# ASU CR Cards Round 6 Texas

## 1NC

### 1

#### A. Our interpretation is that the affirmative should have to instrumentally defend the institutional implementation of a topical plan.

#### Most predictable—the agent and verb indicate a debate about hypothetical government action

Jon M Ericson 3, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow should in the should-verb combination. For example, should adopt here means to put a program or policy into action through governmental means. 4. A specification of directions or a limitation of the action desired. The phrase free trade, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the affirmative side in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### Restrictions must refer to a specific statutory source on which to base prohibitions—asserting illegitimacy isn't the same

**Bradley, 10** - \* Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School (Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>)

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1 For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### B. Violation – the aff doesn’t defend a plan.

#### C. Reasons to Prefer

#### 1. Fairness - Topical fairness requirements are key to effective dialogue—monopolizing strategy and prep makes the discussion one-sided and subverts any meaningful neg role

Galloway 7—Samford Comm prof (Ryan, Contemporary Argumentation and Debate, Vol. 28, 2007)

**Debate as a dialogue** sets an argumentative table, where all parties receive a relatively fair opportunity to voice their position. Anything that fails to allow participants to have their position articulated denies one side of the argumentative table a fair hearing. **The affirmative side is set by the topic and fairness requirements**. While affirmative teams have recently resisted affirming the topic, in fact, the topic selection process is rigorous, taking the relative ground of each topic as its central point of departure.¶ **Setting the affirmative reciprocally sets the negative**. The negative crafts approaches to the topic consistent with affirmative demands. The negative crafts disadvantages, counter-plans, and critical arguments premised on the arguments that the topic allows for the affirmative team. According to fairness norms, each side sits at a relatively balanced argumentative table.’s¶ **When** one side takes more than its share, **competitive equity suffers**. **However, it also undermines the respect due to the other involved in the dialogue. When one side excludes the other, it** fundamentally denies the personhood of the other participant (Ehninger, 1970, p. 110). **A pedagogy of debate as dialogue takes this respect as a fundamental component. A desire to be fair is a** fundamental condition of a dialoguethat takes the form of a demand for equality of voice. **Far from** being **a banal request for links to a disadvantage, fairness** is a demand for respect**, a demand to be heard, a demand that a voice backed by literally months upon months of preparation, research, and critical thinking** not be silenced.¶ **Affirmative cases that suspend basic fairness norms operate to exclude particular negative strategies. Unprepared, one side comes to the argumentative table unable to meaningfully participate in a dialogue.** **They are unable to “understand what ‘went on…’” and are left to the whims of time and power** (Farrell, 1985, p. 114). Hugh Duncan furthers this line of reasoning:¶ **Opponents not only tolerate but honor and respect each other because in doing so they enhance their own chances of thinking better and reaching sound decisions**. Opposition is necessary because it sharpens thought in action. We assume that argument, discussion, and talk, among free an informed people who subordinate decisions of any kind, because **it is only through such discussion that we reach agreement which binds us to a common cause…If we are to be equal…relationships among equals must find expression in many formal and informal institutions** (Duncan, 1993, p. 196-197).¶ **Debate compensates for the exigencies of the world by offering a framework that maintains** equality for the sake of the conversation(Farrell, 1985, p. 114).¶ For example, **a**n affirmative **case** on the 2007-2008 college topic **might defend neither state nor** international **action** in the Middle East, andyet claim to be germane to the topic **in some way. The case essentially denies the arguments that state action is oppressive or that actions** in the international arena **are philosophically or pragmatically suspect. Instead of allowing for the dialogue to be modified by the interchange of the affirmative case and the negative response, the affirmative** subverts any meaningful role to the negative team**, preventing them from offering effective “counter-word” and undermining the value of a meaningful exchange of speech acts.** Germaneness and other substitutes for topical action do not accrue the dialogical benefits **of topical advocacy**.

#### 2. Decisionmaking - debate over a clear and specific controversial point of government action creates argumentative stasis – that’s a prerequisite to the negative’s ability to engage in the conversation — that’s critical to deliberation

Steinberg 8, lecturer of communication studies – University of Miami, and Freeley, Boston based attorney who focuses on criminal, personal injury and civil rights law, **‘8**

(David L. and Austin J., Argumentation and Debate: Critical Thinking for Reasoned Decision Making p. 45)

Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a tact or value or policy, there is no need for debate: the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? I low are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007. Someone disturbed by the problem of the growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or. worse. "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as "What can be done to improve public education?"—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime'\* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treatv with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

#### Decisionmaking is the most portable skill—key to all facets of life and advocacy

Steinberg 8, lecturer of communication studies – University of Miami, and Freeley, Boston based attorney who focuses on criminal, personal injury and civil rights law, ‘8

(David L. and Austin J., Argumentation and Debate: Critical Thinking for Reasoned Decision Making p. 9-10)

After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military\* action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition. Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these\* situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions. Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making homes from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations. We all make many decisions even- day. To refinance or sell one's home, to buy a high-performance SUV or an economical hybrid car. what major to select, what to have for dinner, what candidate CO vote for. paper or plastic, all present lis with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? Tlie Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIMI: magazine named YOU its "Person of the Year." Congratulations! Its selection was based on the participation not of ''great men" in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs. online networking. You Tube. Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople. academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates. Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized. Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others. Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job oiler, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for out product, or a vote for our favored political candidate.

#### Simulated national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11/13**,** National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### 3. Policy nuances are key to challenge Islamophobia- it’s the center of global sentiment

Esposito 6 [John L. Esposito, Professor of Religion and International Affairs and of Islamic Studies at Georgetown University, director of the Prince Alwaleed Center for Muslim–Christian Understanding at Georgetown, “It's The Policy Stupid: Political Islam and US Foreign Policy,” 8/19, http://acmcu.georgetown.edu/135400.html]

**US foreign policy and political Islam today are deeply intertwined**. Every US president since Jimmy Carter has had to deal with political Islam; none has been so challenged as George W. Bush. Policymakers, particularly since 9/11, have demonstrated an inability and/or unwillingness to distinguish between radical and moderate Islamists. They have largely treated political Islam as a global threat similar to the way that Communism was perceived. However, **even in the case of Communism, foreign policymakers eventually moved from an ill-informed, broad-brush, and paranoid approach personified by** Senator Joseph **McCarthy** in the 1950s **to more nuanced, pragmatic, and reasonable policies that led to the establishment of relations with China in the 1970s**, even as tensions remained between the United States and the Soviet Union. **As Islamist parties continue to rise in prominence across the globe,** it is necessary that policymakers learn to make distinctions and adopt differentiated policy approaches**. This requires a deeper understanding of what motivates and informs Islamist parties and the support they receive, including the ways in which some US policies feed the more radical and extreme Islamist movements while weakening the appeal of the moderate organizations to Muslim populations.** It also requires the political will to adopt approaches of engagement and dialogue**. This is especially important where the roots of political Islam go deeper than simple anti-Americanism and where political Islam is manifested in non-violent and democratic ways**. The stunning electoral victories of HAMAS in Palestine and the Shi’a in Iraq, the Muslim Brotherhood’s emergence as the leading parliamentary opposition in Egypt, and Israel’s war against HAMAS and Hizbollah go to the heart of issues of democracy, terrorism, and peace in the Middle East.¶ Global terrorism has also become the excuse for many Muslim autocratic rulers and Western policymakers to backslide or retreat from democratization. They warn that the promotion of a democratic process runs the risk of furthering Islamist inroads into centers of power and is counterproductive to Western interests, encouraging a more virulent anti-Westernism and increased instability. Thus, for example, despite HAMAS’ victory in free and democratic elections, the United States and Europe failed to give the party full recognition and support.¶ In relations between the West and the Muslim world, phrases like a clash of civilizations or a clash of cultures recur as does the charge that Islam is incompatible with democracy or that it is a particularly militant religion. But is the primary issue religion and culture or is it politics? Is the primary cause of radicalism and anti-Westernism, especially anti-Americanism, extremist theology or simply the policies of many Muslim and Western governments?¶ **A new Gallup World Study overwhelmingly suggests** the latter. The poll, whose results are released for the first time in this article, now enables us to get beyond conflicting analyses of experts and selective voices from the “Arab street.” It lets us listen to one billion Muslims from Morocco to Indonesia. And they tell us **that US policies, not values, are behind the ire of the Arab/Muslim world**.

### 2

#### 1. Identity politics necessarily sustain the regular functioning of capitalism – identity formation is the process by which capitalism divides the working class to make resistance impossible.  This guarantees that political demands are not elevated past the level of particularism and reaching the level of the bourgeoisie becomes the ultimate objective.

Brown 93 (Wendy, Professor of Political Science at the University of California, Berkeley, “Wounded Attachments” Political Theory, Vol. 21, No. 3 (Aug., 1993), pp. 392-395, JSTOR, http://www.jstor.org/stable/191795)

Although this détente between universal and particular within liberalism is potted with volatile conceits, it is rather thouroughly unraveled by two features of late modernity, spurred by developments in what Marx and Froucault, respectively, reveal as liveralism’s compainion powers: capitalism and disciplinarity. On one side, the state loses even its guise of universality as it becomes ever more transparently invested in particular economic interests, political ends, and social formations. This occurs as it shifts from a relativley minimalist “night watchman” state to a heavily bureacratized, managerial, fiscally complex, and highly interventionist welfare-warfare state, a transmogrification occasioned by the combined imperatives of capital and the autoproliferating characteristics of bureacracy. On the other side, a range of economic and political forces increasingly disinter the liberal subject from substantive nation-state identification: deterritorializing demographic flows; disintegration from within and invasion from without of family and community as (relatively) autonomous sites of social production and identification; consumer capitalism’s marketing discourse in which individual (and subindividual) desires are produced, commodified, and mobilized as identities; and disciplinary productions of a fantastic arry of behavior-based identities ranging from recovering alchoholic professionals to unrepentant crack mothers. These disciplinary productions work to conjure and regulate subjects through classificatory schemes, naming and normalizing social behaviors as social positions. Operating through what Foucault calls “an anatomy of detail,” “disciplinary power” produces social identities (available for politicization because they are deployed for purposes of political regulation) that crosscut juridicial identities based on abstract right. Thus, for example, the welfare state’s production of welfare subjects – themselves subdivided through the socially regulated categories of motherhood, disability, race, age and so forth – potentially produce political identity through these categories, produce identities as the these categories*.* In this story, the always imminent but increasingly politically manifest failure of liberal universalism to be universal – the transparent fiction of state universality – combines with the increasing individuation of social subjects through capitalist disinternments and disciplinary productions. Together, they breed the emergence of politicized identity rooted in disciplinary productions but oriented by liberal discourse toward protest against exclusion from a discursive formation of universal justice. This production, however, is not linear or even but highly contradictory: although the terms of liberalism are part of the ground of production of a politicized identity that reiterates yet exceeds these terms, liberal discourse itself also continuously recolonizes political identity as political interest – a conversion that recasts politicized identity’s substantive and often deconstructive cultural claims and critiques as generic claims of particularism endemic to universalist political culture. Similarly, disciplinary power manages liberalism’s production of politicized subjectivity by neutralizing (re-depoliticizing) identity through normalizing practicies. As liberal discourse converts politcal identity into essentialized private interest, disciplinary power converts interest into normativized social identity manageable by regulatory regimes. Thus disciplinary power politicially neutralizes entitlement claims generated by liberal individuation, whereas liberalism poltiically neutralize rights claims generated by disciplinary identities. In addition to the formations of identity that may be the complex effects of disciplinary and liberal modalities of power, I want to suggest one other historical strand relevant to the production of politicized identity, this one hewn more specifically to recent developments in political culture. Although sanguine to varying degrees about the phenomenon they are describing, many on the European and North American Left have argued that identity politics emerges from the demise of class politics consequent to post-Fordism or pursuant to May 1968. Without adjudicating the precise relationship between the breakup of class politics and the proliferation of other sites of political identification, I want to refigure this claim by suggesting that what we have come to call identity politics is partly dependent on the demise of a critique of capitalism and of bourgeois cultural and economic values. In a reading that links the new identity cliams to a certain relegitimation of capitalism, identity politics concerned with race, sexuality, and gender will appear not as a supplement to class politics, not as an expansion of Left categories of oppression and emancipation, not as an enriching complexification of progressive formulations of power and person – all of which they also are – but as tethered to a formulation of justice which, ironically, reinscribes a bourgeois ideal as its measure. If it is this ideal that signifies educational and vocational opportunity, upward mobility, relative protection against arbitrary violence, and reward in proportion to effort, and if it is this ideal against which many of the exclusions and privations of people of color, gays and lesbians, and women are articulated, then the political purchase of contemporary American identity politics would seem to be achieved in part through a certain discursive renaturalization of capitalism that can be said to have marked progressive discourse since the 1970s. What this suggests is that identity politics may be partly configured by a peculiarly shaped and peculiarly disguised form of resentment – class resentment without class consiousness or class analysis. This resentment is displaced onto discourses of injustice other than class but, like all resentments, retains the real or imagined holding of its reviled subject – in this case, bourgeois male privileges – as objects of desire. From this perspective, it would appear that the articulation of politicized identities through race, gender, and sexuality require, rather than incidentally produce, a relatively limited identification though class. They necessarily rather than incidentially abjure a critique of class power and class norms precisely because the injuries suffered by these identities are measured by bourgeois norms of social acceptance, legal protection, relative material comfort, and social independence. The problem is that when not only economic stratification but other injuries to body and psyche enacted by capitalism (alientation, commodificiation, exploitation, displacement, disintegration of sustain, albeit contradictory, social forms such as familes and neighborhoods) are discursively normalized and thus depoliticized, other markers of social difference may come to bear an inordinate weight. Absent an articulation of capitlism in the political discourse of identity, the marked identity bears all the weight of the sufferings produced by capitalism in addition to that bound to the explicity politicized marking.

#### 2. The logic of capitalism results in extinction through the creation of ecological catastrophe and violent imperialist wars that will turn nuclear

Foster 5 [John Bellamy, Monthly Review, September, Vol. 57, Issue 4, “Naked Imperialism”, <http://www.monthlyreview.org/0905jbf.htm>]

From the longer view offered by a historical-materialist critique of capitalism, the direction that would be taken by U.S. imperialism following the fall of the Soviet Union was never in doubt. Capitalism by its very logic is a globally expansive system. The contradiction between its transnational economic aspirations and the fact that politically it remains rooted in particular nation states is insurmountable for the system. Yet, ill-fated attempts by individual states to overcome this contradiction are just as much a part of its fundamental logic. In present world circumstances, when one capitalist state has a virtual monopoly of the means of destruction, the temptation for that state to attempt to seize full-spectrum dominance and to transform itself into the de facto global state governing the world economy is irresistible. As the noted Marxian philosopher István Mészáros observed in Socialism or Barbarism? (2001)—written, significantly, before George W. Bush became president: “[W]hat is at stake today is not the control of a particular part of the planet—no matter how large—putting at a disadvantage but still tolerating the independent actions of some rivals, but the control of its totality by one hegemonic economic and military superpower, with all means—even the most extreme authoritarian and, if needed, violent military ones—at its disposal.” The unprecedented dangers of this new global disorder are revealed in the twin cataclysms to which the world is heading at present: nuclear proliferation and hence increased chances of the outbreak of nuclear war, and planetary ecological destruction. These are symbolized by the Bush administration’s refusal to sign the Comprehensive Test Ban Treaty to limit nuclear weapons development and by its failure to sign the Kyoto Protocol as a first step in controlling global warming. As former U.S. Secretary of Defense (in the Kennedy and Johnson administrations) Robert McNamara stated in an article entitled “Apocalypse Soon” in the May–June 2005 issue of Foreign Policy: “The United States has never endorsed the policy of ‘no first use,’ not during my seven years as secretary or since. We have been and remain prepared to initiate the use of nuclear weapons—by the decision of one person, the president—against either a nuclear or nonnuclear enemy whenever we believe it is in our interest to do so.” The nation with the greatest conventional military force and the willingness to use it unilaterally to enlarge its global power is also the nation with the greatest nuclear force and the readiness to use it whenever it sees fit—setting the whole world on edge. The nation that contributes more to carbon dioxide emissions leading to global warming than any other (representing approximately a quarter of the world’s total) has become the greatest obstacle to addressing global warming and the world’s growing environmental problems—raising the possibility of the collapse of civilization itself if present trends continue. The United States is seeking to exercise sovereign authority over the planet during a time of widening global crisis: economic stagnation, increasing polarization between the global rich and the global poor, weakening U.S. economic hegemony, growing nuclear threats, and deepening ecological decline. The result is a heightening of international instability. Other potential forces are emerging in the world, such as the European Community and China,that could eventually challenge U.S. power, regionally and even globally. Third world revolutions, far from ceasing, are beginning to gain momentum again, symbolized by Venezuela’s Bolivarian Revolution under Hugo Chávez. U.S. attempts to tighten its imperial grip on the Middle East and its oil have had to cope with a fierce, seemingly unstoppable, Iraqi resistance, generating conditions of imperial overstretch. With the United States brandishing its nuclear arsenal and refusing to support international agreements on the control of such weapons, nuclear proliferation is continuing. New nations, such as North Korea, are entering or can be expected soon to enter the “nuclear club.” Terrorist blowback from imperialist wars in the third world is now a well-recognized reality, generating rising fear of further terrorist attacks in New York, London, and elsewhere. Such vast and overlapping historical contradictions, rooted in the combined and uneven development of the global capitalist economy along with the U.S. drive for planetary domination, foreshadow what is potentially the most dangerous period in the history of imperialism. The course on which U.S and world capitalism is now headed points to global barbarism—or worse. Yet it is important to remember that nothing in the development of human history is inevitable. There still remains an alternative path—the global struggle for a humane, egalitarian, democratic, and sustainable society. The classic name for such a society is “socialism.” Such a renewed struggle for a world of substantive human equality must begin by addressing the system’s weakest link and at the same time the world’s most pressing needs—by organizing a global resistance movement against the new naked imperialism.

#### 3. Vote negative to adopt the historical material criticism of the 1NC - historical analysis of the material conditions of capital is the only way to break free from is contradictions and social inequalities it causes

Tumino 1 (Steven, teaches at the City University of New York, Spring, What is Orthodox Marxism and Why it Matters Now More Than Ever Before)

Any effective political theory will have to do at least two things: it will have to offer an integrated understanding of social practices and, based on such an interrelated knowledge, offer a guideline for praxis. My main argument here is that among all contesting social theories now, only Orthodox Marxism has been able to produce an integrated knowledge of the existing social totality and provide lines of praxis that will lead to building a society free from necessity. But first I must clarify what I mean by Orthodox Marxism. Like all other modes and forms of political theory, the very theoretical identity of Orthodox Marxism is itself contested—not just from non-and anti-Marxists who question the very "real" (by which they mean the "practical" as under free-market criteria) existence of any kind of Marxism now but, perhaps more tellingly, from within the Marxist tradition itself. I will, therefore, first say what I regard to be the distinguishing marks of Orthodox Marxism and then outline a short polemical map of contestation over Orthodox Marxism within the Marxist theories now. I will end by arguing for its effectivity in bringing about a new society based not on human rights but on freedom from necessity. I will argue that to know contemporary society—and to be able to act on such knowledge—one has to first of all know what makes the existing social totality. I will argue that the dominant social totality is based on inequality—not just inequality of power but inequality of economic access (which then determines access to health care, education, housing, diet, transportation, . . . ). This systematic inequality cannot be explained by gender, race, sexuality, disability, ethnicity, or nationality. These are all secondary contradictions and are all determined by the fundamental contradiction of capitalism which is inscribed in the relation of capital and labor. All modes of Marxism now explain social inequalities primarily on the basis of these secondary contradictions and in doing so—and this is my main argument—legitimate capitalism. Why? Because such arguments authorize capitalism without gender, race, discrimination and thus accept economic inequality as an integral part of human societies. They accept a sunny capitalism—a capitalism beyond capitalism. Such a society, based on cultural equality but economic inequality, has always been the not-so-hidden agenda of the bourgeois left—whether it has been called "new left," "postmarxism," or "radical democracy." This is, by the way, the main reason for its popularity in the culture industry—from the academy (Jameson, Harvey, Haraway, Butler,. . . ) to daily politics (Michael Harrington, Ralph Nader, Jesse Jackson,. . . ) to. . . . For all, capitalism is here to stay and the best that can be done is to make its cruelties more tolerable, more humane. This humanization (not eradication) of capitalism is the sole goal of ALL contemporary lefts (marxism, feminism, anti-racism, queeries, . . . ). Such an understanding of social inequality is based on the fundamental understanding that the source of wealth is human knowledge and not human labor. That is, wealth is produced by the human mind and is thus free from the actual objective conditions that shape the historical relations of labor and capital. Only Orthodox Marxism recognizes the historicity of labor and its primacy as the source of all human wealth. In this paper I argue that any emancipatory theory has to be founded on recognition of the priority of Marx's labor theory of value and not repeat the technological determinism of corporate theory ("knowledge work") that masquerades as social theory.

#### 4. Class divisions are the root of all other oppressions

Kovel 2 (Alger Hiss Professor of Social Studies at Bard College, awarded Fellowship at the John Guggenheim Foundation, Joel, The Enemy of Nature, pages 123-124)

If, however, we ask the question of efficacy, that is, which split sets the others into motion, then priority would have to be given to class, for the plain reason that class relations entail the state as an instrument of enforce­ment and control, and it is the state that shapes and organizes the splits that appear in human ecosystems. Thus class is both logically and historically distinct from other forms of exclusion (hence we should not talk of 'classism' to go along with 'sexism' and 'racism,' and `species-ism'). This is, first of all, because class is an essentially man-made category, without root in even a mystified biology. We cannot imagine a human world without gender dis­tinctions – although we can imagine a world without domination by gender. But a world without class is eminently imaginable – indeed, such was the human world for the great majority of our species' time on earth, during all of which considerable fuss was made over gender. Historically, the difference arises because 'class' signifies one side of a larger figure that includes a state apparatus whose conquests and regulations create races and shape gender relations. Thus there will be no true resolution of racism so long as class society stands, inasmuch as a racially oppressed society implies the activities of a class-defending state.'° Nor can gender inequality be enacted away so long as class society, with its state, demands the super-exploitation of woman's labour. Class society continually generates gender, racial, ethnic oppressions and the like, which take on a life of their own, as well as profoundly affecting the concrete relations of class itself. It follows that class politics must be fought out in terms of all the active forms of social splitting. It is the management of these divisions that keeps state society functional. Thus though each person in a class society is reduced from what s/he can become, the varied reductions can be combined into the great stratified regimes of history — this one becoming a fierce warrior, that one a routine-loving clerk, another a submissive seamstress, and so on, until we reach today's personi­fications of capital and captains of industry. Yet no matter how functional a class society, the profundity of its ecological violence ensures a basic antagonism which drives history onward. History is the history of class society — because no matter how modified, so powerful a schism is bound to work itself through to the surface, provoke resistance (`class struggle'), and lead to the succession of powers. The relation of class can be mystified without end — only consider the extent to which religion exists for just this purpose, or watch a show glorifying the police on television — yet so long as we have any respect for human nature, we must recognize that so funda­mental an antagonism as would steal the vital force of one person for the enrichment of another cannot be conjured away.

### Case

#### As long as discourses are arranged according to the illusion of authenticity and as long as our politics are hierarchialized according to the way that they penetrate to the truth of cultural identities, the basic structure of hegemonic imperialism which retains the power to discipline these identities remains intact. Debate exacerbates these problems: the ballot commodifies identities and arranges them according to the most “authentic” experiences of suffering and cultural identity.

Bowman 2010 [Paul, professor of cultural studies at Cardiff University. “INTRODUCTION

Rey Chow and postcolonial social semiotics,” *Social Semiotics* 20.4]

A confession: a predictable confession. Part of me feels like a joke, a fraud, a fake, a phoney. A white British guy, with qualifications and a job, in Britain, about to write, as if authoritatively, about ‘‘postcolonialism’’ (a title that I myself chose I did not have to choose it, but I did): I feel a bit odd, to say the least. Perhaps for this reason, when thinking of how to proceed and of what to write, I got a tune stuck in my head a single line in a constant loop, replaying in my head, a single interminably repeated phrase an ear-worm which I took to be a crystal clear message on the royal road from my unconscious to my superego. It was a line from a song by the American pop/punk band, The Offspring. It was: ‘‘and all the girlies say I’m pretty fly for a white guy’’. The music video for this song, ‘‘Pretty Fly for a White Guy’’ (The Offspring 1998), can of course always be found on YouTube, even if its URL keeps changing. Even a cursory viewing of the video reveals that, in the music video, the words ‘‘all the girlies say I’m pretty fly for a white guy’’ are uttered by a stereotypical white ‘‘wannabe’’. The lyrics narrate the tale or rather, the situation the plight of an apparently affluent, suburban white American teenager who fetishizes and fantasizes about edgy non-white ethnicity. In the video, we see several of the scenarios that define his phantasy.1 Whether black African-American or Latino, our eponymous ‘‘white guy’’ wannabe wants-to-be that: he identifies with, he fantasizes as that. He wants to be one of them. Unfortunately, what is absolutely clear here is that the one thing he is not is ‘‘pretty fly’’. Rather, he is presented as ridiculous, a fool, utterly lacking in self-awareness or self-knowledge living, as the lyrics put it, ‘‘in denial’’. So, the song is all about getting it wrong, wanting the impossible, and denying that impossibility. The reason for wanting the impossible boils down to a phantasy. This is dramatized in the call-and-response (and commentary) that opens and permeates the song. The song opens with it: a female chorus chant ‘‘Give it to me baby’’. In the video, our hapless hero responds in the affirmative. This call and response is repeated. It is a chant of female call and male response that dramatizes what is evidently a male sexual phantasy about specifically ethnic female desire. It is followed by the gravelly-voiced claim: ‘‘And all the girlies say I’m pretty fly for a white guy’’, whereupon the song ‘‘proper’’ begins. This, it soon becomes clear, is the structuring fantasy of our misrecognizing, fantasizing white guy. This is what he wants. This is what he thinks it would be like if only he were the ethnic he wants to be. This is what he wants to see and hear. He imagines the call. He ‘‘performs’’ (as they say) a response. So, in the video representation, the song runs: repeated female chant (‘‘Give it to me baby’’); he answers (‘‘uh huh, uh huh’’). This is followed by the voice of his phantasy, which asserts his conviction that ‘‘all the girlies say I’m pretty fly for a white guy’’. After this intro, we are ‘‘counted-in’’ in incorrect Spanish (‘‘Uno, dos, tres, cuatro, cinco, cinco, seis’’). If we had been in any doubt up until now, this miscount this moment of getting it just a bit but fundamentally wrong not quite getting the Spanish right clarifies things for us. This is a joke. This is about misrecognition, getting it wrong. Moreover, the girls in the video are clearly non-existent fantasy constructions: there never were girls thronging around him on the way to his car, by the side of the road, or covered in glittering paint by the pool. They are entirely his phantasy. An initial assessment of the song, taking into account any mirth it might produce and the extent to which we might share, understand, or ‘‘get’’ the joke suggests that this popular cultural text is saying something quite precise about identity, ‘‘cultural’’ identity, ‘‘identity performativity’’ and ethnicity. And this appears to be something quite different from what is widely supposed to be held by many thinkers, from Judith Butler to Homi Bhabha and beyond. For, the text is saying at least one, or perhaps all, of the following: that a white ethnic cannot or should not try to ‘‘perform’’ another ethnic identity; that trying to be other than white for the white is ridiculous; that trying to do or to be so is premised on ‘‘not getting it’’, on ‘‘denial’’; that white ethnicity is not like other ethnicities not porous, not dilutable, not ‘‘hybridisable’’ or ‘‘fragile’’; and that the only compensation for the sadness and disappointment that this might cause for our wannabe is the contemporary Confessional: ‘‘At least you know you can always go on Ricki Lake’’. Indeed, do not worry, be happy, add The Offspring: ‘‘the world needs wannabes’’. So, ‘‘hey, hey, do the brand new thing’’. The song is very clear on this. After staging the fantasy scenario, after being miscounted-in, the narrative voice begins to tell us all about it. The lyrics begin by addressing us in terms of a shared lot, a common problem that we all recognize: 330 P. Bowman ‘‘You know it’s kinda hard just to get along today’’. We all know this, right? Furthermore: ‘‘Our subject isn’t cool, but he thinks it anyway’’. Is this not a familiar story? How many of us are guilty of it ourselves? We may recall Lacan’s contention that, in love, ‘‘You never look at me from the place from which I see you. Conversely, what I look at is never what I wish to see’’ (Lacan, quoted in Chow 1998, 81). Moreover, as Rey Chow points out, this ‘‘dialectic of eye and gaze’’ need not be literally intersubjective; a man may fall ‘‘in love, not with a woman or even with another man, not with a human being at all but with a thing, a reified form of his own fantasy’’ (1998, 78). As The Offspring put it: ‘‘He may not have a clue, and he may not have style/But everything he lacks, well he makes up in denial’’. Is this his problem: ‘‘denial’’? ‘‘Denial’’ is surely the most abused, misused, bandied-about psychobabblistic term ever. Everyone, it seems risks living in denial. Overcoming denial is indeed an abiding concern of an enormous range of popular cultural texts and discourses. But, if denial is deemed to be the problem, what is deemed to be the solution? The popular answer is: come to terms, recognize, accept. But how? By talking about yourself; by confessing. Go on Ricki Lake. Even if you are ‘‘fake’’, you can have a moment of real-world, recognized, ‘‘authentic’’ success (‘‘fame’’), by coming clean, by confessing, publicly: the only authentic redemption in a world that thrives on the production of fakes and wannabes, say The Offspring. If we can laugh at all of this it is also because we can recognize all of this. According to the implications of the argument of Michel Foucault (1978) in The history of sexuality, volume 1, this familiarity and recognizability comes from the fact that The Offspring song plays with the material thrown up by and circulating in and as a discursive constellation a very old discursive constellation, says Foucault, which came together in the eighteenth century. In this discursive formation, the terms ethnicity, identity, authenticity and autobiography or confession encounter each other in an overdetermined chiasmus. In it, whenever issues of identity and ethnicity arise as a (self-reflexive, ‘‘personal’’) problem, this discursive constellation proposes that the route out is via the self-reflexive side-door of autobiographical (self-)confession. There is more to this than observing that engaging with ethnicity requires an engagement with one’s own identity, one that ought to lead into a searching self-interrogation and ideally a deconstruction of questions of authenticity and autobiography although this is certainly a part of it. For the Foucauldian point is that precisely such discourses of the self, especially in terms of the brands of self-referentiality that nowadays feed chat shows like Ricki Lake, can be seen to have emerged decisively in modernity. And they emerged with an attending argument about self-referentiality’s subversive relation to power and its emancipatory relation to truth. That is, it refers us to the implications of Foucault’s argument about what he called ‘‘the repressive hypothesis’’ namely, that almost irresistible belief that power tries to silence us and demands our silence (Foucault 1978, 18; Chow 2002, 114). As Foucault argued, however, almost the exact opposite is the case. Or rather, even if there are places where power demands silence or discipline, these are more than matched by an exponential explosion and proliferation of discourses in this case, about the self. These discourses include arguments about self-referentiality’s subversive relation to power and its emancipatory relation to truth, which relates to the Enlightenment idea that an introspective turn to the self is emancipatory: the ingrained idea (whose prehistory is the Catholic Confessional, and whose contemporary ministers Foucault finds in the psychiatrist and psychoanalyst) that seeking to speak the truth of oneself is the best method of getting at our essential truth and the best way to resist power. Similarly, modern literary self-referentiality emerged with an attending discourse of resistance a discourse that regarded literature ‘‘as such’’ as resistance to the instrumentalization of technical and bureaucratic language, first and foremost. And, by the same token, self-referentiality emerged as an apparently ideal solution to the knotty problem of representing others. For, how do you represent others truthfully, adequately, ethically? The answer here is: you do not. They should represent themselves. Here, the self-reflexivity of self-referentiality is regarded not as apartheid but as the way to bypass the problems of representing others by throwing the option open for everyone to speak the truth of themselves. However, in Foucault’s phrase: ‘‘the ‘Enlightenment’, which discovered the liberties, also invented the disciplines’’ (Foucault 1995, 222; see also Chow 1998, 113). In other words, the desire to refer to the self, to discuss the self, to produce the self discursively, the impulse to autobiography and confession, can be regarded as a consequence of disciplinarity. Psychiatry demands that we reveal our selves. As does psychoanalysis, as do ethnographic focus groups, as do corporate marketing focus groups, not to mention the Confessional, the criminologist and Ricki Lake. And so on. Autobiography and confession are only resistance if power truly tries to repress the production of discourse. Which it does not at least not everywhere. The point is that autobiography and confession are genealogically wedded if not welded to recognizable disciplinary protocols and perhaps most significantly proceed according to the terms of recognizable metanarratives. Thus, says Chow: When minority individuals think that, by referring to themselves, they are liberating themselves from the powers that subordinate them, they may actually be allowing such powers to work in the most intimate fashion from within their hearts and souls, in a kind of voluntary surrender that is, in the end, fully complicit with the guilty verdict that has been declared on them socially long before they speak. (Chow 2002, 115) Of course, in thinking about postcoloniality, ethnicity, social semiotics and cultural politics, it is very difficult not to think about oneself. Indeed, even in full knowledge of Foucault, there remains something of a complex imperative to do so, even (perhaps especially) if, like me, one does not have a blatantly postcolonial ethnicity in the classic sense even if, that is, like me, one has an entirely hegemonic sociocultural identity: an ethnicity without ethnicity, as it were; the hegemon of a hegemony; that is, the ‘‘norm’’. For, surely, one must factor oneself into whatever picture one is painting, in terms of the ‘‘institutional investments that shape [our own] enunciation’’ (Chow 1993, 2). Indeed, suggests Chow: the most difficult questions surrounding the demarcation of boundaries implied by ‘‘seeing’’ have to do not with positivistic taxonomic juxtapositions of self-contained identities and traditions in the manner of ‘‘this is you’’ and ‘‘that is us,’’ but rather, who is ‘‘seeing’’ whom, and how? What are the power relationships between the ‘‘subject’’ and ‘‘object’’ of the culturally overdetermined ‘‘eye’’? (Chow 1991: 3) 332 P. Bowman Might acknowledging as much make me pretty fly for a white guy? As thinkers like Robyn Wiegman and Rey Chow have pointed out: the white subject who nowadays endeavors to compensate for the historical ‘‘wrong’’ of being white by taking on politically correct agendas (such as desegregation) and thus distancing himself from his own ethnic history, is seldom if ever accused of being disloyal to his culture; more often than not, he tends to be applauded for being politically progressive and morally superior. (Chow 2002, 116117) Chow proposes that we compare and contrast this with non-white ethnic subjects or rather, in her discussion, with non-white ethnic critics, scholars and academics. These subjects, she argues are pressured directly and indirectly to behave ‘‘properly’’ to act and think and ‘‘be’’ the way ‘‘they’’ are supposed to act and think and be, as non-white ethnic academic subjects. If they forget their ethnicity, or their nationalistically or geographically and hence essentialistically and positivistically defined ‘‘cultures’’ and ‘‘heritages’’, such subjects are deemed to be sell-outs, traitors inauthentic. But, says Chow, if such an ethnic scholar ‘‘should . . . choose, instead, to mimic and perform her own ethnicity’’ that is, to respond or perform in terms of the implicit and explicit hailing or interpellation of her as an ethnic subject as such, by playing along with the ‘‘mimetic enactment of the automatized stereotypes that are dangled out there in public, hailing the ethnic’’ (2002, 110) ‘‘she would still be considered a turncoat, this time because she is too eagerly pandering to the orientalist tastes of Westerners’’ (2002, 117), and this time most probably by other non-white ethnic subjects. Thus, the ethnic subject seems damned if he/she does and damned if he/she does not ‘‘be’’ an ethnic subject. Of course, this damnation comes from different parties, and with different implications. But, in any eventuality, Chow’s point is that, in sharp contradistinction, ‘‘however far he chooses to go, a white person sympathetic to or identifying with a nonwhite culture does not in any way become less white’’ (2002, 117). Indeed, she claims: When it comes to nonwhite peoples doing exactly the same thing . . . that is, becoming sympathetic to or identified with cultures other than their own we get a drastically different kind of evaluation. If an ethnic critic should simply ignore her own ethnic history and become immersed in white culture, she would, needless to say, be deemed a turncoat (one that forgets her origins). (2002, 117) It is important to be aware that it is not just whites who pressure the non-white ethnic to conform. Chow gives many examples of the ways that scholars of Chinese culture and literature, for instance, relentlessly produce an essentialist notion of China that is used to berate modern diasporic Chinese (and their cultural productions). This essentialism is an essence that none can live up to, precisely because they are alive and as such are contaminated, diluted, tainted or corrupted by non-Chinese influences. At least one side of this key difference between the white and the non-white is dramatized in the song by The Offspring. Whilst postcolonial critics often recount cases in which non-white ethnic subjects are pressured directly and indirectly to start to behave ‘‘properly’’ to act and think and be the way ‘‘they’’ are supposed to act and think and be as non-white ethnic subjects in other words, to be both interpellated, in Althusser’s sense, and disciplined, in Foucault’s sense I think that the very intelligibility of The Offspring’s song and its fairly unequivocal condemnation of the white-wannabe-non-white suggests that the white guy who shows too much interest in non-white culture, rather than being ‘‘applauded for being politically progressive and morally superior’’, can quite easily and will quite frequently be deemed not only ‘‘disloyal to his culture’’ but ridiculous. Yet, he remains no less white. In fact, it seems, he can become no less white. But he is still a traitor. Thus, corroborating Chow’s thesis, white ethnicity is here presented as absolutely immovable and essentially (or wholly/holy) incorruptible. All of this, Rey Chow calls ‘‘coercive mimeticism’’ (2002, 107). Coercive mimeticism designates the way in which the interpellating, disciplining forces of all different kinds of discourses and institutions call us into place, tell us our place, and work to keep us in our place. As Chow writes of the ethnic academic subject: ‘‘Her only viable option seems to be that of reproducing a specific version of herself and her ethnicity that has, somehow, already been endorsed and approved by the specialists of her culture’’ (2002, 117). Accordingly, coercive mimeticism ultimately works as ‘‘an institutionalized mechanism of knowledge production and dissemination, the point of which is to manage a non-Western ethnicity through the disciplinary promulgation of the supposed difference’’ (Chow 2002, 117). As we see through The Offspring’s song, this disciplinary mechanism extends far beyond the disciplines proper, far beyond the university. In Chow’s words: unlike the white man, who does not have to worry about impairing his identity even when he is touched by a foreign culture, the ethnic must work hard to keep hers; yet the harder she works at being bona fide, the more of an inferior representation she will appear to be. (2002, 124) Reciprocally, we might add, the harder the white guy tries to be non-white, the ‘‘more’’ white he will appear. In trying to be other so say the interpellating voices, tropes, discourses and institutions he is of course, just being silly. Whether this means that the white attempt to be like the other is silly, or that the other is silly or both is debatable. What is not debatable is that in all cases ‘‘authenticity’’ ultimately translates as a hypothetical state of non-self-conscious and nonconstructed essential ‘‘being’’. The fact that this is an essentialism that is essentially impossible does not mean that it does not ‘‘happen’’; rather, it means that ‘‘ethnicity’’ becomes an infinitely supple rhetorical tool. It is available (to anyone and everyone) as a way to disparage both anyone who is not being the way they are supposed to be and anyone who is being the way they are supposed to be. As Chow explains, ‘‘ethnicity can be used as a means of attacking others, of shaming, belittling, and reducing them to the condition of inauthenticity, disloyalty, and deceit’’ (2002, 124). Ironically, such attacks are ‘‘frequently issued by ethnics themselves against fellow ethnics, that is, the people who are closest to, who are most like them ethnically in this fraught trajectory of coercive mimeticism’’ (Chow 2002, 124). What this means is that the most contempt, from all quarters, will always be reserved for he or she who does not stay in their place, play their proper ethnicity. All too often, criticism is leveled individually, as if it is a personal issue, ‘‘despite the fact that this historically charged, alienating situation is a collectively experienced one’’ (Chow 2002, 124). Such is the disciplining, streaming, classifying force of coercive mimeticism. Such are the ‘‘uses of ethnicity’’. 334 P. Bowman In the words of Etienne Balibar: ‘‘the problem is to keep ‘in their place’, from generation to generation, those who have no fixed place; and for this, it is necessary that they have a genealogy’’ (Balibar, quoted in Chow 2002, 95). As such, even the work of sensitive, caring, deeply invested specialists, and expert ethnic scholars even ethnic experts in ethnicity themselves can function to reinforce ethnicized hierarchies, structured in dominance, simply by insisting on producing their field or object in its difference. What is at stake here is the surely significant fact that even the honest and principled or declared aim of studying others otherwise can actually amount to a positive working for the very forces one avowedly opposes or seeks to resist. Chow clarifies this in terms of considering the uncanny proximity but absolute difference between the disciplinary orientations of cultural studies and area studies. Area studies is a disciplinary field that ‘‘has long been producing ‘specialists’’ who report to North American political and civil arenas about ‘other’ civilizations, ‘other’ regimes, ‘other’ ways of life, and so forth’’ (Chow 1998, 6). However, quite unlike cultural studies’ and postcolonial studies’ declared aims and affiliative interests in alterity and ‘‘other cultures’’, within area studies ‘‘others’’ are ‘‘defined by way of particular geographical areas and nation states, such as South Asia, the Middle East, East Asia, Latin America, and countries of Africa’’ and are studied as if potential threats, challenges and hence ultimately ‘‘information target fields’’ (Chow 1998, 6).2 Thus, says Chow, there is ‘‘a major difference’’ between cultural studies and area studies and indeed between cultural studies and ‘‘normal’’ academic disciplines per se (Chow 1998, 67). This difference boils down to a paradigmatic decision. This is the resistance to ‘‘proper’’ disciplinarity precisely because of its disciplining effects; the resistance to becoming ‘‘normal’’ or ‘‘normalized’’, wherever this might equal allowing power inequalities, untranslatables and heterogeneities to evaporate in the production of universalistic ‘‘objective’’ knowledge (see also Mowitt 1992; Bowman 2007). This is why, as Robert J.C. Young has argued, anyone can do postcolonial studies (Young 2003). One simply has to start from below. This ‘‘below’’ always involves as thinkers from Edward Said to Stuart Hall have asserted something messy, dirty, mucky. This ‘‘below’’, then, evokes both class and sexuality and therefore ethnicity and gender.3 It must, as Stuart Hall once put it, work on two fronts at the same time, saying yes and no at the same time (Hall 1992, 285). That is to say, as Hall has always argued, just as the critical and political impetus and genealogy of cultural studies is a simultaneously interdisciplinary and antidisciplinary ‘‘self-reflexive’’ field (i.e. self-consciously theoretical and performative), it is also constitutively wedded to critical and political issues cortical to postcolonialism (i.e. those of language, power, culture, class, gender, and ethnicity). So if it is of anything that ‘‘I am’’, or this writing is the offspring, it is this disciplinary chiasmus or, rather, this unrepentant undisciplined mess. Settling the genealogy of such a tangle has no proper place. Knowingly inhabiting this tangle in a particular way is vital. Such is the orientation of Rey Chow’s ongoing body of work.

#### Strong executive war powers key to fighting terrorists

Royal 2011 (John Paul Royal, Institute of World Politics, “War Powers and the Age of Terrorism,” Center for the Study of the Presidency & Congress The Fellows Review, http://www.thepresidency.org/storage/Fellows2011/Royal-\_Final\_Paper.pdf)

Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels and magnitudes than in the past. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States…with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

#### Nuclear terror is possible and results in extinction.

Dvorkin, Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences, ‘12

[Vladimir, The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html]

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, **these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons.** The use of **“**dirty bombs**”** will not cause many immediate casualties, but it **will result into long-term radioactive contamination, contributing to the spread of** panic and socio-economic destabilization**.**¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. **Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that** well-trained terrorists may be able to penetrate nuclear facilities**.**¶ **Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time**.¶ Of all the scenarios, it **is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** **Information on the design of such devices, as well as implosion-type devices, is available in the public domain**. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that **such materials can be bought on the black market.** Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).**¶ **A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is** comparable to the yield of the bomb dropped on Hiroshima**.** **The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences**.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. **A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures**.¶ If a nuclear terrorist act occurs, **nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act.** We can imagine what would happen if they do so, **given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “**The Clash of Civilizations **and the Remaking of World Order” may come true**. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. **This is especially dangerous for Russia because these fault lines run across its territory.** To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

## 2NC

### Framework

#### Framework turns the case – only process-based deliberation and decision-making can create institutional war power reform

Koh 95 (Harold Hongju – Gerard C. and Bernice Latrobe Smith Professor of International Law and Director, Orville H. Schell, Jr. Center for International Human Rights, Yale Law School, “WAR AND RESPONSIBILITY: A SYMPOSIUM ON CONGRESS, THE PRESIDENT, AND THE AUTHORITY TO INITIATE HOSTILITIES: War and Responsibility in the Dole-Gingrich Congress”, 1995, 50 U. Miami L. Rev. 1, lexis)

 But there is a second, substantive critique of the legal process school, which has been put forward at this symposium and elsewhere by Professor Jules Lobel. Indeed, Lobel first sounded this theme in a prescient book review written half a decade ago. n32 Echoing Laurence Tribe's critique of Ely's process-based theory of judicial review, n33 Lobel argued that war powers scholars should focus not on process, but on substance. The problem with our foreign policymaking, he argued, has [\*8] not been our process of decisionmaking, but our substantive goals, which Lobel ultimately identified as extending American hegemony. Post-Vietnam efforts to reform our national security system have failed, he argued, because they sought to reform process without modifying these substantive goals. Thus, Lobel concluded, we cannot regain constitutionalism in foreign policy through procedural tinkering with legal rules; what we need instead is to mobilize popular movements to restrain America's hegemonic impulses. While I concede that process and substance cannot be entirely separated, I do not believe that we can work a fundamental transformation of the substance of foreign policymaking, when the process of making that policy is so fundamentally defective. In my view, a well-functioning process is the prerequisite to any kind of political agreement on substance. The goal of a constitutional process should not be to specify policy results, but to force the institutional players into a dialogue about which political ends they collectively seek and which they prefer to avoid. If interbranch dialogue occurs, it may produce a consensus for war (as occurred, for example during the Gulf War); but if no dialogue occurs, the Constitution mandates peace as the default position. The problem with our current process is that such institutional dialogue almost never occurs. As Ely's book points out, debates about war powers are rare, most debates are not "dialogue," but largely for show, and the branches almost never talk about our national goals regarding military intervention. Worst of all, as Ely shows, our current law, particularly the War Powers Resolution, lets them get away with it. A process-based view envisions a very different, three-step political procedure: one in which decisions to make war are preceded by intrabranch debate and deliberation, interbranch dialogue, and the creation and delineation of institutional precedent. Again, the exception that proves the rule was the debate over the congressional authorization of Operation Desert Storm, one of the few cases where judicial action helped force a dialogue about prior legislative approval before it was too late. n34 In that case, both the executive and legislative branches engaged in lengthy intrabranch deliberation before ultimately committing to war, an interbranch dialogue ensued that culminated in the congressional resolution authorizing use of force in Iraq, and the episode helped delineate an important institutional precedent which has served as a touchstone for subsequent deliberations. Regardless of what one thinks of the substance of the current Dole-Gingrich legislation, the process is at least working to the extent that after nearly two decades, Congress is once again proposing new framework legislation to govern war powers, which the [\*9] President may sign, veto, construe, or execute, and which the courts may end up interpreting. Even when the branches do not conduct direct dialogue, another lesson recent history has taught is that academic debate can force valuable "shadow dialogue" between private parties and the government, particularly when lawyers and academics challenge particular government legal interpretations. The debate over the correct interpretation of the Anti-Ballistic Missile Treaty was one famous recent example. n35 But the best recent illustration was the Clinton Administration's military incursion into Haiti in the fall of 1994, based on dubious legal authority. Instead of sending troops without justification, the Attorney General's lawyer, Walter Dellinger of the Office of Legal Counsel (and Duke Law School), put forward a legal explanation of the invasion of Haiti. That opinion letter responded to both public and congressional pressure and two joint letters from a group of law professors that had argued for the opposite position. n36 By sending the letter, the academics placed a burden of explanation upon the executive branch, forced internal debate within the legal circles of the executive branch, and prompted development of a nuanced governmental legal position, which not only clarified the precedential value of the episode for the future, but also made clear what legal claims the executive branch was not relying upon in Haiti (e.g., the claim that the President could commit troops abroad without congressional approval, based solely on United Nations Security Council authorization). n37 In sum, legal process is hardly irrelevant to politics in the war powers area. We simply cannot develop new substantive goals for our foreign policy without a better process, one that requires the active institutional participation of all three branches and that promotes the creation and internalization of legal norms. Far from being peripheral to politics, legal process can cabin politics. Properly designed process thus makes political actors accountable, by forcing them to live up to their constitutional responsibilities.

#### Framework is not a method of policing but rather an argument for which form of engagement is better to solve the harms of the 1AC. It’s a call for deliberation over common problems that’s important per their own Dabashi evidence. Our argument doesn’t exclude style or identity but rather places a normative focus on debate.

Amanda Anderson 6, Andrew W. Mellon Professor of Humanities and English at Brown University, Spring 2006, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, p. 281-290

MY RECENT BOOK, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain unquestioned legitimacy, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that argument is a form of respect, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be protected from debate, that argument is somehow injurious to persons if it does not honor their desire to have their basic beliefs and claims and solidarities accepted without challenge, is strenuously opposed. As is the notion that any attempt to ask people to agree upon processes of reason-giving argument is somehow necessarily to impose a coercive norm, one that will disable the free expression and performance of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced-if misconceived-criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement-the internal dynamic in argument that imagines argument might be the beginning of a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is a complacent-and in some versions, even celebratory-attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to justify their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society. One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos-specifically, an appeal to Foucault's style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers-was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book's central arguments, though one certainly gets an incremental sense of the book's claims from Bruce Robbins. Because I don't assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.) The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one's pre-given forms of identity or the norms of one's community, both so as to talk across differences and to articulate one's claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity-race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of contingency-recommendations that get elevated into full-fledged exemplary personae in Richard Rorty's notion of the "ironist" or Barbara Herrnstein Smiths portrait of the "postmodern skeptic." These examples-and the larger claim they support-are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument. Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is "potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument." What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite "debaterly" This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies-to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference. More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the question of disagreement about what counts as argument. In the opening essay, "Debatable Performances," I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a wide variety of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist-and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics-that when they have an effect, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the very form of reasoned analysis that their champions sometimes imagine they must refuse in order to liberate other modes of being (the affective, the narrative, the performative, the nonrational). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be affirmed and communicated and also can be used to justify political positions and legislative agendas.

#### Even Malcolm X thinks switching sides and debating about the Gov is sweet.

Branham 95 (Robert, Professor Rhetoric at Bates College, Argumentation and Advocacy, "`I Was Gone On Debating': Malcolm X's Prison Debates And Public Confrontations," Winter, vol. 31, no. 3, p.117)JFS

As Malcolm X sought new outlets for his heightened political consciousness, he turned to the weekly formal debates sponsored by the inmate team. "My reading had my mind like steam under pressure," he recounted; "Some way, I had to start telling the white man about himself to his face. I decided to do this by putting my name down to debate" (1965b, p. 184). Malcolm X's prison debate experience allowed him to bring his newly acquired historical knowledge and critical ideology to bear on a wide variety of social issues. "Whichever side of the selected subject was assigned to me, I'd track down and study everything I could find on it," wrote Malcolm X. "I'd put myself in my opponent's place and decide how I'd try to win if I had the other side; and then I'd figure out a way to knock down those points" (1965b, p. 184). Preparation for each debate included four or five practice sessions.

#### A topical version of the aff would solve most of their offense—it’s capable of radical change

Lobel 7 (Orly Lobel, University of San Diego Assistant Professor of Law, 2007, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf)

V. RESTORING CRITICAL OPTIMISM IN THE LEGAL FIELD

“La critique est aisée; l’art difficile.”

A critique of cooptation often takes an uneasy path. Critique has always been and remains not simply an intellectual exercise but a political and moral act. The question we must constantly pose is how critical accounts of social reform models contribute to our ability to produce scholarship and action that will be constructive. To critique the ability of law to produce social change is inevitably to raise the question of alternatives. In and of itself, the exploration of the limits of law and the search for new possibilities is an insightful field of inquiry. However, the contemporary message that emerges from critical legal consciousness analysis has often resulted in the distortion of the critical arguments themselves. This distortion denies the potential of legal change in order to illuminate what has yet to be achieved or even imagined. Most importantly, cooptation analysis is not unique to legal reform but can be extended to any process of social action and engagement. When claims of legal cooptation are compared to possible alternative forms of activism, the false necessity embedded in the contemporary story emerges — a story that privileges informal extralegal forms as transformative while assuming that a conservative tilt exists in formal legal paths. In the triangular conundrum of “law and social change,” law is regularly the first to be questioned, deconstructed, and then critically dismissed. The other two components of the equation — social and change — are often presumed to be immutable and unambiguous. Understanding the limits of legal change reveals the dangers of absolute reliance on one system and the need, in any effort for social reform, to contextualize the discourse, to avoid evasive, open-ended slogans, and to develop greater sensitivity to indirect effects and multiple courses of action. Despite its weaknesses, however, law is an optimistic discipline. It operates both in the present and in the future. Order without law is often the privilege of the strong. Marginalized groups have used legal reform precisely because they lacked power. Despite limitations, these groups have often successfully secured their interests through legislative and judicial victories. Rather than experiencing a disabling disenchantment with the legal system, we can learn from both the successes and failures of past models, with the aim of constantly redefining the boundaries of legal reform and making visible law’s broad reach.

#### Appeals for institutional restrain are a crucial supplement to political resistance to executive power – any other interpretation fails

David COLE Law @ Georgetown ’12 “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53

As I have shown above, **while political forces played a significant role in checking** President **Bush**, what was significant was the particular substantive content of that politics; **it was not just any political pressure**, **but pressure to maintain** fidelity to **the rule of law**. **Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party** in Germany, or **xenophobia** more generally. **What we need if we are to check abuses of executive power is a politics that champions the rule of law.** Unlike the politics Posner and Vermeule imagine, **this** type of **politics cannot be segregated neatly from the law**. On the contrary, **it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms**, heard in a court case, as we saw with Guantanamo. **Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances**. **The litigation generated and concentrated political pressure on claims for a restoration of the values of legality,** and, as discussed above, **that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. T**here is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. **The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself.** **Civil society organizations devoted to such values**, **such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics**. Indeed, **they have no alternative.** Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. **But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values**. Unlike ordinary politics, which tends to focus on the preferences of the moment, **the politics of the rule of law is committed to a set of long-term principles.** **Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate.** Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which **there is a symbiotic relationship between politics and law**: **the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation**. **Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers** – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process**. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law.** We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

## 1NR

### Case

#### As long as discourses are arranged according to the illusion of authenticity and as long as our politics are hierarchialized according to the way that they penetrate to the truth of cultural identities, the basic structure of hegemonic imperialism which retains the power to discipline these identities remains intact. Debate exacerbates these problems: the ballot commodifies identities and arranges them according to the most “authentic” experiences of suffering and cultural identity.

Bowman 2010 [Paul, professor of cultural studies at Cardiff University. “INTRODUCTION

Rey Chow and postcolonial social semiotics,” *Social Semiotics* 20.4]

A confession: a predictable confession. Part of me feels like a joke, a fraud, a fake, a phoney. A white British guy, with qualifications and a job, in Britain, about to write, as if authoritatively, about ‘‘postcolonialism’’ (a title that I myself chose I did not have to choose it, but I did): I feel a bit odd, to say the least. Perhaps for this reason, when thinking of how to proceed and of what to write, I got a tune stuck in my head a single line in a constant loop, replaying in my head, a single interminably repeated phrase an ear-worm which I took to be a crystal clear message on the royal road from my unconscious to my superego. It was a line from a song by the American pop/punk band, The Offspring. It was: ‘‘and all the girlies say I’m pretty fly for a white guy’’. The music video for this song, ‘‘Pretty Fly for a White Guy’’ (The Offspring 1998), can of course always be found on YouTube, even if its URL keeps changing. Even a cursory viewing of the video reveals that, in the music video, the words ‘‘all the girlies say I’m pretty fly for a white guy’’ are uttered by a stereotypical white ‘‘wannabe’’. The lyrics narrate the tale or rather, the situation the plight of an apparently affluent, suburban white American teenager who fetishizes and fantasizes about edgy non-white ethnicity. In the video, we see several of the scenarios that define his phantasy.1 Whether black African-American or Latino, our eponymous ‘‘white guy’’ wannabe wants-to-be that: he identifies with, he fantasizes as that. He wants to be one of them. Unfortunately, what is absolutely clear here is that the one thing he is not is ‘‘pretty fly’’. Rather, he is presented as ridiculous, a fool, utterly lacking in self-awareness or self-knowledge living, as the lyrics put it, ‘‘in denial’’. So, the song is all about getting it wrong, wanting the impossible, and denying that impossibility. The reason for wanting the impossible boils down to a phantasy. This is dramatized in the call-and-response (and commentary) that opens and permeates the song. The song opens with it: a female chorus chant ‘‘Give it to me baby’’. In the video, our hapless hero responds in the affirmative. This call and response is repeated. It is a chant of female call and male response that dramatizes what is evidently a male sexual phantasy about specifically ethnic female desire. It is followed by the gravelly-voiced claim: ‘‘And all the girlies say I’m pretty fly for a white guy’’, whereupon the song ‘‘proper’’ begins. This, it soon becomes clear, is the structuring fantasy of our misrecognizing, fantasizing white guy. This is what he wants. This is what he thinks it would be like if only he were the ethnic he wants to be. This is what he wants to see and hear. He imagines the call. He ‘‘performs’’ (as they say) a response. So, in the video representation, the song runs: repeated female chant (‘‘Give it to me baby’’); he answers (‘‘uh huh, uh huh’’). This is followed by the voice of his phantasy, which asserts his conviction that ‘‘all the girlies say I’m pretty fly for a white guy’’. After this intro, we are ‘‘counted-in’’ in incorrect Spanish (‘‘Uno, dos, tres, cuatro, cinco, cinco, seis’’). If we had been in any doubt up until now, this miscount this moment of getting it just a bit but fundamentally wrong not quite getting the Spanish right clarifies things for us. This is a joke. This is about misrecognition, getting it wrong. Moreover, the girls in the video are clearly non-existent fantasy constructions: there never were girls thronging around him on the way to his car, by the side of the road, or covered in glittering paint by the pool. They are entirely his phantasy. An initial assessment of the song, taking into account any mirth it might produce and the extent to which we might share, understand, or ‘‘get’’ the joke suggests that this popular cultural text is saying something quite precise about identity, ‘‘cultural’’ identity, ‘‘identity performativity’’ and ethnicity. And this appears to be something quite different from what is widely supposed to be held by many thinkers, from Judith Butler to Homi Bhabha and beyond. For, the text is saying at least one, or perhaps all, of the following: that a white ethnic cannot or should not try to ‘‘perform’’ another ethnic identity; that trying to be other than white for the white is ridiculous; that trying to do or to be so is premised on ‘‘not getting it’’, on ‘‘denial’’; that white ethnicity is not like other ethnicities not porous, not dilutable, not ‘‘hybridisable’’ or ‘‘fragile’’; and that the only compensation for the sadness and disappointment that this might cause for our wannabe is the contemporary Confessional: ‘‘At least you know you can always go on Ricki Lake’’. Indeed, do not worry, be happy, add The Offspring: ‘‘the world needs wannabes’’. So, ‘‘hey, hey, do the brand new thing’’. The song is very clear on this. After staging the fantasy scenario, after being miscounted-in, the narrative voice begins to tell us all about it. The lyrics begin by addressing us in terms of a shared lot, a common problem that we all recognize: 330 P. Bowman ‘‘You know it’s kinda hard just to get along today’’. We all know this, right? Furthermore: ‘‘Our subject isn’t cool, but he thinks it anyway’’. Is this not a familiar story? How many of us are guilty of it ourselves? We may recall Lacan’s contention that, in love, ‘‘You never look at me from the place from which I see you. Conversely, what I look at is never what I wish to see’’ (Lacan, quoted in Chow 1998, 81). Moreover, as Rey Chow points out, this ‘‘dialectic of eye and gaze’’ need not be literally intersubjective; a man may fall ‘‘in love, not with a woman or even with another man, not with a human being at all but with a thing, a reified form of his own fantasy’’ (1998, 78). As The Offspring put it: ‘‘He may not have a clue, and he may not have style/But everything he lacks, well he makes up in denial’’. Is this his problem: ‘‘denial’’? ‘‘Denial’’ is surely the most abused, misused, bandied-about psychobabblistic term ever. Everyone, it seems risks living in denial. Overcoming denial is indeed an abiding concern of an enormous range of popular cultural texts and discourses. But, if denial is deemed to be the problem, what is deemed to be the solution? The popular answer is: come to terms, recognize, accept. But how? By talking about yourself; by confessing. Go on Ricki Lake. Even if you are ‘‘fake’’, you can have a moment of real-world, recognized, ‘‘authentic’’ success (‘‘fame’’), by coming clean, by confessing, publicly: the only authentic redemption in a world that thrives on the production of fakes and wannabes, say The Offspring. If we can laugh at all of this it is also because we can recognize all of this. According to the implications of the argument of Michel Foucault (1978) in The history of sexuality, volume 1, this familiarity and recognizability comes from the fact that The Offspring song plays with the material thrown up by and circulating in and as a discursive constellation a very old discursive constellation, says Foucault, which came together in the eighteenth century. In this discursive formation, the terms ethnicity, identity, authenticity and autobiography or confession encounter each other in an overdetermined chiasmus. In it, whenever issues of identity and ethnicity arise as a (self-reflexive, ‘‘personal’’) problem, this discursive constellation proposes that the route out is via the self-reflexive side-door of autobiographical (self-)confession. There is more to this than observing that engaging with ethnicity requires an engagement with one’s own identity, one that ought to lead into a searching self-interrogation and ideally a deconstruction of questions of authenticity and autobiography although this is certainly a part of it. For the Foucauldian point is that precisely such discourses of the self, especially in terms of the brands of self-referentiality that nowadays feed chat shows like Ricki Lake, can be seen to have emerged decisively in modernity. And they emerged with an attending argument about self-referentiality’s subversive relation to power and its emancipatory relation to truth. That is, it refers us to the implications of Foucault’s argument about what he called ‘‘the repressive hypothesis’’ namely, that almost irresistible belief that power tries to silence us and demands our silence (Foucault 1978, 18; Chow 2002, 114). As Foucault argued, however, almost the exact opposite is the case. Or rather, even if there are places where power demands silence or discipline, these are more than matched by an exponential explosion and proliferation of discourses in this case, about the self. These discourses include arguments about self-referentiality’s subversive relation to power and its emancipatory relation to truth, which relates to the Enlightenment idea that an introspective turn to the self is emancipatory: the ingrained idea (whose prehistory is the Catholic Confessional, and whose contemporary ministers Foucault finds in the psychiatrist and psychoanalyst) that seeking to speak the truth of oneself is the best method of getting at our essential truth and the best way to resist power. Similarly, modern literary self-referentiality emerged with an attending discourse of resistance a discourse that regarded literature ‘‘as such’’ as resistance to the instrumentalization of technical and bureaucratic language, first and foremost. And, by the same token, self-referentiality emerged as an apparently ideal solution to the knotty problem of representing others. For, how do you represent others truthfully, adequately, ethically? The answer here is: you do not. They should represent themselves. Here, the self-reflexivity of self-referentiality is regarded not as apartheid but as the way to bypass the problems of representing others by throwing the option open for everyone to speak the truth of themselves. However, in Foucault’s phrase: ‘‘the ‘Enlightenment’, which discovered the liberties, also invented the disciplines’’ (Foucault 1995, 222; see also Chow 1998, 113). In other words, the desire to refer to the self, to discuss the self, to produce the self discursively, the impulse to autobiography and confession, can be regarded as a consequence of disciplinarity. Psychiatry demands that we reveal our selves. As does psychoanalysis, as do ethnographic focus groups, as do corporate marketing focus groups, not to mention the Confessional, the criminologist and Ricki Lake. And so on. Autobiography and confession are only resistance if power truly tries to repress the production of discourse. Which it does not at least not everywhere. The point is that autobiography and confession are genealogically wedded if not welded to recognizable disciplinary protocols and perhaps most significantly proceed according to the terms of recognizable metanarratives. Thus, says Chow: When minority individuals think that, by referring to themselves, they are liberating themselves from the powers that subordinate them, they may actually be allowing such powers to work in the most intimate fashion from within their hearts and souls, in a kind of voluntary surrender that is, in the end, fully complicit with the guilty verdict that has been declared on them socially long before they speak.

#### {Marked}

 (Chow 2002, 115) Of course, in thinking about postcoloniality, ethnicity, social semiotics and cultural politics, it is very difficult not to think about oneself. Indeed, even in full knowledge of Foucault, there remains something of a complex imperative to do so, even (perhaps especially) if, like me, one does not have a blatantly postcolonial ethnicity in the classic sense even if, that is, like me, one has an entirely hegemonic sociocultural identity: an ethnicity without ethnicity, as it were; the hegemon of a hegemony; that is, the ‘‘norm’’. For, surely, one must factor oneself into whatever picture one is painting, in terms of the ‘‘institutional investments that shape [our own] enunciation’’ (Chow 1993, 2). Indeed, suggests Chow: the most difficult questions surrounding the demarcation of boundaries implied by ‘‘seeing’’ have to do not with positivistic taxonomic juxtapositions of self-contained identities and traditions in the manner of ‘‘this is you’’ and ‘‘that is us,’’ but rather, who is ‘‘seeing’’ whom, and how? What are the power relationships between the ‘‘subject’’ and ‘‘object’’ of the culturally overdetermined ‘‘eye’’? (Chow 1991: 3) 332 P. Bowman Might acknowledging as much make me pretty fly for a white guy? As thinkers like Robyn Wiegman and Rey Chow have pointed out: the white subject who nowadays endeavors to compensate for the historical ‘‘wrong’’ of being white by taking on politically correct agendas (such as desegregation) and thus distancing himself from his own ethnic history, is seldom if ever accused of being disloyal to his culture; more often than not, he tends to be applauded for being politically progressive and morally superior. (Chow 2002, 116117) Chow proposes that we compare and contrast this with non-white ethnic subjects or rather, in her discussion, with non-white ethnic critics, scholars and academics. These subjects, she argues are pressured directly and indirectly to behave ‘‘properly’’ to act and think and ‘‘be’’ the way ‘‘they’’ are supposed to act and think and be, as non-white ethnic academic subjects. If they forget their ethnicity, or their nationalistically or geographically and hence essentialistically and positivistically defined ‘‘cultures’’ and ‘‘heritages’’, such subjects are deemed to be sell-outs, traitors inauthentic. But, says Chow, if such an ethnic scholar ‘‘should . . . choose, instead, to mimic and perform her own ethnicity’’ that is, to respond or perform in terms of the implicit and explicit hailing or interpellation of her as an ethnic subject as such, by playing along with the ‘‘mimetic enactment of the automatized stereotypes that are dangled out there in public, hailing the ethnic’’ (2002, 110) ‘‘she would still be considered a turncoat, this time because she is too eagerly pandering to the orientalist tastes of Westerners’’ (2002, 117), and this time most probably by other non-white ethnic subjects. Thus, the ethnic subject seems damned if he/she does and damned if he/she does not ‘‘be’’ an ethnic subject. Of course, this damnation comes from different parties, and with different implications. But, in any eventuality, Chow’s point is that, in sharp contradistinction, ‘‘however far he chooses to go, a white person sympathetic to or identifying with a nonwhite culture does not in any way become less white’’ (2002, 117). Indeed, she claims: When it comes to nonwhite peoples doing exactly the same thing . . . that is, becoming sympathetic to or identified with cultures other than their own we get a drastically different kind of evaluation. If an ethnic critic should simply ignore her own ethnic history and become immersed in white culture, she would, needless to say, be deemed a turncoat (one that forgets her origins). (2002, 117) It is important to be aware that it is not just whites who pressure the non-white ethnic to conform. Chow gives many examples of the ways that scholars of Chinese culture and literature, for instance, relentlessly produce an essentialist notion of China that is used to berate modern diasporic Chinese (and their cultural productions). This essentialism is an essence that none can live up to, precisely because they are alive and as such are contaminated, diluted, tainted or corrupted by non-Chinese influences. At least one side of this key difference between the white and the non-white is dramatized in the song by The Offspring. Whilst postcolonial critics often recount cases in which non-white ethnic subjects are pressured directly and indirectly to start to behave ‘‘properly’’ to act and think and be the way ‘‘they’’ are supposed to act and think and be as non-white ethnic subjects in other words, to be both interpellated, in Althusser’s sense, and disciplined, in Foucault’s sense I think that the very intelligibility of The Offspring’s song and its fairly unequivocal condemnation of the white-wannabe-non-white suggests that the white guy who shows too much interest in non-white culture, rather than being ‘‘applauded for being politically progressive and morally superior’’, can quite easily and will quite frequently be deemed not only ‘‘disloyal to his culture’’ but ridiculous. Yet, he remains no less white. In fact, it seems, he can become no less white. But he is still a traitor. Thus, corroborating Chow’s thesis, white ethnicity is here presented as absolutely immovable and essentially (or wholly/holy) incorruptible. All of this, Rey Chow calls ‘‘coercive mimeticism’’ (2002, 107). Coercive mimeticism designates the way in which the interpellating, disciplining forces of all different kinds of discourses and institutions call us into place, tell us our place, and work to keep us in our place. As Chow writes of the ethnic academic subject: ‘‘Her only viable option seems to be that of reproducing a specific version of herself and her ethnicity that has, somehow, already been endorsed and approved by the specialists of her culture’’ (2002, 117). Accordingly, coercive mimeticism ultimately works as ‘‘an institutionalized mechanism of knowledge production and dissemination, the point of which is to manage a non-Western ethnicity through the disciplinary promulgation of the supposed difference’’ (Chow 2002, 117). As we see through The Offspring’s song, this disciplinary mechanism extends far beyond the disciplines proper, far beyond the university. In Chow’s words: unlike the white man, who does not have to worry about impairing his identity even when he is touched by a foreign culture, the ethnic must work hard to keep hers; yet the harder she works at being bona fide, the more of an inferior representation she will appear to be. (2002, 124) Reciprocally, we might add, the harder the white guy tries to be non-white, the ‘‘more’’ white he will appear. In trying to be other so say the interpellating voices, tropes, discourses and institutions he is of course, just being silly. Whether this means that the white attempt to be like the other is silly, or that the other is silly or both is debatable. What is not debatable is that in all cases ‘‘authenticity’’ ultimately translates as a hypothetical state of non-self-conscious and nonconstructed essential ‘‘being’’. The fact that this is an essentialism that is essentially impossible does not mean that it does not ‘‘happen’’; rather, it means that ‘‘ethnicity’’ becomes an infinitely supple rhetorical tool. It is available (to anyone and everyone) as a way to disparage both anyone who is not being the way they are supposed to be and anyone who is being the way they are supposed to be. As Chow explains, ‘‘ethnicity can be used as a means of attacking others, of shaming, belittling, and reducing them to the condition of inauthenticity, disloyalty, and deceit’’ (2002, 124). Ironically, such attacks are ‘‘frequently issued by ethnics themselves against fellow ethnics, that is, the people who are closest to, who are most like them ethnically in this fraught trajectory of coercive mimeticism’’ (Chow 2002, 124). What this means is that the most contempt, from all quarters, will always be reserved for he or she who does not stay in their place, play their proper ethnicity. All too often, criticism is leveled individually, as if it is a personal issue, ‘‘despite the fact that this historically charged, alienating situation is a collectively experienced one’’ (Chow 2002, 124). Such is the disciplining, streaming, classifying force of coercive mimeticism. Such are the ‘‘uses of ethnicity’’. 334 P. Bowman In the words of Etienne Balibar: ‘‘the problem is to keep ‘in their place’, from generation to generation, those who have no fixed place; and for this, it is necessary that they have a genealogy’’ (Balibar, quoted in Chow 2002, 95). As such, even the work of sensitive, caring, deeply invested specialists, and expert ethnic scholars even ethnic experts in ethnicity themselves can function to reinforce ethnicized hierarchies, structured in dominance, simply by insisting on producing their field or object in its difference. What is at stake here is the surely significant fact that even the honest and principled or declared aim of studying others otherwise can actually amount to a positive working for the very forces one avowedly opposes or seeks to resist. Chow clarifies this in terms of considering the uncanny proximity but absolute difference between the disciplinary orientations of cultural studies and area studies. Area studies is a disciplinary field that ‘‘has long been producing ‘specialists’’ who report to North American political and civil arenas about ‘other’ civilizations, ‘other’ regimes, ‘other’ ways of life, and so forth’’ (Chow 1998, 6). However, quite unlike cultural studies’ and postcolonial studies’ declared aims and affiliative interests in alterity and ‘‘other cultures’’, within area studies ‘‘others’’ are ‘‘defined by way of particular geographical areas and nation states, such as South Asia, the Middle East, East Asia, Latin America, and countries of Africa’’ and are studied as if potential threats, challenges and hence ultimately ‘‘information target fields’’ (Chow 1998, 6).2 Thus, says Chow, there is ‘‘a major difference’’ between cultural studies and area studies and indeed between cultural studies and ‘‘normal’’ academic disciplines per se (Chow 1998, 67). This difference boils down to a paradigmatic decision. This is the resistance to ‘‘proper’’ disciplinarity precisely because of its disciplining effects; the resistance to becoming ‘‘normal’’ or ‘‘normalized’’, wherever this might equal allowing power inequalities, untranslatables and heterogeneities to evaporate in the production of universalistic ‘‘objective’’ knowledge (see also Mowitt 1992; Bowman 2007). This is why, as Robert J.C. Young has argued, anyone can do postcolonial studies (Young 2003). One simply has to start from below. This ‘‘below’’ always involves as thinkers from Edward Said to Stuart Hall have asserted something messy, dirty, mucky. This ‘‘below’’, then, evokes both class and sexuality and therefore ethnicity and gender.3 It must, as Stuart Hall once put it, work on two fronts at the same time, saying yes and no at the same time (Hall 1992, 285). That is to say, as Hall has always argued, just as the critical and political impetus and genealogy of cultural studies is a simultaneously interdisciplinary and antidisciplinary ‘‘self-reflexive’’ field (i.e. self-consciously theoretical and performative), it is also constitutively wedded to critical and political issues cortical to postcolonialism (i.e. those of language, power, culture, class, gender, and ethnicity). So if it is of anything that ‘‘I am’’, or this writing is the offspring, it is this disciplinary chiasmus or, rather, this unrepentant undisciplined mess. Settling the genealogy of such a tangle has no proper place. Knowingly inhabiting this tangle in a particular way is vital. Such is the orientation of Rey Chow’s ongoing body of work.

#### They transform the suffering of the black body into a spectacle to be consumed by whiteness.

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Saidiya V.- “SCENCES OF SUBJECTION: Terror, Slavery, and Self-Making in Nineteenth-Century America”; pp. 20-21

 As well, we need ask why the site of suffering so readily lends itself to inviting identification. Why is pain the conduit of identification? This question may seem to beg the obvious, given the violent domination and dishonor constitutive of enslavement, the acclaimed transformative capacities of pain in sentimental culture, the prevalence of public displays of suffering inclusive of the pageantry of the trade, the spectacle of punishment, circulating reports of slavery’s horrors, the runaway success of *Uncle Tom’s Cabin*, and the passage through the “bloodstained gate,” which was a convention of the slave narrative, all of which contributed to the idea that the feelings and consciousness of the enslaved were most available at this site. However, what I am trying to suggest is that if the scene of beating readily lends itself to an identification with the enslaved, it does so at the risk of fixing and naturalizing this condition of pained embodiment and, in complete defiance of Rankin’s good intention, increases the difficulty of beholding black suffering since the endeavor to bring pain close exploits the spectacle of the body in pain and oddly confirms the spectral character of suffering and the inability to witness the captive’s pain. If, on one hand, pain extends humanity to the dispossessed and the ability to sustain suffering leads to transcendence, on the other, the spectral and spectacular character of this suffering, or, in other words, the shocking and ghostly presence of pain, effaces and restricts black sentience. As Rankin himself states, in order for this suffering to induce a reaction and stir feelings, it must be brought close. Yet if sentiment or morality are “inextricably tied to human proximity,” to quote Zygmunt Bauman, the problem is that in the very effort to “bring it near” and “inspect it closely” it is dissipated. According to Bauman, “morality conforms to the law of optical perspective. It looms large and thick close to the eye.” So, then, how does suffering elude or escape us in the very effort to bring it near? It does so precisely because it can only be brought near by way of a proxy and by way of Rankin’s indignation and imagination. If the black body is the vehicle of the other’s power, pleasure, and profit, then it is no less true that it is the white or near-white body that makes the captive’s suffering visible and discernible. Indeed, the elusiveness of black suffering can be attributed to a racist optics in which black flesh is itself identified as the source of opacity, the denial of black humanity, and the effacement of sentience integral to the wanton use of the captive body. And as noted earlier, this is further complicated by the repressive underside of an optics of morality that insists upon the other as a mirror of the self and that in order to recognize suffering must substitute the self for the other. While Rankin attempts to ameliorate the insufficiency of feeling before the spectacle of the other’s suffering, this insufficiency is, in fact, displaced rather than remedied by his standing in. Likewise, this attempt exacerbates the distance between the readers and those suffering by literally removing the slave from view as pain is brought close. Moreover, we need to consider whether the identification forged at the site of suffering confirms black humanity at the peril of reinforcing racist assumptions of limited sentience, in that the humanity of the enslaved and the violence of the institution can only be brought into view by extreme examples of incineration and dismemberment or by placing white bodies at risk. What does it mean that the violence of slavery or pained existence of the enslaved, if discernible, is only so in the most heinous and grotesque examples and not in the quotidian routines of slavery? As well, is not the difficulty of empathy related to both the devaluation and the valuation of black life? Empathic identification is complicated further by the fact that it cannot be extricated from the economy of chattel slavery with which it is at odds, for this projection of one’s feeling upon or into the object of property and the phantasmic slipping into captivity, while it is distinct from the pleasures of self-augmentation yielded by the ownership of the captive body and the expectations fostered therein, is nonetheless entangled with this economy and identification facilitated by a kindred possession or occupation of the captive body, albeit on a different register. In other words, what I am trying to isolate are the kinds of expectations and the qualities of affect distinctive to the economy of slavery. The relation between pleasure and the possession of slave property, in both the figurative and literal senses, can be explained in part by the fungibility of the slave-that is, the augmentation of the master subject through his embodiment in external objects and persons. Put differently, the fungibility of the commodity makes the captive body an abstract and empty vessel vulnerable to the projection of others’ feelings, ideas, desires, and values; and, as property, the dispossessed body of the enslaved is the surrogate for the master’s body since it guarantees his disembodied universality and acts as the sign of his power and dominion. Thus, while the beaten and mutilated body presumably establishes the brute materiality of existence, the materiality of suffering regularly eludes (re)cognition by virtue of the body’s being replaced by other signs of value, as well as other bodies. Thus the desire to don, occupy, or possess blackness or the black body as a sentimental resource and/or locus of excess enjoyment is both founded upon and enabled by the material relations of chattel slavery. In light of this, is it too extreme or too obvious to suggest that Rankin’s flight of imagination and the excitements engendered by suffering might also be pleasurable? Certainly this willing abasement confirms Rankin’s moral authority, but what about the pleasure engendered by this embrace of pain-that is the tumultuous passions of the flightly imagination stirred by this fantasy of being beaten? Rankin’s imagined beating is immune neither to the pleasures to be derived from the masochistic fantasy nor to the sadistic pleasure to be derived from the spectacle of sufferance. Here my intention is not to shock or exploit the perverse but to consider critically the complicated nexus of terror and enjoyment by examining the obviated and debased diversions of the capricious master; the pleasure of indignation yielded before the spectacle of sufferance; the instability of the scene of suffering; and the confusion of song and sorrow typical of the coffle, the auction block, performing before the master, and other popular amusements.

#### The Western intellectual’s production of knowledge serves to reify the sovereignty and mastery of the sovereign European subject.

Spivak 1988 [Gaytari, “Can the Subaltern Speak?” in *Marxism and the Interpretation of Culture* ed. Cary Nelson and Lawrence Grossberg, pp. 271-316]

Some of the most radical criticism coming out of the West today is the result of an interested desire to conserve the subject of the West, or the West as Subject. The theory of pluralized "subject-effects" gives an illusion of undermining Subjective sovereignty while often providing a cover for this subject of knowledge. Although the history of Europe as Subject is narrativized by the law, political economy, and ideology of the West, this concealed Subject pretends it has "no geo-political determinations." The much-publicized critique of the sovereign subject thus actually inaugurates a Subject. I will argue for this conclusion by considering a text by two great practitioners of the critique: "Intellectuals and Power: A Conversation between Michel Foucault and Gilles Deleuze."3 I have chosen this friendly exchange between two activist philosophers of history because it undoes the opposition between authoritative theoretical production and the unguarded practice of conversation, enabling one to glimpse the track of ideology. The participants in this conversation emphasize the most important contributions of French poststructuralist theory: first, that the networks of power/desire/interest are so heterogeneous that their reduction to a coherent narrative is counterproductive-a persistent critique is needed; and second, that intellectuals must attempt to disclose and know the discourse of society's Other. Yet the two systematically ignore the question of ideology and their own implication in intellectual and economic history. Although one of its chief presuppositions is the critique of the sovereign subject, the conversation between Foucault and Deleuze is framed by two monolithic and anonymous subjects-in-revolution: "A Maoist" (FD, 205) and "the workers' struggle" (FD, 217). Intellectuals, however, are named and differentiated; moreover, a Chinese Maoism is nowhere operative. Maoism here simply creates an aura of narrative specificity, which would be a harmless rhetorical banality were it not that the innocent appropriation of the proper name "Maoism" for the eccentric phenomenon of French intellectual "Maoism" and subsequent "New Philosophy" symptomatically renders "Asia" transparent.4 Deleuze's reference to the workers' struggle is equally problematic; it is obviously a genuflection: "We are unable to touch [power] in any point of its application without finding ourselves confronted by this diffuse mass, so that we are necessarily led ... to the desire to blow it up completely. Every partial revolutionary attack or defense is linked in this way to the workers' struggle" (FD, 217). The apparent banality signals a disavowal. The statement ignores the international division of labor, a gesture that often marks poststructuralist political theory.5 The invocation of the workers' struggle is baleful in its very innocence; it is incapable of dealing with global capitalism: the subject-production of worker and unemployed within nation-state ideologies in its Center; the increasing subtraction of the working class in the Periphery from the realization of surplus value and thus from "humanistic" training in consumerism; and the large-scale presence of paracapitalist labor as well as the heterogeneous structural status of agriculture in the Periphery. Ignoring the international division of labor; rendering "Asia" (and on occasion "Africa") transparent (unless the subject is ostensibly the "Third World"); reestablishing the legal subject of socialized capital-these are problems as common to much poststructuralist as to structuralist theory. Why should such occlusions be sanctioned in precisely those intellectuals who are our best prophets of heterogeneity and the Other?

#### Their politics of signification assumes the transparency of the intellectual in debate to represent the suffering of the other. This transparency is the cover for institutional and ideological investments which maintain imperialism and the international division of labor.

Spivak 1988 [Gaytari, “Can the Subaltern Speak?” in *Marxism and the Interpretation of Culture* ed. Cary Nelson and Lawrence Grossberg, pp. 271-316]

The reduction of Marx to a benevolent but dated figure most often serves the interest of launching a new theory of interpretation. In the Foucault-Deleuze conversation, the issue seems to be that there is no representation, no signifier (Is it to be presumed that the signifier has already been dispatched? There is, then, no sign-structure operating experience, and thus might one lay semiotics to rest?); theory is a relay of practice (thus laying problems of theoretical practice to rest) and the oppressed can know and speak for themselves. This reintroduces the constitutive subject on at least two levels: the Subject of desire and power as an irreducible methodological presupposition; and the self-proximate, if not self-identical, subject of the oppressed. Further, the intellectuals, who are neither of these S/ subjects, become transparent in the relay race, for they merely report on the nonrepresented subject and analyze (without analyzing) the workings of (the unnamed Subject irreducibly presupposed by) power and desire. The produced "transparency" marks the place of "interest"; it is maintained by vehement denegation: "Now this role of referee, judge, and universal witness is one which I absolutely refuse to adopt." One responsibility of the critic might be to read and write so that the impossibility of such interested individualistic refusals of the institutional privileges of power bestowed on the subject is taken seriously. The refusal of the sign-system blocks the way to a developed theory of ideology. Here, too, the peculiar tone of denegation is heard. To Jacques-Alain Miller's suggestion that "the institution is itself discursive," Foucault responds, "Yes, if you like, but it doesn't much matter for my notion of the apparatus to be able to say that this is discursive and that isn't ... given that my problem isn't a linguistic one" (PK, 198). Why this conflation of language and discourse from the master of discourse analysis? Edward Said’s critique of power in Foucault as a captivating and mystifying category that allows him "to obliterate the role of classes, the role of economics, the role of insurgency and rebellion," is most pertinent here.24 I add to Said's analysis the notion of the surreptitious subject of power and desire marked by the transparency of the intellectual. Curiously enough, Paul Bove faults Said for emphasizing the importance of the intellectual, whereas "Foucault's project essentially is a challenge to the leading role of both hegemonic and oppositional intellectuals."25 I have suggested that this "challenge" is deceptive precisely because it ignores what Said emphasizes-the critic's institutional responsibility. . This S/subject, curiously sewn together into a transparency by denegationns, belongs to the exploiters' side of the international division of labor. It is impossible for contemporary French intellectuals to imagine the kind of Power and Desire that would inhabit the unnamed subject of the Other of Europe. It is not only that everything they read, critical or uncritical is caught within the debate of the production of that Other supporting or critiquing the constitution of the Subject as Europe. It is also that, in the constitution of that Other of Europe, great care was taken to obliterate the textual ingredients with which such a subject could cathect, could occupy (invest?) its itinerary--not only by ideological and scientific production, but also by the institution of the law. However reductionistic an economic analysis might seem, the French intellectuals forget at their peril that this entire overdetermined enterprise was in the interest of a dynamic economic situation requiring that interests, motives (desires), and power (of knowledge) be ruthlessly dislocated. To invoke that dislocation now as a radical discovery that should make us diagnose the economic (conditions of existence that separate out "classes" descriptively) as a piece of dated analytic machinery may well be to continue the work of that dislocation and unwittingly to help in securing a new balance of hegemonic relations. "26 I shall return to this argument shortly. In the face of the possibility that the intellectual is complicit in the persistent constitution of Other as the Self's shadow a possibility of political practice for the intellectual would be to put the economic "under erasure," to see the economic factor as irreducible as it reinscribes the social text, even as it is erased, however imperfectly, when it claims to be the final determinant or the transcendental signified. 27 The clearest available example of such epistemic violence is the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other. This project is also the asymetrical obliteration of the trace of that Other in its precarious Subject-ivity. It is well known that Foucault locates epistemic violence, a complete overhaul of the episteme, in the redefinition of sanity at the end of the European eighteenth century.28 But what if that particular redefinition was only a part of the narrative of history in Europe as well as in the colonies? What if the two projects of epistemic overhaul worked as dislocated and unacknowledged parts of a vast two-handed engine? Perhaps it is no more than to ask that the subtext of the palimpsestic narrative of imperialism be recognized as "subjugated knowledge," "a whole set of knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledges, located low down on the hierarchy, beneath the required level of cognition or scientificity" *(PK, 82).*