typically determine both the work rules the parties must abide by and the grievance procedures they must follow to resolve disputes. In essence, such contracts create the substantive law of the workplace as well as the workplace judiciary. A similar The Nationa Law Journal has noted that "Much of corporate America is creating its own private business`courts' that are far removed from the public courthouses." William H. Schroder, Jr. Private ADR May Offer Increased Confidentiality, NAT'L L. J., July 25, 1994, at C14. 39 situation exists with regard to homeowner agreements which create both the rules and dispute settlement procedures within a condominium or housing development, i.e., the law and judicial procedure of the residential community. Perhaps a better example is supplied by universities. These institutions create their own codes of conduct for both students and faculty that cover everything from academic dishonesty to what constitutes acceptable speech and dating behavior. In addition, they not only devise their own elaborate judicial procedures to deal with violations of these codes, but typically supply their own campus police forces as well. A final example may be supplied by the many commercial enterprises that voluntarily opt out of the state judicial system by writing clauses in their contracts that require disputes to be settled through binding arbitration or mediation rather than through a lawsuit. In this vein, the variegated "legal" procedures that have recently been assigned the sobriquet of Alternative Dispute Resolution (ADR) do a good job of suggesting what a free market in legal service might be like. Of course, it is not merely that we fail to observe what is presently all around us. We also act as though we have no knowledge of our own cultural or legal history. Consider, for example, the situation of African-American communities in the segregated South or the immigrant communities in New York in the first quarter of the twentieth century. Because of prejudice, poverty and the language barrier, these groups were essentially cut off from the state legal system. And yet, rather than disintegrate into chaotic disorder, they were able to privately supply themselves with the rules of behavior and dispute-settlement procedures necessary to maintain peaceful, stable, and highly structured communities. Furthermore, virtually none of the law that orders our interpersonal relationships was produced by the intentional actions of central governments. Our commercial law arose almost entirely from the Law Merchant, a nongovernmental set of rules and procedures developed by merchants to quickly and peacefully resolve disputes and facilitate commercial relations. Property, tort, and criminal law are all the products of common law processes by which rules of behavior evolve out of and are informed by the particular circumstances of actual human controversies. In fact, a careful study of Anglo American legal history will demonstrate that almost all of the law which facilitates peaceful human interaction arose in this way. On the other hand, the source of the law which produces oppression and social division is almost always the state. Measures that impose religious or racial intolerance, economic exploitation, one group's idea of "fairness," or another's of "community" or "family" values virtually always originate in legislation, the law consciously made by the central government. If the purpose of the law really is to bring order to human existence, then it is fair to say that the law actually made by the state is precisely the law that does not work.

### AT Theory

#### THIS AFF IS AN IMPACT TURN TO THEORY

#### [THE ROLE OF THE BALLOT FILTERS WHAT TYPES OF EDUCATION SHOULD COME FIRST TO THE JUDGE, OUR ARGUMENT IS THAT YOU MUST A TRUTH-TELLER WHO IDENTIFIES HOW POWER OPERATES – THIS CHECKS BACK POWERFUL ACTORS. THEREFORE WE LINK TURN NORM CREATION]

#### THE RULE OF LAW AS IT EXISTS IS THEORY IN LD TODAY, THE RULES OF DEBATE ARE NOT ABSOLUTE, THEORY PROVES THAT BROAD RULES CHANGE EVERY ROUND AND ARE APPLIED DIFFERENT. THEY HAVE OTHERIZED THE 1AC AND DEEMED IT WHOLLY NOT WORTHY OF BEING IN DEBATE, THAT SORT OF IDEOLOGICAL IMPERIALISM IS THE SAME WARRANT IN DOSSA – THAT MEANS THEORY IS A DA TO VOTING NEG UNDER THE ROLE OF THE BALLOT.

#### I’M GOING TO CROSS APPLY A FEW MORE ARGUMENTS FROM THE AFF

#### THERE’S NO SUCH THING AS UNINTERPRETABLE LANGUAGE THAT MEANS THE INTERP CAN BE USED FOR ANY MEANS NECCESARY TO WIN THE ROUND – THAT’S HASNAS. TO CORRECT THAT WE SHOULD LOOK AT THE SPIRIT OF THE INTERP AND NOT IT’S DIRECT LANGUAGE, IT’S THAT TRUE IT IS RIDICULOUS TO DROP THE 1AC IF WE’RE REASONABLEY TOPICAL/FAIR/EDUCATIONAL

#### FAIRNESS TURN: OUR LAST PIECE OF HASNAS EVIDENCE INDICATES THAT A STATIC RULE OF LAW IS HORRID FOR FAIRNESS BECAUSE THE ENTIRETY OF A COMMUNITY DOESN’T AGREE ON THOSE NORMS. THE WAY THE NEG MAKES THE LAW, DOESN’T ENGAGE IN ANY PRIOR DISCUSSION ABOUT IT’S MERIT WITH PEERS, AND THEN SAYS I SHOULD BE PUNISHED FOR IT IS THE TYPE OF EX POST FACTO LAWMAKING THE SYSTEM ALLOWS.

#### AT Inform

Even if T inform is gen true we shouldn’t punish this aff bc this aff is just ‘jury null is a gen good idea’, this aff is core of the topic lit if you can’t stand up and read rule of law good then you don’t deserve to win debates. We’re k2 to topical education and we only have 2 months to debate that topic, even if your issue is important ideological whole rez affs are an essential part of the topic lit. I would have said yes in CX.

#### AT Spec

Even if this is good in most cases spirit of the law my case is engagable and educational. For them to win an abuse claim they need to quantifying their lost ground, the wont give you the topical version of the aff because the aff is topical.

### AT Epistemology Bad

**That’s not the type of epistemic approach our role of the ballot takes. Maybe this is true of fuck fuck critical theory but the aff is germane. We ground our theorizing in real world solutions and historical empirics. Steele specifically says real world actors like the president need intellectuals who are trained in exposing power to keep them grounded.**

### 1AR v Prison Abolitionism

#### Perm, do both. Either the perm is enough to resolve racist jury selection and the excess of plea bargains, or the alt alone never will.

#### Jury null can be combined with abolitionist pedagogy—the perm is key to transformative change

**Leavitt 12**

Leavitt, Adrien (2012) "Queering Jury Nullification: Using Jury Nullification as a Tool to Fight Against the Criminalization of Queer and Transgender People," Seattle Journal for Social Justice: Vol. 10: Iss. 2, Article 2.

More expansively, queer jurors who are prison abolitionists can use jury nullification to effect transformative change. Simply put, queer abolitionist jurors should always nullify. In this application, jury nullification becomes a highly effective tool to subvert the racist, homophobic, transphobic, violent, and unjust criminal legal system. While this conception of jury nullification is more expansive than Butler’s—and therefore may exceed the logic used by him to show that black jury nullification is morally permissible—abolitionbased queer jury nullification is nonetheless morally justifiable. In fact, abolition-based queer jury nullification furthers Butler’s primary goal of reducing the burden of imprisonment on vulnerable communities. Indeed, as highlighted previously, the collateral consequences of imprisoning queer and trans people are intolerably severe and can only be remedied by the abolishing the prison system and replacing it with a more humane and healing method of addressing antisocial behavior.258 Like black jury nullification, queer jury nullification is morally justifiable due to the continuing and systematic failure of the democratic system in the United States to protect queer people, typified by the criminalization of queer identities. Queer people and their sympathizers should not be morally obligated to enforce a system that perpetrates violence on them and members of their community. While the ideal of the “rule of law” suggests neutral interpretation and application, in reality this is impossible to achieve. As a result, the law cannot lead to justice in every case, making queer jury nullification appropriate to ameliorate the deeply held stereotypes and assumptions made about those who refuse to subscribe to heteronormative sexualities and gender identities. Additionally, queer people’s underrepresentation as legal decision makers had the result of creating a legal system reflecting norms that were not assented to by queers and other political minorities. As in the Magna Carta era, without another method of changing these unjust laws, jury nullification is the appropriate avenue. Finally, regardless of the facts of the case or the law at issue, queer jury nullification is morally justified simply to avoid sending queer people into inherently violent prisons where they are likely to be sexually and physically abused, subjected to verbal harassment and degradation, and forced to endure the physiological punishment of nearly constant segregated isolation.

#### Interim reforms that lead to short-term change are a prerequisite to eventual prison abolition—abolition can’t happen overnight—means only the perm solves

**Shaylor and Chandler 5**

Cassandra Shaylor and Cynthia Chandler (the co-directors of Justice Now, an Oakland-based organization that works with women in prison and local communities to build a safe compassionate world without prison). “Reform and Abolition:

Points of Tension and Connection.” 2005. <http://www.publiceye.org/defendingjustice/organizing/shaylor_reform.html>

We can simultaneously address the needs of people who are suffering in the system currently and challenge the efforts by the Right to co-opt our attempts to change the system by carefully crafting reform strategies that are about diminishing the power of the system and building alternatives to it. For instance, a focus on strategic decarceration is a significant step toward the ultimate abolition of the prison. Such campaigns focus on: implementing a moratorium on prison construction; closing existing prisons; changing laws and sentencing structures that imprison the greatest numbers of people (such as drug laws, three strikes schemes, property offenses, anti-sex work ordinances, etc); and creating community-based institutions that provide services that people need. When implementing such strategies, however, it is important to build them on rhetorical approaches that do not play into the hands of the Right. An example, which often occurs in relation to death penalty and immigrant rights work, is the pitting of non-violent prisoners (those who "deserve" to be released) against violent prisoners (those who do not) or "innocent" prisoners against "guilty" prisoners. Though the number of people who are in prison for violent offenses is extremely small, the first question posed to prison abolitionists is the question of how to respond to harms that people inflict. In response, strategies for creating systems of accountability instead of punishment when someone is harmed can be developed without relying on policing and prison. While the antiprison movement has historically challenged racist policing and imprisonment practices, few strategies have been developed for alternative mechanisms of safety and justice. As a result, the anti-violence movement has struggled to respond to interpersonal violence in an era when policing and prisons are often the only available response. Moreover, through a desire to have the State acknowledge the vulnerability of marginalized groups, anti-violence activists often push for increased criminalization, such as hate crimes legislation, as a response to discrimination. Through these practices, activists interested in protecting vulnerable groups can unintentionally bolster the same systems of oppression and State violence that most often target the groups they are seeking to protect. There is a need to break down barriers between and within the anti-prison and anti-violence movements, to expand the definition of violence to include Statesanctioned violence such as imprisonment, and to create tangible alternatives for establishing true safety and justice. The perceived lack of creative responses to violence has been seized upon by the Right to increase the level of fear about violent crime and present prison as the only response. We know that the numbers of women who are survivors of domestic violence or rape, for instance, have not decreased despite the growing number of people in prison. Therefore, strategies for creating accountability locally and in communities will go a long way to countering the notion that we have no choice but to lock people up. Many of these strategies are in place on a local level and can serve as models for organizers who are developing alternatives to policing and prisons. For instance, Communities Against Rape and Abuse in Seattle develops innovative responses to sexual assault that do not rely on the police; SistaIISista in Brooklyn organizes young women to challenge police abuse through direct action, and Generation Five in San Francisco trains community members to implement responses to child sexual abuse that do not rely on child protective services or the prison system.11 We also can implement changes to language that both ensure that we are not undermining a longer term goal of abolition and reclaim language that has been appropriated by the Right. For instance, we can avoid using language that pits categories of prisoners against each other (innocent vs. guilty, non-violent vs. violent) and we can also reclaim rhetoric that has been used by the Right to grow the system (prisons don't make communities safe but affordable housing, healthcare, food and education do). Questions To Ask When Developing a New Campaign/Slogan/Rhetorical Approach: Are we responding to conditions by calling for more or "better" prisons? Are we calling for new modes of policing that expand surveillance and policing in our communities (for instance electronic monitoring, house arrest, etc.)? Are we calling for more money/staff to go into the system? Does this pit categories of people against each other? Does this approach ultimately undermine the long-term goal of abolition? How can we shift it without losing our goal of addressing current harms so that it doesn't? Can we build into our strategy ways to reframe rhetoric and reclaim language that has been co-opted by the Right, such as "public safety," "safe communities," "violence against women," "compassion," or "family values?" Anti-prison activists inside and outside of prison have unmasked the many ways in which prisons are predicated on racism and violence and have clearly argued that there are better ways to deal with social problems and the harms that people inflict than to lock people in cages. Because historically efforts that relied exclusively on reform served to strengthen the system, it is imperative that we take seriously the call to abolish it. The abolition of the prison is a protracted process, not an overnight transformation. Reforms are necessary on the way to abolition, but as anti-prison activists we need to move away from reform as an endpoint, and we need to consider carefully the impact of short-term goals on the longer-term vision of a world without prisons. Abolition as a goal and strategy allows us to break out of the frame that currently confines our ability to imagine alternatives and pushes us to work strategically toward a world free of the prison industrial complex.

#### The alt doesn’t do shit. It’s just reflection on the violence of the prison system, but doesn’t propose a concrete liberation strategy—only concrete solutions like the aff are productive

**Bryant 12**

Levi, Critique of the Academic Left, <http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/>

I must be in a mood today– half irritated, half amused –because I find myself ranting. Of course, that’s not entirely unusual. So this afternoon I came across a post by a friend quoting something discussing the environmental movement that pushed all the right button. As the post read,¶ For mainstream environmentalism– conservationism, green consumerism, and resource management –humans are conceptually separated out of nature and mythically placed in privileged positions of authority and control over ecological communities and their nonhuman constituents. What emerges is the fiction of a marketplace of ‘raw materials’ and ‘resources’ through which human-centered wants, constructed as needs, might be satisfied. The mainstream narratives are replete with such metaphors [carbon trading!]. Natural complexity,, mutuality, and diversity are rendered virtually meaningless given discursive parameters that reduce nature to discrete units of exchange measuring extractive capacities. Jeff Shantz, “Green Syndicalism”¶ While finding elements this description perplexing– I can’t say that I see many environmentalists treating nature and culture as distinct or suggesting that we’re sovereigns of nature –I do agree that we conceive much of our relationship to the natural world in economic terms (not a surprise that capitalism is today a universal). This, however, is not what bothers me about this passage.¶ What I wonder is just what we’re supposed to do even if all of this is true? What, given existing conditions, are we to do if all of this is right? At least green consumerism, conservation, resource management, and things like carbon trading are engaging in activities that are making real differences. From this passage– and maybe the entire text would disabuse me of this conclusion –it sounds like we are to reject all of these interventions because they remain tied to a capitalist model of production that the author (and myself) find abhorrent. The idea seems to be that if we endorse these things we are tainting our hands and would therefore do well to reject them altogether. The problem as I see it is that this is the worst sort of abstraction (in the Marxist sense) and wishful thinking. Within a Marxo-Hegelian context, a thought is abstract when it ignores all of the mediations in which a thing is embedded. For example, I understand a robust tree abstractly when I attribute its robustness, say, to its genetics alone, ignoring the complex relations to its soil, the air, sunshine, rainfall, etc., that also allowed it to grow robustly in this way. This is the sort of critique we’re always leveling against the neoliberals. They are abstract thinkers. In their doxa that individuals are entirely responsible for themselves and that they completely make themselves by pulling themselves up by their bootstraps, neoliberals ignore all the mediations belonging to the social and material context in which human beings develop that play a role in determining the vectors of their life. They ignore, for example, that George W. Bush grew up in a family that was highly connected to the world of business and government and that this gave him opportunities that someone living in a remote region of Alaska in a very different material infrastructure and set of family relations does not have. To think concretely is to engage in a cartography of these mediations, a mapping of these networks, from circumstance to circumstance (what I call an “onto-cartography”). It is to map assemblages, networks, or ecologies in the constitution of entities. Unfortunately, the academic left falls **prey to its own form of abstraction**. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, **structures, or regimes of attraction would have to be remade to create a workable alternative**. Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work:¶ Well this is sadly how it often is with the academic left. Our plan seems to be as follows: Phase 1: Ultra-Radical Critique Phase 2: ? Phase 3: Revolution and complete social transformation!¶ Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done!¶ But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, **our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals?** We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc.¶ What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle.¶ I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation.¶ “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry. Everyone knows something is wrong. Everyone knows this system is destructive and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

#### Prison abolition is utopian—reforms are better

**Herbert 8**

Nick Herbert (Conservative MP for Arundel and South Downs). “The abolitionists’ criminal conspiracy.” The Guardian. July 27th, 2008. <http://www.theguardian.com/commentisfree/2008/jul/27/prisonsandprobation.youthjustice>

Last week saw an International Conference on Penal Abolition. With such a heady ambition, what can be next? A global conference to abolish crime? The ambition of an eccentric minority to abolish prison isn't just dotty. It's a distraction from a real and pressing agenda, which is to reform prisons which simply aren't working. A century ago, prisons had hard labour and treadmills. Today, they have colour TVs in cells. Jails may have changed, but the enduring truth that they are necessary has not. We will always have a small minority of offenders who, by their behaviour, pose so great a threat to the lives and property of the law-abiding majority that they must be kept apart from us. Ignoring this reality and arguing for the total abolition of prison is a hopelessly utopian goal that does the credibility of penal reformers no service. The case for penal abolition rests on a series of tenuous assertions. Let's set aside the obvious, if uncomfortable, fact that part of the purpose of prison is to punish. It's said that short-term prison sentences don't work, because recidivism rates are shockingly high and there is little time for any restorative programmes to work. But since the evidence is that longer sentences have lower recidivism rates, and provide the opportunity to rehabilitate offenders, this might be an argument to lengthen sentences, not abolish them altogether. After all, another purpose of prison is to incapacitate offenders. Of course, overcrowded prisons that are awash with drugs, and a system which gives short-term prisoners no supervision or support on release, is almost calculated to fail. But this could equally be an argument – the one which the modern Conservative party is making – for a complete transformation of prison regimes and a system of support for offenders when they are released from jail. It's a logical non sequitur on a grand scale to argue that because short-term prison sentences currently aren't working, we should therefore stop using them at all. Abolitionists say that short-term prison sentences have a poorer recidivism rate than community sentences. In fact, both have a lamentable record – and one that has deteriorated in the last ten years. But the difference is hardly surprising, since the worst recidivists are bound to end up in jail. According to Home Office figures (pdf), only 12% of those sentenced to prison have no previous convictions. Over half have five or more previous convictions, and over a third have ten or more. Those who say that prison should be reserved for serious or serial offenders tend to ignore the fact that it already is. Serial offenders who end up with custodial sentences have usually run through the gamut of weak community sentences already. If we want to avoid magistrates having little choice but to send them down, the logical thing to do is to make community sentences far more effective. Yet the perverse reaction of the abolitionists is to recommend that the very community disposals that have, by definition, already failed are used again. Over a third of unpaid work requirements are not completed. Drug rehabilitation requirements have an even worse record – fewer than half are completed. If a fraction of the energy and resources that are being devoted to the cause of penal abolition were directed to thinking seriously about how better to design non-custodial punishments, short-term prison sentences would be less necessary. What do the abolitionists really want? If it's the end of all custody, including for the most serious and dangerous offenders, then we can dismiss their demands as truly silly. If it's the abolition of short-term custodial sentences, then the effect on the overall prison population will be minimal. Justice ministry tables show (pdf) that over 87% of the current prison population are serving sentences of over 12 months. Abolishing prison for those serving, say, six months or less would mean watering down 60,000 sentences – but it would reduce the prison population by less than 7,000. The more effective and sustainable way to reduce the prison population in the long term is to reduce re-offending, as the Conservative party's radical "rehabilitation revolution" proposes. It would be nice to live in a society where there were no prisons, just as it would be nice if there were no hospitals because there was no illness. But until someone steps forward with a ten-year plan to Make Crime History, jails are here to stay. The challenge is to create prisons with a purpose – not to hold lazy conferences making futile calls for their abolition.

#### The alt calls for an end to prisons, not an end to laws and jury trials—means that people will still be criminalized AND the punishments get worse

**Posner 14**

Richard Posner (American jurist, legal theorist, and economist. He is currently a judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School). “We Need a Strong Prison System: But we need to imprison people for fewer crimes and for less time.” The New Republic. May 24th, 2014. http://www.newrepublic.com/article/117803/inferno-anatomy-american-punishment-robert-ferguson-reviewed

Imprisonment is an indispensable social practice, and it is more humane than killing, mutilating, flogging, or visiting punishment on the criminal’s relatives as well as on the criminal himself. Some criminals are at once dangerous and incorrigible, and for them there is no practical alternative to long prison terms. But it is demonstrable that too much conduct has been made criminal in this country, and that many prison sentences are far too long. About half our prison inmates are drug dealers: were the purchase and sale of illegal drugs decriminalized, the prison population would plummet, and as a result prison conditions would improve dramatically. Oddly Ferguson does not advocate decriminalization but merely amnesty for those drug offenders “who conquer their addiction in prison.” There are also other candidates for decriminalization, such as prostitution and copyright infringement (which should be just a civil offense); and it is time that the age of consent were reduced to 16 or even 15, in recognition of contemporary sexual mores. Gambling should be decriminalized, and probably environmental offenses as well, such as killing a migratory bird; such offenses should be left to the civil law, with its financial sanctions.

#### Prison abolition fuels white supremacy—what about white people who deserve to be in prison? If he’s right that we can’t trust white people, then we need prisons around to lock white people up.

#### The argument above means prefer jury null because black people who don’t deserve prison will be rescued, but white people who do deserve it won’t.

### AT Reverse Jury Null

This is ridiculous to pin on the aff. We affirm jury nullification as a process of recognizing the indeterminacy of law. Their impact is nonuq, nothing stops this in the squo because juries aren’t held to explanatory expectations. Link turn – the ability to wrongfully convict stems from the fact that there is a determinant rule of law that doesn’t account for case particulars and has codified the criminality of certain groups.

### AT Hauntology

#### The alt fails—we can never fully understand the specter—they reduce the ghost prematurely to an object of knowledge which is a flawed form of ethics

**Davis 5**

Colin Davis. “E´TAT PRE´SENT: HAUNTOLOGY, SPECTRES AND PHANTOMS.” French Studies. 2005.

The crucial difference between the two strands of hauntology, deriving from Abraham and Torok and from Derrida respectively, is to be found in the status of the secret. The secrets of Abraham’s and Torok’s lying phantoms are unspeakable in the restricted sense of being a subject of shame and prohibition. It is not at all that they cannot be spoken; on the contrary, they can and should be put into words so that the phantom and its noxious effects on the living can be exorcized. For Derrida, the ghost and its secrets are unspeakable in a quite different sense. Abraham and Torok seek to return the ghost to the order of knowledge; Derrida wants to avoid any such restoration and to encounter what is strange, unheard, other, about the ghost. For Derrida, the ghost’s secret is not a puzzle to be solved; it is the structural openness or address directed towards the living by the voices of the past or the not yet formulated possibilities of the future. The secret is not unspeakable because it is taboo, but because it cannot not (yet) be articulated in the languages available to us. The ghost pushes at the boundaries of language and thought. The interest here, then, is not in secrets, understood as puzzles to be resolved, but in secrecy, now elevated to what Castricano calls ‘the structural enigma which inaugurates the scene of writing’ (Cryptomimesis, p. 30). Hauntology is part of an endeavour to keep raising the stakes of literary study, to make it a place where we can interrogate our relation to the dead, examine the elusive identities of the living, and explore the boundaries between the thought and the unthought. The ghost becomes a focus for competing epistemological and ethical positions. For Abraham and Torok, the phantom and its secrets should be uncovered so that it can be dispelled. For Derrida and those impressed by his work, the spectre’s ethical injunction consists on the contrary in not reducing it prematurely to an object of knowledge. Derrida’s reading of Abraham and Torok in ‘Fors’ emphasizes how their work involves attentiveness to disturbances of meaning, the hieroglyphs and secrets which engage the interpreter in a restless labour of deciphering. In the process, Derrida underplays the extent to which Abraham and Torok attempt to bring interpretation to an end by recovering occluded meanings, and his reading has had a significant impact on the more general understanding of their work. Their phantoms and his spectres, though, have little in common. Phantoms lie about the past whilst spectres gesture towards a still unformulated future. The difference between them poses in a new form the tension between the desire to understand and the openness to what exceeds knowledge; and the resulting critical practices vary between the endeavour to attend patiently to particular texts and exhilarating speculation. As far as I know, the ghost of a resolution is not yet haunting Europe, or anywhere else.

**If theres time - Hauntology is a form of Deconstructionist thought that is more about authority than intellect. Obscure language feeds the ideology where the name of the author matters more than the author’s insight. This link turns the impact scenerios, culminating in micro political despotism**

**D’eramo,** 2000 [Marco, “Academic Insult in Greenwich Village”, Sokal Hoax: The Sham That Shook the Academy, 2000]

To begin with, **hauntology shows how dependent this field is on the authority principle: people care less about what is said than about who says it.** So, if **a piece of nonsense has a** Derrida **logo, it’s a deep concept**. And Sokal brings to light the visceral antiscientism of this milieu. If people like him aren’t exactly subtle when it comes to epistemology, deconstruction theorists and company have, for their part, a lousy relationship with science based on a similar arrogance: after all, had they asked a physicist to check Sokal’s specific claims, the hoax would have been defused. But **the idea didn’t even cross their minds: “technical” questions are too petty for them. What Sokal has brought to light, then, is “the specialized discourse of the anti-specialist,” like politicians who make careers out of attacking politics**. As Tom Frank has written in In These Times, “post-structuralist jargon . . . is the sacred talk of a professional group . . . But **it’s a jargon with a curious twist, a professional jargon that celebrates anti-professionalism, and fetishizes the subversive power of transgression.”**

**To get past the big pomo terms – this means their role of the ballot fails because they want to create a space for us to engage with the spectre which we fundamentally cannot understand under their descriptions of it.**

**rule of law which I dissolve is root cause of hauntology bc it makes suffering static and recurring**

**If I win root cause, I have a terminally defensive link shield even if I don't win the no link args**

### AT Eugenics

How the fuck are we eugenics

Rule of law root cause?