## 1 ColorBlindness K

**Academic philosophy is anti-Black – the 1AC’s abstraction from the material consequences of racialized violence absolves white philosophers of their contributions to America’s apathy towards Black death – their race-neutral rhetoric and assertion of universal humanistic principles reduces systemic racism to a problem of recognition that prevents effective mobilization against white supremacy – vote negative to reject the Western metaphysical tradition and recognize the permanent failure of white philosophy.**

Tommy J. **Curry and Curry 18** [Tommy, PhD, Prof. of Philosophy @ TAMU, Gwenetta, PhD, Ass. Prof. of Gender and Race Studies @ Alabama], “On the Perils of Race Neutrality and Anti-Blackness: Philosophy as an Irreconcilable Obstacle to (Black) Thought,” American Journal of Economics and Sociology, Vol. 77, Nos. 3-4 (May-September 2018). DOI: 10.1111/ajes.12244

We begin with the first author’s reflections on philosophy and its recurring problem of denying the realities of race and racism, reflections that have arisen as a Black (male) philosopher whose life has been threatened for doing Black philosophy. The experience of confronting death, being fearful of being killed doing my job as a critical race theorist, and being threatened with violence for thinking about racism in America has a profound effect on concretizing what is at stake in our theories about anti-Black racism. Whereas my work on race and racism in philosophy earlier in my career was dedicated to the problems created by the mass ignorance of the discipline to the political debates and ethnological history of Black philosophers in the 19th and 20th centuries, I now find myself thinking more seriously about the way that **philosophy**, really theory itself—our present categories of knowledge, such as race, class, and gender, found through disciplines—actually **hastens the deaths of subjugated peoples in the U**nited **S**tates. **Academic philosophy routinely abstracts away from**—directs thought to not attend to the realities of death, dying, and despair created by—**antiBlack racism. Black, Brown, and Indigenous populations are routinely rationalized as disposable flesh. The deaths of these groups launch philosophical discussions** of social injustice and spark awareness by whites, **while the deaths of white people direct policy and demand outrage. Because racialized bodies are confined to inhumane living conditions that nurture violence** and despair **that become attributed to the savage nature of nonwhites and evidence of their inhumanity, the deaths of these** **dehumanized peoples are** often **measured against the dangers they are thought to pose to others**.

**The interpretation of the inferior position that racialized groups occupy in the U**nited **S**tates **is grounded in how whites often think of themselves in relation to problem populations. This relationship is** often **rationalized by avoidance and by** the **denials** of whites **about being causally related to the harsh conditions imposed on nonwhites in the world. Philosophy, and its glorification of the rational individual, ignores the complexity of anti-Black racism by blaming the complacency**, if not outright hostility, **towards Blacks on the mass ignorance of white America**. To remedy this problem, Black philosophers are asked to respond by gearing their writings, lectures, and professional presence to further educate and dialogue with white philosophers in order to enable them to better understand anti-Black racism and white supremacy (Curry 2008, 2015). This therapy is often rewarded as scholarship. **Philosophical positions that analyze racism as a problem of miscommunication, misunderstanding, and ignorance** (philosophies predicated on the capacity of whites to change) **are rewarded and praised as the cutting edge and most impactful theories about race and racism. Reducing racism to a problem of recognition** and understanding **allows white philosophers to remain absolved of their contribution to the apathy that white America has to the death** and subjugation **Black Americans endure** at the hands of the white race.

To some readers, speaking about races as different groups with opposite, if not antagonistic, social lives seems to run contrary to the idea that there are no real races, just people, only the human race. This is the core of **race-neutral theory** in academic philosophy. Race neutrality **asserts that while race, class, and gender may** in fact **differentiate bodies, the capacity for reason—the human essence beneath it all—is what is ultimately at stake in the recognition of difference**. While **this mantra** has been offered to whites since the integrationist strategies of the U.S. Supreme Court in the 1950s under Chief Justice Earl Warren, it **has had little effect in restructuring the psychology of white individuals or remedying** the **institutional** practices of **racism that continue to exclude** or punish **Black Americans**. How are Black scholars to speak about racism, specifically the violence and death that seem to gravitate towards Black bodies if the rules of philosophy and the fragility of white Americans insist that racism is not the cause of the disproportionate death Black Americans suffer and race is not a significant factor in Black people’s lives?

This article is an attempt to debunk the seemingly neutral starting point of academic philosophy. **For decades, Black philosophers have attempted to** educate white philosophers and **reorient the philosophical anthropologies of the discipline. Black, Brown, and Indigenous philosophers have dedicated their lives** and careers **to educating white philosophers** and students, **with little to no effect on the composition** and disposition **of the discipline**. While it is not uncommon for philosophy departments to say they support diversity, the reality is that many, if not most, Black philosophers continue to write about the problem of racism, their experiences of marginalization, and the violence they suffer from white colleagues, disciplinary organizations, and universities. **This article should be read as an attempt not to amend the Western metaphysical tradition but to reveal the obstacles that indicate its perennial failure**. It is the position of the authors that many of the demands for disciplinary change are often expressed as politics, when in reality **there are issues of metaphysics** (the concerns of being) **and philosophical anthropology** (the concerns about the (non)being capable of thinking) **that are unaddressed in much of the current literature**. Section I of this article describes what Black philosophy has taken to be the problem of racism in academic philosophy more broadly. Since the 1970s Black philosophers have criticized, attacked, and attempted to reform the discipline with little effect. This section interrogates why that is the case. Section II argues that the failure of philosophy to change is a problem of metaphysics or the illusion that Blackness is compatible with the idea of the white human. Section III presents the social scientific evidence demonstrating the seeming permanence of anti-Black racism and the dangerous nature of colorblind ideology, which does not recognize that societal organization and racism determine the life chances of Blacks. This article ends with a suggestion of what Black philosophy would look like if its primary mandate were not to persuade whites to remedy their own racist practices, but to diagnose and build strategies against the present problems of racism in philosophy before us.

**1NC L: Gender**

**Vote negative to flip the script on white philosophy and respectability politics – instead of class, gender, and queerness problematizing blackness, we should use race to problematize gender and economics.**

Tommy J. **Curry and Curry 18** [Tommy, PhD, Prof. of Philosophy @ TAMU, Gwenetta, PhD, Ass. Prof. of Gender and Race Studies @ Alabama], “On the Perils of Race Neutrality and Anti-Blackness: Philosophy as an Irreconcilable Obstacle to (Black) Thought,” American Journal of Economics and Sociology, Vol. 77, Nos. 3-4 (May-September 2018). DOI: 10.1111/ajes.12244

**For the liberal white philosopher, race is the category to be problematized by gender, queerness, and class analysis. Rarely, however, do we see an analytic reciprocity whereby racism problematizes gender** (such as feminism or queerness) **or** political **economics and class dynamics. Even in the deployment of critical analysis, race is made into a decadent positionality in need of remedy and conceptual clarity. This process involves said Black thinkers recognizing themselves as more than Black. However, such demands are not placed on feminists**, queer theorists, **Marxists, or on the liberal white philosopher’s normative** whiteness or **humanism**. Their conceptual representations of the woman, the poor, the queer as forms of being an outsider are generally welcomed platforms of theorizing about the world. Blackness is not (Curry 2017: 5–6). **These political dynamics guide and direct the unannounced forces that are arrayed against Africana philosophy** and race theory and **that** more generally **deradicalize the potential critiques waged by Black philosophers against white** colleagues, majority white departments, and various **institutions** and communities of higher learning. Within disciplinary discourse, **the civility of Black critique is emphasized over the substance and verifiability of Black philosophers’ theoretical claims**. Consequently, **theories of race and racism are gauged by the comfort whites generally have** with how the terms of race are expressed and whether the Black philosopher’s analysis of the consequences of racism personally implicates or absolves whites generally. **This interference of the white interpreter limits how the concepts of and evidence for racism are studied and theori**zed. Previous scholarship has referred to this as a problem of underspecialization (Curry 2010).

Because African-American philosophy is mainly praised for its ability to point out the inadequacies of European thought, there has been relatively little scholarship that articulates the actual historical positions that many Black authors held outside Africana philosophers’ criticisms of European thinking. (Curry 2011b: 140)

This problem is not isolated to the methodological disagreements concerning how one does Black philosophy. Jobs are decided on this very basis. Since Black philosophy has no set constellation of key texts or curricula that indicate that one is in fact a specialist in Black philosophy or Critical Race Theory, such decisions are often made by the closeness the particular Black candidate has to the research already conducted by white philosophers or the desirablility of the political ideology the Black candidate holds or how it serves the department. On search committees evaluating Black candidates, **it is not uncommon for white philosophers to actually disregard Black philosophy as a field or area of specialization altogether**. Recollecting one such meeting, when it was brought up that a particular applicant did not have any classes in Black philosophy, the reply of a senior faculty member suggested that such knowledge was not necessary for a tenure-track position at a research one institution and that “the candidate could learn that shit when they get here.” **The aversion white philosophers have to the problems tackled by Black philosophy** often **manifests in how white departments screen out more radical candidates, and prefer minority hires who appear to be less specialized, less controversial, and more integrationist** in orientation.

**Their philosophical orientation approaches the world from a ‘view from nowhere’ that abstracts away from historical injustice. Their framework rests on the idea that we can generate universal rules based on shared features of humanity. This propagates a Eurocentric world view.**

Arnold **Farr 4** “Whiteness Visible: Enlightenment Racism and the structure of Racialized Consciousness” From What Whiteness Looks Like? Edited by George Yancy. 2004

**Philosophy’s own self-understanding is very problematic for many of us of African descent** who enter the field of philosophy. **Philoso- phy’s universal claims about the human condition systemically,** sys- tematically, and persistently **omit the experience of oppressed social groups**, especially those of African descent. **There is no end to the texts in philosophy that attempt to explain rationality** or the development of human consciousness **without considering the ways consciousness develops in the oppressed.** **There is an assumption that race has no place in philosophy**. As Lucius Outlaw writes:¶ But why bring such a dangerous and seemingly discredited notion as “race” into philosophy to be legitimized, even if not “properly” justified, in support of a possibly misguided quest to “conserve” racial and ethnic groups? For should not philosophizing, as has been claimed for centuries, be devoted to setting out principles and norms of reason to guide human beings in fashioning their lives through which they can become fully, flourishingly human? **Various philosophers have long argued that if such principles and norms—of truthfulness and justice,** for example—**are to be binding on all, they must not rest on the valorization and privileging of the norms and life-agendas of any particular groups, races, or ethnicities**.3¶ **Philosophy’s goal of universality forces it to dismiss the particulars of one’s existence. The possibility of introducing “perspective” into phi- losophy undermines philosophy’s claim to the privileged view from nowhere.** It is feared that once the perspectives of various social groups are introduced, philosophy will find itself struggling to make coherent sense of incommensurate truth-claims. However, as Outlaw goes on to point out, we are biological creatures who are affected by our biological and geographical situations.¶ **One of the tragedies in Western philosophy is the idea that we can somehow approach philosophical inquiry in a disinterested manner**. **A second problem is the assumption that insofar as we may not achieve a disinterested disposition our interests are still universal. The philoso- pher tends to assume that his/her interests are universal without care- fully examining the biological, geographical, racial, cultural, and class basis for that interest.** **The view from nowhere is an impossibility be- cause this view is initiated by an interest that has its foundation in the material world of the philosopher**. As Charles Mills has pointed out, we are members of various epistemic communities. These epistemic com- munities influence our interest, and they also determine what ques- tions are important for us. **Our epistemic communities also provide us with a basis for evaluating what lies outside of our community.4**¶ **The idea that our philosophical inquiry begins within the confines of a particular epistemic community, is legitimated by that commu- nity, and develops by employing the theoretical tools of that commu- nity is an idea that has not yet been well received by philosophers.** **The idea that philosophical principles are universal and that philosophy it- self is color-blind allows the whiteness of traditional Western philoso- phy to make itself invisible.** The task of this chapter is to make the whiteness of philosophy visible. There are many ways this may be accomplished, though it is not possible in the confines of this chapter to discuss or apply all of them. Hence, I will confine myself to the case study of Hegel and the whiteness of Geist.

**Even if they win that their colorblindness is theoretically ideal, it is practically impossible because racialized bodies are marked by their skin color – the psychological construction of Black as inferior makes their impacts inevitable – philosophy’s segregation of black scholarship is not neutral and not normal.**

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Eduardo Bonilla-Silva (2010: 15) explains that **colorblind racism emerged as a new racial ideology in the late 1960s** concomitantly with the crystallization of the “new racism” as America’s new racial structure. **Whites could no longer get away with the overt racist practices** that were used before the civil rights movements **but instead depended on more subtle ways to maintain their racial dominance** without using race. In today’s society, there are very few whites who outwardly consider themselves to be racist, but they will still support systems that create inequalities among minority populations.

Bonilla-Silva’s (1996) account of racism leads him to develop the idea of racialized social systems, a term that refers to societies where economic, political, social, and ideological levels are partially structured by the placement of actors in racial categories. Bonilla-Silva theorizes that **the racialized system incentivizes how racialized persons develop their identities within racist structures. Race is not simply imposed on bodies but is psychologically invested in by individuals in terms of how dominant racial groups identify themselves in relationship to the** **groups** and individuals **they construct as inferiors. For some groups assimilation is possible. This is the case for ethnic groups like the Irish and the Jews because their skin color is closer to that of whites, but it would be impossible for Black groups to similarly disappear. Colorblindness could exist in theory, but in reality, people see skin color, and in America, white skin stands for superiority.**

Racial **segregation** has been a mainstay of the American race problem since the beginning of slavery. Assigning the places that Blacks belonged, whether it be in the fields or as the “house Negro,” **has been one of the primary ways that racism has been enforced against Blacks**. Even after the end of slavery, **Jim Crow was established to terrorize Blacks into staying confined by their segregated spaces**. We would argue that **even today**, the established racial dynamic in America maintains racial segregation. In The Hidden Cost of Being African American, Thomas Shapiro (2004: 152) has shown how **whites have been able to move into the neighborhoods with the better schools and resources with the help of their inheritances**. Many of the people he interviewed about their housing location stated that they did not look at race when deciding to move to certain neighborhoods but rather they focused on the lifestyle and “standards” of the people. **Most stated that “it just happened” that there were no African Americans at the school their child attends. These understandings of “standards” and lifestyle are nested in the notion that white culture defines the norms and standards**. Eduardo Bonilla-Silva’s concept of “white habitus” explains the tendency whites have for racial segregation, namely, their preference for moving to all-white neighborhoods and the effects this practice has on African Americans.

Shapiro’s work parallels the findings of Bonilla-Silva’s theory of white habitus. Bonilla-Silva et al. (2006: 233) describe “white habitus” as a racialized, uninterrupted socialization process that conditions and creates whites’ racial taste, perceptions, feelings, and emotions and their views on racial matters. The most pronounced effect of white habitus is that “it promotes a sense of group belonging (a white culture of solidarity) and negative views about nonwhites.” In these **all-white spaces, whites become the standard or norm while anything or anyone different becomes unnatural or problematic**. White habitus promotes minorities being viewed based on stereotypes and generalizations perpetuated by the media or through other second-hand sources. **The greatest irony of Bonilla-Silva et al.’s interviews was their finding that “whites do not interpret their racial isolation and segregation from Blacks as something racial.”** This qualitative project shows that **even when whites are communally segregated** from Blacks, **they do not interpret this as a racialized or racist environment**. The absence of Blacks is thought to be compatible with how white Americans think about colorblindness. The idea of white superiority, or whiteonly neighborhoods, is not understood by many white Americans as racist. In one of Shapiro’s (2004: 152) interviews, the participant states that she has “Black friends.” However, Bonilla-Silva et al. (2006: 248) point out that when whites claim to have Black friends, they usually are referring to formal activities such as sports or classroom work groups. Once the activity is over the relationship ends; the so-called Black “friends” are not actual neighbors or friends who live within their social environment. **Academic philosophy operates similarly**.

**This turns the aff – America is organized around the subjugation and death of non-white people – discriminatory applications of their policy are inevitable absent a recognition of racialization in the law – their colorblindness is mutually exclusive with the necessary upheaval of the racial dynamics that necessitate inequality.**

Tommy J. and Gwenetta **Curry and Curry 18** [Tommy, PhD, Prof. of Philosophy @ TAMU, Gwenetta, PhD, Ass. Prof. of Gender and Race Studies @ Alabama], “On the Perils of Race Neutrality and Anti-Blackness: Philosophy as an Irreconcilable Obstacle to (Black) Thought,” American Journal of Economics and Sociology, Vol. 77, Nos. 3-4 (May-September 2018). DOI: 10.1111/ajes.12244

It is now accepted fact that **scientists have been able to demonstrate that race does not exist on a biological level, but instead was constructed by society**. Classifying race as a social construct conveys that there is a “process of endowing a group or concept with a delineation, name or reality” (Delgado and Stefancic 2012: 155). Race has a reality to it, a substance given by the historical and cultural projections of the specific society within which it is birthed. **While philosophers commonly entertain**, at least at the theoretical level, **the idea that race does not have any real consequence, that is a pernicious supposition**. Tessman and On (2001: 5) suggest that “**an analysis of racialization as the process of the social construction of race can lead theorists away from the possibility of race-conscious strategies for struggling against racism**.” **If the issues surrounding race and racism are not addressed, minorities will still fall victim to unfair treatment in education, housing, and the court systems**.

Although the concept of race is socially constructed, the populations most affected by racialization and racial disparities agree that **there are still real consequences to race because of its embeddedness within** practically **all facets of American society. Race consciousness is necessary to diagnose the function** and effects **of racialization in law, policy, and social interactions**. As the sociologist Michael Banton (2001: 164) argues, some elements of the racial idiom are still needed in law because “the concept of a racial group is the price to be paid for a law against indirect discrimination.” Contrary to the idea that race is mere societal rhetoric, Banton argues that the language of race is needed in law to combat prejudice and discrimination against victim groups. This point is made extremely clear by the data presented by Michelle Alexander in The New Jim Crow: Colorblindness in the Age of Mass Incarceration. She argues that **racism is a driving force behind social organization—an architecture around which social hierarchy and disparity accumulate. Racism explains why the penal system is filled with Black men who are incarcerated and how labeling them as felons**, primarily due to the criminalization of drugs, **causes them to lose their basic civil rights**. The Anti-Drug Abuse Act of 1988, passed by Congress as part of the War on Drugs, called for strict lease enforcement and eviction of public housing tenants who engage in criminal activity (Alexander 2010: 142). In the spirit of the Anti-Drug Abuse Act, the Clinton Administration sought to strengthen the law in 1996, adding **the “One Strike and You’re Out”** legislation whose goal is to prevent people with criminal records from being able to live in public housing. This **measure to “crack down” on crime has had a debilitating effect on the family lives of people of color living in public housing units**.

**America is organized around the subjugation, death, and political suppression of racialized people’s voice**.

**Instead you should affirm Black philosophy as a site to engage in radical theorizations that are a genuine reflection of Black experience – attempts at integration commodifies Black philosophers as extensions of white thinkers which waters down Black philosophy to a form for white philosophers to deem respectable scholarship – a fundamental reorientation of the discipline away from universal reason is key.**

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The debate about what constitutes or is real philosophy continues to dominate the discussions concerning race and racism. Drawing from the inclusion/exclusion or integrationist/segregationist paradigms, the problem of race and racism in philosophy is routinely understood as what is allowed to stand within or excluded from the discipline. The integrationist or post-civil-rights understanding of racism in philosophy routinely misses that **racism involves a complex and denaturing dynamic regarding the thought and perceptions of oppressed groups**. This is a paradigmatic and methodological problem introduced by Curry (2011a, 2011b) as signs of Black philosophy’s “derelictical” crisis. As Curry (2011a: 144) explains:

At its most basic level, philosophy is an activity of inquiry into the world which is supposed to guarantee its practitioners some level of assuredness in the ways we interpret the realities before us. If we take African American philosophy to be philosophical activity, then we should expect, by necessity of being philosophy, that Africana philosophy should result in the same methodological rigor—some assuredness in the ways that Africana people have used to interpret their realities. Unfortunately, the present day crisis of African American philosophy makes this simple formulation an impossibility. By making the methodological rigor of Africana philosophy dependent on its popular acceptance; its closeness to the political dogmas of our racial era, we condemn our area of study to under-specialization whereby our works of philosophical genius, past and present, will be judged solely by the degree to which they extend the universalizing character of Europe and her theories. To t**he extent that African American philosophy chooses to abandon the genealogical patterns of Black thought for philosophically privileged associations with white thinkers, it remains derelictical—continuing to neglect its only actual duty**—the duty **to inquiry into the reality of African-descended people as they have revealed it**.

We begin with the premise that **racism permeates the discipline of philosophy**. We are attempting to bring attention to the ways in which **authentic Black philosophy has been revised and denatured into a form that whites in the discipline accept as philosophical**. Whereas all disciplines have norms or rules of scholarly rigor, **philosophy demands that Black thinking and thought tend towards specific political ends in order to be considered philosophy**. Whether or not the thought and texts of Black philosophers are correctly interpreted, understood, or even read ultimately becomes irrelevant to the larger political orientation of the discipline.

**Black philosophers are read as extensions of white thought. A Black philosophical figure is relevant only to the extent that he or she can be understood as the unrealized intentionality of canonical white figures. Black historical figures are made philosophical by the extent to which their voice can be imagined as what Dewey, Hegel, Addams, or Foucault would have said**

**ry at the most abstract levels of thought is what is at stake in the Black philosophical project**.

### 1NC Worker Freedom PIC

#### The AC is an effort in “left legalism”, they believe the right to strike is not adequately protected and the solution is to codify it. This ignores that it is the nature of rights themselves in liberal societies that produce conflict

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

A third example concerns the legal status of concerted activity taken in response to an employer’s unfair labor practices. The Supreme Court addressed this issue in a widely cited and discussed decision, NLRB v. Fansteel Metallurgical Corp.49 In that case, the employees responded to a series of the employer’s unfair labor practices — recognizing only an “independent,” company-dominated union, and employing a labor spy to engage in espionage within the bona fide, “outside” union — by “seizing the employer’s property” in a sit-down strike. The employer countered by announcing that “all of the men in the plant were discharged for the seizure and retention of the buildings.” The employer then appealed to the local sheriff, who with an “increased force of deputies” evicted the workers from the plant and arrested them; most of the workers were eventually fined and given jail sentences. As a remedy for the employer’s unfair labor practices, the Board ordered “‘immediate and full reinstatement to their former positions,’ with back pay.” However, the Supreme Court denied enforcement of this order, concluding that the workers had been legitimately discharged for illegally seizing the employer’s property. The court’s decision has been widely criticized for taking a narrow view of “concerted, protected activity,” and ignoring the workers’ claims to be acting in self-defense against the employer’s violation of their rights granted to them by the Wagner Act. According to Karl Klare, the language of the Fansteel decision reinforces the role of workers as sellers of labor power and consumers of commodities, rather than as producers, and obstructs an alternative perspective presaged by the “‘dereifying’ explosion of repressed human spirit” expressed in the sit-down strike.50 According to James Gray Pope, the Fansteel decision inverts appropriate legal hierarchies, placing the employer’s common-law property rights above those of the employee’s statutory right to engage in collective action, a conclusion that can only be justified by an unstated appeal to a discredited interpretation of the Constitution.51 Both critics, however, overlook the very first words of Chief Justice Hughes’s decision following its statement of facts: “For the unfair labor practices of [the employer] the Act provided a remedy. Interference in the summer and fall of 1936 with the right of self-organization could at once have been the subject of complaint to the Board.”52 Once again, using the strike to enforce workers’ statutory rights is legally duplicitous because the Board already possesses the power to enforce those rights. The court continued, “To justify such conduct because of the existence … of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations.”53 Responding to this language, Klare is correct to draw attention to the inherently peaceful nature of workers’ concerted activity in general and the sit-down strike in particular.54 But it is not the court’s hysterics that are most interesting; instead, it is the overlooked rationale that, whether violent or not, concerted action to enforce rights already subject to Board administration and enforcement subverts the appropriate scheme of rights enacted by the NLRA. Thus, it is not (or not just) ideologically freighted judicial reasoning that has undermined the labor movement, but the very rights themselves, created and enforced by the state apparatus, that have justified restrictions on concerted worker activity.

#### Subordination- rights weaken labor movements by making them dependent on a corrupt legal system. Cross-national analysis shows rights never help, they only hurt

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

Labor law presents an inescapable problem for the labor movement. If that claim was not already obvious, then the US Supreme Court’s decision in Janus v. AFSCME should have made this clear. Even labor law scholars, who once viewed labor law as a path of liberation for the labor movement, now see it as an ossified millstone around its neck. Recommendations for the reform and renewal of labor law therefore abound. In nearly all of these recommendations, there is no question that the law can and should play a fundamental role in revitalizing the labor movement. Indeed, labor law’s current flaw according to these recommendations is not the rights they provide, but only the “weakness” of these rights. In this essay, I want to ask a question that has quite a different implication for how trade unions should approach labor law: how did the regulation of labor relations come to assume the form of law? The first objective of this essay is to answer this question. As labor movements developed under capitalism in the late nineteenth and early twentieth centuries, the regulation of labor relations took different paths. The path that a particular country took was determined by various material, political, and ideological causes that this essay will try to describe. While some amount of legal regulation is inescapable in a society based on private property and generalized commodity exchange — which logically imply the contestation of private interests — labor movements in some parts of the world have been able to avoid the dependency and displacement that always follows a regime of full-blown legal regulation. Trade unions in Scandinavia in particular have been able to develop a system of labor regulation that avoids the subordination to the state that has been the fate of Anglophone countries, such as the US and Australia, as well as on the Continent, in France and Germany. Another objective of this essay is to show that even labor law sympathetic to unions, rather than loosening, came to bind ever more tightly the cords constraining labor. This is not, or at least not only, because of capitalist-class interest or ideology extrinsic to labor law, but in fact is quite intrinsic to law itself. As this essay will demonstrate, many of the restrictions and prohibitions that hobble the labor movement today are justified by the very rights the labor law statute, the National Labor Relations Act (NLRA), confers. Statutory labor law confers rights, and rights are distinguished by the fact that they constitute claims that are enforced through the machinery of the state apparatus. In the mind of a judge or bureaucrat, one can hardly complain about the suppression of workers’ self-activity to advance or enforce some interest or claim, because the existence of a corresponding legal right makes such activity legally redundant. Of course, there is an enormous sociological difference: if strikes are the means by which workers build solidarity and develop class consciousness, then the substitution of the strike for other means of reaching working-class objectives may, whether intentionally or not, undermine working-class interests.

#### Prefer negative methodology- a comparative history approach reveals flaws in the affirmatives “critical labor law” approach. Their focus on specifics obscures the fundamental issue of statism

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The intent of this brief comparative history is to reveal the uniqueness of the form of labor union organization found in the US. Unlike either the continental or Nordic variants, labor union organization in the US (and other Anglophone countries) is characterized by strong workplace-based organization (when and where it exists) and weak coordinating capacity above the workplace level (i.e., sectoral, national, etc.). This section will trace how that form of union organization gave rise to a law-based, statist form of labor-relations regulation. The shift to a law-based form of regulation was dramatic. Toward the end of the nineteenth century, neither unions nor collective bargaining had any legal existence. The only means available to a union to obtain recognition from an employer, bring the employer to the bargaining table, make a collective agreement, or even enforce a collective agreement, was through “extralegal” economic compulsion — the threat or exercise of strikes, boycotts, and other forms of concerted activity. Court injunctions frequently repressed such tactics — thus “recognizing” collective worker activity only in the negative sense. By the middle of the twentieth century, this had all changed: statutes established comprehensive legal regulation of all stages of a collective bargaining process presided over by an administrative agency, the NLRB, and the federal courts. What explains this transformation? How did the regulation of labor relations come to assume the form of law? Did alternative possibilities exist? DECENTRALIZED UNIONISM AND THE ADOPTION OF THE LEGAL FORM The answer I offer is that this statist regime of labor law is a product of the narrowness of labor relations themselves. Unions in the US have a strong workplace presence but weak coordinating capacity. This decentralized model of trade union organization produced pervasive employer-union conflict as well as union-union conflict. Owing to their lack of coordinating capacity, unions in the US were unable to forge a regime of self-regulation. A statist regime of labor law was constructed to fill the regulatory void. At the heart of the 1935 National Labor Relations Act (or Wagner Act, after its main sponsor Senator Robert F. Wagner of New York) is an election procedure in which the NLRB supervises a secret ballot election and, by majority rule, awards “exclusive representation” status to a union if it prevails. Other features of the Act fit neatly into this “recognition” framework. The Act bans “unfair labor practices” to ensure that the workers’ choice of representative (or whether to be represented) is “fair and free.” After a union is “certified” by the government, the Act provides for elaborate procedures for when workers may decertify a union or an employer withdraw recognition. The legal status of various kinds of economic weapons to which workers may resort often depend on whether a union has been certified. And certification grants to unions themselves certain rights and protections, including machinery for the enforcement of union-negotiated contracts. This regime can only be described as a highly statist form of labor-relations regulation. The origins of this majority-rule recognition procedure can be traced to the pre-New Deal era, specifically to attempts to regulate labor relations on the railroads. Union organization on the railroads is a classic example of the early-industrialization problem. First as fraternal and benefit societies, later as bona fide unions, there were no fewer than twenty different labor organizations representing workers in the railway industry. Each of these organizations, in structure and strategy, enacted the principle of exclusivity described in the previous section. “Each brotherhood, as was customary among American craft unions, claimed sole jurisdiction over the employment conditions governing employees in that craft,” whether or not the worker was a member of the union.34 At approximately the same time, railway unions began appealing to the majority-rule principle both to justify their demands for union recognition vis-à-vis employers and to solve their jurisdictional disputes with one another. This all took place against the backdrop of extraordinary labor strife. Later, this principle was adopted in one of first pieces of national legislation regulating labor relations, the Transportation Act of 1920. Fifteen years later, a series of statutes, court decisions, and policy choices had so narrowed the available options that “the question of Wagner’s intent became secondary to his policy constraints. Wagner built the NLRA upon an ideology that had become self-sustaining.”35 Scholars have criticized the NLRA for enshrining into law the old AFL’s “voluntarist” labor-relations philosophy. This was accomplished either by the passage of the NLRA itself or by its subsequent “judicial deradicalization.” Either version treats the NLRA as a kind of ex nihilo event, without any legal or policy history of its own.36 Ruth O’Brien convincingly demolishes this account. It was not the AFL’s voluntarism that prevailed but the progressive movement’s “responsible unionism.” For progressives, the labor movement was too narrowly self-interested to accommodate the “public interest.” What was needed was a Hobbesian strong state — one that would subordinate the labor movement to the “true” guardian of the public interest.37 I endorse O’Brien’s version of events, but she doesn’t account for the counterfactual: could the AFL’s voluntarism have been a viable alternative solution to the “labor problem”? Given the lack of coordinating capacity among US labor unions, I suggest not. At least partly, the progressives’ critique of the AFL-dominated labor movement was true. It is just that the possibilities, if not the concrete choices available to the labor movement in the early 1900s, were not limited to either a Leviathan or narrow craft voluntarism. The following comparative example makes this claim concrete. In a forgotten story in labor history — forgotten because of the opportunity that was not taken — the International Association of Machinists (IAM) and the National Metal Trade Association (NMTA) signed the so-called Murray Hill agreement in 1900. In terms of the agreement’s substance, employers conceded to a reduction in the working day from ten to nine hours for all machinists in NMTA shops. However, a complication arose from the union’s inability to convince all NMTA employers to also adopt a uniform 12.5 percent wage increase to maintain weekly earnings at earlier levels. The agreement was repudiated in the following strike wave, the union claiming that the employer had failed to agree to the wage increase, the employers accusing the union of calling strikes instead of settling the disputes through the central arbitration system established by the agreement. As told by Peter Swenson, employers would have in time accepted, and many would have even welcomed, centralized bargaining over wages and working conditions in exchange for the unions relinquishing their job-control objectives. Employers “slammed the door shut for all time, however, because union militants used the strikes to impose the closed shop … and rules prohibiting men from operating more than one machine at a time, working for piece rates, and instructing unskilled workers.”38 The IAM leadership did not approve the strikes and in fact had agreed to management’s demand for the open shop and the right to manage. Thus, the objective of taking wages out of competition came to founder on the IAM’s inability to control local militancy and designs on job control. At almost exactly the same time, in 1905, an almost identical experiment in the identical industry led the Swedish labor movement in a very different direction. Confronted with a metal-workers’ strike, the employers’ association in the engineering industry responded with a lockout at eighty-three member firms. The conflict led to the “first industry-wide multi-employer wage settlement for any industry in the country.” The agreement “allowed no restrictions on manning of machinery or hiring of unskilled workers and apprentices … [and] the union agreed to an open shop clause.” The metal workers’ counterpart in the United States, “[m]ilitant skilled craftsmen” in the IAM, “would have regarded the deal with dismay and disgust.” The next year, this industry agreement was followed by a multi-industry, national agreement known as the “December Compromise.” A key section of the agreement prohibits closed-shop agreements and establishes management control over “decisions involving hiring, firing, and supervising work.”39 Yet what workers gave up in firm-level “production politics” they gained in power over the labor market itself. Centralized bargaining has come to deliver high union density, the lowest level of wage dispersion in the advanced capitalist world, and most critically, high inclusivity, encompassing virtually all wage earners. The IAM’s attempt at establishing industry-wide bargaining vividly demonstrates how the US labor movement’s workplace-centered unionism acted as an obstacle to broader and more inclusive forms of worker organization. Centered at the workplace, and pursuing a job-control strategy, US unions had significant power to contest the employer’s domination of the labor process. Unfortunately, for exactly those same reasons, this constellation of power was too weak, too uncoordinated between firms, to contest the domination of the market. As the comparison of the IAM with the Swedish metal workers shows, local power generated conflict but obstructed efforts to develop self-regulation. Following decades of the “labor problem,” the state stepped in as regulator. As a result, “[g]overned by this state-operated regulatory agency [i.e., the NLRB], organized labor no longer shaped its own destiny—it was dependent on this agency.”40 O’Brien is therefore correct to insist that it was the progressives’ statist vision rather than the AFL’s voluntarist philosophy that prevailed. Nevertheless, we should not overlook how historically given forms of labor organization frustrated other possible forms of labor-relations regulation. This gives us another reason why voluntarism per se was not the culprit in labor’s current legal and existential crisis. Scandinavian self-regulation is, after all, another kind of voluntarism. At the same time, as the IAM example demonstrates, the institutional and organizational narrowness of craft unionism left the door open to a statist regime of labor law. THE CONSEQUENCES OF IGNORING THE LEGAL FORM Because of unions’ strong workplace presence but weak capacity for coordinating activity across workplaces, the regulation of labor relations was achieved by recourse to the law. This claim cuts directly against the thrust of a tradition of “critical” labor law. The story told by critical labor law scholars is of a potentially “anticapitalist” National Labor Relations Act that was “deradicalized” by conservative judges and narrow-minded intellectuals.41 In these approaches there is never any question whether the law should be used to regulate labor relations. Rather, the line of attack is to challenge the particular content of the labor law, not the form of regulation itself. Not only is this a mistake as a method of analysis but, as I will also demonstrate, it also commits an instrumentalist error about the nature of the law and the state within capitalism. A content critique of law obscures the way that law does more than simply help or hinder the labor movement achieve various, specific objectives. As a form of social regulation, the law also allocates determinate material and ideological resources as a means to achieve these ends. These means threaten to substitute for the working class’s own material and ideological means of regulation. This would not be an issue if labor unions or other working-class organizations were merely means of achieving gains for workers. But they are not. Whatever their limitations, unions are moments in the process by which workers constitute themselves as a class. Thus, the law — not in its content, but as a form of social regulation — always presents the danger of undermining this process through mechanisms of dependency and displacement.

#### Methodological questions should be prioritized over policy -it’s a logical prior question to solvency

Bartlett ‘90, professor of law at Duke University, 1990 (Katharine, 103 Harvard Law Review 829, February, lexis)

Feminists have developed extensive critiques of law n2 and proposals for legal reform. n3 Feminists have had much less to say, however, about what the "doing" of law should entail and what truth status to give to the legal claims that follow. These methodological issues matter because methods shape one's view of the possibilities for legal practice and reform. Method "organizes the apprehension of truth; it determines what counts as evidence and defines what is taken as verification." n4 Feminists cannot ignore method, because if they seek to challenge existing structures of power with the same methods that [\*831] have defined what counts within those structures, they may instead "recreate the illegitimate power structures [that they are] trying to identify and undermine." n5

#### TEXT\_\_\_\_\_\_\_ a just government ought to recognize an unconditional freedom of workers to strike as an act of solidarity with marginalized peoples.

#### A “right” gives power to the state, a freedom reduces it. The alternative is mutually exclusive with the case and solves better

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

What then should be the attitude of the labor movement toward the law? The very existence of the state and law requires some engagement with it, if only to avoid it. I address these issues in the next section. LABOR LAW AND UNION STRATEGY I have argued that the regulation of labor relations need not always assume the form of law, and that in fact it does not always assume the extreme form of legalism that we find in the United States. I have also demonstrated the contradictory nature of rights in the regulation of labor relations. What kind of labor legal strategy emerges from this analysis? The introduction drew the distinction between rights and freedoms.68 Rights are those interests or actions that are protected by the coercive power of the state. Freedoms on the other hand are those interests or actions that are not prohibited by the state, but also with which others may interfere; freedoms are neither legally protected nor prohibited. My contention is that the labor movement should advance labor freedoms and be wary about labor rights. This contention follows from the previous analysis. Since rights are distinguished by the fact that they are protected by the coercive power of the state, bureaucrats, judges, and legislators can use that fact to restrict labor’s own means and powers to enforce these interests and claims, subordinating society to the state. Indeed, as I have shown, state officials, with interests and power of their own, are likely to view labor’s competing power as legally redundant and particularly subversive. Labor freedoms restrict the coercive power of the state in a way that gives priority to labor’s autonomous sources of power, subordinating the state to society. Advancing labor freedoms is hardly an unambitious strategy, since direct prohibitions on concerted activities are abundant. The three most restrictive prohibitions on strike activity are those directed to (1) mass picketing,69 (2) organizing and bargaining strikes,70 and (3) secondary strikes and boycotts.71 Each is an affirmative ban on worker collective action, by which an employer may have the actions enjoined and the union fined. As such, they are restraints on workers’ freedom of action. The first ban has done the most to destroy the power of the strike and, as discussed below, to open the door to the employer’s use of replacement workers. The second has done the most to squelch coordinated worker activity across firms and industries. As identified earlier, the third has done the most to derail and suppress organic worker self-organization. These restrictions could be eliminated through various means. Congress could amend the National Labor Relations Act, and remove the offending provisions. Some labor law scholars have argued that these provisions violate the First Amendment and therefore should be declared unconstitutional. The labor movement should entertain all options, but I have little doubt that massive civil disobedience though direct worker confrontation with these legal barriers will also be necessary to discredit and overcome them. If such labor freedoms were achieved, employers would be under no state-imposed duty to refrain from interfering with workers engaged in such activities. Workers could be terminated for engaging in mass picketing, organizing strikes, or secondary picketing. Freedoms may therefore strike some readers as insufficient. Yet, it has been the burden of this essay’s comparative, historical, and legal analysis to demonstrate the self-defeating sociological effects of labor rights. Nevertheless, there is truth to the claim that certain, fundamental labor rights remain essential. Thus, insofar as it facilities worker solidarity and collective action, there seems little reason to eschew, for example, a worker’s right to join a union. Even more fundamentally, the rights of workers to be free from the employer’s physical assaults or from the state’s interference with speech and expression are also necessary. The distinction between rights and freedoms is no talisman. Rather, the ultimate objective must be kept in mind: the collective self-organization of the working class.72 To convince the reader that this proposal is not merely wishful thinking, we should recall the self-regulation models of Scandinavia. In Denmark and Sweden, the regulation of labor relations — including such fundamental matters as union recognition and minimum wages — falls within the purview of unions and organized employer associations. Strikes that are banned in the United States remain viable options in Scandinavia. Enforcement of the rules and agreements depends primarily (though not exclusively) on the economic weapons of labor and employers, rather than the physical compulsion administered by the state. Labor courts, unlike the NLRB, operate outside the hierarchy of the bureaucracy and courts of the state apparatus.

#### Statism destroys value to life

**Kateb** – Professor of Politics and Director of the Program in Political Philosophy at Princeton – **1992** (George, The Inner Ocean p. 117-118)

What is statism? From a broad range of possible meanings, we may confine ourselves for the moment to the sense present in nuclear rhetoric. Let us say that this statism is the belief that a government is not a mere government but a state and that as such it is the locus of identity of a society; that it is not only distinct from but above society; that it has rights (not merely duties); that its survival can be secured at any cost to its own society or to others. We ordinarily associate such thinking with absolute monarchy or with modern party and military dictatorships. We certainly do not think that such a belief is compatible with the Constitution or with the moral ideas connected with political legitimacy in general. Statism is a vision of life in which people are means to the end of the survival of power, in which society is understood as one great quasi-military organization or power base and in which the state is seen not only as a society's leadership but also as its reason for being. Officials may not recognize their rhetoric and themselves in this description. But I do not see what the expressed determination to risk or engage in a sizable exchange of nuclear weapons could mean except that the idea of statism has been accepted. This point becomes especially evident when we see that American nuclear rhetoric explicitly refers to a protracted nuclear war and thus to the readiness to accept massive numbers of American deaths. Even if we choose to leave aside the rhetoric concerning limited or special nuclear uses, and also to leave aside the massive numbers of deaths in other countries, we are compelled to take in the fact that the American government says it is willing to have the American people endure countless deaths. This willingness, in turn, can only mean that officials think that as long as the executive upper echelons survive intact, and with them a corps of military and police, the only other need is enough people left alive to supply the means necessary for the government—that is, the state—and its purposes. Its purposes are one: to remain and continue to bear the true existence and meaning of society, even when millions have been passively victimized unto death. I do not see what other implication can be drawn from any rationalization of the use of nuclear weapons in a sizable exchange. If we insist that even a so-called special or limited use carries with it the immediate or delayed possibility of escalation, then we simply say that the rationalization of any use of nuclear weapons is the most extreme form of statism and therefore is the most extreme form of illegitimate or anti-constitutionalist doctrine.

#### Statism causes extinction

**Beres, 1994** (Louis Rene, Professor of International Law in the Department of Political Science at Purdue University, Spring,, Arizona Journal of International and Comparative Law, Lexis)

The State presents itself as sacred. The idea of the State as sacred is met with horror and indignation, especially in the democratic, secular West, but this notion is indisputable. Throughout much of the contemporary world, the expectations of government are always cast in terms of religious obligation. And in those places where the peremptory claims of faith are in conflict with such expectations, it is the latter that invariably prevail. With States as the new gods, the profane has become not only permissible, it is now altogether sacred. Consider the changing place of the State in world affairs. Although it has long been observed that States must continually search for an improved power position as a practical matter, the sacralization of the State is a development of modern times. This sacralization, representing a break from the traditional [\*20] political realism of Thucydides, n57 Thrasymachus n58 and Machiavelli, n59 was fully developed in Germany. From Fichte n60 and Hegel, through Ranke and von Treitschke, n61 the modern transformation of Realpolitik has led the planet to its current problematic rendezvous with self-determination. Rationalist philosophy derived the idea of national sovereignty from the notion of individual liberty, but cast in its modern, post-seventeenth century expression, the idea has normally prohibited intervention n62 and acted to oppose human dignity and human rights. n63 Left to develop on its continuous flight from reason, the legacy of unrestrained nationalism can only be endless loathing and slaughter. Ultimately, as Lewis Mumford has observed, all human energies will [\*21] be placed at the disposal of a murderous "megamachine" with whose advent we will all be drawn unsparingly into a "dreadful ceremony" of worldwide sacrifice. n64 The State that commits itself to mass butchery does not intend to do evil. Rather, according to Hegel's description in the Philosophy of Right, "the State is the actuality of the ethical Idea." It commits itself to death for the sake of life, prodding killing with conviction and pure heart. A sanctified killer, the State that accepts Realpolitik generates an incessant search for victims. Though mired in blood, the search is tranquil and self-assured, born of the knowledge that the State's deeds are neither infamous nor shameful, but heroic. n65 With Hegel's characterization of the State as "the march of God in the world," John Locke's notion of a Social Contract -- the notion upon which the United States was founded n66 -- is fully disposed of, relegated to the ash heap of history. While the purpose of the State, for Locke, is to provide protection that is otherwise unavailable to individuals -- the "preservation of their lives, liberties and States" -- for Hegel, the State stands above any private interests. It is the spirit of the State, Volksgeist, rather than of individuals, that is the presumed creator of advanced civilization. And it is in war, rather than in peace, that a State is judged to demonstrate its true worth and potential. [\*22] How easily humankind still gives itself to the new gods. Promised relief from the most terrifying of possibilities -- death and disappearance -- our species regularly surrenders itself to formal structures of power and immunity. Ironically, such surrender brings about an enlargement of the very terrors that created the new gods in the first place, but we surrender nonetheless. In the words of William Reich, we lay waste to ourselves by embracing the "political plague-mongers," a necrophilous partnership that promises purity and vitality through the killing of "outsiders."

#### Rights subordinate, legitimate, and alienate-30 years of empirical evidence prove the k correct so have a high threshold for aff answers

West, JD, 13

(Robin L, Frederick J. Haas Professor of Law and Philosophy, Associate Dean, Georgetown University Law Center Tragic Rights: The Rights Critique in the Age of Obama Georgetown Public Law and Legal Theory Research Paper No. 11-143 <http://scholarship.law.georgetown.edu/facpub/736>)

Now, whither the rights critique today? If anything, U.S. constitutional rights in the age of Obama are more overtly Lochnerian,"more economically regressive," more aggressively colorblind," more insulating of the private sphere and of intimate violence," and, particularly when coupled with new technologies, more alienating than they were when Gabel first leveled that sad charge against them." Obama-era rights, viewed from the perspective of the 1980s rights critique, seem at first to be simply a story of plus ga change. Thus, our contemporary rights subordinate, just as the critics charged, and as Heller39 and Citizens United illustrate.40 It is hard to doubt that gun rights subordinate the interests of the weak to those empowered with lethal weaponry, particularly in the domestic setting of the home, and that extending speech rights to corporations to influence political elections subordinates individual to corporate interests. Second, Obama-era rights rhetorically legitimate, again in much the way critics thought they might. Perhaps most notable, the new, improved, and expanded "right to marry" now extends to same-sex couples in much of the country4 ' and enjoys the support of both the progressive left and social conservatives alike. 42 The right will also likely soon be given the Supreme Court's seal of constitutional approval. 43 Nevertheless, it carries at least two quite serious and largely unnoticed legitimation costs. First, and as a number of commentators have noted, the "right to marry" is at heart an economic entitlement that extends a fairly long list of not very generous financial benefits to some members of the polity lucky enough to find a marriage partner.4 4 The right grants entitlements to a spouse's employer-granted health insurance, his or her retirement benefits, military benefits, and workers' compensation payments, thereby allowing those with spouses to marginally hedge their bets against life's risks. Not coincidentally, whatever good this does the marital partners, it also further legitimates the lack of a more robust safety net for all. What poor people should do, simply, is marry, if they wish to improve their economic prospects. Trumpeting the economic value of marriage-its utility as a privatized safety net for the partners and hence a lifting of the burden of social responsibility on the rest of us-was a shared project of both the Bush and Clinton administrations, both of whom viewed marriage as a privatized safety net and therefore urged it on poor citizens. 45 The Bush- and Clinton-era marriage-promotion project for poor citizens and the equal rights advocates' case for same-sex marriage pushed by devotees of same-sex marriage rest on precisely the same premise: marriage is a privatized safety net given by the state to marital partners. The latter advocacy effort simply adds that it should be made available to gay as well as straight citizens. The "right to marry" that has come to fruition during the Obama years is simply the logical outcome of both movements-the marriage promotion movement of the Clinton-Bush years and the equal rights campaign of more recent vintage. Once it comes to full realization, it will no doubt bring tremendous psychic benefits to those who have had their sexual and personal identities shattered or torn by societal nonrecognition. It will also, however, further cement, through the relentlessness of legitimating levers, the felt justice of an inadequate safety net for all others, who for whatever reason are not within the benighted circle of marital choice. That is the first legitimation cost. But there is a second legitimation cost, less noticed in the euphoria and struggle to win the right to marry for same-sex couples, particularly when that right is read, as it should be, in conjunction with the recently expanded right to sexual privacy for gay as well as straight sex.4 6 The right to marry, and the right to gay sex, at least rhetorically, further cements the legitimacy of the subordination that occurs within the bounds of intimacy and marital privacy. Crimes that occur within intimate relationships such as marriage are indeed still crimes and have been recognized as such since the advent of domestic violence movements. But the valorization and now constitutionalization of marriage at the heart of a right to privacy risks further insulating that violence within walls of constitutional privacy.4 7 The broad coalition of groups, individuals, and courts increasingly inclined to recognize and expand marital rights further protects intimate and marital privacy but arguably does so at the cost of rhetorically insulating the sexual violence and coercion that sometimes occurs within the bedroom walls. Now, it does so for the benefit of same-sex as well as opposite-sex partners. The legitimation of institutional, unconscious, private, or simply unintentional forms of racial subordination has also arguably accelerated during this time of governance by an African American President, aided by a Court intent on restraining affirmative action or race conscious remedies of other sorts. Parents Involved in Community Schools v. Seattle School District No. 148 cleanly legitimates the inadequacy of unequal schooling and housing by granting a formal right against state-sponsored segregation in precisely the way that Alan Freeman first predicted.4 9 There could not be a clearer demonstration of the critical claim-put forward by Alan Freeman, Derrick Bell, Charles Lawrence, and a host of other early critical scholars-that achievement of limited formal racial equality in some spheres of employment and schooling, through a legal approach focusing on the perpetrator's state of mind, legitimates the unfairness and lack of generosity of winner-take-all approaches to education and employment in which the losers, whether or not intentionally targeted by race, are both disproportionately black and nearly universally poor.so And finally, rights in the age of Obama alienate in both new and old ways. In its original formulation, Peter Gabel's "pact of the withdrawn selves" was captured by a metaphoric transaction he used repeatedly to communicate the essence of his critique: the placid noncommunication between a customer in a bank and a teller, when the customer goes in to the bank to exercise his right to deposit or withdraw cash from his account." That entire transaction, Gabel observed, is heavily structured by layer upon layer of rights: rights protecting the bank owners from trespass, rights entitling the teller to a paycheck, rights protecting the employer's power to fire her at will, rights entitling the customer to money charged to his account, rights that structure the relations of payor and payee, drawer and drawee, and so on, rights protecting both the bank and the customer against theft and fraud, and rights protecting the security of the customer's account from calamitous bank failure.5 2 The human relation between the teller and customer is so encrusted with rights that its humanity virtually disappears. Might some of that layering of rights, he wondered, be implicated in the utter inability of the customer and the teller to even acknowledge, much less celebrate, their mutual humanity? Gabel thought so.5 3 Today, thirty years later, hardly anyone encounters a teller for that transaction. We go outside to stand in line to effectuate the transaction with a machine, and we do that only on the rare occasions when our home banking system cannot accomplish the same end. Gabel might observe that rights now form the lingua franca of a pact not between withdrawn selves but between withdrawn selves and the machines that facilitate as well as police the withdrawal. Indeed, rights that facilitate the mechanization of our interactive lives alienate our withdrawn selves from community, if anything, more aggressively and more blatantly than did the nondiscrimination rights and the identity rights to reproductive freedom that formed the target of the various rights critiques in the 1980s.54 Again, one might think that rights critics would at least be claiming vindication. Maybe they are embarrassed by just how transparent it has all become; maybe it has all become too obvious for words. But for whatever reason, no one in the legal academy is examining whether the alienation cyberspace effectuates might be impacting communitarian values, and whether that trade-off is affecting legal regimes. (721-7)

#### Fetishizing rights inherently separate and isolate, this prevents valuing relationships and care

Dillon, PhD, 92

(Robin S., Philosophy@Lehigh, Toward a Feminist Conception of Self-Respect Hypatia, Vol. 7, No. 1 (Winter, 1992), pp. 52-69)

There is another disturbing aspect of the standard account. Insofar as persons are viewed as essentially rights-bearers, we are separated and distanced from each other. For many of our fundamental moral rights function as barriers to protect us from the encroachments of others, and to respect a person's rights is to keep one's distance from her. Staking our worth as persons on being rights-bearers may thus make it difficult to envision ourselves as being-in-rela- tion with others and to value ourselves as connected with others. On the other hand, to the extent that the self-conceptions of many women do include regarding themselves as selves-in-relation, as Carol Gilligan and others have claimed (Gilligan 1982, 1986; Miller 1984), then such an understanding of self-respect does not take seriously the actual concerns of many women. Nor does it take appropriate account of the way in which we are, as Annette Baier calls us, "second persons": beings who become and exist as persons only in relationships with persons (Baier 1985; Code 1987b; Whitbeck 1984). All of this is not to say that we ought not to think of persons as having rights. Rather, it is to suggest that an exclusive or even a strong emphasis on respecting ourselves as rights-bearers does not offer us a way of viewing and valuing ourselves that could serve as the basis for the transformation of society along more integrative lines. (57-8)