## 1

#### Interpretation: The Affirmative must prove the desirability of Resolved: A just government ought to recognize an unconditional right of workers to strike.

#### Resolved indicates a policy action.

Parcher 1. [Jeff. 2/26/01. “Re: Jeff P--Is the resolution a question?” <https://web.archive.org/web/20050122044927/http://www.ndtceda.com/archives/200102/0790.html>] Justin

(1) Pardon me if I turn to a source besides Bill. American Heritage Dictionary: Resolve: 1. To make a firm decision about. 2. To decide or express by formal vote. 3. To separate something into constiutent parts See Syns at \*analyze\* (emphasis in orginal) 4. Find a solution to. See Syns at \*Solve\* (emphasis in original) 5. To dispel: resolve a doubt. - n 1. Frimness of purpose; resolution. 2. A determination or decision. (2) The very nature of the word "resolution" makes it a question. American Heritage: A course of action determined or decided on. A formal statemnt of a deciion, as by a legislature. (3) The resolution is obviously a question. Any other conclusion is utterly inconcievable. Why? Context. The debate community empowers a topic committee to write a topic for ALTERNATE side debating. The committee is not a random group of people coming together to "reserve" themselves about some issue. There is context - they are empowered by a community to do something. In their deliberations, the topic community attempts to craft a resolution which can be ANSWERED in either direction. They focus on issues like ground and fairness because they know the resolution will serve as the basis for debate which will be resolved by determining the policy desireablility of that resolution. That's not only what they do, but it's what we REQUIRE them to do. We don't just send the topic committtee somewhere to adopt their own group resolution. It's not the end point of a resolution adopted by a body - it's the prelimanary wording of a resolution sent to others to be answered or decided upon. (4) Further context: the word resolved is used to emphasis the fact that it's policy debate. Resolved comes from the adoption of resolutions by legislative bodies. A resolution is either adopted or it is not. It's a question before a legislative body. Should this statement be adopted or not.

#### Recognition requires policy action.

Britannica. https://www.britannica.com/topic/international-law/States-in-international-law

Recognition is a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality. The process of recognizing as a state a new entity that conforms with the criteria of statehood is a political one, each country deciding for itself whether to extend such acknowledgment. Normal sovereign and diplomatic immunities are generally extended only after a state’s executive authority has formally recognized another state (see diplomatic immunity). International recognition is important evidence that the factual criteria of statehood actually have been fulfilled. A large number of recognitions may buttress a claim to statehood even in circumstances where the conditions for statehood have been fulfilled imperfectly (e.g., Bosnia and Herzegovina in 1992). According to the “declaratory” theory of recognition, which is supported by international practice, the act of recognition signifies no more than the acceptance of an already-existing factual situation—i.e., conformity with the criteria of statehood. The “constitutive” theory, in contrast, contends that the act of recognition itself actually creates the state.

#### Definition of unconditional right to strike:

NLRB 85 [National Labor Relations Board; “Legislative History of the Labor Management Relations Act, 1947: Volume 1,” Jan 1985; <https://play.google.com/store/books/details?id=7o1tA__v4xwC&rdid=book-7o1tA__v4xwC&rdot=1>] Justin

\*\*Edited for gendered language

As for the so-called absolute or unconditional right to strike—there are no absolute rights that do not have their corresponding responsibilities. Under our American Anglo-Saxon system, each individual is entitled to the maximum of freedom, provided however (and this provision is of first importance), his [their] freedom has due regard for the rights and freedoms of others. The very safeguard of our freedoms is the recognition of this fundamental principle. I take issue very definitely with the suggestion that there is an absolute and unconditional right to concerted action (which after all is what the strike is) which endangers the health and welfare of our people in order to attain a selfish end.

#### Violation they don’t.

#### Standards:

#### 1] Limits—no resolutional bound creates infinite 1ACs, favoring the aff because they set the stage and determine engagement.

#### Impacts – a] prepping every possible aff wrecks small schools, which has a disparate impact on under-resourced debaters b] States will inevitability use militarization to suppress movements – engaging that weaponry is key to movement building c] Not subjecting the aff to rigorous argumentation eliminates hope for the skills necessary to make real change.

#### 2] T creates the legal education key to understand the law’s strategic reversibility paired with intellectual survival skills.

Archer 18 (Deborah N., Associate Professor of Clinical Law @ NYU School of Law, “POLITICAL LAWYERING FOR THE 21ST CENTURY,” draft, pp. 1-43) \*Edited\*

Many law students are overwhelmed by injustice. When faced with the reality of systemic inequities, even the most committed students may surrender to hopelessness, despair, and inaction. This is not because they have stopped caring about injustice, but because they cannot envision a path from injustice to justice. Many do not have the tools to navigate systemic injustice or respond to interwoven legal and social ills. This article contends that although clinical legal education provides an excellent opportunity to offer students the skills, experience, perspective, and confidence to grapple with today’s complex social justice issues, it has not sufficiently responded to the changing educational needs of our students by teaching law students how to most effectively utilize litigation alongside other tools of systemic reform advocacy. How can clinical education prepare law students to navigate issues of systemic discrimination and injustice? Clinical teaching’s signature pedagogical vehicle involves students providing direct representation of individual clients in straightforward, manageable cases in which students focus on discrete legal issues, take full ownership of the case, and see it through from beginning to end.1 These cases train students to be creative problem solvers for individual clients. However, this model does not effectively prepare students to address and combat structural or chronic inequality. The individualized model also provides relatively limited opportunities for students to address the intellectual and skills-based challenges of lawyering on a larger scale.2 Complex cases allow students to explore the complicated relationship between justice, law, and politics.3 They introduce students to many of the skills needed to integrate rebellious or political lawyering into their practice, including working with others to brainstorm, design, and execute an advocacy strategy; helping to build and participate in a coalition; engaging in integrated advocacy; and analyzing the outside forces that help shape outcomes, including organizational capacity, challenges of enforcement, and potential political backlash.4 There is a longstanding and ongoing debate within the clinical legal education community about the relative merits of small, individual cases versus larger impact advocacy matters.5 The parameters of this debate, coupled with an influential body of clinical scholarship criticizing impact litigation and the lawyers who bring it,6 have led the clinical teaching community to overreact to these critiques by moving farther away from impact advocacy and strategic litigation rather than working to reconcile the legitimate concerns with the critical importance of impact advocacy as a tool for both systemic social change and legal education. Law schools also face internal and external pressures that affect their willingness to engage students in strategic litigation. The result is that important benefits of impact advocacy and strategic litigation have gotten lost or minimized. Twenty years ago, social justice advocates rallied around political lawyering as a tool for more effective advocacy on behalf of marginalized communities.7 Political lawyering employs a systemic reform lens in case selection, advocacy strategy, and lawyering process, with a focus on legal work done in service to both individual and collective goals.8 While litigation is central to political lawyering, political lawyers recognize that litigation, interdisciplinary collaboration, policy reform, and community organization must to proceed together. Litigation is just one piece of a complex advocacy puzzle. However, clinical law professors have never fully grappled with how to employ this model.9 Law professors today seeking to train the next generation of social justice advocates should expose students to the transformational potential of integrated advocacy—strategic litigation, community organizing, direct action, media strategies, and interdisciplinary collaboration proceeding together—in the fight for social change. Political lawyering can serve as a model. The NAACP strategy of building comprehensive advocacy campaigns to challenge racial and economic injustice helped to launch the political lawyering movement in the last century.10 But political lawyering in the 21st century needs to do more. It needs to re-embrace and update the concept of integrated advocacy to help lawyers leverage a broad range of tools and perspectives to generate effective approaches to issues of injustice, both nascent and chronic. Charles Hamilton Houston, the architect of the strategy to challenge the racialized policy of “separate but equal,” whose life work challenged racial injustice in novel ways, famously explained that “a lawyer’s either a social engineer or he’s a parasite on society,” defining social engineer as a “highly skilled, perceptive, sensitive lawyer who understood the Constitution of the United States and knew how to explore its uses in the solving of problems of local communities and in bettering the conditions of the underprivileged citizens.”11 Law schools should set as an ambition teaching students to push boundaries in diagnosing and tackling the most pressing problems facing society. The Article proceeds in three parts. Part I discusses political lawyering and explores its potential to serve as a framework to teach students the legal and extra-legal advocacy skills necessary to tackle the complex challenges of systemic injustice and inequity. Part I also discusses the institutional barriers that limit the ability and willingness of legal educators to exploit the pedagogical potential of a political lawyering framework, including the idea that litigation is often harmful to the cause of justice because it puts the lawyer ahead of the community being served. Part I then examines whether the choice that clinical legal education makes to teach through small, single-issue cases rather than through more complex vehicles offers students sufficient opportunities to develop the array of skills needed for integrated advocacy. Part II describes the ways that clinical legal education can reframe political lawyering as political justice lawyering, both to adapt to the current environment—complicated by the current partisan political climate—and the contemporary challenges of social justice advocacy. It also explores pedagogic strategies that clinical legal educators can employ to train effective 21st century social justice lawyers. Finally, Part III presents a case study from my own teaching to elucidate the opportunities and challenges inherent in this approach to clinical teaching. I. POLITICAL LAWYERING AS A FRAMEWORK FOR LEGAL EDUCATION “Social vision is part of the operating ethos of self-conscious law practice. The fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo. Self-conscious practice appears to be less important, and is always less destabilizing, when it serves what is, rather than what ought to be.” - Gary Bellow12 In 1996, the Harvard Civil Rights-Civil Liberties Law Review published a symposium on “political lawyering”: a model of social justice advocacy that integrates legal advocacy and political mobilization by linking courtroom advocacy to community education, mobilization, and organizing.13 The symposium, honoring Gary Bellow, a leading political lawyer of the time and one of the architects of clinical legal education, explored the potential for political lawyering to respond to the social justice challenges of the moment.14 At the time of the symposium, progressive scholars and activists believed that America was in a period of retrenchment on civil rights and were in search of sources of hope.15 In the face of waning public support for the poor and disenfranchised, both financially and philosophically, one of the biggest dangers social justice advocates faced was despair about the possibility of progress.16 Bellow contended that the nation’s ideological reconfiguration created a potentially debilitating doubt among lawyer-activists who, faced with declining avenues for change, had “embraced a far too constricted definition of both the possible and desirable in law-oriented interventions than is, in fact, dictated by the rightward turn of national and local politics.”17 With victory harder to achieve, he insisted that lawyers who embraced and reimagined political lawyering would advance the fight for equality more effectively. The purpose of political lawyering is not to advance a particular partisan agenda: It is to represent disenfranchised communities against the forces of oppression.18 While difficult to define precisely, political lawyers take a politicized and value-oriented approach to legal work done in service to both individual and collective goals,19 embracing “politics” in the classical sense as a concern “with what it means to be human; what is the best life for a human being; and . . . the ways in which we can order our living together so that good human lives will emerge.”20 Practically, political lawyers use a systemic reform lens in decisions about case selection, advocacy strategy, and the lawyering process. Political lawyers think about the relationship between law, politics, and justice21 and use the law to animate fundamental change in society, to alter the allocation of power and opportunity, and to enable those individuals and communities with little power to claim and enjoy their rights.22 Political lawyers also take advantage of opportunities to influence the perceptions and behaviors of those in power.23 Finally, political lawyers empower individuals and communities by providing them with competent legal advocacy,24 but do not confine themselves to one mode of advocacy in their quest for structural change. Instead, political lawyers use integrated advocacy strategies, including litigation, legislative advocacy, public education, media, and social science research, assessing the efficacy and impact of each tool in service to a long-term visions of equality and solidarity.25 A. A ROLE FOR POLITICAL LAWYERING IN CLINICAL LEGAL EDUCATION In his essay, Gary Bellow described several examples of his experience as a political lawyer.26 He reflected that: Certainly, if one focuses on the strategies employed in these examples, few uniformities emerge. In some of the efforts, we sought rule changes or injunctive relief against a particular practice on behalf of an identified class. In other situations, we pursued aggregate results by filing large numbers of individual cases. Some strategies are carried out in the courts. At other times we ignored litigation entirely in favor of bureaucratic maneuvering and community and union organizing. Even when pursuing litigation, we often placed far greater emphasis on mobilizing and educating clients, or strengthening the entities and organizations that represented them, than on judicial outcomes. And always, we employed the lawsuit, whether pushed to conclusion or not, as a vehicle for gathering information, positioning adversaries, asserting bargaining leverage, and adding to the continuing process of definition and designation that occurs in any conflict.27 The parallels between the challenges social justice lawyers faced in the 1980s and 1990s and those that law students committed to social justice 28 face today are evident. As discussed earlier, law students’ own despair about the enormity of the fight for justice can compromise their ability to recognize and tackle chronic injustice. Like the earlier generation of political lawyers Bellow described, many law students today find it difficult to believe in the possibility of change let alone its likelihood. Inexperience challenging systemic legal problems exacerbates their skepticism. They recognize that the advocacy tools they have learned are insufficient to solve today’s problems, which fuels their sense of doubt. To help expand their understanding of what may be possible, law students, particularly those interested in continuing the fight for racial justice, should be taught to understand and embrace the goals, strategies, and tools of political lawyering—re-imagined for current times. Clinical professors need not adopt political lawyering wholesale as the only or primary approach to teaching lawyering skills and legal advocacy. Indeed, one of the challenges social justice advocates face is unnecessarily limiting the understanding of what it means to be a good lawyer. Rather, clinical professors should explore political lawyering as one framework they can use to help struggling law students find direction and inspiration, as well as to create a sense of connection to the work of the social justice lawyers who preceded them. As Gary Bellow wrote: Doubt and defeatism, the sense of overly pessimistic assessments of action possibilities, are recurrent experiences in oppositional politics, whomever the political actors may be. They require hard-headed assessments of what works and why; a willingness to relinquish strategies and goals born of different possibilities and particularities. . . . Doubt and defeatism produce powerful spirals that can only be broken by acts of will and leaps of faith.29 To be an effective political lawyer, an advocate must have a “profound willingness and ability to learn about and respond to the complexity of real human beings in ever-shifting legal, economic, and social worlds.”30 So, while political lawyering is certainly grounded in effective legal advocacy, it demands more than conventional legal skills. The political lawyer values deep personal involvement as a necessary component in addressing and tackling legal issues. That personal engagement can take many forms, but, at a minimum, involves countless conversations, collaborative brainstorming, comparing shared experiences, and adding empathy and commonality to enhance the legal analysis and political judgment.31 It also requires lawyers to advocate with a clear vision of what justice looks like because effective political lawyering “reache[s] not only across large numbers of people, but from the present into some altered version of the future.”32 Learning to combine savvy legal analysis with broad engagement, a deeper understanding of the complexity of the problems faced by impacted communities, and envisioning an altered and more just future can help lead to real solutions and overcome passivity and ~~paralysis~~.33 The Civil Rights Movement, with its blended advocacy strategies, pulling a variety of levers to enable immediate or systemic change, offers one example of political lawyering. Visionary leaders helped give voice to the frustrations and demands of the community, while other leaders acted as tacticians to devise, plan, and coordinate the strategy.34 There were sustained and strategic protests to draw public attention to injustices, demand change, and apply political pressure. The strategic use of litigation led gradually to the establishment of the building blocks for systemic change. Finally, civil rights lawyers worked to enshrine litigation victories in legislation.35 While the goal of political lawyering is to empower and advance the rights of disadvantaged communities, the lawyers who engage in it also reap significant benefits. One scholar effectively articulated some of these benefits utilizing religious terms, asserting that political lawyering can provide hope and direction to advocates by providing a “faith”—“a story, an account of a rational hope that provides people with an image and principles for realizing the sort of lives they ought to live.”36 Political lawyering can also provide what Christians refer to as a “gospel”—a story that explains and inspires.37 The faith and gospel of political lawyering can help lead law students who are overwhelmed by injustice to a place of deeper understanding and more effective advocacy. But law students must learn how to understand, articulate, and deploy that faith and gospel in service of others. B. INSTITUTIONAL CONSTRAINTS ON POLITICAL LAWYERING Complex social justice problems offer robust opportunities to teach students about the law and lawyering, and legal clinics serve as an important vehicle to bring that set of issues and experiences into the classroom.38 As law schools reevaluate the nature and function of legal education in light of market forces,39 they should also give attention to the role of justice in the curriculum and the potential for law school clinics to be centers for incubation of new and evolving models of lawyering. By embracing political lawyering and encouraging engagement on complex and novel social justice issues, clinical legal education can operate as a “generator of new visions for legal practice” on behalf of poor and marginalized communities.40 Of course, that choice is not without hurdles or concern. 1. Ideological, Financial, and Pedagogical Pressures When clinical and experiential learning programs have moved away from an access to justice model—with a focus on the immediate challenges facing individual clients—to a broader social justice model focused on systemic reform and community empowerment, they have often encountered criticism from inside and outside of the legal academy.41 First, critics have raised concerns that integrated advocacy in support of systemic reform may elevate the profile of faculty and law schools but detract from an appropriate focus on the educational goals of individual students.42 Others have identified the potential for violating the separation between pedagogy and partisan politics.43 And still other critics have identified a risk that faculty will impose their personal political perspectives on their students.44 As discussed in more detail below, integrated advocacy strategies can, in fact, serve as valuable clinical teaching tools that promote broader student learning and support important pedagogical goals. By contrast, exclusive reliance on individual representation offers limited opportunities to teach essential lawyering skills, including the skills critical to identifying and challenging systemic injustice.45 Every clinical program makes a political decision in deciding which cases to take or not to take, as each decision has political implications.46 Accepting cases in criminal justice, immigration, environmental justice, and international human rights, for example, involves political choices, regardless of whether the issues are addressed through individual representation or systemic reform efforts.47 Clinics will continue to represent individual clients who are the victims of poverty, discrimination, and disenfranchisement. These cases do not suddenly become inappropriate teaching tools because the lawyer aggregates those claims and utilizes complementary strategies to seek systemic, community-wide redress. Lawyers must be free to use all available means to challenge the marginalization of their clients, including strategic litigation, legislative advocacy, and other advocacy strategies designed to achieve systemic reform. If law schools intend to fulfill their promise to prepare law students to tackle urgent and pressing challenges, then they must teach students to identify and address interlocking legal and social problems. Still, while law schools have educational ambitions, they also face financial demands that might affect their educational choices. In fact, those financial realities may motivate schools to avoid disputes that expose them to financial risk and to a potential loss of good will that a clinic’s involvement in controversial cases might occasion.48 While that institutional concern certainly has merit, it is not unique to political lawyering on behalf of clients. Whenever a law school chooses to represent clients, there is the potential for someone to take issue with the school’s choice of side or client. Similarly, law schools may experience external pressures from government, private entities, donors, and alumni to prevent the use of law school resources to challenge powerful corporate or government interests.49 These critiques evoke the successful challenge to Legal Services Corporations engaging in class action litigation on behalf of their clients50 and the long history of efforts to limit the means through which clinics can represent their clients.51 History is replete with examples of external attacks on law schools’ clinical efforts. From the 1968 attack by state legislators on the clinical program at the University of Mississippi School of Law over its involvement in a school desegregation suit,52 to the early 1980s threats to limit the activities of the University of Connecticut’s criminal defense clinic after the clinic successfully challenged a provision of the state’s death penalty statute,53 to the 2017 decision of the University of North Carolina Board of Governors to defund the law school’s Center for Civil Rights’ work to challenge systemic and racialized barriers to equality, law schools have experienced public scrutiny and scorn for their client and case selection decisions. A clinical faculty member’s case selection decisions should not be without limits or guidelines. For example, limited resources and specific pedagogical objectives will necessarily dictate which cases will be considered appropriate. However, making case selection decisions on the basis of pedagogical choices differs fundamentally from decisions based on ideological pressure from outside forces. The latter raises fundamental questions of academic freedom and other professional responsibilities.54 Clinical faculty members must maintain some independence to choose cases and clients that meet that clinic’s educational and public service goals.55 2. The Anti-Litigation Bias Political lawyers have long embraced litigation’s potential to achieve “radical extensions of democracy, equality, and racial justice” in addition to structural and cultural change.56 Law reform and structural change are important aspects of political lawyering.57 Accordingly, impact litigation on behalf of marginalized people and communities has long been an important tool for political lawyers.58 Indeed, the NAACP’s fight against racial segregation and inequality in the 1940s and 1950s represents an early example of political lawyering that strategically deployed litigation as part of a comprehensive effort to resist oppression and advance equality.59 Political lawyering never embraced an exaggerated belief that litigation should be the centerpiece of the fight for equality.60 Instead, like the advocates at the heart of the NAACP’s desegregation strategy, political lawyers “recognized that litigation, interdisciplinary collaboration, and community organization had to proceed together.”61 In the late 1990s and early 2000s, political and cultural shifts affected the strategies many political lawyers employed. New federal restrictions on the use of impact litigation and legislative advocacy by legal services lawyers were a cause of significant concern.62 Where impact litigation remained a possibility, many political lawyers worried that litigation offered a dangerous path. Although federal courts, in particular, had proved supportive in the fight for racial justice in the 1960s, progressive lawyers in later years worried that a more conservative judiciary was just as likely, if not more inclined, to set back progressive movements.63 This concern proved correct, particularly in the area of racial justice. Decades of conservative appointments to the federal bench64 led to a series of legal setbacks65 that effectively limited the federal courts as a venue for the redress of illegal discrimination.66 Many advocates also believed that while progressive lawyers were toiling away in the courtroom and achieving only minor success, conservative advocacy groups had mastered the more efficacious strategy of building powerful grassroots constituencies.67 As courts increased their hostility to civil rights and racial justice, making victory and progress more difficult, political lawyers turned away from litigation and began focusing on alternative methods to fight for social change.68 While the labels have changed, the fundamental purpose of the work remained the same. Political lawyering gave way to rebellious lawyering, community lawyering, and movement lawyering.69 These models of advocacy embrace different visions of advocacy that may vary in the emphasis placed on the law’s comparative advantage relative to other strategic methodologies and tools.70 But, they all acknowledge the bond that joins client, community, and lawyer together in a common enterprise: empowering those without power and fighting for justice and equality. The de-emphasis on strategic litigation brought real benefits. It encouraged lawyers to work as members of a team, and challenged lawyers to ensure that those marginalized by injustice played a central role both as the focus of the advocacy and as participants in the advocacy, a positive turn regardless of the motivation.71 This evolution came at a cost. What began as a tactical de-emphasis on litigation evolved into a philosophical bias against litigation as a social justice advocacy tool.72 Initially, social justice lawyers turned away from impact litigation because they feared that an increasingly conservative judiciary would use these cases as an opportunity to further roll back prior gains. However, with time, the reluctance to pursue litigation became less a reaction to circumstance and more a matter of principle. Some writers argued that litigation is a tool through which lawyers usurp the authority of already marginalized clients by setting their priorities for them.73 And, they claimed that litigation disempowers communities because of the unbalanced power dynamics between social justice lawyers and marginalized clients.74 An example is the dialogue around rebellious lawyering, one of the most prominent models for social change advocacy. Gerald López conceptualized rebellious lawyering as an advocacy model that would empower poor clients through grassroots, community-based advocacy that was facilitated by lawyers.75 Rebellious lawyering emphasizes concepts of community organization, mobilization, and “deprofessionalization.”76 It calls on lawyers to reflect on critical elements of the attorney-client relationship that may further oppress members of marginalized communities.77 Through rebellious lawyering, Professor López advances the belief that although lawyers should help solve problems facing the poor, lawyers are not the preeminent problem solvers in that relationship and should defer to clients and communities.78 Gerald López prefers that lawyers focus on “teaching self-help and lay lawyering” to empower communities to help themselves.79 Professor López espoused his positive vision of rebellious lawyering as an alternative to what he calls regnant lawyering.80 Professor López asserts that regnant lawyers are convinced that they need to be the primary and active leaders in their representation of poor people. Regnant lawyers find community education and empowerment to be of only marginal importance.81 The result is that the regnant lawyer dominates the attorney-client relationship, giving little voice to the needs or concerns of the client. Finally, Professor López also believes that regnant lawyers have little practical understanding of legal, political, and social structures.82 Rebellious lawyering raised important questions about the role litigation should play in social justice movements. Gerald Lopez was certainly skeptical that “legal technicians” could make a meaningful contribution83 and questioned whether lawyers turned to litigation because it was best for the client or because the lawyer wanted to play “hero.”84 All political lawyers should ask themselves these questions when considering impact litigation as part of integrated advocacy on behalf of marginalized communities.85 But, over time, commentators began to equate regnant lawyering with impact litigation.86 Some social justice advocates argued that impact litigation perpetuated racism because white lawyers used it as a tool to impose their views on communities of color.87 Others advanced images of litigators as outsiders who used poor communities as guinea pigs in their social justice experiments, warning that “practicing law in the community is not a tourist adventure and, therefore, we must eschew the routine of the autonomous, interloping advocate who dreams up cases in the home office and then tests them on the community.”88 Litigation, and systemic reform litigation in particular, became synonymous with regnant lawyering: an “enemy” of social justice and not a tool fit for people committed to fighting for enduring social change. Derrick Bell advanced one of the most prominent and influential critiques of litigation.89 Although he acknowledged the success of the first decade of school desegregation litigation, Professor Bell questioned the lack of lawyer accountability to marginalized communities. According to Professor Bell, NAACP lawyers continued to employ an advocacy strategy that focused on structural school desegregation, even while many members of the Black community preferred a strategy that would have focused on building quality, though segregated, neighborhood schools.90 He cautioned that social justice advocates failed to acknowledge growing conflicts between what they believed were the long-range goals for their clients and the client’s evolving interests and needs.91 In the end, many members of the impacted community were left feeling marginalized. Professor Bell also suggested that “civil rights lawyers, like their more candid poverty law colleagues, are making decisions, setting priorities, and undertaking responsibilities that should be determined by their clients and shaped by the community.”92 Certainly, many lawyers who use litigation as a tool for social change are regnant and paternalistic, but these qualities are not inherent in litigators working with marginalized communities.93 Social justice advocates should have a healthy skepticism about the ability of the law, standing alone, to achieve lasting social change.94 They should always engage in advocacy that moves the client from the margins to the center.95 But, advocates should also resist pressure to narrow the definition of what it means to be a great lawyer. The discussion of social justice advocacy far too often collapses the framework not only of political lawyering, but all advocacy on behalf of poor and marginalized individuals and communities, into one that largely rejects the important role that strategic litigation has played and can continue to play in the fight for social justice. The ubiquity of the anti-litigation narrative encourages progressive law students—and many clinical law professors—to dismiss litigation and its potential for challenging bias and discrimination. Many progressive law students are afraid to become the professionals they envisioned they would be.96 They do not want to become the discrimination tourist derided in the literature. In response to the critique of social justice litigation, there is a growing body of scholarship supporting the conclusion that litigation is a key strategy for protecting and expanding the rights of marginalized communities.97 This body of scholarship acknowledges that litigation has played a critical role in the struggle for justice and equality, and that it continues to be “an imperfect but indispensable strategy of social change.”98 Finally, these scholars examine social justice litigation in the context of the tradeoffs of different forms of activism, evaluating its potential in relation to available alternatives and revealing a new understanding of the link between law and social justice reform.99 The demonization of strategic litigation that persists in many progressive lawyering circles not only contributes to student ~~paralysis~~, it gives them a false sense of what it means to engage in systemic reform litigation on behalf of clients and the community. Many prominent critiques of impact litigation neither provide an accurate depiction of the potential of that litigation, nor educate students on how to apply principles of political lawyering to that litigation. Indeed, while Derrick Bell prominently critiqued the role of strategic litigation in social justice movements, he also believed that litigation can be an important means of calling attention to perceived injustice; more important, . . . litigation presents opportunities for improving the weak economic and political position which renders the black community vulnerable to the specific injustices the litigation is intended to correct. Litigation can and should serve lawyer and client, as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support.100 Law students should be taught that lawyers who engage in systemic reform litigation, just like any other lawyer, can and should work with and on behalf of those victimized by discrimination. Indeed, despite the one- dimensional picture often painted for law students, not all progressive lawyers believe that “self-help” should be the focus of lawyering on behalf of poor or marginalized communities.101 Moreover, despite the image of the “interloping advocate who dreams up cases in the home office and then tests them on the community,” not all progressive lawyers believe that it is inappropriate for lawyers to independently analyze social justice issues and develop ideas about ways to use the law to bring society closer to justice. Indeed, “it is artificially constricting to conceive of lawyers as exclusively or primarily problem-solvers. [Lawyers] are not only social mechanics who wait in [their] shops for people to come to [them] with problems to be fixed. [Lawyers] should sometimes create problems. [Lawyers] should sometimes deliver problems by translating people’s anger and hurt and insistence on justice into political as well as legal action.”102 Many great advocacy ideas bubble up from the community, but equally valid ideas can come from advocates who have been working with and for those communities (or are members of the community themselves). Progressive advocates must be prepared to provide legal assistance to clients even when those clients do not wish to be active participants in the advocacy. That is embracing the core meaning of client-centered lawyering. Rather than being taught to avoid litigation at all costs, progressive law students need to learn how they can partner with victims of discrimination and be accountable to those victims in the context of litigation. They need to learn the skills of collaborative leadership in law.103 Advocates should also be careful about advancing a one-size-fits-all model of advocacy,104 lumping everything together under the “social justice advocacy” moniker or work on behalf of the “poor and disadvantaged” and assuming that one advocacy approach will work to solve all problems. Sometimes using “social justice” to refer to all of the work being done on behalf of poor and marginalized communities is the right thing to do—it unifies all of those who are fighting injustice on varying fronts. But, it can be harmful when discussing what advocacy tools will be most effective. Given the many forms that discrimination takes and the many communities subject to discrimination, law professors should caution students to be suspicious about broad generalizations about what clients always need or do not need, and what lawyers always should or should not do. There is no universal theory about how to represent disadvantaged or marginalized people. What works in the fight for economic justice may not be the best strategy to achieving racial justice.105 And what may be appropriate to help one victim of racial discrimination may not work for another. There is room for all types of advocates and advocacy.106 All advocates can be a part of the circle of human concern.107 3. The Preferred Model: Individual Representation Representing individual clients in small, manageable cases where students retain primary control has long been the preferred vehicle for teaching students to effectively address their clients’ legal problems.108 But many clinical programs focused on representing individual clients are not providing opportunities for students to learn how to utilize the law effectively to challenge systemic discrimination. In addition to teaching foundational lawyering skills like client interviewing, counseling, and fact investigation, clinics should also provide opportunities to teach complex and multi- dimensional lawyering skills.109 As this Section demonstrates, the clinical community’s disproportionate focus on micro-lawyering skills may be hampering the ability of students to focus on the political and social functions of the law and the structural dimensions of the problems facing client communities.110 The founding goals of clinical legal education were to provide law students the opportunity to learn the skills necessary to practice law and provide quality legal services to the poor.111 These origins closely shaped the development of clinical pedagogy and its current emphasis on individual representation.112 Small cases allow law students to have the primary relationship with the client, manage the case from beginning to end, and analyze relatively straightforward legal issues—all core principles of clinical pedagogy.113 The reliance on small cases also provides students with the invaluable opportunity to reflect deeply on the choices advocates make in creating and maintaining lawyer-client relationships.114 In the early years of the clinical legal education movement, most clinical law professors came from legal services organizations and brought with them a preference for the individual client representation that dominated legal services practice.115 Clinical professors embody their learning objectives in their case selection116 and must prioritize some lawyering skills over others because there are limits to what can be learned in a single clinical course.117 In focusing on small cases, early clinicians understandably prioritized the skills they knew to be critical to their own work on behalf of poor individuals. Today, clinical professors come to teaching from a broader array of professional backgrounds, and unsurprisingly want to bring their experiences into the classroom. They should be encouraged to make clinic design choices and set educational goals for their students based on the skills and knowledge they know to be necessary for success in their own practice areas. To many, the approaches clinical professors adopted at the beginning of the clinical legal education movement are not the answers to the questions and challenges our students face today. An exclusive reliance on small cases, though they are extremely valuable teaching tools, fails many students because small cases offer limited opportunities to teach a broad array of lawyering skills, including the skills critical to challenging systemic injustice.118 Of course, small cases have value—for the client and student both. But, in the new normal, they are often not enough to carry the weight of change. “Social justice work is rarely easy, clean, or pretty.”119 It can be downright messy and clinics should not shield students from its messiness. Working on larger, more complex cases exposes students to more of the skills necessary to fight for structural change.120 They can learn to exercise intellectual autonomy and to integrate conceptual thinking in their advocacy.121 They teach students how to achieve client objectives while also advancing broader social justice goals. Finally, in complex cases where litigation is a viable option, students are exposed to fundamental questions such as what claims to assert, where to file, who to represent, and who to sue. Students cannot be practice ready without some exposure to these skills. Some clinical legal educators have questioned the traditional model of clinical education, arguing instead for engaging in work with a broader social justice impact.122 One basis for this argument, for example, is that “case- centered clinics are primarily accountable to students and law school administrators, rather than clients, and fail to serve political collectives.”123 In this conception, clinics prioritize student interests over community interests by accepting only those cases over which students will have full responsibility and reject more complex cases where the students’ limited skills would make that impossible. This is done even when the communities’ interests—and thus the cause of social justice—would be better served by the more complex cases.124 While this critique is framed in terms of benefits to students versus losses to social justice, there is indeed a loss to students as well. Clinical legal educators who are teaching the next generation of social and racial justice advocates should help students understand the current legal framework for equality, and develop the ability to utilize that framework creatively on behalf of their clients. But, students also have to learn to transcend and reimagine current institutional frames, to conceptualize avenues for relief, create new narratives, and pull together the building blocks of a new legal framework to establish rights that did not exist before. Indeed, many of the challenges facing America today require reimagining justice from the ground up. Future social justice advocates must have social vision—“vision-making work is fundamental to the activist strategies political lawyering inevitably embodies.”125 Charles Hamilton Houston not only taught his law students to conceive that separate can never be equal, he taught them how to develop a legal theory in support of that idea and then to develop an integrated advocacy strategy, including complex litigation, to give that theory legal effect. “The process of linking strategy to political vision always requires adaptation and a detailed understanding of particular contexts for its effectiveness.”126 Moreover, as students move from theory to legal reality, they have to understand the skills required to genuinely engage the community. Indeed, “it is no simple matter to reconcile commitment to both clients and a larger social vision or to navigate the boundary between the insider and outsider communities in which political lawyers work.”127 There are, of course, trade-offs involved in engaging clinical students in impact advocacy, both for the student and the teacher.128 Many clinical faculty have expressed concerns that systemic reform work and complex vocacy matters require too high a cost to core pedagogical goals.129 There is a sense that “big cases” may achieve important social justice goals, but use student tuition to finance political goals without attendant benefits to the students’ education.130 According to this line of critique, if the fundamental goal of clinical legal education is the education of students, clinical education needs to continue to focus on small cases that allow for complete student ownership, with a student seeing the case through from beginning to end.131 Many clinicians believe that complete student ownership from beginning to end is critical to an effective clinical experience, and that this level of student ownership is not possible in big cases.132 The problem with this argument is that giving clinic students sole control of a case from beginning to end is not the only way to maximize student learning. Close collaboration with clinical educators, fellow students, clients, and other collaborators offers rich opportunities for student learning. Working with those collaborators to evaluate a complex problem, consider whether a litigation strategy is appropriate, and implementing that strategy, is precisely the kind of experience students will need to master in political lawyering practice. If clinical programs want to ensure that social justice students develop the skills and values necessary to be responsible and effective lawyers before they graduate, students should have the opportunity to be exposed to advocacy models beyond individual client representation. Otherwise, clinics are missing an opportunity to teach students to embrace and engage in social justice work broadly. II. REFRAMING POLITICAL LAWYERING FOR THE 21ST CENTURY Modern social problems present new challenges for political lawyers. As such, political lawyers must evaluate the tools an earlier generation of political lawyers used to determine how to employ them in light of changed conditions. Social justice advocates have destabilized the dominant understanding of lawyering.133 Modern political lawyering must continue that process of destabilization, exploring alternatives to the way lawyers marshal social and economic capital, make strategic decisions, and transgress current structures and constraints.134 Political lawyering advocates should also question attempts to constrict the understanding of what lawyering tools can be employed in service to communities and in furtherance of justice. A. Expanding the Advocacy Perspective At the core of Derrick Bell’s critique of the latter stages of the campaign to desegregate public education is the divergence he saw between the interests of NAACP lawyers and those of certain segments of the Black community that evolved after the launch of the school desegregation campaign.135 In many ways, this divergence was the result of a failure to communicate. To effectively engage in the integrated advocacy central to political lawyering, those engaged in individual representation, strategic litigation, legislative advocacy, community organizing, public education, direct action, and other forms of advocacy must remain in constant conversation. They must also use their work to facilitate a constant dialogue between the community, courts, government agencies, and legislatures at the local, state, and national levels. As part of this ongoing conversation, political justice lawyers must endeavor to expand the perspectives of the public, judges, politicians, and government administrators beyond dated conceptions of justice. Powerful narratives can break through opposition and resistance, shaping the way society views equality and justice. In Goldberg v. Kelly,136 advocates disrupted the stock story of greedy welfare recipients trying to take advantage of a fair and responsive bureaucracy by telling “human stories” that introduced the Court “to the day-to-day realities of the lives of poor people—struggling to provide a bare minimum of basic necessities for themselves and their children, while confronting an inefficient, unpredictable, and often hostile welfare bureaucracy.”137 Today’s political justice lawyers must focus on changing legal rules, but also inspiring political action, educating the public, publicizing injustice, and shaping public debate. Developing the ability to craft legal and factual narratives that are not only respectful and true to the client’s or communities’ experiences and demands for justice, but that can also persuade and influence others in a variety of contexts, is a critically important skill.138 Political justice lawyering must also account for the changing economic dynamics within otherwise marginalized communities. Growing income inequality within communities of color mirrors the growing wealth gap within American society as a whole.139 Not only may the experience of race or gender discrimination, for example, differ for people of varying wealth, the advocacy strategies needed to engage those communities may be different as well, depending on the structural barriers to engagement created or exacerbated by economic inequality. Political justice lawyers must wrestle with the complicated economic dynamics within communities of color, remain mindful that widening economic inequality can impact collectivity, and authentically engage with the full breadth of those communities if their advocacy is to be effective. Modern political justice lawyering must also include strategies to support and harness the “disruptive power”140 of widespread youth-led movements, collective action, and protest. Many justice movements seek to harness disruption or provoke unrest to redistribute power or force reforms.141 While disruption through protest has been essential in bringing light and voice to modern social justice issues such as police brutality (through, for example, the Black Lives Matter movement) and economic inequality (through, for example, Occupy Wall Street), protests standing alone may not be enough to lead to structural reform or transformational change. Without a viable replacement to fill the void left by a disrupted system, a clear demand for meaningful change, and a plan for implementing that change, the disruptive power may never translate to justice. Finally, modern political justice lawyers must be able to integrate both positive and negative conceptions of equality into their advocacy. Many modern social justice problems are difficult or impossible to fully resolve through court orders.142 Moreover, courts have shown a growing reluctance to issue sweeping injunctive relief that leaves school systems or police departments under the management of courts or court-appointed special masters.143 While utilizing courts to prohibit or limit actions that infringe on individual rights, advocates should be able to articulate a positive vision of what stakeholders can or should do to better promote, protect, and respect those rights. In the context of police reform, for example, victory may take the form of a judicial finding that a police officer used excessive force or an award of money damages. However, even the broadest injunctive relief may struggle to translate into systemic reform—a positive conception of just and effective policing. B. Expanding the Lawyer’s Toolbox In order to effect systemic change, lawyers need to understand what levers are available to achieve that change, and when, where, and how to pull each lever. Political justice lawyers must be skilled at integrated advocacy, using individual and strategic litigation to establish and protect rights, traditional and social media engagement to shape and promote the narrative, community organizing to mobilize effected communities and their allies, and interdisciplinary collaborations to bring the work of other disciplines to bear on creating policies and practices to replace illegal and repressive practices. An effective political justice lawyer has many tools in her toolbox, and knows when and how to use each one. In addition to these tools, political lawyers must learn to break systemic problems into their smaller components; identify advocacy alternatives and evaluate the costs and benefits of each approach; and resolve instances in which an attorney’s own social justice values and vision collide. 1. Breaking Apart Systemic Issues Political justice lawyers must be able to break apart a systemic problem into manageable components. The complexity of social problems, can cause law students, and even experienced political lawyers, to become overwhelmed. In describing his work challenging United States military and economic interventions abroad, civil rights advocate and law professor Jules Lobel wrote of this process: “Our foreign-policy litigation became a sort of Sisyphean quest as we maneuvered through a hazy maze cluttered with gates. Each gate we unlocked led to yet another that blocked our path, with the elusive goal of judicial relief always shrouded in the twilight mist of the never-ending maze.”144 Pulling apart a larger, systemic problem into its smaller components can help elucidate options for advocacy. An instructive example is the use of excessive force by police officers against people of color. Every week seems to bring a new video featuring graphic police violence against Black men and women. Law students are frequently outraged by these incidents. But the sheer frequency of these videos and lack of repercussions for perpetrators overwhelm those students just as often. What can be done about a problem so big and so pervasive? To move toward justice, advocates must be able to break apart the forces that came together to lead to that moment: intentional discrimination, implicit bias, ineffective training, racial segregation, lack of economic opportunity, the over-policing of minority communities, and the failure to invest in non-criminal justice interventions that adequately respond to homelessness, mental illness, and drug addiction. None of these component problems are easily addressed, but breaking them apart is more manageable—and more realistic—than acting as though there is a single lever that will solve the problem. After identifying the component problems, advocates can select one and repeat the process of breaking down that problem until they get to a point of entry for their advocacy.

#### 3] TVA solves–defend the Aff theory of power with a plan. Disads are neg ground since they prove ability to contest. DEFEND STRIKES THAT REJECT THE NEGATION OF BLACK LIFE

**Reddy 20**, Diana (Doctoral Fellow at the Law, Economics, and Politics Center at UC Berkeley Law, and a PhD candidate in UCB's Jurisprudence and Social Policy)"" There Is No Such Thing as an Illegal Strike": Reconceptualizing the Strike in Law and Political Economy." Yale LJF 130 (2020): 421.

**Most recently, 2020 saw a flurry of work stoppages in support of the Black Lives Matter movement.**[186](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy" \l "_ftnref186)**These ranged from Minneapolis bus drivers’ refusal to transport protesters to jail, to Service Employees International Union’s Strike for Black Lives, to the NBA players’ wildcat strike.**[187](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy" \l "_ftnref187) Some of these protests violated legal restrictions. The NBA players’ strike for instance, was inconsistent with a “no-strike” clause in their collective-bargaining agreement with the NBA.[188](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy" \l "_ftnref188) And it remains an open question in each case whether workers sought goals that were sufficiently job-related as to constitute protected activity.[189](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy" \l "_ftnref189) Whatever the conclusion under current law, however, **striking workers demonstrated in fact the relationship between their workplaces and broader political concerns.** The NBA players’ strike was resolved in part through an agreement that NBA arenas would be used as polling places and sites of civic engagement.[190](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy" \l "_ftnref190) **Workers withheld their labor in order to insist that private capital be used for public, democratic purposes. And in refusing to transport arrested protestors to jail, Minneapolis bus drivers made claims about their vision for public transport.**

#### Fairness is a voter, debate is a competitive activity – a] it determines engagement in your method which turns your ROTB b] The AC wasn’t in the scope of my research burden so presume their args false c] A ballot won’t actualize their method since what we read doesn’t change subjectivity but it can determine the direction of good norms so a risk of T outweighs any of the Aff d] Every argument presupposes fairness and it being evaluated fairly. If they deny fairness hack against them – that’s the most unfair e] Procedurals outweigh – structural fairness can be compensated for in different substantive ways while procedural fairness denies access to the space entirely f] examples don’t disprove debates potential just isolate violent people in it.

#### Drop the debater: T indicts the aff, I couldn’t have engaged.

#### Use Competing Interps: a] race to the top for the best norm b] reasonability links to our offense.

#### No RVIs: a] Illogical – being topical doesn’t mean you should win, it’s just a burden. b] If T’s bad and you vote on impact turns – you’re voting on T.

## 2

#### Anti-blackness is historically shaped but a method of shutting resistance in life decks survival.

Kelley 17 Robin D.G. Kelley, Gary B. Nash Professor of American History at UCLA, “Robin D.G. Kelley & Fred Moten In Conversation”, YouTube, 1:57:36 – 2:02:56, 15 June 2017, accessed: 21 January 2021, <https://www.youtube.com/watch?v=fP-2F9MXjRE>, \*most likely transcribed by Dustin Meyers Levi (dml), R.S.

Kelley: Um, Fred—Fred will take most of these questions. So that's why I'm going to begin first because he's gonna, he's gonna—he's gonna end it because he, he, he has the answer to all these questions ‘cause I turn to him for these questions. On the specific, on the first question, I just want to make sure I understand it because I'm, you know, I don't always recognize, uh, it may be because I'm just old, but I don't always recognize, uh, that black politics, black [unclear—maybe “guys”] work politics have been structured or defined by white supremacy. I mean, white supremacy is there. And I guess maybe because I'm such a student of Cedric Robinson, you know, not everything is about, or in response to, white supremacy.

And in fact, one of the critiques coming out of doing Southern history was this idea that race relations framework, that race relations defines, uh, African-American history or Black history. And it's simply **not true** because much of what people do in terms of, of social formation, community building, um, is, is, is what Raymond Williams might call alternative cultures. In other words, **it may be structured in dominance in some ways, but not defined by it.** And Cedric's Black Marxism, you know, really made this point. He talks about the ontological totality, you know, the, this sense of being and making ourselves whole, in that we come out of an experience, again, structured by white supremacy, structured by violence, structured by enslavement and dispossession, but, but one in which western hegemony didn't work, you know, that modes of thinking wasn't defined by Enlightenment modes of thinking.

In other words, that, that part of the **Black radical tradition is** a **refusal to be property**, to even admit that human beings could be property. You know, so we sometimes give white supremacy **way too much credit**, and maybe I misunderstood the question. And so I think that there's lots of things that happen outside of joy and survival, and survival is important, but survival is not the end all, you know. So I think, and I'll give you one very, very specific example, and now I'm not gonna say anything else after this. The way we have tended to more recently treat slavery, Jim Crow and mass incarceration as a piece, as the reinstantiation of the same thing, the continuation, that denies the fact that these systems are **actually** **distinct**, that they are historically specific, and in fact they’re responses to, in many ways, to the weakness of this as a racial regime.

So if you think of like the whole idea of the new Jim Crow to me is very, very problematic. Um, although that book by Michelle Alexander is very, very powerful and very useful in terms of educating people about prisons. **Jim Crow was not the continuation of slavery.** It was not. Jim Crow was a **response to** the **Black Democratic**, uh, **upsurge** after slavery. It was a revolution of Reconstruction. It was a way to try to suppress that. The fact that, that, you know, there was this incredible response. That's why there's a, there's a huge gap between 1877 at the official end of Reconstruction and the rise of Jim Crow, which is the 1890s, disfranchisement, lynching. That's because you've had 13, 14, 15, 20, 25 years of a democratic possibility and struggle. The same thing with mass incarceration—yes, we've had incarceration, but it's, but that, that, that, that upward swing has a lot to do with, again, **response**s **to** the **struggles in the 1960s**, the assault on the Keynesian welfare-warfare state, the fact that you know the, the war on political, the formation of political prisoners, those struggles in fact was the state's **response to opposition.** And so if we don't acknowledge that, then what we end up doing is thinking that somehow there's a structure of white supremacy that's unchanging, fixed, and so powerful we can't do anything about it when in fact it's the opposite.

White supremacy is fragile. White supremacy is weak. Racial regimes actually are always having to shore themselves up precisely **because they're unstable.** We can see that. We can't see it because **the whole system of hegemony** is to give us the impression that it is so powerful, there's **no space out.** And yet it’s working overtime to, to respond to our opposition. Right. That may not answer your question, but that's sort of a way I think about it. Maybe it’s not satisfactory, but yeah.

#### Humanism that’s oriented “to praxis in this world” is good – it’s not “all lives matter” but necessary to cultivate black endurance.

Pithouse 16 Richard PITHOUSE, senior researcher, programme coordinator and supervisor at the Unit for Humanities at Rhodes University, 16 [“Frantz Fanon: Philosophy, Praxis, and the Occult Zone,” Journal of French and Francophone Philosophy, Vol. XXIV, No 1, 2016, p. 116-138, http://www.jffp.org/ojs/index.php/jffp/article/viewFile/761/723]

Racism, as ideology, is organised around the assertion that humanity is riven by an ontological split. In the consciousness of the racist, and in the general intellect of racist social formations, this ontological split is taken as part of what Immanuel Kant called the a priori, the categories through which sense is made of experience.61 This deception of reason, this “racist rationality”62 results in racist societies producing forms of knowledge that, while authorised as the most fully formed instances of reason at work, are fundamentally irrational. In The “North African Syndrome”, an essay first published in 1952, Frantz Fanon wrote that in the French medical establishment: (T)he attitude of medical personnel is very often an a priori attitude. The North African does not come with a substratum common to his race, but on a foundation built by the European. In other words, the North Africa, spontaneously, by the very fact of appearing in the scene, enters into a pre-existing framework.63 In other words medical science in colonial France allowed a priori ontological assumptions to prevent it from making rational sense of experience. In Black Skin, White Masks, published in the same year, Fanon also offers a critique of philosophy in colonial France. He insists that the lived experience of the black person is not congruent with any (philosophically orthodox) “ontological explanation” because “The black man has no ontological resistance in the eyes of the white man.”64 Fanon stresses that racism is not only unreasonable but that it structures the a priori categories through which experience is mediated in a manner that makes it impossible to recognise reason expressed from black embodiment as reason: “[W]hen I was present, it was not; when it was there, I was no longer.”65 The inability to recognise black reason as reason produces an inability to recognise black political agency – a distortion of reality all too evident in both historiography and contemporary attempts to think the political. In his discussion of the evident fact that, in the colonial imagination, the Haitian Revolution “entered history with the peculiar characteristic of being unthinkable as it happened” Michel-Rolph Trouillot writes that: the contention that enslaved Africans and their descendants could not envision freedom – let alone formulate strategies for gaining and securing such freedom – was based not so much on empirical evidence as on an ontology, an implicit organization of the world and its inhabitants.66 He goes on to show that racist ontology continued to structure the historiography of the Haitian Revolution for the next two centuries. Lewis Gordon, riffing off Fanon as well as W.E.B. du Bois, uses the idea of illicit appearance to theorise the absence “of the right of appearance” beyond the right to appear as reasonable resulting in invisibility and hypervisibility – “the effect of which is the erasure of individuating or contextualizing considerations - that is, human invisibility.”67 “When you come down to it” Fanon wrote in The North African Syndrome, “the North African is a simulator, a liar, a malingerer, a sluggard, a thief.”68 Lewis and Jane Anna Gordon, writing together, argue that across space and time elites generally assume that the system in which they have prospered is ultimately good and that the people that disrupt its smooth functioning must be problem people – even monsters. Gordon and Gordon point out that in anti-black societies, black people are rendered monstrous “when they attempt to live and participate in the wider civil society and engage in processes of governing among whites...Their presence in society generally constitutes crime.”69 Fanon begins the pivotal fifth chapter of Black Skin, White Masks with the cauterisation of an affirmation of a desire for sociality: ““I came into the world imbued with the will to find a meaning in things, my spirit filled with the desire to attain to the source of the world, and then I found that I was an object in the midst of other objects.”70 The chapter concludes with the defeat of all attempts to attain recognition in a racist world: “I wanted to rise, but the disemboweled silence fell back upon me, its wings paralyzed. Without responsibility, straddling Nothingness and Infinity, I began to weep.”71 His response to the impossibility of a dialectic of recognition72 is not to give up on the aspiration for a world of mutuality, of universal humanism (predicated on a universal ontology) – he still aspires to a world that will recognise “the open door of every consciousness”73 - but to accept that he has found himself in a world “in which I am summoned into battle”74 and to commit to action: “To educate man to be actional, preserving in all his relations his respect for the basic values that constitute a human world, is the prime task of him who, having taken thought, prepares to act.”75 In Gordon’s estimation the Fanonian position is that “Legitimacy doesn’t emerge from the proof of cultural heritage or racial authenticity, it emerges...[Fanon] argues, from active engagement in struggles for social transformation and building institutions and ideas that nourish and liberate the formerly colonized.”76 This commitment to praxis is a politics that, in Gordon’s formulation, requires a commitment to “meeting people on the terrain where they live”77 with a view to forging what, as noted above, Mbembe calls “a radical future orientated politics in this world and these times.”78 Such a politics, it is asserted here, must be grounded in what S’bu Zikode first called a ‘living politics’79 and what Lewis Gordon calls ‘living thought’ or ‘thinking as a living activity’.80 It requires a decisive break with the idea, all too frequently present in South Africa, that radical politics is fundamentally a matter of rallying ‘the masses’ to the authority of a group of people who, whether situated in a party, a proto-party or an NGO, imagine themselves to be an enlightened vanguard. This is not the apocalyptic politics that, as is sometimes the case in Aimé Césaire’s work, is more concerned with eschatology than praxis. In the Notebook of Return to my Native Land Césaire, in a manner that in some respects anticipates some currents in contemporary Afro-pessimism, affirms that the only thing work starting is “The end of the world!”81 and anticipates the one glorious moment82, the brilliant new dawn in which “the volcanoes will break out and the naked water will sweep away the ripe stains of the sun and nothing will remain but a tepid bubbling pecked at by sea birds – the beach of dreams, and demented awakening”83, a rising of a new sun that would “burst open the life of the shacks like an over-ripe pomegranate.”84 In this vision, in which the political is sublimated into the theological, the authentic radical gesture is, ultimately, to disavow the world as it is and to wait for the birth of a new world. Again unlike Césaire Fanon does not accept the ontological split introduced into the conception of humanity authorised by colonial racism. His evident commitment to the universal85, and action to affirm a universal humanism86, situates him in a line of black radical thought that runs from Toussaint Louverture87 to Biko88, Jean-Bertrand Aristide89 and, arguably for that matter, the constant insistence on the barricades on South African streets of words to the effect of ‘we are human not animal’.90 But like Césaire Fanon’s radical vision is not, at all, a commitment to what Césaire, writing in 1956, termed ‘abstract equality’. Césaire remarks that: To prevent the development of all national consciousness in the colonized, the colonizer pushes the colonized to desire an abstract equality. But equality refuses to remain abstract. And what an affair it is when the colonized takes back the word on his own account to demand that it not remain a mere word!'91 From a South African perspective this condemnation of ‘abstract equality’ sounds almost prophetic but it has always been a colonial response to black insurgency. In in 1801 Napolean wrote, from St Helena, of the French policy, with regard to Haiti, of “disarming the blacks while assuring them of their civil liberty, and restoring property to the [white] colonists.”92 For Fanon emancipation has many aspects. These include a spatial aspect,93 a material aspect,94 the attainment of equality between women and men,95 but, also, and fundamentally, the sovereignty of the human person. Liberation must, he insists, in Sekyi-Otu’s revised translation, "give back their dignity to all citizens, fill their minds and feast their eyes with human things and create a prospect that is human because conscious and sovereign persons dwell therein.”96 In contemporary South Africa this cannot take the form of the sole defence of abstract rights, a politics primarily organised around exploitation via the wage relation or the sort of nationalism that is naïve about the cleavages with the nation. It must to, to return to Mbembe, “take the form of a conscious attempt to retrieve life and ‘the human’ from a history of waste.”97

#### Their politics based in ethnic-racialized identity drawing lines between practices and people results in color-checking and a new standard of “recognizable ethnicity”.

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Part of what I am talking about here is what the Lacanian Latino Studies scholar Antonio Viego (2007) refers to as “coercive mimeticism,” an institutional and social practice whereby there are certain ways in which ethnic minorities must act, believe, dress, and be in order to present themselves as “recognizably ethnic,” as Latino-enough, as Black-enough, as Asian-enough, and so forth. It is mimetic insofar as one has to look into the mirror of ethnic identity and adapt oneself to that image, reproducing a very particular ego-identity, one that is often a poor fit to one’s more immediate subjective experience. It is also coercive in that there are institutional, cultural, and societal pressures to conform to that notion of identity in order to find one’s place in the coordinates of race and ethnicity – essentially, to be allotted a place on the color line. We are to take up our respective place on the chessboard as Black or White, pawns in a much bigger and deadlier game. Here we can glean both the imaginary and symbolic functions of racial object maps. These object maps provide coherence and integration in the imaginary to an otherwise chaotic collection of signifiers – the racialized bodies in which we exist. At the same time, racial object maps yield symbolic categories of me and not-me, Black and White, and a language with which to organize and regulate closeness, distance, and racial desire. Conversely, what is contained, or to be more precise, excluded, through the symbolic and imaginary operations of the object map is the Real dimension of race – the ever shifting, anxiety-producing, formless nature of the color line. When ambiguously ethnic subjects fail to see their image in the mirror, when they are unable to play the language games of race and racial signification, there is a noticeable discomfort and anxiety that sets in among those who partake in the production of coercive mimeticism. The illusion of the color line comes into focus, disrupting how we see and define racialized bodies, evoking the fragmented and uncoordinated nature of the child’s body prior to Lacan’s (2005a, b) mirror stage. The illusion of wholeness, of being a whole body-ego – whether White, Black, or Brown – falters, revealing the destitute, undifferentiated, and broken nature of race and racial identity. To survive the encounter with the Real of race, I argue, paves the way for a unique kind of freedom. To give one example, a Puerto Rican-ness is more malleable, flexible, and non-linear than one bound into one static form and yields a fluidity that fosters experimental and novel ways of responding to oppression. This fluidity at the same time can validate the ghosts of one’s ancestors while integrating their wisdom into new, emancipatory potentialities. To be clear, I am not denying the importance of addressing colorism, racism, and the privileging of white skin that exists in the Latino community and other ethnic minorities (not to mention society as a whole). It is important for us to have that conversation, and point out how notions of mestizaje, of hybridity in the Latino experience, may mask underlying tensions around race and skin color, and render the relative privilege of light-skinned Latinos such as myself invisible. At the same time, I am proposing that we also have a conversation that is perpendicular to a critique of racism and colorism, intersecting with it but going towards a different vector. How we exclude one another based on not meeting certain expectations about what it means to be Latino, Asian, Black, etc., threatens to disempower us further, limiting our political power by carving out a “minority of a minority.” as opposed to sustaining often difficult conversations about our sameness and difference. Similarly, as Baratunde Thurston (2011) points out in his recent book, How to be Black, often this kind of black-checking or color-checking narrows our vision of what it means to be Black (or Latino, or Asian, etc.). Reflecting on his own sense of his Blackness, he writes, “One of the most consistent themes in my own experience… is this notion of discovering your own Blackness by embracing the new, the different, the uncommon, and, simply, yourself” (p. 218). Color-checking prevents us from experimenting with different forms of dis-identification which enrich, challenge, and nourish us, and which hold the promise of new forms of resistance, emancipation, and psychosocial revolt. As I argue, these perpendicular conversations push and pull toward different trajectories, but have as their intersection the most crucial nexus of political, cultural, and social justice. So what am I, in the end? I am whatever you want me to be: oppressor, oppressed, cracker, spic, enemy, friend, White, Black, lover, fighter, masculine, effeminate, strong, weak, dead or alive. Just know that with each turn, each attempt to define me, to mark me, to confine and bind me, you free me. Like the hysteric who produces ever shifting configurations of symptoms in order to throw the obsessive physician off guard (see Gherovici, 2003), I will keep producing knowledge of something else, something other, something that is incalculable and undefinable. Something Real. For you I’ll become a Hispanic hysteric, screeching Foucault (1972) with each symptom, with each episode of acting out, “Do not ask me who I am and do not ask me to remain the same” (p. 17). Because in the end this is not really about me, or where I stand on the color line. It is about your illusion about where you stand and where you place yourself in the coordinates of race and ethnicity, of self and other, of Black and White. In that sense I function as your blank screen, receiving your projections and identifications, hopefully returning them to you as knowledge productions that question, destabilize, and decenter your ego, paving the way for the subject that slides in the link between signifier and signified, that does not know if it is caused by the signifier or the signified of race, but is instead, its own cause.

#### The alternative is to un-enlist – true undercommon communication requires absolute vulnerability and unconditionality as opposed to the aff’s line-drawing and redefining.

Moten and Harney, 13 (Fred and Stefano, *The Undercommons: Fugitive Planning & Black Study*, p.38 TAT)

The critical academic questions the university, questions the state, questions art, politics, culture. But in the undercommons it is “no questions asked.” It is unconditional – the door swings open for refuge even though it may let in police agents and destruction. The questions are superfluous in the undercommons. If you don’t know, why ask? The only question left on the surface is what can it mean to be critical when the professional defines himself or herself as one who is critical of negligence, while negligence defines professionalization? Would it not mean that to be critical of the university would make one the professional par excellence, more negligent than any other? To distance oneself professionally through critique, is this not the most active consent to privatize the social individual? The undercommons might by contrast be understood as wary of critique, weary of it, and at the same time dedicated to the collectivity of its future, the collectivity that may come to be its future. The undercommons in some ways tries to escape from critique and its degradation as university-consciousness and self-consciousness about university-consciousness, retreating, as Adrian Piper says, into the external world.

This maroon community, if it exists, therefore also seeks to escape the fiat of the ends of man. The sovereign’s army of academic antihumanism will pursue this negative community into the Undercommons, seeking to conscript it, needing to conscript it. But as seductive as this critique may be, as provoked as it may be, in the Undercommons they know it is not love. Between the fiat of the ends and the ethics of new beginnings, the Undercommons abides, and some find comfort in this. Comfort for the emigrants from conscription, not to be ready for humanity and who must endure the return of humanity nonetheless, as it may be endured by those who will or must endure it, as certainly those of the Undercommons endure it, always in the break, always the supplement of the General Intellect and its source. When the critical academic who lives by fiat (of others) gets no answer, no commitment, from the Undercommons, well then certainly the conclusion will come: they are not practical, not serious about change, not rigorous, not productive.

Meanwhile, that critical academic in the university, in the circle of the American state, questions the university. He claims to be critical of the negligence of the university. But is he not the most accomplished professional in his studied negligence? If the labor upon labor, the labor among labor of the unprofessionals in the university sparks revolt, retreat, release, does the labor of the critical academic not involve a mockery of this first labor, a performance that is finally in its lack of concern for what it parodies, negligent? Does the questioning of the critical academic not become a pacification? Or, to put it plainly, does the critical academic not teach how to deny precisely what one produces with others, and is this not the lesson the professions return to the university to learn again and again? Is the critical academic then not dedicated to what Michael E. Brown phrased the impoverishment, the immiseration, of society’s cooperative prospects? This is the professional course of action. This enlightenment-type charade is utterly negligent in its critique, a negligence that disavows the possibility of a thought of outside, a nonplace called the Undercommons—the nonplace that must be thought outside to be sensed inside, from whom the enlightenment-type charade has stolen everything for its game.

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