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**Making It Work: Audre Lorde's "The Master's Tools" and the Unbearable Difference of GSOC**

Elizabeth Loeb

**Introduction: GSOC and the Master's Tools**

In 1979, Audre Lorde was asked to attend the Second Sex conference at the New York University Institute for the Humanities. Organized to mark the 30<sup>th</sup> anniversary of the publication of Simone DeBeauvoir's feminal<sup>1</sup> work, *The Second Sex*, the conference marked a major gathering of feminist academics at a moment when the institutionalization of feminist critique was being consolidated within the academy.<sup>2</sup> According to Lorde's account, she was invited to "stand as a black lesbian feminist, having been invited to comment within the only panel at this conference where the input of black feminists is represented."<sup>3</sup> Lorde responded by attending the conference, where she delivered an address<sup>4</sup> and invitation of her own in the set of remarks famously titled "The Master's Tools Will Never Dismantle the Master's House."<sup>5</sup>

In the "The Master's Tools," Lorde explained that the exclusions at play in the NYU conference program marked not only the division of social power, but that they also enacted a larger assumption about the status of black lesbian subjects within the academy as authorized producers of recognized knowledge. As Lorde stated:

To read this [conference] program is to assume that lesbian and black women have nothing to say of existentialism, the erotic, women's culture and silence, developing feminist theory, or heterosexuality and power. And what does it mean in personal and political terms when even the two black women who did present here were literally found at the last hour? What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow parameters of change are possible and allowable.<sup>6</sup>

In asking these questions, Lorde went beyond simply recognizing that resources and dignity are distributed through frameworks of patriarchy, white supremacy, and homophobia. Accepting a deep responsibility, Lorde attempted to show why designations of representation and identity such as black, lesbian, and woman matter. In calling on us to reject the Master's Tools as inherently subjugating, Lorde both acknowledged and refused the oppressions that mark the identities she named.<sup>7</sup> Going

beyond the sphere of rhetorical gesture, Lorde concretely asserted to the conference audience that: 1) queer and black lives were not being addressed by the collective politics of white socialist feminism; 2) the insights and experiences of queer and black women must be valued for their own inherent worth as well as for their assistance to the project of socialist feminism; and 3) when the white arbiters of socialist feminism allowed voices to be erased and silenced in the name of “unity” and “effective politics,” those arbiters only diminished the material strength and success of the movement at issue.

At the same time, Lorde refused a politics that divided its strength based on difference. Rather, she envisioned a politics of revolutionary and collective strength practiced through a simultaneous recognition of difference and solidarity. She wrote: “The failure of the academic feminists to recognize difference as a crucial strength is a failure to reach beyond the first patriarchal lesson. Divide and conquer, in our world, must become define and empower.”<sup>8</sup>

Lorde’s analysis of “the master’s tools,” and of the stakes of exclusion within academia has been met with both passionate respect and lasting consternation within the feminist circles. Some of the academic organizers of the NYU conference have gone beyond consternation and toward disagreement. Jessica Benjamin, a significant feminist theorist and one of the original conference organizers, has recently published remarks that pointedly refute Lorde’s conference address.<sup>9</sup> In those published remarks, Benjamin not only rejects the substance of Lorde’s observations about the whiteness of mainstream feminism and academia, but Benjamin also blames black feminists and other feminists of color for refusing to work with the conference organizers, and more generally, for dividing and detracting from the socialist cause.

For Benjamin, the Second Sex conference marked the point from which the formulation of “identity politics” may be traced, and for this reason, Benjamin refers to the conference as a “watershed event” in her published remarks.<sup>10</sup> Benjamin does not, however, view the conference as a positive event. Describing the conference’s project as “a last-ditch effort to rescue feminist intellectual life from the confines of the academy and keep it turned into a political movement,”<sup>11</sup> Benjamin goes on to implicitly argue that feminism qualified as a “political movement” only so long as it maintained a rigorously “socialist” character.

Disturbingly, Benjamin asserts in her published remarks that Lorde’s commitment to race and group difference detracted from and potentially destroyed the political base of feminism by diluting its socialist base with concerns grounded in mere “identity.” Benjamin blames feminists of color and queer feminists for continuing the “opposition” between “cultural feminism” (which Benjamin implicitly derides), and the more properly “political feminism.”<sup>12</sup> As she explicitly claims the “camp” of “socialist feminism” for the white conference organizers, she describes queer feminists and feminists of color as the merely “cultural” feminists who acted destructively against the socialist movement with their negative insistence on “difference” in racial and sexual terms.<sup>13</sup> Describing herself as the heroic figure struggling to build a bridge across such difference for the sake of collective political struggle, Benjamin pays no attention to whose back that bridge must be built upon.<sup>14</sup>

As a lawyer committed to social justice, I am constantly unsettled by my own use of the master’s tools. That is, in practicing law, I often work through and in the very juridical terms that subjugate those for whom I speak.<sup>15</sup> More basically, do I reproduce

the master's tools simply by submitting my political activism to the authority of a legal system formed through a legacy of patriarchy and white supremacy?<sup>16</sup>

In addition to working as a lawyer, I am a Ph.D. candidate at New York University (NYU) and an active member of GSOC / UAW Local 2110 – the labor union representing graduate workers at NYU. In this essay, I will explore the question of the master's tools as relevant to the politics of 2005-2006 GSOC / UAW graduate worker's strike – a strike in which I served as an active participant.<sup>17</sup> As many readers of this article likely know, the strike has ended, and we have not yet won recognition or a contract for our union. Rather than presuming to offer an answer as to what might effect such a win, this article will attempt to offer a meditation and analysis of how GSOC structured its relationship to the following three themes: 1) the history of labor unions as hierarchical organizations that have at times privileged male, straight, and white identities; 2) the exclusion of GSOC from a regime of legally recognized rights<sup>18</sup>; 3) GSOC's strategic navigation of direct action and civil disobedience.

As noted in its first paragraph, I have framed this essay in terms that owe much to Lorde's insights in "The Master's Tools." At heart, I am asking whether, in our passion for a contract, we may have at times undermined the strength of our union and of our strike by failing to consider the experiences of empowerment and disempowerment that were encountered by our own members within the union. I am further suggesting that we may have ourselves failed to interrogate our own use of the master's tools, and that we may have deployed such tools at our own expense.

More specifically, I will offer my analysis of the three themes listed above in order to suggest that in all three cases, we might have strengthened ourselves as a union by paying greater respect and attention to the raced, gendered, and sexed experiences of GSOC members. For the first theme, I will question how GSOC reproduced the tension found in the conversation between Lorde and Benjamin through our frequent public silence regarding the raced and gendered issues raised internally by our members. As a staff member and striking worker within GSOC, I was explicitly and implicitly told by our leaders that our public message must be one of commitment and unity – a unity that might be threatened by an organizational discussion or prioritization of raced, sexed, and gendered difference.

In order to make a claim about why an emphasis on controlling and minimizing raced, gendered, and sexed difference might have hurt the GSOC strike, I turn towards the second theme – that of legal rights. I argue that our exclusion from a rights regime<sup>19</sup> placed a greater emphasis on the collective strength of our solidarity, thus placing greater pressure on our navigation of difference within solidarity. When members experienced raced, gendered, and sexed alienation within our collective group, we weakened our foundational source of power – that of our commitment to each other and to our collective struggle. While in some cases, the support and protection of labor rights might have opened alternative sources of power, I argue that the GSOC strike faced a more limited world of options, and thus suffered more deeply when internal alienation occurred than we may have otherwise. While some members and leaders of GSOC might have believed that ignoring race, sex, and gender might have prevented such alienation, my experience was one in which such dismissals only served to create and intensify alienation.

In mapping this theme, I will attempt to show how the GSOC strike can be read as extending a long-standing debate in legal feminism, critical race theory, and socio-legal literature concerning whether collective movements should or should not pursue rights based strategies in their campaigns. Since our rights had already been foreclosed by the NRLB, the GSOC strike began as inherently extralegal in nature. This foreclosure poses the question of where we, as representatives of an academic labor movement, have access to sources of power that can win us recognition without recourse to the buttress of legal recognition or rights. While our strike shows the difficulty of leveraging extralegal power against an established institution, this paper works to acknowledge that difficulty as inextricable from raced, gendered, and sexed histories.

Finally, for the third theme, I will discuss how specifically raced experiences shaped the attitudes of members towards civil disobedience and direct action. Using the counterexample of the recent campus takeover effected by students at Gallaudet University, I suggest that in our unwillingness to “shut it down”<sup>20</sup> we (GSOC) placed greater pressure on the quality and breadth of membership participation in the strike, thus making us more vulnerable to divisions and alienation, and leaving us without a “safe space” in which to be honest about the divisions and alienations that formed around experiences of race, gender, and sexuality.

The Gallaudet example provides an instance in which a group of activist students did use the power of “shutting it down” to force a major policy change within a University, without recourse to legal rights or guarantees. (In fact, over 100 Gallaudet students were arrested during the protests and campus takeover).<sup>21</sup> While there are many analyses of why the Gallaudet students were so effective, I am drawn by descriptions of the protesters as coming together out of an immensely strong and undivided sense of shared culture, values, and interests. According to their published reports, the Gallaudet students were protesting in order to protect their shared world and shared project.<sup>22</sup> From this, I offer the conclusion that the Gallaudet example shows how a strong sense of shared values can encourage activists, and potentially members of academic labor unions, to take greater and possibly more effective risks with regard to direct action than they might otherwise consider. I would thus argue that we in GSOC may work towards creating a stronger sense of shared values and interests by honoring the differences – and especially the raced, gendered, and sexed differences – that inform our social and political activities.

Before moving more deeply into this paper, I want to acknowledge the difficulty of providing narrative or testimony concerning “what happened” within GSOC during the strike, or of giving concrete example of the raced, gendered, and sexed dynamics at play among members, strikers, activists, organizers, UAW paid staff, and UAW leadership. At minimum, I can offer my own testimony that during the spring of 2006, over a dozen GSOC members, including myself, were hired as paid UAW staff, and our jobs were to support and facilitate the GSOC strike. To my knowledge, no one on that staff identified as a person of color. Though there was a mix of male/female sex identifications among the staff, I was, to the extent of my knowledge, the only staff member who identified as queer. There were no staff members who identified as transgender or gender-variant, and of the two international students one was a U.S. citizen and one held an Irish passport. Prior to being hired as staff, I had been approached by many members of GSOC who did identify as LGBT and/or of color, who told me that they were leaving the strike and

GSOC due to their experience of GSOC as an organization that privileged the experiences, perspectives, and assumptions of a white and heterosexist culture. While I suggested that UAW mandate awareness and diversity trainings for the paid staff, and while I submitted a detailed proposal for such trainings and offered to take on the administrative work, my suggestion was denied due to the determination that it would take too much time away from the “real” work of the strike.

While I recognize that the testimony or narratives of other GSOC members would be of great help in explaining and substantiating my claims to readers, and while such testimonies would provide greater detail on which to base my analysis and arguments, I am choosing not to present direct testimony other than my own in this article. I have had long discussions with other queer and color-identified GSOC members about these issues, and in those discussions, we considered the sense of exclusion, and representational violence that arose from the notion of other (and mostly white) GSOC members receiving authorial credit and currency for articles written on the backs of the experience of members of color. Perhaps I am already perpetuating representational violence simply by authoring this article, especially in a special issue that does not, to my knowledge, include articles by any self-identified academics of color. I am urged to speak despite this complicity, and despite the complicity that all authorship and academic credit shares in the perpetuation of exclusionary power structures – exclusions that are inescapably raced and gendered.<sup>23</sup>

At this point in time, our campaign for a union contract with NYU continues. We are not currently on strike, but a dedicated group of graduate workers are maintaining our struggle through ordinary, everyday organizing and solidarity. It’s not glamorous, and there aren’t any *New York Times* articles reporting their efforts, but I am grateful for what they are doing, and I truly hope that this article supports those efforts. If I didn’t know that my friends were out around campus carrying on the basic mission of our union, I wouldn’t have the luxury of contemplation and distance, of time to write and think. Though I am not currently a member of the GSOC organizing team, I remain committed to our struggle. Though this article offers critiques of our internal dynamics and decisions, I must also state that individual organizers have done much to change the attitudes, strategies, and actions on which my critique is based, and I believe that as of now, individual organizers in GSOC are consistently and committedly working to shape GSOC into an antiracist, non-patriarchal organization.

## **I. Unity and Difference**

A great number of distinguished scholars have previously charted the history of labor unions in the U.S. as segregated, racist, and patriarchal organizations.<sup>24</sup> Rather than rehearse that work here, I wish to use that work as a reference point for the question of how GSOC itself carries a legacy of the master’s tools.

I am proud to be a member of the UAW, but my experience within the union has been one in which leaders meted out authority and decision-making power in a unilateral fashion. While commitment to the cause, talent, and willingness to accept hierarchy were rewarded, leaders often characterized the voicing of gendered, raced, and sexed critiques as disruptive and counterproductive, such as in the instance of the awareness trainings that I proposed (as described earlier in this article). Additionally, in my experience and in the experience of others whom I observed, the more we voiced internal critiques or

dissatisfactions with leadership, the less we were encouraged or enabled to take on decision-making authority within the union and strike.

At the same time, the GSOC / UAW leaders who discouraged critique and consensus-based decision making, many of whom were women and people of color themselves, had a point – they were implementing an internal strategy that they believed would be the strategy most likely to win us a contract, even if that strategy meant deferring concerns about hierarchy, internal process, race, sex, and gender.

I understand why leadership might have found such a deferral worthwhile on ethical or political grounds. Our strike was a test case for the viability of unionization within private universities absent a court mandate, and the success of our strike had material consequences for the rights of NYU graduate workers and for academic laborers nationally. Additionally, our first union contract put a stop to some of the worst forms of exploitation that NYU had visited upon graduate workers who were of color, who were queer, who were woman-identified, or who did not carry U.S. citizenship.

While this article could focus entirely on debating the ethics of the strategy outlined above, there remains the question of this strategy's actual effectiveness. I agree that theories of anti-subordination were not going to win us a contract all on their own. Then again, marching around in circles hasn't won us a contract either. If our first strike had offered a more active and visible platform of solidarity with those who are oppressed on the basis of their race, gender, sex, sexuality, and nationality, it might have been a stronger strike that included more members willing to push harder. In my experience, I and many of my friends ended our strike having had an ultimately disempowering experience, not only due to NYU's union busting, but also due to the deferral of the internal concerns referenced above. If we strike again, I will stand in solidarity with my colleagues, but I will work with my colleagues to insist on a solidarity that balances hierarchy with consensus, and that solders us in the fullness of our raced, sexed, and gendered beings.

## **II. Rights and Exclusions**

In order to look more decisively towards the question of empowerment and its definitions invoked at the end of the last section, I will now turn to a discussion of legal rights. As mentioned in this article's introduction, I read the GSOC strike as posing the question of whether an academic labor union can win a contract at a private university *without* recourse to the courts or legal rights regime as a guarantor of such a win. In order to build a concrete analysis from that question, however, it seems useful to spend some amount of time considering how the question of legal rights implies a negotiation of the master's tools themselves. As stated in this article's introduction, I am attempting to suggest that without the guarantee or the legal regime as a source of power, GSOC was left all the more vulnerable to the quality of our member participation as a source of leverage against an unwilling employer. Hence, GSOC became more vulnerable to internal divisions on the basis of difference than we might have been had our strike occurred within the legal regime of labor rights.

Rather than depend solely on anecdotal evidence from the GSOC strike to make this point, I am grounding my argument in a reading of the debate over rights and power that has already been occurring for over thirty years within literatures of critical race theory and feminism. Additionally, given that the literature traced here shows the

particularly racialized history of rights as a political strategy, it seems not accidental that in my experience one of the most difficult forms of difference within GSOC fell along lines of racial identity.

To begin then with the theoretical literature, scholars such as Wendy Brown and Judith Butler have argued that rights function not as truths of political or subjective being but as fictional figures mobilized for the purposes of cultural and political control of subjects.<sup>25</sup> Brown argues the juridical rights, as applied to raced, gendered, and sexed subjects, are only ever granted through a narrative of equality that in actuality reproduces structures of group-based inequality. In order to “have rights,” subjects who do not currently enjoy access to the rights that they wish to have must supplicate to the legal regime through the judiciary, asking that the rights in question be granted as “theirs.”<sup>26</sup> Brown shows how U.S. courts require a subject to present itself as inherently injured, inherently less than equal.<sup>27</sup> Thus, Brown explains, the act of seeking rights, of submitting to the adjudication through which rights are distributed, reproduces and ontologically cements the intractability of the very inequality and injury that these rights intend to address.<sup>28</sup> More sharply, Brown argues that subjects themselves are caught within Nietzschean *ressentiment*, that they are “passionately attached” to their injured states – unable to psychically construct a positive form of uninjured being.<sup>29</sup>

For Brown, hope, and a third term, lies with the agency she finds in desire. A successful and liberatory politics, for Brown, will not arise through legal reform or even through psychoanalytic discourse, but through the sheer force of wanting. Without telling the reader exactly how this might happen, Brown presents a theoretical landscape in which she asks: “What if we were to rehabilitate the memory of desire within identificatory processes – prior to its wounding? What if ‘wanting to be’ or ‘wanting to have’ were taken up as modes of political speech that could destabilize the formulation.... In short, if framed in a political language, this deconstruction could be that which reopens a desire for futurity.”<sup>30</sup>

I love Brown’s theoretical force and elegance. At the same time, if wanting it badly were enough, I feel certain that GSOC would have won a union contract for NYU graduate workers in 2006. Not only didn’t we win, but we wanted it so badly that we were willing in many instances to reproduce a multiplicity of subordinations, silences, and erasures, most especially around the raced, gendered, and sexed subject positions to which Brown draws her political and theoretical attention.

For example, at one point in my role as a UAW/GSOC staff researcher, I proposed to other UAW/GSOC staff that I research possible violations of Title VII and Title IX committed by NYU.<sup>31</sup> I thought that such an investigation would serve two purposes: 1) it could begin to provide a factual foundation for use by GSOC or other campus organizations in demanding that NYU cure any potential violations, and 2) it could publicly and meaningfully assert GSOC’s commitment to racial, sexual, and gendered justice as an integral *part* of our struggle for a contract, rather than as an *ex post facto* benefit that might accrue as a *result* of winning contract. Coming in the late spring, at a moment when large numbers of GSOC members still supported a union contract but many were not willing to take personal risks in order to achieve that contract, and at a moment when specific groups had publicly stated that they were limiting their participation due to feelings of raced, gendered, and sexed alienation from the union, this second purpose, along with other initiatives and changes in internal culture, may have

encouraged some of those alienated members to recommit to more active participation in the union or the strike. I still believe that though a contract might be our main purpose, we will be a stronger, more effective, and ultimately more worthwhile organization if our goals explicitly include racial, gendered, and sexual justice as part and parcel of our work, and not as benefits of an eventual win.<sup>32</sup>

Returning to rights and to why the deferral of difference might have weakened our struggle, Judith Butler seems to offer a more complicated consideration of the political, material, and actual saliency of rights, desire, and political possibility than does Brown. In her book *Excitable Speech*, Butler suggests that liberatory political projects can and should set out to reclaim colonized words and concepts, transforming and shifting the meaning and use of those concepts to support a different world order.<sup>33</sup> Butler writes:

With respect to the political discourse of modernity, it is possible to say that its basic terms are all tainted, and that to use such terms is to reinvoké the contexts of oppression in which they were previously used. Paul Gilroy points out, for instance, that terms such as universality have been premised on the exclusion of women, of people of color, that they are wrought along class lines and with strong colonial interests. But, he adds, crucially, that the struggles against those very exclusions end up reappropriating those very terms from modernity in order to configure a different future. A term like “freedom” may come to signify what it never signified before, may come to embrace interests and subjects who have been excluded from its jurisdiction; “justice” may also come to embrace precisely what could not be contained under its description.<sup>34</sup>

In this way, Butler hopes that the political use of what she terms the “sovereign performative”<sup>35</sup> might allow us to push past the stuck-ness of knowing that the concepts of modernity such as rights and consent and sovereignty are problematic ones, while also knowing that we must speak to and within those concepts if we are to demand respect and legibility within the world constituted by those concepts.<sup>36</sup>

Critical race theorists within the academy have also argued that political and social movements for racial justice do not have the luxury of a theoretical and philosophical critique of rights as just another hammer in the master’s toolbox.<sup>37</sup> Questioning the theoretical rejection of rights popularized within the legal academy by the critical legal studies movement of the early 1990’s, critical race theorist Patricia Williams writes:

This country’s worst historical moments have not been attributable to rights *assertion* but to a failure of rights commitment. From this perspective, the problem with rights discourse is not that the discourse is itself constricting but that it exists in a constricted referential universe. The body of private laws epitomized by contract, including slave contract, is problematic because it denies the object of contract any right at all.<sup>38</sup>

Williams also marks the historical difference between whites and African-Americans when it comes to rights and legal personhood, noting that it’s easy to critique

rights when you've always had them. Wendy Brown responds to Williams' defense of rights by arguing that though rights may "mark personhood," they cannot "confer" personhood to those whom the dominant social/legal/political order would subjugate, oppress, or marginalize. Brown suggests that without this power to confer, rights will continue to reproduce larger structural distributions of power and personhood without room for liberationist transformation.

[W]hile [rights] formally mark personhood, they cannot confer it; while they promise protection from humiliating exposure, they do not deliver it.... The necessarily abstract and ahistoricizing discourse of rights mystifies the conditions and power that delimit the possibility for achieving personhood, while its decontextualizing force deprives political consciousness of recognition of the histories, relations, and modalities of power that produce and situate as us human.<sup>39</sup>

I have two responses to Brown – a theoretical one that I will offer now, and a practical one that I will reach later in this article. First, I would ask Brown whether the representation and constitutive violence that she describes might be a problem of equal rights rather than of rights themselves. That is, contemporary, canonical scholars of jurisprudence in the United States imagine rights as treating everyone the same – rights are a written legal system that makes radically different people into equal legal units.<sup>40</sup> While it's simple enough to marshal empirical evidence showing that rights are unsuccessful in this aim, perhaps it's the imagination of the purposes of rights as equality machines that so destructively erases difference, and especially the very raced, gendered and sexed differences that are continually subordinated within the U.S. even as rights remain a privileged metaphor of emancipation.

With this in mind, I would like to return to the GSOC strike. For the four years prior to our strike, graduate workers at NYU could rely on the guarantee of a legally protected right to unionize. This right to unionize qualified fully as the type of juridical right that Brown critiques. Yet, at the same time, the right to unionize requires no showing of equality or injury in the manner critiqued by Brown. That is, a subject seeking labor rights does not have to show a gendered, raced, or sexed injury, as required under civil rights regimes or under the contemporary jurisprudence of the Fourteenth Amendment.<sup>41</sup> Rather, that subject only needs to show that they qualify under the legal definition of worker, as defined by the tasks they perform within the scope of their paid employment.<sup>42</sup>

While labor rights might empirically diverge from the rights described by Brown, accepting a rights-based strategy still depends on recognition from the courts, which maintains workers as vulnerable to the court's decisions and authority, and hence to the reproduction of dominant power distributions that the politically appointed NLRB tends to enact.<sup>43</sup> Even so, working without and outside rights does not offer an uncomplicated path to liberation.

GSOC's decision to fight for a contract *after* the NLRB revoked our legal recognition made us into unusual players within the U.S. labor movement. While strikes are always a contestation over forms of power, most unions strike with at least a basic framework of legal recognition and rights on which to rely. As someone trained in the

field of law and society, however, I have been fascinated by the relatively little attention that was given, either by the press or in our own organizing conversations, to the fact that the GSOC strike proceeded entirely without legal authorization or protection. In denying our claim for legal recognition, the NLRB granted NYU full juridical power over any eventual recognition – nothing in the law would force NYU to bargain a contract. Having lost the option of mobilizing rights to our cause, we had to turn fully to nonjuridical forms of resistive power. I would suggest that NYU institutionally navigated this non-juridical space through the assertion of unilateral force and supremacy. To paraphrase NYU President John Sexton, the decision of whether to bargain with GSOC was his alone and he was saying no.<sup>44</sup>

In return, I would also suggest that GSOC attempted to use this nonjuridical space as a ground from which to build participatory power – we imagined that we would win because such large numbers of people would support us, whether they be elected officials, media outlets that effect NYU’s reputation, NYU donors, NYU undergraduates, community residents, other academics, or the union members who could hurt the functioning of the university by withholding labor. At the same time, while supporters would stand with us symbolically based on a general commitment to organized labor, they were reluctant to actually lend their preexisting social, political, and economic currency to our fight without an active sense of the strike being supported by the majority of NYU graduate workers and GSOC members. (This was especially true of the prominent public figures who could offer us the greatest resources in terms of leverage against NYU.)

Thus, it seems that we were in a dangerous position where, without a legal structure to guarantee our existence, the quality of participation wholly and entirely affected the quality of our power. While many GSOC members, staff, and leaders would posit that our strike lost energy and numbers during the spring of 2006, and while many would posit that such losses are the inevitable result of fatigue, disappointment, and uncertainty, I feel that we must also accept how deeply those reactions were grounded in raced, gendered, and sexed experiences of alienation. I make this claim based not only on countless conversations with large groups of GSOC members who expressed exactly that sentiment, but also because, in May of 2006, we were able to reestablish and certify that a majority of NYU graduate workers continued to demand a union contract only after a meaningful, honest, open, and shared discussion of raced, sexed, and gendered alienation began to take place at membership meetings and at collective GSOC member events. If leaders tell us that difference is divisive or negative, and if many of us often experience deeply resonant identifications, positionalities, and knowledge that come from a place of difference, how are we then to imagine ourselves in positive and unified solidarity with our shared struggle?

For this reason, I do believe that our struggle would have been easier with the legal recognition of the courts, and it would have been easier to strike within the regime of labor rights. Under that regime, commonly known as Unfair Labor Practices, NYU would have been externally constrained in its ability to threaten, manipulate, and retaliate against us for our strike activity.<sup>45</sup> NYU could not have legally fired twenty-three of us for striking – a risk that, in general, white students are more likely to be able to take than students of color given the deep effects that slavery, legalized white supremacy, and social discrimination have had on the ability of people of color to accrue and pass on

wealth.<sup>46</sup> Just as pointedly for the purposes of considering difference within the context of a legally recognized strike, NYU could not have threatened international students with deportation, as it did. With the law as an external limit on NYU's actions, we would not have had to rely so profoundly on each other for protection and support, a system of reliance that seemed, in my experience, to favor white students over students of color. More broadly, the legal recognition of our union under the regime of labor rights would have set a legal precedent that could provide a tool for the protection of other workers facing the de-recognition of their unions. While such a tool might not be ideologically perfect, it would help preserve the wages, pensions and health benefits of workers who would otherwise suffer a severe material decline in their basic quality of life.

It is this consideration that brings me to the practical response to Wendy Brown mentioned earlier in this article. Even though I find Brown persuasive with regard to the subjugation suffered by subjects under the law, I am, in many instances, still willing to suffer the loss Brown charts in return for the actual and material benefits at stake. In some sense, I make this choice because I am convinced by Foucault's claim that there can be no outside to power, but only differing distributions within the operation of power.<sup>47</sup> Even if I attached a politics to Brown's critique, we would still all remain inside the complex workings of power and oppression. As such, I'll trade, where I can, my theoretical hopes for the tangible, experiential politics described by Patricia Williams, even if this trade diminishes my chances for attacking power itself. Moreover, we don't always have the luxury and privilege of waiting.

### **III. Gallaudet and GSOC**

In the previous section I suggested that one source of power is to marshal the leverage of a broad base of numerous supporters. Another source of power, as illustrated by recent events at Gallaudet University, is to shut the university down through militant and direct action.

Gallaudet University has long been considered the "nation's premier school for the deaf."<sup>48</sup> On October, 13, 2006, hundreds of students, representing the majority of students enrolled at the university, shut down the functioning of the University through a coordinated physical blockade of all academic and administrative buildings, as well as campus entrances. Over one hundred students were arrested, but the arrests neither broke the blockade nor diminished the protests.<sup>49</sup>

The students were resisting the appointment of a new university president whom they viewed as not culturally deaf, and whom they viewed as insufficiently committed to the pedagogy of American Sign Language.<sup>50</sup> Though Gallaudet serves both Deaf and non-hearing students, students and faculty have become increasingly committed to a school-wide mission of teaching, reproducing, and preserving Deaf culture, most especially through the exclusive use of American Sign Language as the language of the university. Differentiated from people who are simply physically non-hearing, the Deaf understand their community as a distinct language group and shared culture much like an ethnicity.<sup>51</sup> After two weeks of undiminished militancy and disruption, the Gallaudet board of trustees voted to remove the president elect in favor of a president more fully committed to Deaf culture and to American Sign Language as a pedagogical foundation. The student protesters won their fight, despite having no legal grounds for rights or enforcements, and despite having no power to leverage but their own.<sup>52</sup>

During the GSOC strike, I worked with a group of members, strikers, and strike supporters to explore the possibility of a takeover such as the one effected at Gallaudet. Ultimately we concluded that our members were not willing or able to accept the risks entailed, and more saliently, that even if we arranged a takeover that minimized risk to a willing few, we would not be supported by the GSOC membership.

While there are many strategic reasons to defer from a direct campus or building takeover, and while such actions are never assured success, the estimation of our working group was that a direct action at NYU would fail because members already felt excluded from the union and from a shared culture, and as such would passively support the strike, but would not actively engage with a takeover campaign. Moreover, many GSOC members of color questioned a strategy that privileged a willingness to be arrested and to face police violence. Given the everyday violence that police forces have visited upon communities of color in the U.S., many members of color who attended the “takeover” working group meetings expressed deep discomfort with any situation in which they would open themselves to police custody or violence. As such, these members felt that a takeover strategy would only further marginalize the experience and perspectives of members of color.

In fact, our discussion of race and direct action within the working group echoed a larger discussion that occurred during membership discussions of whether and how GSOC should employ civil disobedience. After having successfully organized a peaceful and planned arrest for almost eighty members in August of 2005, the GSOC/UAW staff approached members with a plan for a similar action during our final rally in May, 2006. I participated in all of the organized planning conversations for that action that were open to members, and in many of the staff discussions. Staff and leadership presented us with an action plan for discussion that involved sitting down in a public street across from Washington Square Park and in front of NYU administrative buildings. If one remains sitting in a public street when asked to move by police, one commits a violation of New York City traffic laws and of the disorderly conduct statute. The act of sitting and refusing to move in this context constitutes valid grounds for arrest. GSOC/UAW staff felt this plan incurred the least risk for arrestees, thus encouraging the largest possible number of participants. The staff also planned extensive pre-coordination with the police, so that all intentional arrestees would be preprocessed and “cleared” by the relevant precinct.

I participated in the May 2006 civil disobedience. Over fifty GSOC members and a small number of supporters from other institutions, about 90% of whom were white and straight, were peacefully arrested. We spent four hours in central booking in sanitary conditions. We are charged with a violation under the law, which does not constitute a crime. We will not face a sentence of incarceration. In doing this, we were not trying to shut the university down, and we were not trying to use our willingness to be arrested as a means for increasing the disruption of our strike.

In each one of our meetings on this issue, GSOC members of color voiced deeply felt concerns that people of color, and especially African-Americans, had not been involved in the planning of either the 2005 or the proposed 2006 action. At each one of our meetings, GSOC members of color stated that they felt excluded and erased by the assumption that we can all just sit back and “choose” whether to be arrested, and that complicity with the police can lead to safety. It seemed to me that for many African-

American members, collaborating with the police felt like a betrayal of their experience, and for people who are regularly assaulted by police due to racial profiling, the notion of deciding to sit down and passively wait to be arrested felt like an insult to the contemporary conditions of their communities. Similarly, as someone of queer experience, I found the assumption that we'd be safe in police custody to be a startlingly heterosexist assumption, as many of my close friends had been assaulted while in police custody, by both police and other arrestees, due to their queer sexual or gender presentation.

As GSOC members, we were brought together by one collective value – support for a union contract for graduate workers at NYU. Our chosen membership in UAW Local 2110 and enrollment at NYU marked our only collective identities – identities that were circumstantial and practical rather than based on a prior shared culture. In contrast, the protesters at Gallaudet were in fact protesting *from* and *for* their already formed shared sense of cultural connection. The protesters' demands had everything to do with their sense of what was necessary to preserve that shared, collective culture.<sup>53</sup> Having read the statements and narratives of various Gallaudet protesters,<sup>54</sup> I would argue that their strength – their ability to maintain a blockade with sufficient bodies – came directly from their shared cultural connection, a connection that had formed into a multi-generational collective identity long before the October protests.

From this, I would like to offer the conclusion that GSOC would be a stronger, more effective group if we were to invest our time and energy in creating a sense of shared cultural connection and collective identity that touches us more directly and more personally than our UAW membership cards. At the same time, this article has endeavored to show, through anecdote and through scholarly analysis, that we cannot build a collective identity without acknowledging and respecting the racial, sexual, and gendered differences that are the core of our connections to one another.

## **Conclusion**

Earlier in this article I also asked how we, in GSOC, might build solidarity in ways that honor and respect our differences. While this question is not easily answered, I do believe that it is a structural question to which we must constantly respond. GSOC could begin that response by systemically and rigorously considering the heterosexist and colorblind assumptions of leadership and staff. While awareness training provides one avenue for starting such a consideration, simply making the institutional commitment to the premise would be a start. Additionally, if we believe that people's embodiments shape their raced, gendered, and sexed experiences, and if we believe that our experience shapes our assumptions and our ability to interrogate those assumptions, then it would follow that for GSOC to work against the entrenchment of heterosexism and color blindness in its decision making and organizing, we must actively recruit and incorporate activists, organizers, staff, and leadership with significant queer and racially marked experiences. It would also seem to follow that if we wish to retain any such recruits, we must move away from a top-down hierarchy that can at any time ignore and dismiss the input of staff, activists, and organizers who come from nondominant experiences and identities.

It seems noncontroversial to suggest that we create shared culture through shared meanings. For me, no matter how antiracist my commitments, I interpret the world only

through a white-coded experience, and sometimes I genuinely miss how my interpretation would mean something else for someone of color. When GSOC and UAW leadership treated raced, sexed, and gendered concerns as peripheral to our main goal of securing a contract, we created an organization that made decisions and formed a shared culture that was programmed to be insensitive to non-white and queer experience.

My point here is that GSOC needs to match its knowledge of marginalized perspectives by granting authority and priority to those perspectives. Not only have I attempted to show that this matching would strengthen us in our struggle for a contract, but I have also offered something of a normative belief in the notion that solidarity comes with a responsibility to the work of anti-subordination and empowerment beyond our campaign goals. I believe that the master's tools we must consider are those of GSOC as a labor union, where "labor union" has come to stand for a hierarchical, rigid, non-consensus based organization with a significant history of racial and gendered exclusion. Or, in the words of the socialist/feminist political theorist Nancy Fraser: "Instead of simply endorsing or rejecting all of identity politics *simpliciter*, we should see ourselves as presented with a new intellectual and practical task: that of developing a *critical* theory of recognition.... I assume that justice today requires both redistribution *and* recognition."<sup>55</sup>

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<sup>1</sup> Since language itself often serves as a site for the construction of patriarchy, I am using feminal to avoid privileging semen as the root of productive genesis through the use of the term seminal.

<sup>2</sup> Benjamin, Jessica. (2000). "Letter to Lester Olson." 33.3 *Philosophy and Rhetoric* 286-290. Philadelphia: The Pennsylvania State University Press.

<sup>3</sup> Lorde, Audre. (1979). The Master's Tools Will Never Dismantle The Master's House. Comments Delivered at the "Personal and Political" Panel at Second Sex Conference, October 29, 1979: New York University. Reprinted in Audre Lorde. (1984) *Sister Outsider: Essays and Speeches* 110-114. New York: The Crossing Press.

<sup>4</sup> For work on the political implications of address as a rhetorical mode and scene, see Rooney, Ellen. (1989). *Seductive Reasoning: Pluralism as The Problematic of Contemporary Literary Theory 1-16*, 226-251. Ithaca: Cornell University Press. Using Audre Lorde's edict about the master's tools as her introductory quotation, Rooney questions the power structures that underlie what she sees as the persuasive aims of pluralism as a social and academic paradigm. After providing a historical reading of pluralism in political context within the United States, Rooney argues that persuasion as a mode of address works within pluralism to coopt dissident, minority, and oppressed subject positions into dominant frames of meaning. Nonetheless, Rooney maintains that pluralism still offers a productive discourse open to Marxist-inflected struggles. Speaking in her epilogue to the circulation of the work within feminist debates, Rooney once again draws upon Lorde, writing that relationships to pluralism must remain politically contextual, and that "[t]o resist is first to refuse homage to those who hope to master otherness in the figure of persuasion; conceiving knowledge as productive work, we can then undertake to fashion our own tools" (Rooney, 251). See also Butler, Judith. (1997). *Excitable Speech: A Politics of the Performative*. New York: Routledge.

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<sup>5</sup> Lorde, Audre. (1979). The Master's Tools Will Never Dismantle The Master's House. Comments Delivered at the "Personal and Political" Panel at Second Sex Conference, October 29, 1979: New York University. Reprinted in Audre Lorde. (1984) *Sister Outsider: Essays and Speeches* 110-114. New York: The Crossing Press.

<sup>6</sup> *Id.*

<sup>7</sup> Ronell, Avital. (1991). *The Telephone Book: Technology, Schizophrenia, Electric Speech*. Lincoln: University of Nebraska Press.

<sup>8</sup> Lorde, Audre. (1979). The Master's Tools Will Never Dismantle The Master's House. Comments Delivered at the "Personal and Political" Panel at Second Sex Conference, October 29, 1979: New York University. Reprinted in Audre Lorde. (1984) *Sister Outsider: Essays and Speeches* 110-114. New York: The Crossing Press.

<sup>9</sup> Benjamin, Jessica (2000) "Letter to Lester Olson". 33.3 *Philosophy and Rhetoric* 286-290. Philadelphia: The Pennsylvania State University Press.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Butler, Judith. (1997). "Merely Cultural," *Social Text* 52-53: 265-178 (She argues that by "relegat[ing] new social movements to the sphere of the cultural..., " commentators are not describing a factual reality in which new social movements are, indeed, merely cultural phenomenon and interventions. Rather, for Butler, such commentators are attempting to mask how marginalized groups mobilize through new social movements as a strategy for resisting the materiality of social, economic, and political oppression.

<sup>14</sup> Anzaldúa, Gloria & Moraga, Cherie, eds. (1983). *This Bridge Called My Back: Writings By Radical Women of Color*. New York: Kitchen Table: Women of Color Press. See also *The Statement of the Combahee River Collective* (1974). I would argue that in her published comments, Benjamin demonstrates Lorde's points about prejudice and exclusion through the personal insults that she levels against Lorde's work. Benjamin attempts to mask the racial content of her analysis of Lorde's participation in the conference by describing Lorde as ineffective at her own game, as "a radical [who emerges] time and time again to express an opinion based on 'pure negation' of the existing relations, thus engaging in a reversal that in some measure keeps alive the enmity behind the very oppositions that they would hope to challenge."<sup>14</sup> Additionally, Benjamin casts doubt upon Lorde's qualifications as a scholar, writing, with much sarcasm, that "it is not clear to me whether Audre ever studied any political theory, or had any acquaintance with the political revolutions of those different from herself." Benjamin, Jessica (2000) "Letter to Lester Olson." 33.3 *Philosophy and Rhetoric* 286-290. Philadelphia: The Pennsylvania State University Press.

<sup>15</sup> See Armen Merjian, remarks delivered at NYU School of Law, 2003 (notes on file with author.) Mr. Merjian directs legal services and impact litigation at Housing Works Inc., and serves as the senior litigator for the organization. Recently, Mr. Merjian argued a claim of gender identity discrimination under the Americans with Disabilities Act (ADA). Mr. Merjian acknowledged that bringing such a claim reproduced and strengthened the power of the law and U.S. government to pathologize transgendered people as sick, ill, and disabled. At the same time, the ADA claim offered the quickest

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and most certain method of direct redress and remedy for a large number of homeless, transgendered persons, many of whom were HIV positive and sleeping outdoors during a cold winter. (The case involved the refusal of New York City shelters to house transgendered persons.) In defending his choice to pursue an ADA claim, Mr. Merjian explained that he couldn't in this instance ask his client to unwillingly bear the dire costs and burden of ideological change. See also Loeb, Elizabeth. (Feb. 19, 2004). Paper delivered at the Review of Law and Social Change 2004 Colloquium: Relearning Brown. Judith Butler similarly writes about this conundrum, noting how many transgendered people must depend on a pathologizing diagnosis of "Gender Identity Disorder" (GID) in order to gain economic access to surgery and hormones. Butler uses this to read a tension between those "those who are, for the purposes of the debate, trying to gain entitlement and financial assistance, and those who seek to ground the practice of transsexuality in a notion of autonomy." Butler, Judith. (2004). *Undoing Gender* 76. New York: Routledge. Butler then critiques this separation, arguing that autonomy cannot be understood as distinct from economic and financial access, while also reminding the reader that trans people might be performing autonomy by working a seemingly oppressive system for trans-positive purposes (i.e.- using a GID diagnosis to obtain much desired hormones and surgery). Butler uses these complications as entrances into a questioning of autonomy itself, suggesting that it might not stand as an especially useful concept with regard to GID. Butler turns instead to a structural critique of the diagnosis as an oppressive institutional practice, while also insisting that insofar as GID provides needed and desired access to medical care, it cannot be abandoned "without finding other, durable ways to achieve those same results." *Id.* at 82. Acknowledging that some trans activists have invested in a strategic use of GID, Butler resists the notion that the impact and effect of the diagnosis's pathologization could be contained within the safe boundaries of strategy. After an extensive working of the cultural biases at play in the mental health component of GID (no such component exists for other forms of cosmetic surgery or for gender normative hormone therapies, etc.), Butler brings her discussion back to the question of autonomy and the social recognition of autonomy, asking "why is it that we do accept these other choices as choices.... Society doesn't consider itself to have a right to stop a woman from enlarging or diminishing her breasts.... No one gets sent to a psychiatrist for announcing a plan to cut or grow his or her hair or to go on a diet.... Yet these practices are part of the daily habits of cultivating secondary sex characteristics." *Id.* at 87. In this passage, Butler not only attacks the arbitrary quality of normative medical practice around transsexuality, but she also implicitly asks why certain body modifications are considered threatening to normative "healthy" sex designation when others are not. In the end, Butler offers few answers, resting on "the paradox of autonomy" in which "not only does one need the social work to be a certain way in order to lay claim to what is one's own, but it turns out that what is one's own is always from the start dependent upon what is not one's own, the social conditions by which autonomy is, strangely, dispossessed and undone. In this sense, we must be undone in order to do ourselves: we must be part of a larger social fabric of existence in order to create who we are." *Id.* at 100. While this echoes much of Butler's work on the impossible bind of legibility (we become agent subjects through social legibility even as we are subjected by its terms), it also feels maddeningly unsatisfying. Butler writes, "Until those social

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conditions [normative gender regulations] are radically changed, freedom will require unfreedom, and autonomy is implicated in subjection.... That alteration comes from an increment of acts, collective and diffuse, belonging to no single subject, and yet one effect of those alterations is to make acting like a subject possible,” *Id.* at 101. While Butler may be brilliant and her work necessary as such, what are we to do in the meantime?

<sup>16</sup> See e.g. Brown, Wendy and Halley, Janet eds. (2002). *Left Legalism / Left Critique* 1-38. Durham: Duke University Press.

<sup>17</sup> To further place myself, I began working as a member of the GSOC organizing and bargaining committees in the Spring of 2005. I struck my labor as an appointed teaching assistant through the duration of our strike, from November 9, 2005 through May 2006. I also struck a teaching and research job for which I had been hired in the school of law at NYU. As one of the twenty-three students who were singled out and fired by the NYU administration in retaliation for our strike activities, I also worked as a staff researcher for the UAW during the spring of 2006. During my time as a UAW staff member, I was increasingly disturbed by the derogatory treatment of raced and gendered experience within GSOC and the UAW, as well as by the way such experience failed to inform our outward politics, rhetoric, and organizing. At the same time, I was very much inside GSOC, and I participated in the conditions and decisions that marginalized raced, gendered, and sexed experience. To give further detail to my own raced and gendered experiences, I am legally designated as a U.S. citizen, and my family history is one of Jewish descent. As such, I pass as white, and currently enjoy a corporeality that passes within most scenes of social reading as able-bodied. Despite my queer sexual practices and queer personal identifications, I also pass as gender-normative, and would likely pass publicly as heterosexual if I did not “out” my queer practice and identification. Additionally, my professional training as a lawyer has trained me to pass as class-normative within an urban social structure that rewards particular, and one might argue, bourgeois norms of comportment, dress, grooming, etc.

<sup>18</sup> Here I am using “regime” in a technical sense to describe a coherent and substantively connected set of statutes, regulations, administrative delegations, doctrines, and judicial interpretation currently in force as the “law” of the substantive area in question.

<sup>19</sup> In 2000, the National Labor Relations Board issued a ruling that mandated NYU to recognize and negotiate with GSOC/UAW. (332 NLRB 1205 (2000)). While an intense on-the-ground organizing campaign was necessary in order to force NYU to comply with the ruling as opposed to running an aggressive legal appeal, the auspices of the Court’s decision and the rights guaranteed therein provided a framework for our success. In 2004, the Bush-appointed NLRB overruled their decision from 2000 — NYU was permitted to continue with a second contract, but they were no longer mandated to do so. (342 NLRB 483 (2004)). In a world where the legal regime of labor rights no longer claimed any relevancy to our position, our only options were to marshal sources of power and legitimacy outside the more familiar framework of legally guaranteed rights.

<sup>20</sup> During our strike, we organized a number of outdoor rallies. During these rallies, some of the more popular and prominent speakers would lead us in a chant of

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“Shut It Down!,” meaning that we should take over and shut down the day to day operations of the NYU campus.

<sup>21</sup> Zongker, Brett (2006). *Gallaudet Rejects Fernandes As President*. Associated Press. October 29, 2006.

<sup>22</sup> *Id.*

<sup>23</sup> For example, the acclaimed critical race theorist Richard Delgado has meticulously researched the raced and gendered distribution of academic currency through citation practices, arguing that the legal academy attributes greater success and authority to authors who are more frequently cited by their peers. Delgado found that in the legal academy, frequently cited articles were overwhelming those written by authors who identified as white men. Delgado, Richard. (1992). “The Imperial Scholar Revisited: How to Marginalize Outside Writing.” 140 *Pa. L. Rev.* 1349.

<sup>24</sup> See e.g. Hill, Herbert (1996) "The Problem of Race in American Labor History," 24 *Reviews in American History* 189-208; Cotter, Anne-Marie Mooney. (2004). *Gender Injustice: An International Comparative Analysis of Equality in Employment*. New York: Ashgate Press.

<sup>25</sup> Butler, Judith. (1997). *The Psychic Life of Power: Theories in Subjection* 14-15. New York: Routledge; Brown, Wendy. (1995). *States of Injury: Power and Freedom In Late Modernity* 110, 122-125. New York: Routledge; Brown, Wendy (2002). *Politics Out of History* 1-17. New York: Routledge. See also McKinnon, Catherine (1989). *Feminism Unmodified*.

<sup>26</sup> Brown, Wendy. (1995). *States of Injury: Power And Freedom in Late Modernity* 127. New York: Routledge.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 75.

<sup>31</sup> Used colloquially, “Title VII” refers to the section VII of the Civil Rights Act of 1964 – a federal statute currently in force that prohibits employment practices that discriminate against individuals or groups on the basis of race, color, religion, sex, or national origin. This statute applies to both public and private institutions. 42 U.S.C.A. §§ 2000e et seq. “Title IX” refers to the Education Amendments of 1972 – an amendment to federal statute that prohibits sex discrimination in post-secondary educational programs and activities that receive federal assistance. 20 U.S.C. §§ 1681 et seq.

<sup>32</sup> An article called “The Gender Gap in Higher Education” in the November, 17 2006 issue of the GSOC Journal union newsletter is an example of GSOC’s efforts, since the strike, to make issues of workplace justice and equity a more central component of its research and organizing priorities. –ed.

<sup>33</sup> Butler, Judith. (1997). *Excitable Speech*. New York: Routledge.

<sup>34</sup> *Id.* at 162.

<sup>35</sup> *Id.* at 72.

<sup>36</sup> An alternative resistive strategy, such as had been imagined by lesbian separatism, might be one of evacuation, of ceasing to participate in the dominant social, legal, political order altogether. Foucault, Michel. (1982). “The Subject and Power”. 8

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*Critical Inquiry* Summer; Foucault, Michel. (1991). "Governmentality" in Graham Burchell, et. al. eds. *The Foucault Effect; Studies in Governmentality* 87+.

<sup>37</sup> Williams, Patricia J. (1991). *The Alchemy of Race and Rights: Diary of a Law Professor* 150-152, 159.

<sup>38</sup> *Id.* at 159.

<sup>39</sup> Brown, Wendy. (1995). *States of Injury: Power And Freedom in Late Modernity* 127. New York: Routledge.

<sup>40</sup> Dworkin, Ronald. (1997). "DeFunis v. Sweatt." In *Equality and Preferential Treatment* 63-83. Cohen, Nagel, Scanlon, eds. 63-83. Princeton: Princeton University Press.

<sup>41</sup> Bok, Derek, et. al. (2001). *Labor Law: Cases and Materials*. New York: Foundation Press.

<sup>42</sup> *Id.*

<sup>43</sup> Kennedy, Duncan. (1991). *A Critique of Adjudication*.

<sup>44</sup> As another example, when the NYU administration ended the academic stipends of certain striking workers, they did so on entirely their own arbitrary and ad hoc authority – without the constraint of rules, pre-set procedures, or written regulations. In trying to appeal the administration's decision through the administratively created "grievance process," and in trying to determine why some striking workers were punished by the administration and not others, the administration has repeatedly and publicly asserted its right to proceed without deference to external principles or review.

<sup>45</sup> Bok, Derek, et. al. (2001). *Labor Law: Cases and Materials*. New York: Foundation Press.

<sup>46</sup> See, e.g. Harris, Cheryl I. (1993). "Whiteness as Property." *Harvard Law Review*. 106:1709.

<sup>47</sup> Foucault, Michel. (1975). *Discipline and Punish* (Alan Sheridan trans.). Judith Butler makes a similar argument when talking about the necessary subjectivation inscribed into subject-being. Butler, Judith. (1997). *The Psychic Life of Power*. New York: Routledge.

<sup>48</sup> Zongker, Brett (2006). *Gallaudet Votes to Remove President*. Associated Press. October 29, 2006.

<sup>49</sup> Zongker, Brett (2006). *Gallaudet Rejects Fernandes As President*. Associated Press. October 29, 2006.

<sup>50</sup> *Id.*; Davis, Lennard (1995) *Enforcing Normalcy, Disability, Deafness, and the Body*. New York: Verso.

<sup>51</sup> Davis, Lennard (1995) *Enforcing Normalcy, Disability, Deafness, and the Body*. New York: Verso.

<sup>52</sup> Zongker, Brett (2006). *Gallaudet Rejects Fernandes As President*. Associated Press. October 29, 2006.

<sup>53</sup> *Id.*

<sup>54</sup> [www.gallaudet.net.com](http://www.gallaudet.net.com) last accessed December 2, 2006.

<sup>55</sup> Fraser, Nancy (1997). *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* 12. New York: Routledge.