## 1AC

### Definitions

#### Jury Nullification is a check on government to protest against injustice.

Collins-Chobanian defines,

**Jury nullification** comes from common law and **is considered a check on oppressive governments and policies and thus an important guarantor of our basic freedoms**. **Jury nullification occurs when the jury refuses to convict an obviously guilty defendant**. The defendant has broken the law, but jurors either consider the law to be unjust, unfairly applied (especially to certain groups of people), anachronistic, or problematic in some way that justifies the release of the guilty defendant from the legal consequences of his or her action. Notably, before the U.S. Civil War, in prosecutions under the fugitive slave law, jurors regularly practiced nullification (Marder, 1999b). SK

#### And – this is a shift from the status quo – it is a good idea to debate about nullification as it is the stepping stone to analyzing the criminal justice system.

Collins-Chobanian,

Presently, jury nullification is often associated with juror prejudice and seen as illegitimate because of such cases where White jurors have freed White defendants guilty of crimes against Blacks. In the United States today, it has been assumed that the jury does not have a right to ignore the court's legal instructions, the jury is not informed of nullification, and counsel cannot argue for it. Courts refuse to inform juries of minimum mandatory sentences out of fear of nullification. It is still often used in death penalty cases when there is no sentencing discretion and when the law is perceived as unfair. Farnham (1997) concludes that **the schizophrenic approach to nullification has become the norm**: the courts will not instruct on it and will not permit counsel to argue it because of fears of jury lawlessness. At the same time, **judges acknowledge the important historical role it has played** **in the development of American freedoms**, (p. 13) It is clear that jurors can and do nullify for many reasons, or perhaps without reason. **Nullification is a common law right, one that would benefit from public analysis, debate**, and principled guidelines. Butler's model proposes just such a principled use of nullification

### FW

The judge has the obligation vote up arguments that promote a discourse that embodies an anti-racist perspective. This should be your primary concern because any other benefit in the debate sphere can only be accessed by an equal space for dialogue.

Smith, [Smith, Elijah. History maker, A Conversation in Ruins: Race and Black Participation in Lincoln Douglas Debate. SK]

It will be uncomfortable, it will be hard, and **it will require continued effort but the necessary step in fixing this problem**, like all problems, **is the community as a whole admitting that such a problem** with many “socially acceptable” choices **exists** in the first place. Like all systems of social control, **the reality of racism in debate is constituted by the singular choices that institutions, coaches, and students make on a weekly basis**. I have watched countless rounds where **competitors attempt to win by rushing to abstractions** to distance the conversation from the material reality that black debaters are forced to deal with every day. One of the students I coached, who has since graduated after leaving debate, had an adult judge write out a ballot that concluded by “hypothetically” defending my student being lynched at the tournament. Another debate concluded with a young man defending that we can kill animals humanely, “just like we did that guy Troy Davis”. Community norms would have competitors do intellectual gymnastics or make up rules to accuse black debaters of breaking to escape hard conversations butas someone who understands that experience, **the only constructive strategy is to acknowledge the reality of the oppressed, engage the discussion from the perspective of authors who are** black and brown, **and** then **find strategies to deal with the issues** at hand. It hurts to see competitive seasons come and go and have high school students and judges spew the same hateful things you expect to hear at a Klan rally. **A student should not,** **when presenting an advocacy that aligns them with the oppressed, have to justify why oppression is bad. Debate is** not just a game, **but a learning environment with liberatory potential.** Even if the form debate gives to a conversation is not the same you would use to discuss race in general conversation with Bayard Rustin or Fannie Lou Hamer, that is not a reason we have to strip that conversation of its connection to a reality that black students cannot escape. **Current** coaches and **competitors** alike **dismiss concerns of racism and exclusion**, won’t teach other students anything about identity in debate other than how to shut down competitors who engage in alternative styles and discourses, **and refuse to engage in those discussions** even outside of a tournament setting. A conversation on privilege and identity was held at a debate institute I worked at this summer and just as any theorist of privilege would predict it was the heterosexual, white, male staff members that either failed to make an appearance or stay for the entire discussion. No matter how talented they are, we have to remember that the students we work with are still just high school aged children. **If those who are responsible for participants and the creation of accessible norms won't risk a better future for our community, it becomes harder to explain to students who look up to them why risking such an endeavor is necessary.** As a student provided with the opportunity and privilege of participation by the Jersey Urban Debate League, I can remember plenty of tournaments in high school where the only black students at the tournament were individuals from my high school. It was a world shattering experience; no one spoke to us first and those we did approach didn’t have to acknowledge the fact that, every weekend, our failures and successes made us the representatives of black America in the minds of students and judges that never had to freely associate with black people. The irony of participation for black students is that to understand your existence in an academic, usually white, space throws that very space into question. They are both told that joining debate will make you smarter, more personable, and better able to communicate; however those who are already there don’t speak to them, they don’t vote for them, and they don’t associate with them. The unanswered question, then, is “For which bodies does LD exist?” **Continuing to parade LD under the guise of neutrality will reproduce the problem at hand.** Hiring practices, Judge Preferences /Strike Sheets, invitations to Round Robins, and who coaches don’t require their students to associate with all contribute to the problem at hand because they “accidentally” forget to include people of color. When only two major debate workshops bothered to hire anyone black to work with their students this summer it spoke to the reality of which bodies are seen as being competent enough to teach. Their skills as pedagogues weren’t dismissed because they aren’t qualified, but because they are black .**If we are to confront structural discrimination** against the black community, **we** can’t retreat to a defense of neutrality **but have to take strides in addressing and ending the cycle of exclusion**. If black students do not feel comfortable participating in LD they will lose out on the ability to judge, coach, or to force debate to deal with the truth of their perspectives. SK

The role of the judge is thus to endorse the debater who provides the in round discourse that aims to break down oppressive racist norms.

This is the inherent role in argumentative agency, as well as the judge as the teacher, which is to challenge the spectator mentality that keeps us sequestered within the resolution. We must break free and engage in topics that have value outside the space of the classroom.

Mitchell [Assistant Professor of Communication, University of Pittsburgh, ARGUMENTATION AND ADVOCACY, Fall 1998, p. 47.]

In basic terms **the notion of argumentative agency involves the capacity to contextualize and employ the skills and strategies of argumentative discourse in fields** of social action, especially wider spheres of public deliberation. **Pursuit of argumentative agency charges academic work with democratic energy by linking teachers and students with** civic organizations, **social movements**, citizens and other actors engaged in live public controversies beyond the schoolyard walls. As a bridging concept, **argumentative agency links decontextualized argumentation skills such as research, listening, analysis, refutation and presentation, to the broader political telos of democratic empowerment**. **Argumentative agency fills gaps left in purely simulation-based models of argumentation by focusing** pedagogical energies **on strategies for utilizing argumentation as a driver of progressive social change**. Moving beyond an exclusively skill-oriented curriculum, teachers and students pursuing argumentative agency seek to put argumentative tools to the test by employing them in situations beyond the space of the classroom. This approach draws from the work of Kincheloe (1991), who suggests that through "critical constructivist action research," **students and teachers cultivate their own senses of agency and work to transform the world around them**. The sense of argumentative agency produced through action research is different in kind from those skills that are honed through academic simulation exercises such as policy debate tournaments. Encounters with broader public spheres beyond the realm of the academy can deliver unique pedagogical possibilities and opportunities. By anchoring their work in public spaces, **students and teachers can use their talents to change the trajectory of events, while events are still unfolding.** These experiences have the potential to trigger significant shifts in political awareness on the part of participants. **Academic debaters** nourished on an exclusive diet of competitive contest round experience often come to see politics like a picturesque landscape whirring by through the window of a speeding train. They study this political landscape in great detail, **rarely** (if ever) **entertain**ing **the idea** of stopping the train and exiting **to alter the course of unfolding events. The resulting spectator mentality deflects attention away from roads that could carry their arguments to wider spheres of public argumentation.** However, on the occasions **when students and teachers set aside this spectator mentality by directly engaging broader public audiences, key aspects** of the political landscape **change,** because the point of reference for experiencing the landscape shifts fundamentally.SK

Thus we in the debate sphere have the capacity to change the world around us, as is our duty, and work to challenge the spectator mentality that keeps us bound within the confines of the resolution. Our first obligation is to develop this new pedagogical enterprise to work for the social movement of stopping oppression that exists even beyond the debate space. And, vote me up for starting a discussion about oppression because regardless of what my opponent reads, by reading this Aff I am starting the debate by ensuring that the debate space is used in the most socially productive way possible.

Next, historical tradition communicates normatively and serves as a medium for its future manifestations.

Holston, [Holston, Ryan. "Burke’s Historical Morality." *Humanitas, XX* (2007): 37-63.]

It has been mentioned that Burke sees **good and evil** intermingled and **resid[e] within phenomenal reality**. Because Burke views concrete, historical experience as normative, history may be understood as at once expressing and shaping our normative orientation. In other words, **history is** both **the forum where social interactions are realized and the background in which the normative awareness** of individual and collective actors **is shaped. History being comprised of both good and evil [means], it is wrong to think** of Burke as looking **to the past with simple nostalgia**, as a romantic reactionary who sees only goodness in an inherited tradition and wishes to restore a preexisting social order. This is frequently thought to be Burke’s attitude toward the feudal order of old Europe. **On the contrary**, Burke explicitly contends that **one of the** most cherished **aspects of having** an inherited **tradition is the ability to “draw moral lessons . . . from [it]”** regardless of whether one discerns the need to cleave to or depart from a given tradition. Burke goes so far on one occasion as to focus exclusively on the evil that may infect tradition and its didactic quality: “**In history a great volume is unrolled for** our instruction, drawing the materials of **future wisdom from the past errors** and infirmities of

The paradigmatic approach towards the deconstruction of black oppression must be based in historical struggles because this is the only way to retrospectively arrive at a non-arbitrary moral theory.

The attempt to act anti-oppressive manner is a way in which we determine new ethical codes of conduct free from the bindings of the past.

Clifford and Burke , [Clifford, Derek, and Beverley Burke. *Anti-oppressive ethics and values in social work*. Palgrave Macmillan, 2008.]

 Our view of the nature of **ethics admits** the possibility of **giving reasons**, drawing **on** both **knowledge about the social world, and on** the feelings that are common (and uncommon) to **human experience**, but without assuming that rationality, empirical evidence or human feelings can either by themselves or even together provide an absolute basis for ethics. **Too much is known about the variability of human values and the limitations of human rationality to make** such **an assumption complacently. There are many inequalities** of wealth, status and power, both reflecting and **leading to** cultural and structural social **divisions. The social** context of the professional working with vulnerable individuals and groups **demands recognition of the need to act in a way that minimizes** or overcomes some of **the** complex **effects of** discrimination and **oppression, rather than** adding to them through collusion, **neglect** or lack of self-awareness. Even worse, obviously, would be intentionally adding to existing oppression and exploitation. **What matters is the possibility of dialogue** between individuals and groups – **the attempt to act in an anti-oppressive way is itself an endless search for ethical values in which we continually** negotiate with and **learn from each other** – and especially from the ‘other’, in the sense of one who is socially and culturally different.

Thus, moral dialogue that aims to break down oppressive structures anti-ethically act as a prerequisite to either (a) arrive at a cogent ethical theory, or (b) use a body to create a future end state. This means that the affirmative advocacy comes first.

Next, oppression against blacks negates their ontological identity, making it so they will never be on the same structural level as the whites.

Wilderson, [FRANK B. WILDERSON III “Red, White, and Black” DUKE UNIVERSITY PRESS 2010]

**Whereas Humans exist on some plane of being** and thus can become existentially present through some struggle for, of, or through recognition, **Blacks cannot reach this plane**. Spillers, Fanon, and Hartman maintain that the **violence** that **continually repositions the Black as a void of historical movement** is without analog **in the suffering dynamics of the ontologically alive**. **The violence that turns the African into a thing** is without analog because it does not simply oppress the Black through tactile and empirical technologies of oppression, like the "little family quarrels" which for Fanon the Jewish Holocaust exemplifies. Rather, the gratuitous violence of the Black's first ontological instance, the Middle Passage, "**wiped out [his or her] metaphysics ... his [or her] customs and sources on which they are based**." **Jews went into Auschwitz and came out as Jews. Africans went into the ships and came out as Blacks.** The former is a Human holocaust; **the latter is a Human and a metaphysical holocaust.** That is why it makes little sense to attempt analogy: the Jews have the Dead (the Muselmann) among them; the Dead have the Blacks among them. **This violence which turns a body into flesh, ripped apart literally and imaginatively, destroys the possibility of ontology because it positions the Black in an infinite and indeterminately horrifying and open vulnerability**, **an object** made available (which is to say **fungible**) **for any subject.** As such, **"the black has no ontological resistance in the eyes of the white man**" or, more

### Advocacy

#### I advocate that juries ought to use jury nullification in the face of perceived injustice to break down inherently racist adjudications.

Collins,

The criminal sanction is only one tool available to shape public policy, and it is a dumb, blunt, dangerous weapon of a tool. It is a hammer. And as fine a tool as a hammer may be for some purposes, you cannot use it to fix your television set. You cannot use it to tighten your doorknob or mow your lawn. And yet, in America in the 1990s, we have come to believe that this hammer-the criminal sanction-is the tool of first choice for fixing any social problem. **We have lost the appreciation that there are legitimate limits to the use of the criminal sanction. We have abandoned the creativity necessary to find ways to solve social problems other than locking one of our less conventional or less fortunate neighbors in a cage**. **We are becoming** an **increasingly divided** society, **and** a **decreasingly tolerant** one. Although many people believe that with the widespread acceptance of the goals of the civil rights movement social intolerance has become an aberration, **in a broader context the growing intolerance in American society is not surprising.** **Can there be any act more appropri- ately symbolic of social intolerance than to incarcerate someone for a vic- timless "crime?"** This relentless resort to the criminal sanction as a means of social control is balkanizing our society, especially our inner cities, as thousands of young people-disproportionately minority males-desp-air of succeeding in a society all too anxious to brand them as criminals. As the next millenium begins, there are more young black men in prison than in college. Those left on the streets are increasingly likely to be on parole or probation. They are finding fewer opportunities, fewer jobs, and increas- ing apprehension and hostility among a white majority grown inured to thinking of young black men as dangerous, uneducated criminals. **Band-aid solutions to the problems of our criminal justice system have merely led to layers upon layers of incompatible and often contradictory or nonsensical laws and procedures**. These laws are neither routinely enforced, understood, not followed. **The edifice has become too ponder- ous for substantial legislative reform**, as each successive legislative session adds additional layers without fundamentally rethinking what has gone before. **What is needed is not to reform, but to remove**-to remove **the layers**, remove out-moded or unsupportable laws, remove procedural bar- ricades **that place** form Over substance, **procedure over justice**. **In order to accomplish this creative demolition, we require a target, a specific goal**. The only sensible goal of enlightened penal reform is to limit the crimi- nal sanction to the punishment of those acts (and only those acts) which are broadly and uniformly condemned by the vast majority of Americans. **We need to ensure that criminal law is no longer controlled by special interest politics, so that criminal law is no longer a source of divisiveness in society.** We should be confident that criminal punishments are not destroying the lives of productive, useful Americans who merely engage in unpopular but victimless activities. But how are we to do this in an era when the most dangerous addiction in America seems to be to the use of the criminal sanction itself? And **this is where jury nullification presents itself**. **Jury nullification, the act of a criminal trial jury in deciding not to enforce a law where they believe it would be unjust or misguided to do so, allows average citizens, through deliberations, to limit the scope of the criminal sanction.** **History shows juries have taken this enormous power very seriously, and used it responsibly**. But this history has rarely been developed. That is why this book was written. In writing this book, I was overwhelmed with the quantity of material available. The sheer volume of cases, articles, books, and essays deal- ing with jury nullification was astounding-a quick computer search in 1993 listed over 400 law journal articles discussing the topic, and an even greater number of cases and newspaper articles. By 1998, there were closer to 600 articles listed. Few of these articles, however, discussed independent juries in much depth. One could read that jury nullification. SK

Thus, massive overhaul in terms of reform in the legal or criminal “justice” system is not necessary to change the systematic oppression within it. Nullification allows citizens to take control of the justice system.

#### The culture of discrimination in America has gone too far – black people are disproportionately thrown in prison – studies prove that this is ongoing in the status quo.

Butler,

Sometimes this discrimination is overt, as in the case of people like Mark Fuhrman or the police officers who beat up Rodney King. Sometimes it is unintentional, such as a white juror who invariably credits the testimony of a white witness over a black witness. I think that the most persuasive case for the liberal critique is with drug cases. According to the Department of Justice, black people do not commit any more drug offenses than whites. They are about 12 percent of drug offenders, which is exactly proportionate to their share of the population.7 Now, I know this does not surprise all of you who have been on college campuses, and if you think about it, it is probably consistent with our knowledge of the real world, too. African-American people in South Shore probably do not use drugs more than white people in Bridgeport or Cicero. The Department of Justice agrees, and the conclusion is borne out by statistics. But get this: of people who are incarcerated for drug use, African-Americans are more than 70 percent. AfricanAmericans are 12 percent of the offenders, but 74 percent of the people locked up for the offense.8 That sounds like discrimination, and when I talk to my police and prosecutor friends, they agree that it is a kind of discrimination. However, many make the argument that it is discrimination that is good for the black community: it is more law enforcement, which is a good thing. When I talk about my proposal for nullification, we will come back to that idea. For now, understand that I think that drug offenses are the best argument for the liberal critique on American criminal justice. However, I mentioned another critique, one that I called radical. What is this critique? What is the radical critique of why there are so many more blacks in prison than whites and other minorities? The radical critique does not discount the role of discrimination in accounting for this racial disparity, but it also does not say that most or all of the blame is due to discrimination. It offers a more structural fundamental explanation for black crime. What is the radical explanation for why so many African-Americans commit crime?. SK

#### Even if factors today that contribute to racism are not explicitly racist, they are based on historically racist practices.

Butler 2,

**A lot** of conservatives **will say that** the explanation is because **African-Americans have a culture of poverty**, at least the low income ones do. **However**, even they say that that **culture is shaped by environment, and that environment is shaped by slavery. Segregation is the legacy of that**. So in sum, the radical critique says **the disproportion in black crime rate is attributable to something other than black people being disproportionately evil.** **The something other is a squalid environment. It is a disease that presents a host of life-threatening symptoms, including crime**, and it is **a disease that no reasonable person would choose** if she had a choice. SK

#### This is not limited to the black body – all can utilize this approach. I only isolate the black body as a starting point for further discussion.

Collins-Chobanian 3,

I call this the "**Asians, and Hispanics, and Columbians**, Oh My! **Japanese, and Jewish, and Islamic**, Oh My!" response. Although I, of course, find it problematic that so many have reason to claim injustice, I do not find problematic that **other justified claimants besides African Americans could have access to such a tool.** **The issues of oppression, prejudice, racism, and discrimination should not be delimited merely because the claimants would be too numerous**. I often wonder why people who raise these objections do not become concerned when they look around and see White privilege unchecked in every sphere of society. I also wonder why people point to the "unruly" hyphenated Americans rather than question the injustice. Dr. King (1963) raised this point in response to backlash against the demonstrations: You deplore the demonstrations that are presently taking place in Birmingham. But I am sorry your statement did not express a similar concern for the conditions that brought the demonstrations into being. I am sure that each of you would want to go beyond the superficial social analyst who looks merely at This content downloaded from 68.193.215.236 on Sun, 08 Nov 2015 03:47:13 UTC All use subject to JSTOR Terms and Conditions 522 Journal of Black Studies effects, and does not grapple with underlying causes. I would not hesitate to say that it is unfortunatehat so-called demonstrations are taking place in Birmingham at this time, but I would say in more emphatic terms that it is even more unfortunatehat the white power structure of this city left the Negro community with no other alternatives. **If the system does not reflect the society it purports to govern, measures of rectification are necessary.** As is clear, incarceration is even less suited to dealing with these problems, as it further cripples the community and entrenches the cycle. SK

#### This is a process of rebellion and redefinition – if we cannot reform the system from within we might break it down.

Carrol,

**Those who have characterized nullification as [is] a rebellion from the law are right**. **The lives and narratives of these defendants are,** by their very definition, **a challenge to the “ordered” system that stands in judgment of them**. But that is not the whole story. **Nullification is also a call to instill a different kind of order, one that accepts the fluid possibilities of the law**—the ability of the law, through juror interpretation, to encompass competing values and narratives and judge them. Across the country, individual jurors and whole juries heed the call. At least some of them do—not as frequently as the scholars who write about them or the defendants who bid them, but still enough to draw notice. They stand in defiance of jury instructions to weigh only the facts and, instead, return verdicts that confound judges and mesmerize the academy because they seem to fly in the face of what they know of the law itself. Sometimes we laud these juries as brave heroes striking a blow against oppression.4 Other times history shakes its collective head at them, aghast at their unblinking endorsement of the prejudice or oppression around them.5 Jurors may free the patriot printer who truthfully criticizes a corrupt governor,6 but they may also free the white men who lynch an African-American man for no greater crime than defying the social order.7 Like the defendants who call on them to exercise their power, these “renegade” jurors share noble and ignoble company. Yet there they are, in and out of history, nullifying with and without permission, relatively undisturbed by the swirl of scholarship and judicial consternation that surrounds their action. **Jury nullification would seem an omnipresent** (but currently unofficial) **part of the American judicial system.**

#### If this is not the correct policy then it has far reaching implications – an impossible effort in the very least will collapse the institution.

Zizek 04 (Slavoj, a slick guy, *Iraq: The Borrowed Kettle)*

There are (also) political acts, for **politics cannot be reduced to the level of strategic pragmatic interventions**. In a radical political act, **the opposition between** 'crazy' **destructive gesture and a strategic political decision** momentarily breakdown, which is why **it is theoretically and politically wrong to oppose strategic political acts, risky as they may be** to radical 'suicidal' gestures a la Antigone: gestures of pure self-destructive ethical insistence with, apparently, no political goal. The point is not simply that, once we are thoroughly engaged in a political project, we are ready to put everything at stake for it, including our lives, but more precisely, that **only such an 'impossible' gesture of pure expenditure can change the very coordinates of what is strategically possible within a historical constellation.** This is the key point: **an act is neither a strategic intervention in the existing order, nor its 'crazy' destructive negation, an act is an excessive trans-strategic intersection which refines the rules and contours of the existing order.**

#### Nullification is key – it is an act of protest and will lead to *actual change*

Butler 3,

**The political protest part is to encourage an end to this madness of locking up African-Americans when white people do not get locked up for the identical crimes**. Again, this is borne out by those drug statistics.' According to the Justice Department, black people do not use drugs any more than whites-it is just that African-Americans get locked up more for drug charges. People ask what the black community would look like if drug offenders were not incarcerated. We know the answer to that: it would look like the white community. Again, the white community does not resort to the punishment regime for dealing with drug problems. I agree with that. I think punishment is not a smart way to deal with substance abuse. I think that **when it comes to law enforcement, what is good enough for white people is good enough for AfricanAmericans**. I hope that **nullification would encourage rehabilitation for non-criminal means of dealing with the problem.** I do not like drugs. I wish people would not use them. I have seen them ruin people's lives. I might also add that I have seen alcohol ruin people's lives, but I also do not support locking up alcohol users and distributors. So I hope that **nullification will spark the return of rehabilitation and crime prevention**. SK

#### History proves nullification is a tool intended for good.

Bulter,

**There are many**, many **examples of nullification**. Take the runaway slave cases for example. **It was a crime to run away if you were a slave, and it was a crime for a white person to help them**. These were cases prosecuted in the North. **Northern jurors**, all of whom were white, **would often nullify**, **even though the slaves and their helpers were officially criminals.** They were 100 percent guilty, but the **white juries acquitted through nullification**.SK

#### This is a step in the right direction – even if it is insufficient it is the best strategy to “use in the meantime”

Collins-Chobanian 4,

Butler (1995) received national attention for his article "Racially-Based Jury Nullification: Black Power in the Criminal Justice System." Therein he argues that African American jurors ought to exercise their right of nullification (a common law right of jurors to decide both matters of fact and law) when there are African American defendants of nonviolent crimes. That is, **jurors should refuse to convict nonviolent African Americans or nullify the law under which they are being prosecuted,** in part **to make up for the** oppression African American suffer at the hands of White society and in the **racist criminal justice system** and in part because he argues that the African American community can better address these defendants. Butler states that in the face of our current justice system, it is the "moral responsibility of black jurors to emancipate some guilty black outlaws" (p. 679). Butler points to the community to find ways to deal with their own "outlaws" and to develop true rehabilitative measures. Butler wrote this in 1995, and at that time, it was estimated that by the year 2000, 1 in 10 Black men would be in prison. The most recent statistics available from the U.S. Department of Justice (2003) show that as of June 30, 2005, nearly 12% of Black males in their late 20s were in prison (Harrison & Beck, 2006). In this article, I begin by defining and briefly discussing the history of jury nullification and some examples of its use. I then summarize Butler's call to African Americans to use jury nullification and critically review Leipold's (1996) dissenting response to Butler's race-based proposal. I argue that Butler's **jury nullification** proposal **is a principled tool to use "in the meantime" while working to change disparate impact and treatment in the criminal justice system**, and I address the somewhat problematic issue of returning nonviolent offenders back to the community. Finally, I turn to Marder's (1999b) critique and respond to her arguments that Butler's proposal would be racially divisive, lead to fewer Blacks on juries, and thus contain the seeds of its own undoing.SK

#### Nullification is key to broader reform in the Criminal Justice system – education is the first step.

#### **James** James, Aram, “Take Back our Criminal Justice System, Use Jury Nullification”. May 8, 2012. <http://www.siliconvalleydebug.org/articles/2012/05/08/take-back-our-criminal-justice-system-use-jury-nullification>

**The right of jurors to** veto or **nullify** an unjust law---or a law that may be fair on its face but is being applied in a discriminatory fashion--**is critical** to our democracy and **to our ability to serve** as citizen jurors while being fully informed of our rights and options **as decision makers**. These rights are essential when our government calls us to sit in judgment regarding the guilt or innocence of our fellow citizens and community members **In an era where** our **government** **is increasingly cracking down on dissent** (consider the response of the government to the occupy movement or to high profile whistle blowers such as Bradley Manning or Julian Assange) **the decision** by a federal judge to toss out an indictment against an 80-year-old citizen advocate for handing out materials to members of the public in front of a courthouse **is a powerful rebuff to the U.S. government’s ongoing efforts to intimidate and steal from its citizens the right to think and speak freely and to exercise their independent judgment** in the context of their jury service. The judge’s decision to toss the indictment goes a long way to prevent---or at least to mitigate-- jury tampering activity by judges and or prosecutors who – on occasion -- purposely attempt to leave jurors with the wrong and intimidating impression: that to do anything other than to convict the person on trial is itself a criminal act. Historically brave and courageous jurors refused to convict those charged with violating the Fugitive Slave Act and other immoral laws despite the best efforts of prosecutors and judges to steer jurors towards a conviction. In the contemporary setting, if more jurors were fully informed of their right to disregard immoral or discriminatorily enforced laws—such as California’s “Jim Crow Drug Laws” and the racially motivated three-strike law—they would undoubtedly refuse to convict many defendants charged under these morally repugnant and frequently discriminatory laws. The bottom line is that **any grassroots organization attempting to reform or rebuild the criminal justice system from the ground up must understand and be willing to educate members of the public regarding their basic rights as jurors—including** **the right to** veto or **nullify** bad laws. **Failure to educate** the public in this regard **is to assist and aid the state in wrongfully convicting members** of our own communities. **Knowledge is power and it’s time we go out into our communities and spread the word**—we can just say no to bad laws. Judge Kimba Wood’s action in dismissing the indictment in the Julian Heicklen case is cause for wide celebration-since we now know we are on solid legal ground when we decide to organize our communities around fundamental concepts of justice and our desire to take back our criminal justice system. **We can take back our criminal justice system from the forces that would prefer that justice be administered** and understood **for the benefit of the few to the detriment of the majority of people.** The majority of people who must interact daily with the intentionally maintained mysterious and often baffling criminal justice system. **In California** –pursuant to the holding in People v. Williams 25 Cal. 4th 441 (2001), **jurors are explicitly precluded from exercising the** doctrine of **jury nullification**—in fact if a judge discovers that a juror is refusing to apply the law to a case--he or she may be discharged from the jury. On the other hand, if the judge is unaware that the jury has engaged in nullifying what they perceive to be an unfair or bad law---the double jeopardy clause would prohibit retrial of an acquitted defendant. In Sparf v. U.S. 156 U.S. 51 (1894) the U.S. Supreme Court—in a 5 to 4 decision—held that federal judges are not required to instruct jurors on their right to nullify bad laws. **Understanding the power of jury nullification is one way to even the odds of obtaining justice of all.** To learn more about the power of jury nullification check out the Fully Informed Jury Association (FIJA).SK

Also proves inherency – states prohibit nullification.

#### Even abolitionists concur – at first we should attempt to reform the system from within – hope makes us powerful. This means the 1AC is compatible with abolition of the system.

Roberts, [Dorothy E. Roberts (Kirkland & Ellis Professor, Northwestern University School of Law; faculty fellow, Institute for Policy Research.), CONSTRUCTING A CRIMINAL JUSTICE SYSTEM FREE OF RACIAL BIAS: AN ABOLITIONIST, FRAMEWORK COLUMBIA HUMAN RIGHTS LAW REVIEW, 2/4/2008, SK.]

My claim against mass incarceration, capital punishment, and police terror is not that they are imposed in a discriminatory fashion. Rather, I argue that these **immoral practices have flourished in the United States in order to impose a racist order.** **Understanding their racial origins and function helps to explain their endurance and the need to abolish them**.124Abolishing these institutions should be accompanied by a redirection of criminal justice spending to rebuild the neighborhoods that they have devastated. There should be a massive infusion of resources to poor and low-income neighborhoods to help residents build local institutions, support social networks, and create social citizenship.125 **Abolishing them will also force us to envision a radically different approach to crime disengaged from the racist logic of black enslavement and white supremacy**. **An abolitionist movement opens the possibility of creating alternatives to prison as the dominant means of punishment, as well as alternatives to criminal punishment as a dominant means of addressing social inequities**.126 **Instead of fearing “too much justice,” we should accept the challenge** posed in McCleskey **to envision a criminal justice system free of racial bias**. SK

# K Frontlines

## AT: Curry K

### AT: “Just Governments” Link

1. **No Link** – I don’t defend a government passing a plan – extend Collins-Chobanian 1 – jury nullification is a check on these oppressive governments which means it rejects the concept of a government being just.

2. **No Link –** I don’t say the government should act justly, rather that they cannot and that is why we should give juries the ability to rebel – that’s Carrol

3. **No Link –** The 1AC recognizes that these institutions are “historically racist” – that’s the Holston evidence in the FW that says history is important coupled with Wilderson who describes the history of racism against African Americans.

4. **Aff Solves This Link Specifically** – Allowing Juries to rebel against the law is their way of resisting these institutions – that’s Carrol

5. **Aff Solves This Link** – the 1AC is a process of creative demolition where we remove the layers imposed by the government that subvert true justice – that’s Collins

### AT: “Ought” Link

1. **No Link** – This is a method of liberation which is unconstrained – the 1AC says the racialized thinker should transcend the boundaries that white society has placed and engage in creative demolition – that’s Collins.

2. **Aff Solves** – if the black thinker recognizes that the institution can do nothing and thus the policy fails, it will collapse the racist institution itself – overidentification solves the link – that’s Zizek

3. **Defense** - Even if the values cannot be achieved that doesn’t mean we can’t try – futility is not an option because that will destroy not liberate – that’s Roberts – we should at least attempt to envision a system free of racism.

4. **They link** – their claim merely suggests that blacks “ought not” follow this “ought” constraint which in itself constraints the racialized thinker’s ethical deliberation

5. **Alt is insufficient** – their alternative of () is insufficient because it cannot control either (a) the discourse that we use in round or (b) projecting actions – every single alternative would posit some projected action

At the very least, if (a) they link and I don’t or (b) they link and aff solves or (c) they’re insufficient and aff solves that is a *net benefit* to voting aff as I avoid or solve the harms of this disadvantage and they don’t.

### AT: Antiethics

1. **Not Competitive** – the 1AC is literally an antiethical approach because we refuse to write morality onto the historically racist criminal justice system – that’s Collins

2. **Insufficient –** thinking differently is not going to solve for *actual black deaths* that are ongoing due to the racism of the Criminal “Justice” system – we need to take action

3. **Perm** – do the aff while we implement this shift – the perm is net beneficial because jury nullification is good to do while we do other strategies as it will at least partially solve for the problem at hand – that’s Collins Chobanian 4 – that’s the net benefit to the perm.

4. **Perm** – do the aff then the alt – jury nullification is a shift in the way in which we view the system to one of complicity to one of breaking it down – this realization through JN that we *can* avoid using the system comes before a *refusal* to avoid the system which means the timeframe perm is always net beneficial.

## AT Wilderson

### AT: Civil Society Link

1. **No Link –** 1AC is a breakdown of civil society, a creative demolition – that’s Carroll

2. **No Link** – 1AC doesn’t advocate for civil society - even if it operates inside it aims to break it down – just saying that this operation is insufficient *is not a link* because it doesn’t prove that I actually perpetuate the harms, just proves that something better could be done, which means that the perm will always solve the link.

### AT: Burn it Down

1. **Perm** – do both: if the black thinker recognizes that the institution can do nothing and thus the policy fails, it will collapse the racist institution itself – overidentification solves the link – that’s Zizek

2. **Nonunique** – Zizek means that even if the links of the 1NC are true we should still do the 1AC and we can still garner the benefits of the alt

3. **Perm** – do both: Even if working within civil society doesn’t work we should at least try – hope is what dives us forward not pessimism – that’s Robinson

4. **Perm** – do the aff then the neg: we need to solve for actual incarcerations – that’s Butler – and jury nullification is a good step to do in the meantime – that’s Collins and Chobanian 3.

5. **Perm** – do the aff then the neg: any movement of dissent must start from recognizing that we *can* rebel against the law through jury nullification – this is how citizens can exercise power – that’s James – this is a sequencing issue which means the aff *necessarily comes first*.

6. **Perm** – do the alt in all instances but the aff: solves 100% of the harms because the neg doesn’t prove that the unique instance of the aff triggers all of the harms of the link pushing us over the brink – net benefit to the perm is the immediate benefit of rehabilitation articulated by Butler 2

## AT: B/W Binary

1. **No Link** – others can use this method and I recognize them – that’s Collins-Chobanian 3

2. **No Link** – my advocacy is not specific to the “black” or “white” body – it says everyone affected by racism

3. **No Link** – my solvency advocate (Collins) talks about all minority groups.

4. **Aff solves** – increases participation so that all citizens “have a voice” – that’s James

5. **Perm: do the aff** – harms perpetuate because binary marginalizes but the first step in breaking down this system is letting the citizens know that they have a voice – that’s James.

## AT: Cap

## AT: Anthro

# Substance Frontlines

## Frontlines

Prefer the aff to any reform that relies on the white government to enact a policy. The neg bites into the criticism of historically white powerful institutions by advocating for a government policy to affect change. It doesn’t matter that the policy may be helpful to black people; insofar as they are using the policymaking branches of government to solve a problem they are always biting into my criticism and losing the debate on a pre-fiat level. Prefer my discourse because I acknowledge these problems and attempt to solve them. Jury nullification involves people without necessarily any political power—even though it works within a state procedure it is asking citizens to subvert state power.

## AT: White Jurors Nullify

## AT: Leipold

## AT: Krauss

## AT: Theory

### General

# Extensions

## Definitions

## FW

### Smith

Extend Smith – your first obligation is to aid oppressed groups as their voices are marginalized in the debate space – this means accessibility (a) is a multiplier for all of the impacts of the aff as otherwise oppression would keep them hidden – outweighs on cyclicality and (b) controls access to the 1NC impacts as they presume the ability for individuals to access the debate space in the first place.

### Mitchell

Extend Mitchell – argumentative agency involves positing actions within the debate space which are key to social change – this means that when you sign the ballot you vote aff to endorse my act of actually attempting to engage broader audiences and not just theorize abstractly within the scope of the debate space.

## Advocacy

### James

#### Regular:

Extend James – before anyone can exercise a power they must know that they have a power – citizens do not dissent against the government because they believe the law is absolute and cannot be changed, and the government actively perpetates this notion. Jury Nullification is always the first step because it puts power in the hands of citizens, and helps them recognize that they have this power.

#### Prefiat:

Extend James – before anyone can exercise a power they must know that they have a power – citizens do not dissent against the government because they believe the law is absolute and cannot be changed, and the government actively perpetates this notion. We must always be able to identify this root cause and expose it – this can only be done by education which actively supports and perpetuates the norm that jury nullification is good – this means the judge must vote up the speech act of the 1AC as it aims to educate about jury nullification and provide the knowledge that is the essential step to exercising power.