# 1AC- Athletes

## 1ac- materials

### FW- Oppression Short

#### 1. Structural violence and oppression is based in moral exclusion, which is fundamentally flawed because exclusion is not based on dessert but rather on arbitrarily perceived differences.

**Opotow 01** [Susan Opotow 01 [Susan Opotow is a social and organizational psychologist. Her work examines the intersection of conflict, justice, and identity as they give rise to moral exclusion -- seeing others as outside the scope of justice and as eligible targets of discrimination, exploitation, hate, or violence. She studies moral exclusion and moral inclusion in such everyday contexts as schooling, environmental and public policy conflict, and in more violent contexts, such as deadly wars and the post-war period. She has guest edited The Journal of Social Issues and Social Justice Research and co-edited Identity and the Natural Environment: The Psychological Significance of Nature (MIT Press, 2003). She is associate editor of Peace and Conflict: Journal of Peace Psychology and Past President of the Society for the Psychological Study of Social Issues], “Social Injustice”, Peace, Conflict, and Violence: Peace Psychology for the 21st Centuryl Englewood Cliffs, New Jersey: Prentice-Hall, 2001, BE]

**Both structural and direct violence result[s] from moral justifications and rationalizations.** Morals are the norms, rights, entitlements, obligations, responsibilities, and duties that shape our sense of justice and guide our behavior with others (Deutsch, 1985). **Morals operationalize our sense of justice by identifying what we owe to whom, whose needs, views, and well-being count, and whose do not. Our morals apply to people we value, which define who is inside our scope of jus- tice** (or “moral community”), such as family members, friends, compatriots, and coreligionists (Deutsch, 1974, 1985; Opotow, 1990; Staub, 1989). We extend considerations of fairness to them, share community resources with them, and make sacrifices for them that foster their well- being (Opotow, 1987, 1993).¶ We see other kinds of people such as enemies or strangers outside our scope of justice; they are morally excluded. Gender, ethnicity, religious identity, age, mental capacity, sexual orientation, and political affiliation are some criteria used to define moral exclusion. **Excluded people can be hated and viewed as “vermin” or “plague” or they can be seen as expendable non-entities. In either case, disadvantage, hardship, and exploitation inflicted on them seems normal, accept- able, and just—as “the way things are” or the way they “ought to be.”** Fairness and deserving seem irrelevant when applied to them and harm befalling them elicits neither remorse, outrage, nor demands for restitution; instead, harm inflicted on them can inspire celebration.¶ Many **social issues and controversies**, such as aid to school drop-outs, illegal immigrants, “welfare moms,” people who are homeless, substance abusers, and those infected with HIV **are essentially moral debates about who deserves public resources, and thus, ultimately, about moral inclusion. When we see other people’s circumstances to be a result of their moral failings, moral exclusion seems warranted. But when we see others’ circumstances as a result of structural violence, moral exclusion seems unwarranted and unjust**.¶ Psychological Bases for Moral Exclusion¶ While it is psychologically more comfortable to perceive harm-doers to be evil or demented, we each have boundaries for justice. Our moral obligations are stronger toward those close to us and weaker toward those who are distant. When the media reports suffering and death in Cambodia, El Salvador, Nicaragua, the former Yugoslavia, and Rwanda, **we often fail—as a nation, as com- munities, and as individuals—to protest or to provide aid.** Rationalizations include insufficient knowledge of the political dynamics, the futility of doing much of use, and not knowing where to begin. **Our tendency to exclude people is fostered by a number of normal perceptual tendencies**:¶ 1. Social categorization. **Our tendency to group and classify objects, including social catego- ries**, is ordinarily innocuous, facilitating acquisition of information and memory (Tajfel & Wilkes, 1963). **Social categorizations can become invidious, however, when they serve as a basis for rationalizing structural inequality and social injustice.** For example, race is a neutral physical characteristic, but it often becomes a value-loaded label, which generates unequal treatment and outcomes (Archer, 1985; Tajfel, 1978).¶ 2. Evaluative judgments. **Our tendency to make simple, evaluative, dichotomous judgments** (e.g., good and bad, like and dislike) **is a fundamental feature of human perception. Evaluative judgments have cognitive, affective, and moral components.** From a behavioral, evolutionary, and social learning perspective, evaluative judgments have positive adaptive value because they provide feedback that protects our well-being (Edwards & von Hippel, 1995; Osgood, Suci, & Tannenbaum, 1957). **Evaluative judgments can support structural violence and exclusionary thinking**, however, **when they lend a negative slant to perceived difference. In-group-out-group and we-them thinking can result from social comparisons made on dimensions that maximize a positive social identity for oneself or one’s group at the expense of others (Tajfel, 1982).**

#### A. You’re in a double bind- either 1. your framework cares about oppression which means that the case link turns it or 2. it doesn’t care about oppression and that proves our exclusion offense

#### B. Prerequisite to other ethical theories- we need to be a part of ethical deliberation and ethics in order for it to matter

#### 2. Causal processes predispose us to certain types of reasoning. Particular morality must deconstruct oppression and be historically informed– identity critique is no more radical than ideal political philosophy that essentializes groups

 (a) Means that any realist view appealing to intrinsic goods are arbitrary and causal biases created from external forces instead of independent goods

(b) Constitutivism fails because it asserts the standard of a good agent which beg the question of an independent normative standard to be optimal to. Practical reasoning isn’t constitutive of agency because verifying the truth of practical reasoning requires fixation upon independent standards; but people either have reasons or they don’t, there’s no normative impact to being a desiring wanton that doesn’t appeal to independent values.

(c) Agency- external reasons can’t exist because truths must be self evident from within an agents beliefs otherwise they provide no motivation to be moral. Agency is determined by the structure of the agent which is determined socially.

Young 90 Iris Marion Young. Professor of Political Science at the University of Chicago. “Justice and the Politics of Difference.” Princeton University Press. 1990 KB

Impartial reason aims to adopt a point of view outside concrete situa­ tions of action, a transcendental "view from nowhere" that carries the perspective, attributes, character, and interests of no particular subject or set of subjects. This ideal of the impartial transcendental subjectdeniesor represses differencein three ways. First, it denies the particularity of situations. The reasoning subject, emptied of all its particularity, treats all situations according to the same moral rules, and the more the rules can be reduced to a single rule or principle, the more this impartiality and universality will be guaranteed. Whateverher or his particular situation, any subject can reason from this universal point of view according to uni­ versal principles that apply to all moral situations in the same way. Second, in its requirement of dispassion, impartiality seeks to master or eliminate heterogeneity in the form of feeling. Only by expelling desireor affectivity from reason can impartiality achieve its unity. The construct of an impartial point of view is arrived at by abstractingfromthe concrete particularityof the person in situation. This requires abstracting from the particularity of bodily being**,** its needs and inclinations**,** andfrom the feel­ ingsthat attach to the experienced particularity of things and events. Nor­ mative reason is defined as impartial, and reason defines the unity of the moral subject, both in the sense that it knows the universal principles of morality and in the sense that it is what all moral subjects have in common in the same way. This reasonthus stands opposed to desire and affectivity as what differentiate and particularizepersons. Third, the most important way that the ideal of impartiality reduces particularity to unity is in reducing the plurality of moral subjects to one subjectivity. In its requirement of universality, the ideal of impartial rea­ son is supposed to represent a point of view that any and all rational sub­ jects can adopt, precisely by abstracting from the situational particulari-ties that individualize them. The impartial moral judge, moreover, ideally should treat all persons alike, according to the same principles, impar­ tially applied. In its will to reduce plurality to unity, impartiality seeks one transcen­ dental moral subjectivity. Impartial reason judges from a point of view outside of the particular perspectivesof persons involved in interaction, able to totalize these perspectivesinto a whole, or a general will. From this point of view of a solitary transcendent god, the moral reasoner si­ lently deduces its judgment from weighing the evidence and conflicting claims, and applying to them universal principles. Because it already takes all perspectives into account, the impartial subject need acknowl­ edge no subjects other than itselfto whose interests, opinions, and desires it should attend. .. Impartial reason, as we have seen, also generates a dichotomy between reason and feeling. Because of their particularity, feeling, inclincation, needs, and desire are expelled from the universality of moral reason. Dispassion requires that one abstract from the personal pull of desire, commitment, care, in relation to a moral situation and regard it impersonally. Feeling and commitment are thereby expelled from moral reason; all feelings and desires are devalued, become equally irrational, equally irrelevant to moral judgment (Spraegens, 1981, pp.250-56). This drive to unity fails, however. Feelings, desires, and commitments do not cease to exist and motivate just because they have been excluded from the definition of moral reason. They lurk as inarticulate shadows, belying the claim to comprehensiveness of universalist reason. In its project of reducing the plurality of subjects to one universal point of view, the ideal of impartiality generates another dichotomy, between a general will and particular interests. The plurality of subjects is not in fact eliminated, but only expelled from the moral realm; the concrete interests, needs, and desires of persons and the feelings that differentiate them from one another become merely private, subjective. In modern political theory this dichotomy appears as that between a public authority that represents the general interest, on the one hand, and private individuals with their own private desires, unshareable and incommunicable. We shall explore this dichotomy further in the next section. The ideal of impartiality expresses in fact an impossibility, a fiction. No one can adopt a point of view that is completely impersonal and dispassionate, completely separated from any particular context and commitments. In seeking such a notion of moral reason philosophy is utopian; as Nagel expresses it, the impartial view is a view from nowhere. I argue that instead of focusing on distribution, a conception of justice should begin with the concepts of domination and oppression. Such a shift brings out issues of decisionmaking, division of labor, and culture that bear on social justice but are often ignored in philosophical discussions. It also exhibits the importance of social group differences in structuring social relations and oppression; typically, philosophical theories of justice have operated with a social ontology that has no room for a concept of social groups. I argue that where social group differences exist and some groups are privileged while others are oppressed, social justice requires explicitly acknowledging and attending to those group differences in order to undermine oppression. Although I discuss and argue about justice, I do not construct a theory of justice. A theory of justice typically derives fundamental principles of justice that appl[ies]y to all or most societies, whatever their concrete configuration and social relations, from a few general premises about the nature of human beings, the nature of societies, and the nature of reason. True to the meaning of theoria, it wants to see justice. It assumes a point of view outside the social context where issues of justice arise, in order to gain a comprehensive view. The theory of justice is intended to be self-standing, since it exhibits its own foundations. As a discourse it aims to be whole, and to show justice in its unity. It is detemporalized, in that nothing comes before it and future events will not affect its truth or relevance to social life. Theorists of justice have a good reason for abstracting from the particular circumstances of social life that give rise to concrete claims of justice, to take a position outside social life that rests on reason. Such a self-standing rational theory would be independent of actual social institutions and relations, and for that reason could serve as a reliable and objective normative standard for evaluating those institutions and relations. Without a universal normative theory of justice grounded independently of the experience of a particular society, it is often assumed, philosophers and social actors cannot distinguish legitimate claims of justice from socially specific prejudices or self-interested claims to power. The attempt to develop a theory of justice that both stands independent of a given social context and yet measures its justice, however, fails in one of two ways. If the theory is truly universal and independent, presupposing no particular social situations, institutions, or practices, then it is simply too abstract to be useful in evaluating actual institutions and practices. In order to be a useful measure of actual justice and injustice, it must contain some substantive premises about social life, which are usually derived, explicitly or implicitly, from the actual social context in which the theorizing takes place. Many have argued that Rawls’s theory of justice, for example, must have some substantive premises if it is to ground substantive conclusions, and these premises implicitly derive from experience of people in modern liberal capitalist societies (see Young, 1981; Simpson, 1980; Wolf}, 1977, pt. IV). A theory of justice that claims universality, comprehensiveness, and necessity implicitly conflates moral reflection with scientific knowledge (Williams, 1985, chap. 6). Reflective discourse about justice, however, should not pose as knowledge in the mode of seeing or observing, where the knower is initiator and master of the known. Discourse about justice is not motivated originally by curiosity, a sense of wonder, or the desire to figure out how something works. The sense of justice arises not from looking, but as jean-Francois Lyotard says, from listening: For us, a language is First and foremost someone talking. But there are language games in which the important thing is to listen, in which the rule deals with audition. Such a game is the game of the just. And in this game, one speaks only inasmuch as one listens, that is, one speaks as a listener, and not as an author. (Lyotard, 1985, pp. 71-72) While everyday discourse about justice certainly makes claims, these are not theorems to be demonstrated in a self-enclosed system. They are instead calls, pleas, claims upon some people by others. Rational reflection on justice begins in a hearing, in heeding a call, rather than in asserting and mastering a state of affairs, however ideal. The call to "be just" is always situated in concrete social and political practices that precede and exceed the philosopher. The traditional effort to transcend that finitude toward a universal theory yields only finite constructs which escape the appearance of contingency usually by recasting the given as necessary. …A social group is a collective of persons differentiated from at least one other group by cultural forms, practices, or way of life. Members of a group have a specific affinity with one another because of their similar experience or way of life, which prompts them to associate with one another more than with those not identified with the group, or in a different way. Groups are an expression of social relations; a group exists only in relation to at least one other group. Group identification arises, that is, in the encounter and interaction between social collectivities that experience some differences in their way of life and forms of association, even if they also regard themselves as belonging to the same society. As long as they associated solely among themselves, for example, an American Indian group thought of themselves only as “the people." The encounter with other American Indians created an awareness of difference; the others were named as a group, and the first group came to see themselves as a group. But social groups do not arise only from an encounter between different societies. Social processes also differentiate groups within a single society. The sexual division of labor, for example, has created social groups of women and men in all known societies. Members of each gender have a certain affinity with others in their group because of what they do or experience, and differentiate themselves from the other gender, even when members of each gender consider that they have much in common with members of the other, and consider that they belong to the same society. Political philosophy typically has no place for a specific concept of the social group. When philosophers and political theorists discuss groups, they tend to conceive them either on the model of aggregates or on the model of associations, both of which are methodologically individualist concepts. To arrive at a specific concept of the social group it is thus useful to contrast social groups with both aggregates and associations. An aggregate is any classification of persons according to some attribute. Persons can be aggregated according to any number of attributes eye color, the make of car they drive, the street they live on. Some people interpret the groups that have emotional and social salience in our society as aggregates, as arbitrary classifications of persons according to such attributes as skin color, genitals, or age. George Sher, for example, treats social groups as aggregates, and uses the arbitrariness of aggregate classification as a reason not to give special attention to groups. "There are really as many groups as there are combinations of people and if we are going to ascribe claims to equal treatment to racial, sexual, and other groups with high visibility, it will be mere favoritism not to ascribe similar claims to these other groups as well" (Sher, 1987a, p. 256). But "highly visible" social groups such as Blacks or women are different from aggregates, or mere "combinations of people" (see French, 1975; Friedman and May, 1985; May, 1987, chap. 1). A social group is defined not primarily by a set of shared attributes, but by a sense of identity. What defines Black Americans as a social group is not primarily their skin color; some persons whose skin color is fairly light, for example, identify themselves as Black. Though sometimes objective attributes are a necessary condition for classifying oneself or others as belonging to a certain social group, it is identification with a certain social status, the common history that social status produces, and self-identification that define the group as a group. Social groups are not entities that exist apart from individuals, but neither are they merely arbitrary classifications of individuals according to attributes which are external to or accidental to their identities. Admitting the reality of social groups does not commit one to reifying collectivities, as some might argue. Group meanings partially constitute people’s identities in terms of the cultural forms, social situation, and history that group members know as theirs, because these meanings have been either forced upon them or forged by them or both (of. Fiss, 1976). Groups are real not as substances, but as forms of social relations (of. May, 1987, pp. 22-23).

#### 3. No act-omission or intent-foresight distinction

#### A. The choice to omit constitutes an act in itself since when we intend an act we also must intend not to do anything else

#### B. Willing foreseen effects are necessary to actualize intent so we will the end as a whole.

#### C. Intent is unverifiable and reified by systems that claim to be good which makes ethics subjective because anyone can claim to have had good intent

#### D. Mental states like intention or motivation evaluate agents but have no bearing on action because intentions can be shaped by the character of an agent and can change what we perceive as the action

#### Thus, the standard is minimizing structural violence

### Advantage

#### Plan Text: Public colleges and universities ought to ban the use of free speech restrictions on student athletes

#### The NCAA’s social media policies violate the constitutionally protected speech of student athletes- colleges have capability to ovverdie it because its recommended by the NCAA

Barocas 15----Bretta Barocas, 2015. Brooklyn Law Review. Volume 80, Issue 3. An Unconstitutional Playbook: Why the NCAA Must Stop Monitoring Student-Athletes' Password- Protected Social Media Content. RW

This note argues that the National Collegiate Athletic Association (NCAA) must adopt a new social media policy outlawing the use of monitoring systems and mandatory friend requests, because the current system inappropriately encourages schools to engage in conduct that may violate the constitutional and legal rights of their students. Part I of this note will introduce the state of social media monitoring at universities and will discuss its impact on NCAA student- athletes. Currently, each university is responsible for setting its own social media policies, and choosing its own methods of policing and enforcing these policies.25 While “the NCAA does not require its member schools to monitor social media accounts of student[-]athletes[,]” it does “encourages schools to do so.”26 Many schools, including the University of Georgia, do not even apply their social media restrictions evenly across student-athletes, but rather only to members of select teams.27 This lack of uniformity allows athletic directors and coaches to take whatever measures of social media monitoring and restricting they so choose. If the school chooses a method such as installing monitoring software or demanding a Facebook friend request, it may be violating several constitutional rights,28 including freedom of speech and freedom “against unreasonable searches and seizures.”29 Those schools that choose to utilize a third-party monitoring company appear to be practicing a system that may be unconstitutional and has been likened to using “an online bug.”30 The school may obtain the student’s consent, seemingly removing it from any constitutional liability; however, these acts of consent may have been acquired involuntarily, and perhaps even through coercion.31 Because “the consent was not given voluntarily,” it may be invalid as a violation of the student’s constitutional rights under the Fourth Amendment.32 Finally, the current system opens the door to an immense number of problems for the universities, including potential liability for missing a crime,33 or for leaking “student athletes’ personal information.”34 These methods can actually come back to hurt the schools themselves and, accordingly, they would be wise to stay away from these methods for their own protection.35 Most importantly, the policy must limit the monitoring power of public universities and, alternatively, prevent them from forcing athletes to accept Facebook friend requests from coaches, or turnover their username or password. One way the NCAA can do this is by outlawing the same practices that some state legislatures have already banned. For example, the state of Arkansas enacted H.B. 1902 in 2013.38 The bill “prohibit[s] an institution of higher education from requiring or requesting a current or prospective employee or student from disclosing his or her username or password for a social media account.”39 In addition, the NCAA must take heed of judicial decisions that are giving social media users a wide range of protection, based in the First and Fourth Amendments, and the Stored Communications Act. The NCAA can do so by telling its member institutions that in order to enforce any restrictions on a student’s social media account, the student must first engage in conduct that would lead to “substantial disruption”40 to the university. Furthermore, since the Stored Communications Act prevents individuals from using third-party applications or forcing students to friend a coach to bypass privacy settings,41 the NCAA must prevent its universities from doing the same. The NCAA should announce clearly, via a new bylaw, that both of these monitoring methods are strictly prohibited, and no longer can any NCAA school or team implement these broad-sweeping requirements. The NCAA must not wait for other states or the federal government to act, but should instead be proactive and take action to increase its reputation and level of accountability.

#### Social media restrictions resemble exploitation of student athletes- it violates their free speech and harbor athletic success at the expense of education

**Stoller 15**--- Eric Stoller. February 5, 2015. Inside Higher Ed. <https://www.insidehighered.com/blogs/student-affairs-and-technology/coaches-please-stop-banning-social-media>. RW

When will college and university coaches stop banning their players from using social media? And, are there really any legitimate reasons for student-athletes to be banned from using social media? It seems to me that higher education is all about learning and that educating student-athletes in all facets would be paramount for schools and their exorbitantly compensated coaches. Understandably, some student-athletes head off to school with a focus that is [a bit more athlete-oriented](https://www.insidehighered.com/blogs/student-affairs-and-technology/ohio-states-cardale-jones-asked-us-terrific-question) than student. It makes sense that this is the case. Especially for the "big money" sports like football and men's basketball. Generally speaking, these student-athletes aren't heavily recruited for their academics. Schools woo them with gladiatoesque stadiums and promises of glory...again, not academic success, but how they do on the field. The higher education stage that they are promised is on the turf or on a gleaming hardwood court. Classrooms are often treated as an inconvenience that gets in the way of winning the next "big" game. When a coach says that they are going to ban their players from using social media, they usually say that it's due to the distraction effect. Essentially they are saying that student-athletes can't possibly be [taught about digital identity](https://www.insidehighered.com/blogs/student-affairs-and-technology/digital-identity-development) or how to manage their own lives. Banning social media is usually more about protecting the brand of the sports enterprise at an institution. That anyone can possibly support the banning of social media use by student-athletes is quite telling. This support is less about education and more about the indentured nature of things in collegiate athletics. Ideally, the day will come when case law removes any and all doubt that this is a free speech issue. I look forward to a day when student-athletes are no longer subject to social media bans and are instead given the educational experience that they deserve.

#### Social media restrictions are an effort to control athletes in all facets of life—that violates the first amendment right to free speech

**Kimes 15**---- Mina Kimes, September 2, 2015. Social media bans may violate college athletes' First Amendment rights. ESPN. <http://abcnews.go.com/Sports/social-media-bans-violate-college-athletes-amendment-rights/story?id=33482714>. RW

COLLEGE IS A petri dish for self-expression, a place where students can communicate in new, complex and occasionally boneheaded ways -- unless they play sports. In recent years, a number of programs have banned their players from social media, shielding them from the evil diversions of modernity like cult leaders with underground bunkers. The men's basketball teams at [Minnesota](http://abcnews.go.com/topics/news/minnesota.htm), Purdue, Iowa and Louisville all barred their players from tweeting last season. ("It poisons their minds," Cardinals coach Rick Pitino said.) The women's hoops team at Connecticut follows a similar rule. In August, ACC rivals Clemson and Florida State made headlines when their football teams banned Twitter. Several coaches have argued that they're protecting their players from themselves, as though other college students aren't equally susceptible to harming their career prospects with stupid tweets. The difference, of course, is that normal students don't have the power to dent the reputations of their schools -- or the coffers of their athletic programs. Make no mistake: Social media bans are just one more way for coaches to control their athletes. FSU's [Jimbo Fisher](http://abcnews.go.com/topics/sports/ncaa/coach-jimbo-fisher.htm) told the Orlando Sentinel: "When you've had success doing things, why would you not repeat it?" Here's one reason: It might be unconstitutional. Clemson and FSU both say their policies are imposed by the players themselves, but Fisher clearly backs the sanction; in 2012, he told reporters the rule was his decision. Other coaches, such as Geno Auriemma, are calling the shots. And because they work for the government- -- all of the schools mentioned above are public universities -- they could [should] be liable for suppressing students' free speech. "It's a pretty clear-cut case," says Eric D. Bentley, associate general counsel at the University of Houston. "You can't argue that because they're student-athletes they have no First Amendment rights." (And yet, some have challenged those rights: Until recently, FSU's social media policy for student-athletes said: "Do not have a false sense of security about your rights to freedom of speech.") Season-long bans are particularly egregious, Bentley says, because they're so wide-ranging; such restraints fall under the overbreadth doctrine, which prevents the government from issuing gag orders. A spokesman for UConn says Auriemma's focus is "limiting all potential distractions." He also points out that students have other options for speaking out, such as "writing a letter." A letter! But -- and it should hardly be necessary to point this out to those running institutions of higher learning -- these are not valid arguments for curbing free speech. Yes, schools can forbid students from threatening criminal activity or uttering extreme obscenities. And per a decades-old Supreme Court decision, administrators also can block students from making statements that disrupt campus activity. But these are very narrow exceptions. "You can't ban something because you think someone might engage in disruptive speech," Bentley says. If colleges are ever forced to defend these policies in court -- there have been no significant cases yet -- they'll probably argue that student-athletes are different from their peers. Players already submit to extra oversight, like curfews and practice schedules. But unlike social media bans, those rules don't invalidate their constitutional rights. Frank LoMonte, the executive director of the nonprofit Student Press Law Center, says employers can sometimes defend limits on speech by arguing that their workers are representing the organization -- but it's unlikely that universities, so terrified of categorizing student-athletes as employees, would use that defense. "Colleges have made that bed, and now they're going to have to lie in it," he says. It's undeniable that social media can be distracting. But it's [is] also a facet of modern life, indispensable not just for cultural reasons but also for educational and professional ones. It's a place where athletes like Ohio State QB Cardale Jones can do everything from ruffling feathers (by stating, truthfully, that athletes aren't recruited "to play SCHOOL") to cultivating a fan base to commenting on [social justice](http://abcnews.go.com/topics/news/social-justice.htm) issues like #BlackLivesMatter. Coaches may not like it, but players need a megaphone too. And they have the right to use one.

#### Social media is a unique platform for college athletes to encourage activism and express solidarity with their own political agency—censorship on those grounds discourages activism and normalizes racism on campus

**New 16**--- Jake New, August 3, 2016. “What Athletes Can Say”. Inside Higher Ed. <https://www.insidehighered.com/news/2016/08/03/coachs-comments-about-players-social-media-posts-spark-debate-athlete-speech>. RW

While Mora said during a media conference in July that he does not plan on censoring his player and only meant to encourage Rosen to be “socially responsible,” an [op-ed in the Los Angeles Times](http://www.latimes.com/opinion/op-ed/la-oe-dreier-candaele-college-athletics-lean-right-20160729-snap-story.html) last week renewed the debate. Peter Drier, a politics professor at Occidental College, and Kelly Candaele, a film producer known for making the documentary that inspired the film A League of Their Own, criticized Mora for telling Rosen to emulate only politically conservative football players. They questioned the wisdom of comparing Rosen’s social media posts to the behavior of Manziel, a football player whose career troubles stem from domestic violence and substance abuse. Athletes have a right to speak out, they wrote, adding that “Josh Rosen needs to sharpen his analysis, not shut his mouth.” “Maybe Mora was merely trying to give Rosen some friendly career advice: don’t alienate fans or jeopardize potentially lucrative commercial endorsements,” Drier and Candaele wrote. “But Mora's picks for positive role models fit into a disturbing pattern in college sports: outspoken conservatives are admired and forthright liberals, not so much.” Joshua Rupprecht, UCLA’s assistant athletic director, said the op-ed was unfair. Mora, Rupprecht said, was only referencing Rosen’s use of profanity, not his political opinions, and that the coach's choice of role models was not based on their conservative views. “Coach Mora nor the athletic department limit our student-athletes' free speech or ability to post their views on social media,” Rupprecht said. “In fact it is quite the opposite. We encourage them to find their voice, that's what college is about. As Coach Mora and others have often indicated, in doing so, we want them to be educated on what they actually speak out about and be able to back up their thoughts with intelligent discourse.” In an email Tuesday, Dreier and Candaele defended their view, arguing that it’s noteworthy that Mora chose Tom Brady, a supporter of Donald Trump, as someone Rosen should emulate after the player criticized the presidential candidate. “The reality is that the culture of big-time college sports discourages athletes from speaking out on social and political issues,” they said. While Rosen’s posts struck an irreverent tone, they aren’t the only time in recent years that college athletes have taken a stand over political, social or athletics issues. In 2013, players at Grambling State University, a historically black institution in Louisiana, boycotted football over administrators’ refusal to address poor facility conditions, excessively long bus travel to games and other issues. The boycott caused the university to forfeit a game against Jackson State University, leading to a lawsuit against Grambling. The game was meant to be Jackson State’s homecoming, and that university said the Grambling team’s no-show performance cost it millions of dollars. When Tim Wolfe [announced his resignation](https://www.insidehighered.com/news/2015/11/10/u-missouri-leaders-resign-amid-student-concerns-over-racism-and-diversity) as the University of Missouri System’s president in November, the decision came after weeks of demonstrations over the president’s handling of a string of racist incidents on campus. Student and faculty groups had been calling for Wolfe’s resignation, and a graduate student went on a weeklong hunger strike, vowing he would not eat until Wolfe was “removed from office or my internal organs fail and my life is lost.” Then at least 30 members of the university’s football team linked arms with the hunger striker and gave an ultimatum: if Wolfe didn’t resign, [they would boycott all football-related activities](https://www.insidehighered.com/news/2015/11/11/u-missouri-football-boycott-demonstrates-economic-power-athletes). That included a game scheduled just days later. While it would be an exaggeration to attribute Wolfe's resignation -- and that of the Columbia campus's chancellor, R. Bowen Loftin -- largely to the players' actions, their well-publicized strike certainly helped tip the scales and highlighted what kind of economic power athletes hold. At [a meeting of the Knight Commission on Intercollegiate Athletics in May](https://www.insidehighered.com/news/2016/05/11/knight-commission-shifts-stance-use-players-names-and-likenesses), Arne Duncan, the former U.S. secretary of education and a new member of the commission, wondered aloud if any other athletes had threatened to strike. Recalling the antiracism protests at Missouri, Duncan asked if college players would consider organizing similar boycotts over athletics issues like concussion policies or name, image and likeness rights. Rollins Stallworth, a former Stanford University football player and chair of the Pac-12 Conference’s Student-Athlete Advisory Committee, revealed that two of Stanford’s team captains boycotted football-related activities last year during summer workouts. For the third summer in a row, he said, the university was late in providing players with scholarship money for participating in the camps. The protest was not nearly as dramatic as the strike at Missouri, Stallworth said, but “seeing the effect of two of our teammates doing that and what goes on in the locker room, the discussion that happens, you can see the potential that could happen.” Whether it's full boycotts or tweets containing the F word, Dan Lebowitz, executive director of Northeastern University's Center for the Study of Sport in Society, said, “We’re in a time where people are really having a discussion about what athlete activism looks like.” Lebowitz points to LeBron James, of the National Basketball Association’s Cleveland Cavaliers, as an athlete who is unafraid of using his platform to highlight social justice issues. In 2012, while a member of the Miami Heat, James tweeted an image of himself and his teammates wearing hooded sweatshirts in reference to Trayvon Martin, the unarmed black teenager shot to death by George Zimmerman. In 2014, after the death of Eric Garner, James and his teammates wore black warm-up T-shirts that stated “I can’t breathe.” Garner had died earlier that year after being placed in a choke hold by a New York police officer. Garner repeated, “I can’t breathe” 11 times in the moments before his death. James isn’t the only athlete making such statements. Last month, players for the New York Liberty, a Women’s National Basketball Association team, wore black T-shirts bearing the words #BlackLivesMatter and #Dallas5, in reference to black men killed by police and the police officers murdered in Dallas. In [a July Instagram post](https://www.instagram.com/p/BHmtRkehDV8/), Carmelo Anthony, a forward for the New York Knicks and a longtime member of the U.S. national basketball team, called on other athletes “to step up and take charge” by using their high-profile status to help combat racism and gun violence. The difference between James, Anthony and the Liberty and athletes like Rosen, Lebowitz said, is that Rosen is a college student. “College athletes have this platform, but they are ostensibly governed by the university and the National Collegiate Athletic Association,” Lebowitz said. “We’re seeing this tension between universities and athletes, where it's assumed that athletes will strictly conform to the fact they’re governed by colleges and that they have to worry about what they say and how that could affect their scholarships. And yet against that backdrop, athletes are starting to understand the enormous power they have. The question is, in a country of free speech, where athletes enjoy a platform of visibility, does he or she have a social responsibility to use that platform to speak up for people?” Colleges, including UCLA, provide athletes with guidelines on how to use social media. UCLA’s [student-athlete handbook](http://sidearm.sites.s3.amazonaws.com/uclabruins.com/documents/2015/9/9/SA-Handbook.pdf) calls social media a “balancing act.” The university encourages and fully supports freedom of speech, the handbook states, but it also asks that athletes “be cognizant of the fact that you are representing yourself, UCLA and the athletic department” every time they use social media. Teresa Valerio Parrot, principal of TVP Communications, a public relations firm, said it’s common for coaches and athletic departments to keep a close eye on athletes’ social media use. And with this year’s presidential election conjuring strong emotions, the kind of tension that can come from such monitoring is likely to continue. “Athletes live under a microscope, and institutions try to provide guidance,” Parrot said. “I think campuses will have a heightened awareness of social media use this year as athletes engage with some very polarizing issues across the country. Colleges are going to have to walk very carefully through some minefields.”

#### Debate should deal with questions of real-world consequences—ideal theories ignore the concrete nature of the world and legitimize oppression.

 **Curry 14** [Dr. Tommy J. Curry 14, “The Cost of a Thing: A Kingian Reformulation of a Living Wage Argument in the 21st Century”, Victory Briefs, 2014, BE]

**Despite the pronouncement of debate as an activity and intellectual exercise pointing to the real world consequences of dialogue**, thinking, and (personal) politics when addressing issues of racism, sexism, economic disparity, global conflicts, and death, many of the discussions concerning these ongoing challenges to humanity are fixed to a paradigm which sees the adjudication of material disparities and sociological realities as the conquest of one ideal theory over the other. In “Ideal Theory as Ideology,” Charles Mills outlines the problem contemporary theoretical-performance styles in policy debate and value-weighing in Lincoln-Douglass are confronted with in their attempts to get at the concrete problems in our societies. At the outset, Mills concedes that “ideal theory applies to moral theory as a whole (at least to normative ethics as against metaethics); [s]ince ethics deals by definition with normative/prescriptive/evaluative issues, [it is set] against factual/descriptive issues.” At the most general level, the conceptual chasm between what emerges as actual problems in the world (e.g.: racism, sexism, poverty, disease, etc.) and how we frame such problems theoretically—the assumptions and shared ideologies we depend upon for our problems to be heard and accepted as a worthy “problem” by an audience—is the most obvious call for an anti-ethical paradigm, since such a paradigm insists on the actual as the basis of what can be considered normatively. Mills, however, describes this chasm as a problem of an ideal-as-descriptive model which argues that for any actual-empirical-observable social phenomenon (P), an ideal of (P) is necessarily a representation of that phenomenon. In the idealization of a social phenomenon (P), one “necessarily has to abstract away from certain features” of (P) that is observed before abstraction occurs. ¶ This gap between what is actual (in the world), and what is represented by theories and politics of debaters proposed in rounds threatens any real discussions about the concrete nature of oppression and the racist economic structures which necessitate tangible policies and reorienting changes in our value orientations. As Mills states: “What distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual,” so what we are seeking to resolve on the basis of “thought” is in fact incomplete, incorrect, or ultimately irrelevant to the actual problems which our “theories” seek to address. Our attempts to situate social disparity cannot simply appeal to the ontologization of social phenomenon—meaning we cannot suggest that the various complexities of social problems (which are constantly emerging and undisclosed beyond the effects we observe) are totalizable by any one set of theories within an ideological frame be it our most cherished notions of Afro-pessimism, feminism, Marxism, or the like. At best, theoretical endorsements make us aware of sets of actions to address ever developing problems in our empirical world, but even this awareness does not command us to only do X, but rather do X and the other ideas which compliment the material conditions addressed by the action X. As a whole, debate (policy and LD) neglects the need to do X in order to remedy our cast-away-ness among our ideological tendencies and politics. How then do we pull ourselves from this seeming ir-recoverability of thought in general and in our endorsement of socially actualizable values like that of the living wage? It is my position that Dr. Martin Luther King Jr.’s thinking about the need for a living wage was a unique, and remains an underappreciated, resource in our attempts to impose value reorientation (be it through critique or normative gestures) upon the actual world. In other words, King aims to reformulate the values which deny the legitimacy of the living wage, and those values predicated on the flawed views of the worker, Blacks, and the colonized (dignity, justice, fairness, rights, etc.) used to currently justify the living wages in under our contemporary moral parameters.

#### The Role of the Ballot is to endorse the best strategy for social media activism—social media outlets are an essential avenue for liberation and agency of marginalized communites

**Glover 15**--- Cameron Glover, April 30th, 2015. Model View Culture. <https://modelviewculture.com/pieces/social-media-activism-and-the-problem-with-legitimacy>. RW

There have been few other movements to spark as much controversy, confusion, and gut-wrenching passion as social media activism. If we back up, it all started with the immersion of technology and the prominence of Internet and tech culture. The 21st century has brought us so many different innovations. With this, it has shifted every corner of our culture, even ones that we believed to be untouchable. Activism is no different. One of the best things that has evolved from this shift has been the amount of community that has been able to flourish. For many people, social media was just another outlet to reach an audience. But for marginalized groups – specifically people and women of color – it has become essential to the advancement of our independence from oppression, for raising our voices to injustice. Social media activism invigorated the social justice that was bubbling below the surface. The secret to the effectiveness of social media activism does not come from the catchy slogans or popular hashtags, but the ability of this medium to be used consecutively with other outlets. Without social media activism, these marginalized groups seeking change are left stagnant, and separated. There is indeed strength in numbers, and this is the thread that connects activists to a global power cord, tapping into their full potential. One demonstration of how social media activism can impact and connect communities is #BlackComicsMonth, began as a response to the lack of Black superheroes available for nerd consumers. Founded by Vixen of VixenVarsity.com, the hashtag not only brought awareness of available Black superhero media to the market, but also built community with creators involved in the same cause. The movement has gained momentum, stretching beyond the initial February launch, and Vixen is now able to create a centralized house for Black superhero visibility, and continues to build the brand through networking opportunities with major comic book companies, and comic conventions, with the hope of continued expansion. There is a saying in social justice education that you need to meet people where they are. For me, that means it’s impossible to talk about social justice movements, social media activism, and identity without stating one crucial fact: these are all linked ingredients that contribute to the creation of injustice. This makes social media activism mandatory for marginalized groups to be heard. But even this comes with complications. One of the most prominent (and effective) uses of social media activism has been #BlackLivesMatter. This campaign to bring awareness to the terrifyingly-growing number of Black individuals who have been victimized by racist police brutality and unjust legislation has gained international notice, and continues to be an effective outlet for information and outreach. However, this movement also highlights an all-to-common trend when it comes to tech and cultural movements: it is nearly impossible for marginalized voices, especially those of Black and other women of color – to be heard, credited, and respected. One of the creators of the #BlackLivesMatter movement, Alicia Garza, wrote “[A Herstory of the #BlackLivesMatter Movement](http://thefeministwire.com/2014/10/blacklivesmatter-2/),” published by The Feminist Wire in October. In this piece, she brought back the necessary recognition of the work that she and her co-founders Patrisse Cullors and Opal Tometi have done, and also dived into the power of community and collaboration. She writes: *“We were humbled when* [*cultural workers*](http://dignidadrebelde.com/)*,* [*artists*](http://work.robdontstop.com/)*,* [*designers*](http://designaction.org/) *and techies offered their labor and love to expand #BlackLivesMatter beyond a social media hashtag. Opal, Patrisse, and I created the infrastructure for this movement project—moving the hashtag from social media to the streets.”* She also writes about what she calls “the theft of Black queer women’s work”: *“When you design an event / campaign / et cetera based on the work of queer Black women, don’t invite them to participate in shaping it, but ask them to provide materials and ideas for next steps for said event, that is racism in practice. It’s also hetero-patriarchal. Straight men, unintentionally or intentionally, have taken the work of queer Black women and erased our contributions. Perhaps if we were the charismatic Black men many are rallying around these days, it would have been a different story, but being Black queer women in this society (and apparently within these movements) tends to equal invisibility and non-relevancy.”* As Alicia mentions, article after article centered on the #BlackLivesMatter movement contributed to the erasure of these voices. The erasure of the three Black queer women who headed this movement speaks to [a much larger problem of systematic erasure and oppression](https://modelviewculture.com/pieces/thistweetcalledmyback) on which most movements, including social justice ones, depend and thrive. As much as social media activism has evolved to allow for these voices to rise above and be heard despite these hurdles, it cannot escape its dependency on oppressive norms, ripping the legitimacy of these movements from their creators. There’s a fantasy that one day technology could transcend this dependency, but in reality, there’s been cause to question if this kind of cultural theft and appropriation has actually increased online. Interestingly enough, social media activism is headed largely by the same marginalized groups that are discredited and victimized again and again by the system. For this reason, and many others, certain individuals have pushed for the dismissal of social media activism, citing its “ineffectiveness” as a social justice tool. As both a Black woman and an activist, I do retain that some of the arguments made here are valid. Do we continue to utilize tools that have been shaped to keep us out of the house, or is it worth reinventing the uses for these tools? With social media activism, it becomes more than a hobby – for many of us, it is the missing link for connecting our causes to larger strategies. However, by questioning the “legitimacy” of social media activism, especially when it has such close ties to amplifying marginalized voices, we are inherently questioning the right for these voices to be amplified in the first place. We are subconsciously placing that privilege onto tools for change, contributing to the messy and complicated cycle of oppression all over again. Instead, we can shift this narrative – marginalized activists, or otherwise – by opening these spaces to rightfully include the work that these activists have done, especially when it comes to the reworking of these tools. As social media continues to act as a millennial meeting ground for support and encouragement to flourish, [it also amplifies those marginalized groups for harassment, gaslighting, and plagiarism](https://modelviewculture.com/news/doxxing-is-always-bad-except-when-its-not-your-morality-is-a-bludgeon). Predators that wish these groups harm can now find us with a quick hashtag search. It now becomes mandatory that a marginalized person on the Internet find the courage to continue their work online, while also taking steps to protect themselves from possible threats. Despite the increase in harm that can come from becoming public via technology, it is no longer an option for marginalized voices to be silent with this incredible tool at their fingertips. Social media activism is important in all facets of contemporary social movements, molding technology and adapting to the next frontier of humanities and communication. Only two examples from countless movements, both #BlackComicsMonth and #BlackLivesMatter were able to utilize the power of community through hashtags, effective social media strategy, and the transformative ability to appeal to multiple audiences on different platforms. By using these skills, these movements and their creators are able to see success in shifting activism for the tech age.

### Adv- Black Fugitivity

#### Social media resistance is a key avenue for black fugitivity—it allows the carving out of respresentational spaces to resist dominant racist narratives

**Joyce 15**--- Rebekah Joyce, June 11th, 2015. From Silent Film to Hashtags: Black Media as a Mode of Resistance. <http://boaaevent.org/from-silent-film-to-hashtags-black-media-as-a-mode-of-resistance/>. RW

Media studies and cultural/critical studies scholars have long pointed to the importance representation in shaping our social and political life. Media do not simply represent what is, but also construct and maintain our social realities. In the century since the debut of Birth of a Nation, U.S. media have produced a steady stream of degrading racist caricatures of Black Americans. From the sexual predation of Gus in Birth of a Nation to the buffoonery of Amos and Andy straight through to the present day, media often cast Black Americans as violent, lazy, hyper-sexual, and of low intelligence. These images have served to justify and perpetuate racist beliefs, helping to provide the rationale necessary to maintain racial inequalities. Yet, in the face of an exclusionary, and often outright hostile, white-dominated mainstream media, Black Americans have always created alternative media spaces to represent themselves and fight back against the imagery and discourses that dehumanize them. The release of Birth of a Nation was met not only with outrage for its racist imagery, but also with cinematic retorts such a Birth of a Race (partially funded by Hampton Road’s own Hampton University) and Oscar Micheaux’s Within our Gates. Far from being an exception, these projects are representative of the long history of Black independent media production. Whether through film, newspapers like the Chicago Defender (now in its 110th year), community radio stations, or Hip hop, Black Americans have always carved out spaces for themselves. The 100th anniversary of Birth of a Nation is an opportunity not only to reflect back on and celebrate this long tradition of resistance, but to also recognize the contemporary iterations of such anti-racist media-making – the many vibrant Black media spaces that can be found across digital and social media platforms.In recent years, Black digital media content creators have flourished. The large predominantly Black network of Twitter users known as “Black Twitter” has repeatedly leveraged their dense social media connections to circulate information, organize political protest, and make their voices heard. Blogs like [Racialicious](http://www.racialicious.com/) and [Crunk Feminist Collective](http://www.crunkfeministcollective.com/) provide commentary from perspectives that are routinely silenced elsewhere. A robust and growing group of Black podcasters, like [This Week in Blackness](http://thisweekinblackness.com/) and [The Black Guy Who Tips](http://www.theblackguywhotips.com/), produce talk-radio style content that offers Black perspectives on politics and popular culture. And a new generation of activists have successfully used digital media to organize and mobilize around issues of racial profiling and police brutality. When unrest erupted on the streets of Ferguson, MO in August of 2014, activists and organizers used Vine, Instragram, Twitter and livestreaming technologies to bypass mainstream media and provide their own accounts of events. Digital media have created unprecedented opportunities for self-expression and engagement. While access is still limited for far too many, digital media have lowered the barrier for entry into cultural conversations and created new possibilities for visibility. Faster than print, much less costly than making a feature film, and not geographically limited by the boundaries of reception like terrestrial radio, digital media allow the distribution of content instantaneously and over vast geographical distances. Mobile technologies allow that access to happen almost anywhere. So audiences can essentially carry their alternative media sources with them in their pockets. One hundred years after Birth of a Nation, Black Americans are still “answering” racist representations with self-definition and self-representation. The mediums have changed, but the resistance remains.

#### We embrace fugitivity as a means of escape—blackness can embrace lines of flight to escape ontological violence

**Bey 16**--- Marquis Bey, May 25, 2016. I Like My Coffee Black: Fugitive Blackness (With Gratitude to Fred Moten) <https://medium.com/the-coffeelicious/i-like-my-coffee-black-fugitive-blackness-with-gratitude-to-fred-moten-600523d4507a#.onmn9sx1k>. RW

I may, here, begin to say some things that may propel me into a troublesome discursive milieu. But, as Malcolm X says in the epigraph above, I — to be clear, and nowhere near twisted, *because of my Blackness* — was born and bred in trouble. Indeed, one might say that this is, at least in part, what Blackness is, what Blackness means and signifies, does and portends. I met with a prospective English Ph.D. student the day before he and others in his potential cohort were to be shuttled through meetings, meet-and-greets, lectures, and the academic like in an attempt to get them to matriculate into our institution. He was a dope scholar of theories of miscegenation (he was a biracial dude studying Af. Am. Literature, hip-hop, poetry, short stories, that sort of stuff) and we ended up spending, like, five hours chilling, rapping, vibing in Starbucks. And didn’t buy an ounce of coffee (not all that into their “[conscious capitalism](https://www.youtube.com/watch?v=hpAMbpQ8J7g),” I suppose). As this student and I spoke, we wandered, inevitably as rigorous thinkers of Blackness, Black Studies, and general iconoclastic intellectual shit are wont to do, onto the subject of the effects of Blackness. This is too ironic in retrospect. “Blackness, if we think about what people like Ta-Nehisi Coates or Claudia Rankine are getting at, is…I wanna say, something that is not simply about this right here,” he said as he vigorously rubbed his caramel skin. *Uh huh honey.* “Yes!” I jolted, banging the table. And my response, perhaps, is a controversial point, but I mean it: “Blackness is deployable, which is to say, it is a fugitive, disruptive, iconoclastic pathogenic force perturbing normativity, normative whiteness.” There is, in [Dalton Jones](http://rhizomes.net/issue29/jones/index.html#reading-position-1)’ words, an “intrinsic capacity of blackness to challenge any and all normative assertions of power and privilege wherever [it] may emerge.” In between criminality and propriety, lies Blackness, that quotidian practice of refusal, the middle finger to reconciliation, decorousness, and the demand to structure its raspy vocal timbre into something, anything, that sounds like verified music. Enter whiteness. As we engaged in Black sociality in this public space — a no-no, if there ever was one; a veritable intellectually verbal insurgence beckoning, purportedly, to be policed — this old white dude inserted himself into our conversation. No warning. No request. Just enter, because, apparently, this space was his. “I think you two gentlemen would find this very *interesting*.” He placed on the table a newspaper clipping, pointing at its title: “[Cornell Republicans to Host Fox News Correspondent Kimberly Guilfoyle](http://cornellsun.com/2016/04/05/cornell-republicans-to-host-fox-news-correspondent-kimberly-guilfoyle/).” “That’s not the word I would use to describe this,” I said to him as I read the title. He didn’t hear me, though I was nothing short of clear and assertive. “I think it would be *fun* for you guys to think about,” he said, again, hearing nothing. “That’s *certainly* not the word I would use. Please go away now.” Nothing. He kept talking, waxing oh-so-objectively about the goodness, fairness, and balance this speaker would bring to the community. “Yo, go away now, please. We are done with you.” I am telling you, reader, this dude quite literally was unable to hear me. And I was irate. I can only imagine, as my Black radical feminism always compels me to do, if we were Black women or trans folks having that conversation. The whiteness and cis male supremacy — which is also, like white supremacy, absolutely pervasive — that would have ensued would have been utterly catastrophic, I’d imagine. Black women and Black genderqueer/transgender/gender fucking folks, because of their particularly *gender-*inflected fugitive embodiment, are, I would argue, even more disruptive in public space coded in and through whiteness and cisgender maleness. The erasure, elision, and violent invalidation of the knowledges, voices, and language from Black women and trans folks, yo, is so real. And no wonder, because, as [Gloria Anzaldúa said](http://dsapresents.org/staff/michael-thornton/files/2011/08/Anzaldua-Wild-Tongue.pdf) of Chicana women, women of Color — Black cis women and trans folks — intensely “speak with tongues of fire”; they “are your linguistic nightmare, your linguistic aberration.” So if we are using my experience in Starbucks as a case study that signifies a pervasive and quotidian phenomenon, we must ask ourselves what happens when Blackness occupies space codified through and by whiteness, so much so that corporeal incarnations of this whiteness — a whiteness, mind you, that was consolidated into its current inimical instantiation through “the pillaging of life, liberty, labor, and land; through the flaying of backs…and various other acts meant, first and foremost, to deny you and me the right to secure and govern our own [Black] bodies,” [Ta-Nehisi Coates says](http://www.amazon.com/Between-World-Me-Ta-Nehisi-Coates/dp/0812993543/ref%3Dpd_sim_14_7?ie=UTF8&dpID=51nX2wGTFXL&dpSrc=sims&preST=_AC_UL160_SR107%2C160_&refRID=1V3R61RD09SPC3KQEBZK) — are summoned to shut it down? What happens when, in public, normative space, Blackness comes NY bopping in (you know the leg limpin’), refuses the coffee of Starbucks, and rather prefers to be sippin’ on sin and juice? Blackness is the disposition, the posture, the moving force of *fugitivity*. What? Fugitivity, I say. *What??* My eternal indebtedness is to Fred Moten for his [recalibration of Blackness](https://drive.google.com/file/d/0By5XNHEDzGd5N0UzRHNZX1p5YmdzMGg4VU9ROXZ0YUZlZS1F/edit). We might say that this “thing” we call Blackness is that irreparable disturbance of how the Human has been constructed. An ensemble and revolutionary signifier of fissure, Blackness refuses to even acknowledge the purported tenets of power. It refuses, gets bored with (*yaaawn*) authority that attempts to circumscribe this disruptiveness. It is a problem, a question, a sinister grin undermining interdiction because it possesses — and *re-*possesses — knowledge of the indecorous, the improprietous, the inappropriate. Moten helps us more. He writes, pontificating-in-Black, that Blackness indexes that desire to be free, manifest as flight, as escape, as a fugitivity that may well prove to veer away even from freedom as its telos*, is indexed to anoriginal lawlessness.* The predisposition to break the law is immediately disrupted by an incapacity for law, an inability both to intend the law and intend its transgression and the one who is defined by this double inability is, in a double sense, an outlaw*.* Mmm, mm, mm. Read that again; it’s better the second time, trust me. And then read it a third time. Blackness, then, is lawless, a predisposition to break the Law (note the capital) precisely because the Law is a violent force seeking to preserve order. BUT, to those of you who say “we *need* laws and orderliness,” it must be noted that the Law is distinct from *justice*. The Law, historically, has sanctioned — and still does, my god! — the obliteration of Blackness. Trans-Atlantic slave trade: Lawful. Black bodies as accumulated and fungible mere extensions of another, *real* full-fifthshuman being: Lawful. Black codes: Lawful. Redemption: Lawful. Jim Crow and murderous lynchings: Lawful. The post-13th Amendment enslavement of convicts (who are disproportionately Black and Brown): Lawful. Mass incarceration in prisons, or what [Theodora Danylevich aptly calls](http://rhizomes.net/issue29/danylevich/index.html) the “hidden slave empire”: Lawful. Extra-legal and vigilante extermination of Black insurgency, validated via exoneration of the murderous culprits: Lawful. Again, “Law” is distinct from justice. Let us, please, think of Blackness as a radical movement of escape, as *stolen life*, as knowledge from the underbelly of the *Zong* and *Amistad* where bodies melded languages, cultures, potentialities, and those dreams that are colder — and certainly more volatile — than death. Perhaps that which is Black is “The air of the thing that escapes enframing,” that elusive force that says no to being hedged by power. Perhaps it is, maybe, as [Toni Morrison has said](http://tannerlectures.utah.edu/_documents/a-to-z/m/morrison90.pdf), a language that is “unpoliced, seditious, confrontational, manipulative, inventive, disruptive, masked and unmasking language” and a deployment of the “Daring, disruptive, imaginative, modern, out-of-the-house, outlawed, unpolicing, uncontained and uncontainable.” Alternative iterations: Put “paratheologically,” as that ill theologian of race [J. Kameron Carter says](https://www.academia.edu/7361500/Paratheological_Blackness) in an admittedly “academic” lexicon: “blackness is a movement of the between…an interstitial drama on the outskirts of the order of purity….a fugitive announcement in and against the grain of the modern world’s…investment in pure being, or pristine origins, and of the modern world’s orchestrations of value, rule, and governance (i.e., sovereignty)…” Put in profane vernacular: I’m not simply interested in fucking shit up; what I am genuinely interested in, on a different, but related, register, is the precise moment *when* particular actions or postures fuck shit up, and which things are fucked up, how are they fucked up, who fucks them up. Or more to the point, what is it about this thing deemed Black — what is its texture, its context, its history, its motivation for refusal — that foments the fucking up of that which is shit? Put, if you’ll indulge me, in T-Swift’s sing-songey language: *I knew you were trouble when you walked in…TROUBLE, TROUBLE, TROUBLE!* The Blackness I delineate here, to be frank and a bit controversial (though, that’s simply to say “troublesome,” which we already covered at the beginning of this), is not concerned with authenticity or realness or “blood” or a possessed identity — though, sure, I guess it’s kinda those things. Blackness, as it is delineated here, is not concerned with itemizing a list of requirements that one must meet in order to, alas!, “be” Black, Jack. Nah, this Blackness ain’t about that life. Blackness, we might tentatively say, signifies a proximity to social death (but there is still social *life* all up in that social death). Too, it is that fugitive movement, absconding with life it is not supposed to have, refusing fixity; it speaks to that insurgent sociality that perennially unfixes. Blackness dances in the underground, a dance that is itself a potent knowledge; it Crip Walks, Nae Naes (*watch me whip, whip!*), Lindy hops, Dougies, leans and rocks with it (*what’s hannenin’!*), and snaps its fingers in positional abjection but lived ebullience for the un-grammatizing of whiteness that Blackness augurs. But all the while, it is destructive. It is what happens when Gizmo is satiated after midnight. This is all to say that when Blackness is on unapologetic display in, say, a Starbucks, it may necessitate — to the extent that the space, like most spaces, is mired in the grammar of whiteness and anti-Blackness — that white dudes come and put their whiteness smack dab on display right in front of you, assuring you that it, whiteness, is “interesting” and “fun.” Yes, they will try to come for you. But, as Blackness does, we will sidestep it, keep it movin’, dance, sing, elude, escape, disrupt, and set fire to rain long before, and after, Adele. In short, Blackness will cause trouble, trouble, trouble. And that’s when you will know that something is happening, something is working. You know it’s hot enough when people start to squirm

#### Prefer a fugitive to ontological understanding of blackness—Their view of blackness as slaveness ignores that blackness is prior to ontology—while black people are exterior to civil society, blackness is nonetheless social life within political death

Moten 13 Fred Moten (PhD, UC Berkeley). “Blackness and Nothingness (Mysticism in the Flesh).” South Atlantic Quarterly 2013 Volume 112, Number 4

Over the course of this essay, we’ll have occasion to consider what that means, by way of a discussion of my preference for the terms life and optimism over death and pessimism and in the light of Wilderson’s and Sexton’s brilliant insistence not only upon the preferential option for blackness but also upon the requirement of the most painstaking and painful attention to our damnation, a term I prefer to wretchedness, after the example of Miguel Mellino, not simply because it is a more literal translation of Fanon (though often, with regard to Fanon, I prefer the particular kinds of precision that follow from what some might dismiss as mistranslation) but also because wretchedness emerges from a standpoint that is not only not ours, that is not only one we cannot have and ought not want, but that is, in general, held within the logic of im/possibility that delineates what subjects and citizens call the real world (Mellino 2013). But this is to say, from the outset, not that I will advocate the construction of a necessarily fictive standpoint of our own but that I will seek to begin to explore not just the absence but the refusal of standpoint, to actually explore and to inhabit and to think what Bryan Wagner (2009: 1) calls “existence without standing” from no standpoint because this is what it would truly mean to remain in the hold of the ship (when the hold is thought with properly critical, and improperly celebratory, clarity). What would it be, deeper still, what is it, to think from no standpoint; to think outside the desire for a standpoint? What emerges in the desire that is not (just) that blackness is ontologically prior to the logistic and regulative power that is supposed to have brought it into existence but that blackness is prior to ontology; or, in a slight variation of what Chandler would say, blackness is the anoriginal displacement of ontology, that it is ontology’s anti- and ante-foundation, ontology’s underground, the irreparable disturbance of ontology’s time and space. This is to say that what I do assert, not against, I think, but certainly in apposition to Afro-pessimism, as it is, at least at one point, distilled in Sexton’s work, is not what he calls one of that project’s most polemical dimensions, “namely, that black life is not social, or rather that black life is lived in social death” (Sexton 2011b: 28). What I assert is this: that black life—which is as surely to say life as black thought is to say thought—is irreducibly social; that, moreover, black life is lived in political death or that it is lived, if you will, in the burial ground of the subject by those who, insofar as they are not subjects, are also not, in the interminable (as opposed to the last) analysis, “death-bound,” as Abdul JanMohamed (2005) would say. In this, however, I also agree with Sexton insofar as I am inclined to call this burial ground “the world” and to conceive of it and the desire for it as pathogenic. At stake, now, will be what the difference is between the pathogenic and the pathological, a difference that will have been instantiated by what we might think of as the view, as well as the point of view, of the pathologist. I don’t think I ever claimed, or meant to claim, that Afro-pessimism sees blackness as a kind of pathogen. I think I probably do, or at least hope that it is, insofar as I bear the hope that blackness bears or is the potential to end the world. The question concerning the point of view, or standpoint, of the pathologist is crucial but so is the question of what it is that the pathologist examines. What, precisely, is the morbid body upon which Fanon, the pathologist, trains his eye? What is the object of his “complete lysis” (Fanon 2008: xiv)? And if it is more proper, because more literal, to speak of a lysis of universe, rather than body, how do we think the relation between transcendental frame and the body, or nobody, that occupies, or is banished from, its confines and powers of orientation? What I offer here as a clarification of Sexton’s understanding of my relation to Afro-pessimism emerges from my sense of a kind of terminological dehiscence in Orlando Patterson’s (1982) work that emerges in what I take to be his deep but unacknowledged affinity with and indebtedness to the work of Hannah Arendt, namely, with a distinction crucial to her work between the social and the political. The “secular excommunication” that describes slavery for Patterson (1982: 5) is more precisely understood as the radical exclusion from a political order, which is tantamount, in Arendt’s formulation, with something on the order of a radical relegation to the social. The problem with slavery, for Patterson, is that it is political death, not social death; the problem is that slavery confers the paradoxically stateless status of the merely, barely living; it delineates the inhuman as unaccommodated bios. At stake is the transvaluation or, better yet, the invaluation or antivaluation, the extraction from the sciences of value (and from the very possibility of that necessarily fictional, but materially brutal, standpoint that Wagner [2009: 1] calls “being a party to exchange”). Such extraction will, in turn, be the very mark and inscription (rather than absence or eradication) of the sociality of a life, given in common, instantiated in exchange. What I am trying to get to, by way of this terminological slide in Patterson, is the consideration of a radical disjunction between sociality and the state-sanctioned, state-sponsored terror of power-laden intersubjectivity, which is, or would be, the structural foundation of Patterson’s epiphenomenology of spirit. To have honor, which is, of necessity, to be a man of honor, for Patterson, is to become a combatant in transcendental subjectivity’s perpetual civil war. To refuse the induction that Patterson desires is to enact or perform the recognition of the constitution of civil society as enmity, hostility, and civil butchery. It is, moreover, to consider that the unspoken violence of political friendship constitutes a capacity for alignment and coalition that is enhanced by the unspeakable violence that is done to what and whom the political excludes. This is to say that, yes, I am in total agreement with the Afro-pessimistic understanding of blackness as exterior to civil society and, moreover, as unmappable within the cosmological grid of the transcendental subject. However, I understand civil society and the coordinates of the transcendental aesthetic—cognate as they are not with the failed but rather with the successful state and its abstract, equivalent citizens—to be the fundamentally and essentially antisocial nursery for a necessarily necropolitical imitation of life. So that if Afro-pessimists say that social life is not the condition of black life but is, rather, the political field that would surround it, then that’s a formulation with which I would agree. Social death is not imposed upon blackness by or from the standpoint or positionality of the political; rather, it is the field of the political, from which blackness is relegated to the supposedly undifferentiated mass or blob of the social, which is, in any case, where and what blackness chooses to stay.

#### Pessimism violently polices blackness by forcing it to remain within a damned subject position—that precludes lines of flight which black people can pursue within nothingness since blackness is experienced differently by different people

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Fred Moten (professor of English at Duke). “The Case of Blackness.” 2008.

The cultural and political discourse on black pathology has been so pervasive that it could be said to constitute the background against which all representations of blacks, blackness, or (the color) black take place. Its manifestations have changed over the years, though it has always been poised between the realms of the pseudo-social scientifi c, the birth of new sciences, and the normative impulse that is at the heart of—but that strains against— the black radicalism that strains against it. From the origins of the critical philosophy in the assertion of its extra-rational foundations in teleological principle; to the advent and solidifi cation of empiricist human biology that moves out of the convergence of phrenology, criminology, and eugenics; to the maturation of (American) sociology in the oscillation between goodand bad-faith attendance to “the negro problem”; to the analysis of and discourse on psychopathology and the deployment of these in both colonial oppression and anticolonial resistance; to the regulatory metaphysics that undergirds interlocking notions of sound and color in aesthetic theory: blackness has been associated with a certain sense of decay, even when that decay is invoked in the name of a certain (fetishization of) vitality. Black radical discourse has often taken up, and held itself within, the stance of the pathologist. Going back to David Walker, at least, black radicalism is animated by the question, What’s wrong with black folk? The extent to which radicalism (here understood as the performance of a general critique of the proper) is a fundamental and enduring force in the black public sphere—so much so that even black “conservatives” are always constrained to begin by defi ning themselves in relation to it—is all but selfevident. Less self-evident is the normative striving against the grain of the very radicalism from which the desire for norms is derived. Such striving is directed toward those lived experiences of blackness that are, on the one hand, aligned with what has been called radical and, on the other hand, aligned not so much with a kind of being-toward-death but with something that has been understood as a deathly or death-driven nonbeing. This strife between normativity and the deconstruction of norms is essential not only to contemporary black academic discourse but also to the discourses of the barbershop, the beauty shop, and the bookstore. I’ll begin with a thought that doesn’t come from any of these zones, though it’s felt in them, strangely, since it posits the being of, and being in, these zones as an ensemble of specifi c impossibilities: As long as the black man is among his own, he will have no occasion, except in minor internal confl icts, to experience his being through others. There is of course the moment of “being for others,” of which Hegel speaks, but every ontology is made unattainable in a colonized and civilized society. It would seem that this fact has not been given enough attention by those who have discussed the question. In the Weltanschauung of a colonized people there is an impurity, a fl aw, that outlaws [interdit] any ontological explanation. Someone may object that this is the case with every individual, but such an objection merely conceals a basic problem. Ontology—once it is finally admitted as leaving existence by the wayside—does not permit us to understand the being of the black man. For not only must the black man be black; he must be black in relation to the white man. Some critics will take it upon themselves to remind us that the proposition has a converse. I say that this is false. The black man has no ontological resistance in the eyes of the white man.1 This passage, and the ontological (absence of) drama it represents, leads us to a set of fundamental questions. How do we think the possibility and the law of outlawed, impossible things? And if, as Frantz Fanon suggests, the black cannot be an other for another black, if the black can only be an other for a white, then is there ever anything called black social life? Is the designation of this or that thing as lawless, and the assertion that such lawlessness is a function of an already extant fl aw, something more than that trying, even neurotic, oscillation between the exposure and the replication of a regulatory maneuver whose force is held precisely in the assumption that it comes before what it would contain? What’s the relation between explanation and resistance? Who bears the responsibility of discovering an ontology of, or of discovering for ontology, the ensemble of political, aesthetic, and philosophical derangements that comprise the being that is neither for itself nor for the other? What form of life makes such discovery possible as well as necessary? Would we know it by its fl aws, its impurities? What might an impurity in a worldview actually be? Impurity implies a kind of non-completeness, if not absence, of a worldview. Perhaps that noncompleteness signals an originarily criminal refusal of the interplay of framing and grasping, taking and keeping—a certain reticence at the ongoing advent of the age of the world picture. Perhaps it is the reticence of the grasped, the enframed, the taken, the kept—or, more precisely, the reluctance that disrupts grasping and framing, taking and keeping—as epistemological stance as well as accumulative activity. Perhaps this is the fl aw that attends essential, anoriginal impurity—the fl aw that accompanies impossible origins and deviant translations.2 What’s at stake is fugitive movement in and out of the frame, bar, or whatever externally imposed social logic—a movement of escape, the stealth of the stolen that can be said, since it inheres in every closed circle, to break every enclosure. This fugitive movement is stolen life, and its relation to law is reducible neither to simple interdiction nor bare transgression. Part of what can be attained in this zone of unattainability, to which the eminently attainable ones have been relegated, which they occupy but cannot (and refuse to) own, is some sense of the fugitive law of movement that makes black social life ungovernable, that demands a para-ontological disruption of the supposed connection between explanation and resistance.3 This exchange between matters juridical and matters sociological is given in the mixture of phenomenology and psychopathology that drives Fanon’s work, his slow approach to an encounter with impossible black social life poised or posed in the break, in a certain intransitive evasion of crossing, in the wary mood or fugitive case that ensues between the fact of blackness and the lived experience of the black and as a slippage enacted by the meaning—or, perhaps too “trans-literally,” the (plain[-sung]) sense—of things when subjects are engaged in the representation of objects. The title of this essay, “The Case of Blackness,” is a spin on the title of the fi fth chapter of Fanon’s Black Skins, White Masks, infamously mistranslated as “the fact of blackness.” “The lived experience of the black” is more literal—“experience” bears a German trace, translates as Erlebnis rather than Tatsache, and thereby places Fanon within a group of postwar Francophone thinkers encountering phenomenology that includes Jean-Paul Sartre, Maurice Merleau-Ponty, Emmanuel Levinas, and Tran Duc Thao.4 The phrasing indicates Fanon’s veering off from an analytic engagement with the world as a set of facts that are available to the natural scientifi c attitude, so it’s possible to feel the vexation of certain commentators with what might be mistaken for a fl irtation with positivism. However, I want to linger in, rather than quickly jump over, the gap between fact and lived experience in order to consider the word “case” as a kind of broken bridge or cut suspension between the two. I’m interested in how the troubled, illicit commerce between fact and lived experience is bound up with that between blackness and the black, a difference that is often concealed, one that plays itself out not by way of the question of accuracy or adequation but by way of the shadowed emergence of the ontological difference between being and beings. Attunement to that difference and its modalities must be fi ne. Perhaps certain recalibrations of Fanon—made possible by insights to which Fanon is both given and blind—will allow us to show the necessity and possibility of another understanding of the ontological difference. In such an understanding, the political phonochoreography of being’s words bears a content that cannot be left by the wayside even if it is packaged in the pathologization of blacks and blackness in the discourse of the human and natural sciences and in the corollary emergence of expertise as the defi ning epistemological register of the modern subject who is in that he knows, regulates, but cannot be black. This might turn out to have much to do with the constitution of that locale in which “ontological explanation” is precisely insofar as it is against the law. One way to investigate the lived experience of the black is to consider what it is to be the dangerous—because one is, because we are (Who? We? Who is this we? Who volunteers for this already given imposition? Who elects this imposed affi nity? The one who is homelessly, hopefully, less and more?) the constitutive—supplement. What is it to be an irreducibly disordering, deformational force while at the same time being absolutely indispensable to normative order, normative form? This is not the same as, though it does probably follow from, the troubled realization that one is an object in the midst of other objects, as Fanon would have it. In their introduction to a rich and important collection of articles that announce and enact a new deployment of Fanon in black studies’ encounter with visual studies, Jared Sexton and Huey Copeland index Fanon’s formulation in order to consider what it is to be “the thing against which all other subjects take their bearing.”5 But something is left unattended in their invocation of Fanon, in their move toward equating objecthood with “the domain of non-existence” or the interstitial space between life and death, something to be understood in its difference from and relation to what Giorgio Agamben calls naked life, something they call raw life, that moves—or more precisely cannot move—in its forgetful non-relation to that quickening, forgetive force that Agamben calls the form of life Sexton and Copeland turn to the Fanon of Black Skins, White Masks, the phenomenologist of (the lived experience of) blackness, who provides for them the following epigraph: I came into the world imbued with the will to fi nd a meaning in things, my spirit fi lled 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. (Black Skins, 77) [J’arrivais dans le monde, soucieux de faire lever un sens aux choses, mon âme pleine du désir d’être à l’origine du monde, et voici que je me découvrais objet au milieu d’autres objets.]7 Fanon writes of entering the world with a melodramatic imagination, as Peter Brooks would have it—one drawn toward the occult installation of the sacred in things, gestures (certain events, as opposed to actions, of muscularity), and in the subterranean fi eld that is, paradoxically, signaled by the very cutaneous darkness of which Fanon speaks. That darkness turns the would-be melodramatic subject not only into an object but also into a sign—the hideous blackamoor at the entrance of the cave, that world underneath the world of light that Fanon will have entered, who guards and masks “our” hidden motives and desires.8 There’s a whole other economy of skins and masks to be addressed here. However, I will defer that address in order to get at something (absent) in Sexton and Copeland. What I am after is something obscured by the fall from prospective subject to object that Fanon recites—namely, a transition from thing(s) (choses) to object (objet) that turns out to version a slippage or movement that could be said to animate the history of philosophy. What if we bracket the movement from (erstwhile) subject to object in order to investigate more adequately the change from object to thing (a change as strange as that from the possibility of intersubjectivity that attends majority to whatever is relegated to the plane or plain of the minor)? What if the thing whose meaning or value has never been found finds things, founds things? What if the thing will have founded something against the very possibility of foundation and against all anti- or post-foundational impossibilities? What if the thing sustains itself in that absence or eclipse of meaning that withholds from the thing the horrific honorific of “object”? At the same time, what if the value of that absence or excess is given to us only in and by way of a kind of failure or inadequacy—or, perhaps more precisely, by way of a history of exclusion, serial expulsion, presence’s ongoing taking of leave—so that the non-attainment of meaning or ontology, of source or origin, is the only way to approach the thing in its informal (enformed/enforming, as opposed to formless), material totality? Perhaps this would be cause for black optimism or, at least, some black operations. Perhaps the thing, the black, is tantamount to another, fugitive, sublimity altogether. Some/thing escapes in or through the object’s vestibule; the object vibrates against its frame like a resonator, and troubled air gets out. The air of the thing that escapes enframing is what I’m interested in—an often unattended movement that accompanies largely unthought positions and appositions. To operate out of this interest might mispresent itself as a kind of refusal of Fanon.9 But my reading is enabled by the way Fanon’s texts continually demand that we read them—again or, deeper still, not or against again, but for the fi rst time. I wish to engage a kind of preop( tical) optimism in Fanon that is tied to the commerce between the lived experience of the black and the fact of blackness and between the thing and the object—an optimism recoverable, one might say, only by way of mistranslation, that bridged but unbridgeable gap that Heidegger explores as both distance and nearness in his discourse on “The Thing.” Michael Inwood moves quickly in his explication of Heidegger’s distinction between Ding and Sache: “Ding, ‘thing,’ is distinct from Sache, ‘thing, (subject-) matter, affair.’ Sache, like the Latin res, originally denoted a legal case or a matter of concern, while Ding was the ‘court’ or ‘assembly’ before which a case was discussed.”10 In Heidegger’s essay “Das Ding,” the speed of things is a bit more deliberate, perhaps so that the distinction between things and human affairs can be maintained against an explicatory velocity that threatens to abolish the distance between, which is also to say the nearness of, the two: “[T]he Old High German word thing means a gathering, and specifi - cally a gathering to deliberate on a matter under discussion, a contested matter. In consequence, the Old German words thing and ding become the names for an affair or matter of pertinence. They denote anything that in any way bears upon men, concerns them, and that accordingly is a matter for discourse.”11 The descent from Old High German to Old German is held here and matters. The trajectory of that descent is at issue such that we are to remain concerned with the detachment and proximity of “a gathering to deliberate” and “contested matter.” It might even be worthwhile to think of the gathering as contested matter, to linger in the break—the distance and nearness—between the thing and the case in the interest of the ones who are without interests but who are nevertheless a concern precisely because they gather, as they are gathered matter, the internally differentiated materiality of a collective head. The thing of it is, the case of blackness. THE CASE OF BLACKNESS 183 For Heidegger, the jug is an exemplary thing. The jug is a vessel; it holds something else within it. It is also “self-supporting, or independent.” But “[d]oes the vessel’s self-support alone defi ne the jug as a thing?” The potter makes the earthen jug out of earth that he has specially chosen and prepared for it. The jug consists of that earth. By virtue of what the jug consists of, it too can stand on the earth, either immediately or through the mediation of table and bench. What exists by such producing is what stands on its own, is self-supporting. When we take the jug as a made vessel, then surely we are apprehending it—so it seems—as a thing and never as a mere object. Or do we even now still take the jug as an object? Indeed. It is, to be sure, no longer considered only an object of a mere act of representation, but in return it is an object which a process of making has set up before and against us. Its selfsupport seems to mark the jug as a thing. But in truth we are thinking of this self-support in terms of the making process. Self-support is what the making aims at. But even so, the self-support is still thought of in terms of objectness, even though the over-againstness of what has been put forth is no longer grounded in mere representation, in the mere putting it before our minds. But from the objectness of the object, and from the product’s self-support, there is no way that leads to the thingness of the thing. (Heidegger 167) This is to say, importantly I think, that the “jug remains a vessel whether we represent it in our minds or not” (167). (Later Heidegger says: “Man can represent, no matter how, only what has previously come to light of its own accord and has shown itself to him in the light it brought with it” [171].) Its thingliness does not inhere in its having been made or produced or represented. For Heidegger, the thingliness of the thing, the jug, is precisely that which prompts its making. For Plato—and the tradition of representational thinking he codifi es, which includes Fanon—everything present is experienced as an object of making where “object” is understood, in what Heidegger calls its most precise expression, as “what stands forth” (rather than what stands before or opposite or against). In relation to Fanon, Kara Keeling calls upon us to think that which stands forth as project and as problem. Accordingly, I am after a kind of shadow or trace in Fanon—the moment in which phenomenology strains against its own, shall we say, reifi cation of a certain philosophical experience, its own problematic commitment to what 184 FRED MOTEN emerges from making, in order to get at “a meaning of things.” Though decisive and disruptive in ways that remain to be thought, that strain is momentary in Fanon, momentarily displaced precisely by that “representation of what is present, in the sense of what stands forth and of what stands over against as an object” that never, according to Heidegger, “reaches to the thing qua thing” (168–69). For Heidegger, the jug’s being, as vessel, is momentarily understood as being-in-its emptiness, the empty space that holds, the impalpable void brought forth by the potter as container. “And yet,” Heidegger asks, “Is the jug really empty” (169)? He argues that the jug’s putative emptiness is a semi-poetic misprision, that “the jug is fi lled with air and with everything that goes to make up the air’s mixture” (169). Perhaps the jug, as thing, is better understood as fi lled with an always already mixed capacity for content that is not made. This is something other than either poetic emptiness or a strictly scientifi c fullness that understands the fi lling of the jug as simple displacement. As Heidegger puts it, “Considered scientifi cally, to fi ll a jug means to exchange one fi lling for another.” He adds, These statements of physics are correct. By means of them, science represents something real, by which it is objectively controlled. But—is this reality the jug? No. Science always encounters only what its kind of representation has admitted beforehand as an object possible for science. . . . Science makes the jug-thing into a nonentity in not permitting things to be the standard for what is real. Science’s knowledge, which is compelling within its own sphere, the sphere of objects, already had annihilated things as things long before the atom bomb exploded. The bomb’s explosion is only the grossest of all gross confi rmations of the long-since-accomplished annihilation of the thing: the confi rmation that the thing as a thing remains nil. The thingness of the thing remains concealed, forgotten. The nature of the thing never comes to light, that is, it never gets a hearing. This is the meaning of our talk about the annihilation of the thing. (170) “The Lived Experience of the Black” bears not only a lament over Fanon’s own relegation to the status of object; it also contains a lament that it suppresses over the general annihilation of the thing to which transcendental phenomenology contributes insofar as it is concerned with Sachen, not Dinge, in what remains untranslatable as its direction toward the things themselves. Insofar as blackness remains the object of a complex disavowing claim in Fanon, one bound up precisely with his understanding of blackness as an impure product—as a function of a making that is not its own, an intentionality that could never have been its own—it could be said that Fanon moves within an economy of annihilation even though, at the same time, he mourns his own intentional comportment toward a hermeneutics of thingliness. Is blackness brought to light in Fanon’s ambivalence? Is blackness given a hearing—or, more precisely, does blackness give itself to a hearing—in his phenomenological description (which is not but nothing other than a representation) of it? Studying the case of blackness is inseparable from the case blackness makes for itself in spite and by way of every interdiction. In any case, it will have been as if one has come down with a case of blackness. Meanwhile, Heidegger remains with the question of the essential nature of the thing that “has never yet been able to appear” (171). He asks, What does the jug hold and how does it hold? “How does the jug’s void hold” (171)? By taking and keeping what it holds but also, and most fundamentally, in a way that constitutes the unity, the belonging together, of taking and keeping, in the outpouring of what is held. “The holding of the vessel occurs in the giving of the outpouring. . . . We call the gathering of the twofold holding into the outpouring, which, as being together, fi rst constitutes the full presence of giving: the poured gift. The jug’s jug-character consists in the poured gift of the pouring out. Even the empty jug retains its nature by virtue of the poured gift, even though the empty jug does not admit of a giving out” (172). What is it to speak of this outpouring, to speak of the thing, the vessel, in terms of what it gives, particularly when we take into account the horror of its being made to hold, the horror of its making that it holds or bears? This question is necessary and decisive precisely insofar as it insists upon a rough-hewn accompaniment to Heidegger’s talk of gift and consecration. Sometimes what is given is refusal. How does refusal elevate celebration? Heidegger invokes the “gush” as strong outpouring, as sacrifi - cial fl ow, but perhaps what accentuates the outpouring, what makes it more than “mere fi lling and decanting,” is a withholding that is aligned with refusal, a canted secret (173). At any rate, in the outpouring that is the essence of the thing/vessel dwells the Heideggerian fourfold of earth, sky, divinity, and mortals that precedes everything that is present or that is represented. The fourfold, as staying and as appropriation is where thing approaches, if not becomes, event. This gathering, this event of gathering, is, for Heidegger, what is denoted in the Old High German word “thing.” By way of Meister Eckhart, Heidegger asserts that “Thing is . . . the cautious and abstemious name for something that is at all.” He adds: Because the word thing as used in Western metaphysics denotes that which is at all and is something in some way or other, the meaning of the name “thing” varies with the 186 FRED MOTEN interpretation of that which is—of entities. Kant talks about things in the same way as Meister Eckhart and means by this term something that is. But for Kant, that which is becomes the object of a representing that runs its course in the selfconsciousness of the human ego. The thing-in-itself means for Kant: the object-in-itself. To Kant, the character of the “in-itself” signifi es that the object is an object in itself without reference to the human act of representing it, that is, without the opposing “ob-” by which it is fi rst of all put before the representing act. “Thing-in-itself,” thought in a rigorously Kantian way, means an object that is no object for us, because it is supposed to stand, stay put, without a possible before: for the human representational act that encounters it. (176–77) Meanwhile, in contradistinction to Kant, Heidegger thinks being neither as idea nor as position/objectness (the transcendental character of being posed) but as thing. He might be best understood as speaking out of a clearing, or a fl aw, that also constitutes a step back or away from the kind of thinking that produces worldviews or, at least, that particular worldview that accompanies what, for lack of a better turn, might be called intersubjection. Fanon offers, by way of retrospection, a reversal of that step back or away. In briefl y narrating the history of his own becoming-object, the trajectory of his own being-positioned in and by representational thinking, Fanon fatefully participates in that thinking and fails to depart from the “sphere of mere attitudes” (Heidegger 181). At the same time, Fanon, and the experience that he both carries and analyzes, places the Heideggerian distinction between being (thing) and Dasein—the being to whom understandings of being are given; the not, but nothing other than, human being—in a kind of jeopardy that was already implicit, however much it is held within an interplay between being overlooked and being overseen. So I’m interested in how the ones who inhabit the nearness and distance between Dasein and things (which is off to the side of what lies between subjects and objects), the ones who are attained or accumulated unto death even as they are always escaping the Hegelian positioning of the bondsman, are perhaps best understood as the extra-ontological, extra-political constant—a destructive, healing agent; a stolen, transplanted organ always eliciting rejection; a salve whose soothing lies in the abrasive penetration of the merely typical; an ensemble always operating in excess of that ancient juridical formulation of the thing (Ding), to which Kant subscribes, as that to which nothing can be imputed, the impure, degraded, manufactured (in) THE CASE OF BLACKNESS 187 human who moves only in response to inclination, whose refl exes lose the name of action. At the same time, this dangerous supplement, as the fact out of which everything else emerges, is constitutive. It seems to me that this special ontic-ontological fugitivity of/in the slave is what is revealed as the necessarily unaccounted for in Fanon. So that in contradistinction to Fanon’s protest, the problem of the inadequacy of any ontology to blackness, to that mode of being for which escape or apposition and not the objectifying encounter with otherness is the prime modality, must be understood in its relation to the inadequacy of calculation to being in general. Moreover, the brutal history of criminalization in public policy, and at the intersection of biological, psychological, and sociological discourse, ought not obscure the already existing ontic-ontological criminality of/as blackness. Rather, blackness needs to be understood as operating at the nexus of the social and the ontological, the historical and the essential. Indeed, as the ontological is moving within the corrosive increase that the ontic instantiates, it must be understood that what is now meant by ontological requires special elucidation. What is inadequate to blackness is already given ontologies. The lived experienced of blackness is, among other things, a constant demand for an ontology of disorder, an ontology of dehiscence, a para-ontology whose comportment will have been (toward) the ontic or existential fi eld of things and events. That ontology will have had to have operated as a general critique of calculation even as it gathers diaspora as an open set—or as an openness disruptive of the very idea of set—of accumulative and unaccumulable differences, differings, departures without origin, leavings that continually defy the natal occasion in general even as they constantly bespeak the previous. This is a Nathaniel Mackey formulation whose full implications will have never been fully explorable.12 What Fanon’s pathontological refusal of blackness leaves unclaimed is an irremediable homelessness common to the colonized, the enslaved, and the enclosed. This is to say that what is claimed in the name of blackness is an undercommon disorder that has always been there, that is retrospectively and retroactively located there, that is embraced by the ones who stay there while living somewhere else. Some folks relish being a problem. As Amiri Baraka and Nikhil Pal Singh (almost) say, “Black(ness) is a country” (and a sex) (that is not one).13 Stolen life disorders positive value just as surely as it is not equivalent to social death or absolute dereliction. So if we cannot simply give an account of things that, in the very fugitivity and impossibility that is the essence of their existence, resist accounting, how do we speak of the lived experience of the black? What limits are placed on such speaking when it comes from the position of the black, but also what constraints are placed on the very concept of lived experience, particularly in its relation to the black when black social life is interdicted? Note that the interdiction exists not only as a function of what might be broadly understood as policy but also as a function of an epistemological consensus broad enough to include Fanon, on the one hand, and Daniel Patrick Moynihan, on the other—encompassing formulations that might be said not only to characterize but also to initiate and continually re-initialize the philosophy of the human sciences. In other words, the notion that there is no black social life is part of a set of variations on a theme that include assertions of the irreducible pathology of black social life and the implication that (non-pathological) social life is what emerges by way of the exclusion of the black or, more precisely, of blackness. But what are we to make of the pathological here? What are the implications of a social life that, on the one hand, is not what it is and, on the other hand, is irreducible to what it is used for? This discordant echo of one of Theodor W. Adorno’s most infamous assertions about jazz implies that black social life reconstitutes the music that is its phonographic.14 That music, which Miles Davis calls “social music,” to which Adorno and Fanon gave only severe and partial hearing, is of interdicted black social life operating on frequencies that are disavowed—though they are also amplifi ed—in the interplay of sociopathological and phenomenological description. How can we fathom a social life that tends toward death, that enacts a kind of being-toward-death, and which, because of such tendency and enactment, maintains a terribly beautiful vitality? Deeper still, what are we to make of the fact of a sociality that emerges when lived experience is distinguished from fact, in the fact of life that is implied in the very phenomenological gesture/analysis within which Fanon asserts black social life as, in all but the most minor ways, impossible? How is it that the off harmony of life, sociality, and blackness is the condition of possibility of the claim that there is no black social life? Does black life, in its irreducible and impossible sociality and precisely in what might be understood as its refusal of the status of social life that is refused it, constitute a fundamental danger—an excluded but immanent disruption—to social life? What will it have meant to embrace this matrix of im/possibility, to have spoken of and out of this suspension? What would it mean to dwell on or in minor social life? This set of questions is imposed upon us by Fanon. At the same time, and in a way that is articulated most clearly and famously by W. E. B. Du Bois, this set of questions is the position, which is also to say the problem, of blackness.

# 1AR- Substance

## Case

### XT: Offense- Short

#### The Harms Section:

#### Extend Barocas 15- The NCAA have influenced colleges to have the capability to override constitutionally protected speech, at multiple schools they have violated student policy at the NCAA- only the aff can solve by removing those restrictions

#### Extend Stoller 15- Restrictions on students resemble exploitation and the way that colleges use athletes for their bodies rather than their intrinsic goodness

#### Extend Kimes 15- Social media restrictions especially at public universities are an effort to control athletes in all facets of life- players need a way to speak out

#### Now- Indpendent Offense

#### Extend New 16- there are multiple empirical examples that show that social media has been a platform for progressive college athletes to encourage counterspeech against their movements

#### Extend Joyce 15- Social media is key avenue for black fugitivity and carves out spaces where they can challenge media representations

#### Extend Bey 16- the 1ac is a curcial starting point to escape infinite violence that is faced towards them

### SV Outweighs

#### At the terminal impact level- evaluate structural violence impacts first

#### 1. Magnitude-lack of credible specific brink means that we don’t know when the neg impacts will occur but the aff impact aggregates every day, meaning the magnitude will be greater by the time your scenario occurs.

#### 2. Reversibility-systemic impacts create irreversible harms to people-we can’t un-murder someone, but we can intervene to solve impacts that rely on lots of link chains.

#### 3. Extinction first justifies not picking up a pen because it could cause nuke war; that causes policy paralysis

# 1AR- DA

## AT: DA- Hate Speech

### 1AR- Hate Speech T/O

**1. Cross apply New 16 – counterspeech through athletes solves since athletes ste up to combat racism. Prefer our evidence a) specificity - it’s specific to athletes empirically speaking out in things like Black Lives Matter and b) magnitude – athletes have high-profile status so their campaign efforts spill over. Outweighs the neg- because they reentrench racism**

**2. Empirically proven most college athletes are against hate speech and speak out against it – giving them free speech would NOT cause hate speech.**

**Isaacson 15**

More than ever, college athletes speaking out against R-word By Melissa Isaacson | Jul 22, 2015 espnW.com <http://www.espn.com/espnw/news-commentary/article/13298417/special-olympics-world-games-how-college-athletes-stepping-help-stop-use-hate-speech> LHS HW

Kendall Cooper was shown a list of hateful words and derogatory phrases for **Duke's** "You Don't Say" campaign last winter and asked if any of them spoke to her. One jumped out immediately. And recognizing her influence as one of the **university's top athletes**, the Blue Devils basketball player **joined a growing legion of young people speaking out** against what is now commonly referred to as the "R-word." "No one deserves to be picked on," said Cooper, who was part of Duke's NCAA Tournament squad this past season. "And I realized how much power we can have as athletes to do something about it." For Cooper, the word "retarded" and its slang "retard" brought back painful memories of school bullies picking on her younger brother for a speech impediment when the two were children. Now the words seem archaic. And indeed, eradicated from the language of Special Olympics, viewed as outdated in the medical community, and removed in 2010 from all official use with the federal government's passage of a bill replacing "mental retardation" with "intellectual disability," it is seemingly an old issue. Kendall Cooper Andy Mead/Icon Sportswire Duke basketball player Kendall Cooper **is one of many collegiate athletes speaking out** **against hate speech**. But the R-word still pops up and more often than some might think -- on social media, in movies and even by educated people and in everyday conversation. The difference is that unlike 10 years ago, when Cooper's brother was first victimized, there are generally consequences involved and, at the very least, an audible outcry from people around the country who don't need organizations like the Special Olympics to back them up. Rather, **the pushback is** now **coming from** a growing number of kids, young adults and **athletes** like Cooper **trying to re-educate their generation** and others. "From **studies** we **see**, adults hardly even count in addressing bullying behavior," said Andrea Cahn, national senior director for Project UNIFY, which joins intellectually disabled and non-disabled athletes on the same teams. "It's really about **social networks among kids**, sub-cultures, their friendships and alliances that **have an impact**." The R-word campaign officially began with "Spread the Word to End the Word," co-founded in 2008 with a website created by then-college students Soeren Palumbo and Timbo Shriver, son of Special Olympics chairman Tim Shriver. Soon after, there was an annual day of awareness to stop using the R-word. "Timbo and I consider ourselves co-founders along with tens of thousands of people who have made it happen in their schools and communities," said Palumbo, now 26 and a management consultant and licensed attorney in the Chicago area. "We put a catchy name to it, but hundreds of thousands of local champions at hundreds of colleges and high schools and middle schools have taken the initiative to change their own school. We just provided a platform." Athletes have had a notable role. The Duke online campaign, which relied on the participation of 41 student-athletes, went viral last year with its goal to raise student awareness about the offensive nature of phrases and slurs used in everyday conversation. Haylie Bernacki, a Special Olympics specialist in Unified Sports school and college growth, said roughly 400 U.S. colleges and universities host an annual R-word event on campus, many through a national partnership between the Special Olympics and NCAA Div. III schools. Special Olympics World Games • Cyphers: The girl who wiped out government use of the R-Word. Over the lifetime of the campaign, she estimated that about **30,000 student-athletes** from all NCAA division schools **have signed the pledge**. It is no accident. "The moment we set out to do 'Spread the Word,' we knew it would be a grassroots and viral campaign dependent on so many local champions affecting their own sphere of influence," Palumbo said. "Timbo and I knew we couldn't walk into [a local] high school and change it. We knew we needed someone to help us and ... in our culture, athletes have a very high level of influence. So when they speak out or take a stand on an issue, it's something that gets noticed." As an undergrad at Notre Dame and the founder of its Special Olympics group, Palumbo said he received "fantastic support" from then-football coach Charlie Weis, who has a daughter with intellectual disabilities and involved his team in the "Spread the Word" campaign. "And in one fell swoop," Palumbo said, "we got some of **the most influential people on campus involved**. When you **can convert** or involve **people** like that, your message spreads quickly and it spreads very powerfully." Last year, as an offshoot of the Egg Bowl between rivals Mississippi and Mississippi State, Special Olympics Mississippi brought the state together with the Special Olympics Unified Egg Bowl flag football game. Mississippi athletic director Ross Bjork and his Mississippi State counterpart, Scott Stricklin, also did public service announcements urging their school's student-athletes to sign the pledge to stop using the R-word. Sometimes **an athlete's influence is** unseen but just as **powerful**, as was experienced by Jason Gieschen, a Special Olympics athlete and now global messenger who said he was frequently subjected to the R-word as a child. "Honestly, the scars still remain, it still hurts. I still think about it sometimes even though I tell myself to stop, the past is the past," said Gieschen, now 30. One way he has always coped, Gieschen said, is that whenever he came home from a bad day at school, he would go to his room and look at his Shaquille O'Neal shoe collection. "I actually have his rookie shoes," Gieschen said. "Then I got one a year or two later when he went up to [size] 22 and then when he was in the NBA Finals with the Miami Heat, and he signed them." Sports is a natural catalyst for everything that benefits Special Olympics, Cahn said, and its Unified Sports program is a good starting point.

**3. Even if they win a hate speech link, other athletes will check back on them and change their mentality.**

#### 4. Censoring hate speech entrenches racism --- extremists get to look like martyrs and offensive terms are re-coded and normalized, and censorship empirically make hate speech more appealing and leads to greater publication – this is even truer for athletes who have bigger say and impact.

Heinze 16 (Eric Heinze – Professor of Law and Humanities at the University of London, “Hate Speech and Democratic Citizenship”, “The Prohibitionist Challenge”, pgs. 149-152, https://books.google.com/books?id=UJJyCwAAQBAJ&pg=PA150&lpg=PA150&dq=censoring+hate+speech+helps+the+right-wing+martyr&source=bl&ots=aVdz0PZtic&sig=prvOZgxAtkhebwxC7EDhcb6HDic&hl=en&sa=X&ved=0ahUKEwj0xaWXofLQAhXEwlQKHcqWDwUQ6AEIIjAB#v=onepage&q=censoring%20hate%20speech%20helps%20the%20right-wing%20martyr&f=false,

American oppositionists have lacked domestic empirical evidence of ineffectiveness, available on the continent, due to the post-1960s erosion and disappearance of American bans. They have nonetheless long warned against censorship’s tendency to tutor speakers in re-packaging and re-coding hateful messages, transforming crude insults into what Nadine Strossen calls ‘veiled innuendos’. The Harvard African-American Studies scholar Henry Louis Gates, Jr. challenges those who ‘spend more time worrying about speech codes than coded speech’. Historically, he notes, African Americans have not fared better in environments of polite speech. They have often still faced discrimination, yet without the blunt speech that would help them to make sense of it, and to plan their life strategies accordingly. ‘[the real power commanded by the racist’, Gates recalls, ‘is likely to vary inversely with the vulgarity with which it is expressed.’ Barack Obama makes a similar point in response to ongoing problems of US racism: ‘it’s not just a matter of it not being polite to say nigger in public. That’s not the measure of whether racism still exists or not.’ Those warnings echo Martin Luther King, Jr.’s earlier admonition, ‘Lukewarm acceptance is much more bewildering than outright rejection.’ In his 2003 book Nigger, Gate’s African-American Harvard colleague Randall Kennedy warns against a ‘vocabulary of indirection’ fostering a milieu in which ‘the damaging but polite polemic is protected, while the rude but impotent epithet is not.’ That observation chimes with the veteran African-American civil rights attorney Theodore Shaw’s confirmation that non-repression of hate speech facilitates the gathering of evidence for the enforcement of minorities’ rights. Martin Imbleau, albeit defending French penalties for Holocaust denial, concedes that linguistic manipulations lead to mainstreamed hate speech. But he fails to ask the crucial question – whether those manipulations emerge precisely from the need to avoid falling afoul of the French bans. Imbleau rightly counts ‘taboos’ around Nazism among the stimuli that spur Holocaust deniers. Yet he fails to explain how so strongly exalting and entrenching that taboo – augmenting our response from moral outrage to a legal penalty – can diminish such an incentive. ‘Scandal’ following high-profile prosecutions, as Adriano Prosperi observes with respect to Holocaust denial in Italy, ‘is the universal path to success’. For Strossen, ‘censored speech becomes more appealing and persuasive to many listeners merely by virtue of the censorship’. It is Imbleau’s own chain of causation, then, which identifies bans as sources rather than remedies for intolerance. He condemns the right-wing extremist Jean-Marie LePen’s self-styled image as a free speech martyr. Yet he fails to notice that it is precisely the penalties for speech, which, over decades, placed LePen in that role. French bans spurred him to promote his narrative as the heroic outsider, the renegade excluded by the state from equal access to public discourse. Imbleau warns against the dangers of Holocaust denial disseminated through the mediatization of ‘star’ anti-Semites like Robert Faurisson. He fails to observe, however, that it is precisely the French ban, as with high-profile prosecutions of Holocaust deniers in Austria, Germany, and elsewhere, which have, in each case, triggered the media hype. A further qualification added by some prohibitionists is that bans should protect only the small subset of groups targeted fro their ‘immutable characteristics’ such as race, over which one has little control, but not such as religion, which, involving ‘ideas’ (a more Western view of religion) as well as free choices, must be open to criticism. Muslims in the West, however, often form ethnic minorities. As a casual glance through the tabloids quickly reveals, stabs at Islam become ways of waging racism without reference to race even if grosser versions may end up being punishable in some LSPDs. Once again, instead of diluting hatred, such a legal incentive tutors and invigorates it. Precisely opposite to any such view, many Muslims state that it is their faith, more than their ethnicity, that forms the more important part of their identity. Far from calming the atmosphere, that ‘narrow ban’ position sets up a discriminatory, two-tier regime. It makes groups excluded from protection, because they are not defined racially, feel less respected than groups included under it. The excluded group feels more a victim of state discrimination than the protected group. State policy then pits one group against another in an unseemly rivalry of ‘more victim than thou’. Whatever anti-discrimination policies a state may prefer, one which itself discriminates between outsider groups can scarcely claim must moral high ground. As a practical matter, some oppositionists claim that bans positively detract from non-punitive programmes against intolerance, even while appearing sympathetic to them. Bans have certainly proven easy to pass with little opposition. Mainstream political parties like to be seen as supporting gestures of tolerance, regardless of the substantive policies they otherwise pursue. Sustained and effective civic education, by contrast, requires harder work. For Strossen, ‘regulating speech’ is ‘at best a distraction from, and sometimes an obstacle to, efforts to grapple with the real, concrete problems’, such as discrimination in education or employment, or the lack of investment in poor areas. Bans, Strossen argues, focus policy-makers on ‘symbolism’ instead of ‘something real to promote actual equality.’ Throughout the late twentieth and early twenty-first centuries, while Germany scored questionable successes in punishing hate speech, it tended to be highly lax in punishing violent hate crimes, often failing to distinguish them from ordinary assaults and batteries. Abstention from coercive censorship by no means debilitates a democracy’s battle against intolerance. During the Danish cartoon crisis, some prominent continental media outlets reprinted the cartoons in a defensive posture of asserting their freedoms of expression, even after violent threats or responses had appeared. Their American counterparts refrained from doing so, perhaps from their own fears of attack, yet also because they had no censorship battle to wage against the government. Several European news agencies reprinted the cartoons in the defensive posture of needing to capture still-unconquered, non-viewpoint-punitive territory within public discourse.

# 1AR- CP

## CP- Courts

### 1AR- Courts CP- Short

**The counterplan already passed – the supreme court has ruled that constitutionally protected speech can’t be restricted for athletes but it’s ignored**

**Gay 12**

J. W. Gay, Hands Off Twitter: Are NCAA Student-Athlete Social Media Bans Unconstitutional?, 39 Fla. St. U. L. Rev. (2012) . http://ir.law.fsu.edu/lr/vol39/iss3/5

**Under** either **the Tinker** substantial disruption **test** or a narrowly tailored test, these team-wide and season-long **social media bans are** likely **violations of the student-athletes’ First Amendment speech rights**. However, adopting a narrowly tailored test to be applied to student-athletes’ First Amendment rights would represent a meaningful effort towards protecting their speech and expression during a highly influential time in their lives. VII. CONCLUSION **The recent bans on social media speech** that public universities and college coaches have **forced on student-athletes are likely unconstitutional**. **The Tinker** **substantial disruption test only allows school officials to restrict student speech if the speech causes, or would foreseeably cause, a substantial disruption in the school environment. To date,** **no student-athlete’s social media speech has caused a substantial disruption** in the school environment. However, the substantial disruption test is likely ill-suited for speech communicated through the ubiquitous and transformative social media.

**2. Timeframe deficit – they say next test case but court decisions take years to take place so we still garner offense.**

**3. Solvency deficit - Colleges ignore the supreme court – the fact that they restrict speech right now shows that they don’t care about constitutionally protected speech.**

**4. Perm do both – both is better they can work together to ensure there is no retaliation from other people like the alt-right.**

**5. Perm do both – perm resolves the link because then it makes it seem as if the aff policy is only occurring because of the counterplan so no alumni hurt.**

#### 6. Neg may not read agent counterplans- that moots aff offense by stealing the 1AC and making us argue against the plan itself- vote aff to deter abusive practices that change the way we debate substance

7. Trump DA- CP gets rolled back because Trump hates free speech, aff won’t because it’s not a government policy

#### Colleges do not comply with Supreme Court decisions on free speech– empirics

Gould 01 ---- John, (professor in the Department of Justice, Law and Society and at the Washington College of Law at American University), "The Precedent That Wasn't: College Hate Speech Codes and the Two Faces of Legal Compliance," (2001)]

The fact that private schools were no more likely than public schools to adopt speech codes, and conversely that public schools were no more likely than private schools to amend or rescind them, brings us to the actual question of compliance. We know that there is no significant difference between public and private schools, but what were their compliance decisions? If we were to subscribe to a broad model of judicial impact- that judicial decisions command public action and affect public opinion-then R.A. V. and the four lower court cases should have convinced schools with policies prohibiting offensive speech or verbal harassment of minorities to amend or rescind their rules. Here we have a case where not only did the Supreme Court intend to send a message about public behavior but also its meaning was understood as such. Coupled with the decisions in Doe, UWM Post, Dambrot, and Cony, restrictive speech codes should have been a dead letter at public colleges and universities. For that matter, given the courts' influence beyond public bodies, and given the importance that many Americans ascribe to the First Amendment, we might also have expected many private schools to follow suit. However, as data in Tables 5 and 6 indicate, the trend was just the opposite. By 1997 the percentage of schools with speech policies had jumped 11%, and, while policies against verbal har- assment of minorities had dropped 3%, those covering offensive speech codes had tripled. Admittedly, the change may not be so dramatic when taking into account the confidence intervals, but the number of policies clearly rose following the court decisions, with the largest percentage jump coming from the most-restrictive speech poli- cies. Moreover, as the percentages in Table 7 indicate, the vast majority of schools with constitutionally suspect speech policies kept theirs on the books in the face of contrary legal precedent. Table 8, too, provides a closer look at the various strategies that schools followed. There, "offending policies" reflect those speech restrictions considered unconstitutional by the five court cases- verbal harassment of minorities and offensive speech-while "nonoffending policies" cover fighting words and generic verbal harassment, restrictions that were still permitted after the deci- sions. Although a majority of schools maintained speech policies neither before nor after the court cases, almost a quarter of insti- tutions either retained offending policies or adopted new ones following these decisions. That the courts' decisions had neither a powerful impact nor compelled widespread compliance is consistent with prior re- search in the field (Rosenberg 1991; Canon & Johnson 1999). The question is why this happened. Initially, it is important to define what it means for a school to comply or not comply with the courts' decisions. Returning a moment to Table 8, not all of the schools represented there made a compliance decision. To comply with judicial holdings is to bring a school's policies into line with the courts' rules. Noncompliance, by contrast, means permitting speech policies that conflict with the cases. Thus, the data in Table 8 distinguish between "offending policies"-those whose terms conflict with the courts' holdings-and "nonoffend- ing policies," those that were not touched by the cases. Given these terms, a school that complied with the courts' rulings would have removed an offending policy, replacing it ei- ther with a nonoffending policy or none at all. By contrast, non- compliance reflected two possibilities. Certainly, a school failed to comply with the decisions when it adopted an offending policy even after the cases, but schools that kept offending policies on the books were also in noncompliance. Put another way, non- compliance includes acts of both commission and omission.