### T

#### Judicial restrictions must be targeted at the effects Presidential War Power

Texas Supreme Court 1993 (EX PARTE: REVEREND KEITH TUCCI; EX PARTE: RANDALL TERRY; EX PARTE: PATRICK MAHONEY; EX PARTE: WENDY WRIGHT; EX PARTE: FLIP BENHAM; EX PARTE: JOSEPH SLOVENIC; EX PARTE: BOB JEWITT¶ No. D-2809, No. D-2819, No. D-2820, No. D-2821, No. D-2822, No. D-2823, No. D-2824¶ SUPREME COURT OF TEXAS¶ 859 S.W.2d 1; 1993 Tex. LEXIS 100; 36 Tex. Sup. J. 1154¶ June 30, 1993, Delivered, Lexis, Vance)

Consistent with this jurisprudence and the history of our state constitution, this court announced in Davenport that [HN12](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.845899.8938249878&target=results_DocumentContent&returnToKey=20_T18064826404&parent=docview&rand=1378151264504&reloadEntirePage=true" \l "clscc12" \t "_self)[Go to this Headnote in the case.](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.845899.8938249878&target=results_DocumentContent&returnToKey=20_T18064826404&parent=docview&rand=1378151264504&reloadEntirePage=true#clscc12)restrictions must be targeted at the effect of expression rather than at the expression itself. There, "an imminent and irreparable harm to the judicial process [that] deprives litigants of a just resolution of their dispute" was determined to be the effect of expression to which a judicial order could be directed. [834 S.W.2d at 10](http://www.lexisnexis.com/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T18064825627&homeCsi=10617&A=0.26162702418858585&urlEnc=ISO-8859-1&&citeString=834%20S.W.2d%204,%2010&countryCode=USA). Second, we emphasized the need to ensure [\*6] that any limitation "represents the least restrictive means to prevent that harm[ful effect.]" Id

#### Violation – the aff restricts how the War Powers are interpreted, not an effect of the War Powers Authority.

#### RTP:

Limits – impossible to predict restricting the War Power Authority by the Supreme Court, because Article II of the Constitution outlines the President as Commander-in-Chief

Education – focusing on the effects of the War Powers allows us to explore a wider literature base, than focusing on the war powers alone.

#### Voter for fairness and education. Evaluate through competing interpretations.

### K

#### The AFF’s sympathetic call for deployment of federal power masks an underlying evil intrinsic in colonialist violence. Instead we should be in antagonism with the mass killer that is the US.

Churchill 96 [Ward, native prodigy, *From a Native Son: Selected Essays in Indigenism, 1985-1995*, isbn: 0896085538, pg. 14-16]

The Specter of Hannibal Lecter At this juncture, **the** entire **planet is locked**, figuratively, **in a room with the socio-cultural equivalent of Hannibal Lecter**. **An individual of** consummate **taste and refinement, imbued with** indelible **grace and charm, he distracts his victims with** the brilliance of **his intellect**, even **while honing his blade. He is thus able to dine** alone **upon their livers**, his feast invariably candlelit, accompanied by lofty music and a fine wine. Over and over **the ritual is repeated**, always hidden, always **denied** in order **that it may** be **continue**d. **So perfect is Lecter’s pathology that, from** the depths of **his scorn for the inferiors upon which he feeds, he advances himself as their sage** and therapist, he **who is** incomparably **endowed** with the ability **to explain their innermost meanings**, **he professes to be their savior. His success depends upon being embraced** and exalted by those **upon whom he preys**. Ultimately, **so long as Lecter is able to retain his mask of** omnipotent **gentility, he can never be stopped. The** sociocultural **equivalent of** Hannibal **Lecter is** the core of **an expansionist European ‘civilization’ which has reached out to engulf the planet**. In coming to grips with Lecter, **it is of no useful purpose to engage in sympathetic biography**, to chronicle the nuances of his childhood and catalogue his many and varied achievements, whether real or imagined. **The recounting of such information is** at best **diversionary, allowing him to remain** at large just **that much longer**. More often, **it** inadvertently **serves to perfect his mask, enabling him** not only to **maintain his enterprise**, but to pursue it **with ever more arrogance and efficiency**. At worst, **the biographer is aware of the intrinsic evil lurking beneath** the subject’s veneer of civility, **but** — because of morbid fascination and a desire to participate vicariously — deliberately **obfuscates the truth in order that his homicidal activities may continue unchecked. The biographer** thus **reveals not only a willing complicity** in the subject’s crimes, **but a virulent pathology of his or her own. Such is** and has always been **the relationship of “responsible scholarship” to expansionist** Europe and its derivative **societies. The sole legitimate function of information** compiled **about Lecter is that which will** serve to **unmask him and** thereby **lead to his apprehension**. The purpose of apprehension is not to visit retribution upon the psychopath — he is, after all, by definition mentally ill and consequently not in control of his more lethal impulses — but **to put an end to his activities**. It is even theoretically possible that, once he is disempowered, he can be cured. **The point**, however, **is to understand** what he is and **what he does** well enough **to stop him** from doing it. **This is the role which must be assumed by scholarship vis-a-vis Eurosupremacy, if scholarship** itself **is to have** any positive and **constructive meaning. Scholarship is never ‘neutral’ or ‘objective’**; **it** always **works** either **for the psychopath or against him, to mystify** sociocultural **reality or to decode it, to make corrective action possible or to prevent it**. It may well be that there are better points of departure for intellectual endeavors to capture the real form and meaning of Eurocentrism than the life, times and legacy of Christopher Columbus. Still, since Eurocentrists the world over have so evidently clasped hands in utilizing him as a (perhaps the) preeminent signifier of their collective heritage, and are doing so with such apparent sense of collective jubilation, the point has been rendered effectively moot. Those who seek to devote their scholarship to apprehending the psychopath who sits in our room thus have no alternative but to use him as primary vehicle of articulation. In order to do so, **we must approach him through deployment of** the analytical tools which allow him to be utilized as a medium of explanation, a lens by which to shed light upon phenomena such as the mass psychologies of racism, **a means by which to shear Eurocentrism of its camouflage, exposing its** true **contours, revealing the** enduring **coherence of the dynamics which forged its evolution**. Perhaps **through such efforts we can** begin to genuinely **comprehend the** seemingly incomprehensible **fact that so many groups are** presently **queuing up to associate themselves with a man from whose** very **memory wafts the** cloying **stench of tyranny and genocide**. From there, it may be possible to at least crack the real codes of meaning underlying the sentiments of the Nuremberg rallies, those spectacles on the plazas of Rome during which fealty was pledged to Mussolini, and that amazing red-white-and-blue, tie-a-yellow ribbon frenzy gripping the U.S. public much more lately. If we force ourselves to see things more clearly, we can understand. If we can understand, we can apprehend. **If we can apprehend**, perhaps **we can stop the psychopath before he kills again. We are obligated to try, from a sense of** sheer **self-preservation, if nothing else**. Who knows, we may even succeed. But **first we must stop lying to ourselves**, or allowing others to do the lying for us, **about who it is with whom we now share our room**.

#### Their silence is strategic – the AFF fails to consider Native America because doing so would force a confrontation with a colonial history that undermines their ostensibly progressive agenda. America’s very existence is contingent upon a continuing legacy of colonization and genocide.

Churchill 96 [Ward, professor of ethnic studies at the University of Colorado at Boulder from 1990 to 2007, *From a Native Son: Selected Essays in Indigenism, 1985-1995*, p 520-525] // myost

I’ll debunk some of this nonsense in a moment, but first I want to take up the posture of self-proclaimed leftist radicals in the same connection. And I’ll do so on the basis of principle, because justice is supposed to matter more to progressives than to rightwing hacks. Let me say that the pervasive and near-total silence of the Left in this connection has been quite illuminating. Non-Indian activists, with only a handful of exceptions, persistently plead that they can’t really take a coherent position on the matter of Indian land rights because “unfortunately,” they’re “not really conversant with the issues” (as if these were tremendously complex). Meanwhile, they do virtually nothing, generation after generation, to inform themselves on the topic of who actually owns the ground they’re standing on. The record can be played only so many times before it wears out and becomes just another variation of “hear no evil, see no evil.” At this point, it doesn’t take Albert Einstein to figure out that the Left doesn’t know much about such things because it’s never wanted to know, or that this is so because it’s always had its own plans for utilizing land it has no more right to than does the status quo it claims to oppose. The usual technique for explaining this away has always been a sort of pro forma acknowledgement that Indian land rights are of course “really important stuff” (yawn), but that one really doesn’t have a lot of time to get into it (I’ll buy your book, though, and keep it on my shelf, even if I never read it). Reason? Well, one is just “overwhelmingly preoccupied” with working on “other important issues” (meaning, what they consider to be more important issues). Typically enumerated are sexism, racism, homophobia, class inequities, militarism, the environment, or some combination of these. It’s a pretty good evasion, all in all. Certainly, there’s no denying any of these issues their due; they are all important, obviously so. But more important than the question of land rights? There are some serious problems of primacy and priority imbedded in the orthodox script. To frame things clearly in this regard, let’s hypothesize for a moment that all of the various non-Indian movements concentrating on each of these issues were suddenly successful in accomplishing their objectives. Let’s imagine that the United States as a whole were somehow transformed into an entity defined by the parity of its race, class, and gender relations, its embrace of unrestricted sexual preference, its rejection of militarism in all forms, and its abiding concern with environmental protection (I know, I know, this is a sheer impossibility, but that’s my point). When all is said and done, the society resulting from this scenario is still, first and foremost, a colonialist society, an imperialist society in the most fundamental sense possible with all that this implies. This is true because the scenario does nothing at all to address the fact that whatever is happening happens on someone else’s land, not only without their consent, but through an adamant disregard for their rights to the land. Hence, all it means is that the immigrant or invading population has rearranged its affairs in such a way as to make itself more comfortable at the continuing expense of indigenous people. The colonial equation remains intact and may even be reinforced by a greater degree of participation, and vested interest in maintenance of the colonial order among the settler population at large. The dynamic here is not very different from that evident in the American Revolution of the late 18th century, is it? And we all know very well where that led, don’t we? Should we therefore begin to refer to socialist imperialism, feminist imperialism, gay and lesbian imperialism, environmental imperialism, African American, and la Raza imperialism? I would hope not. I would hope this is all just a matter of confusion, of muddled priorities among people who really do mean well and who’d like to do better. If so, then all that is necessary to correct the situation is a basic rethinking of what must be done, and in what order. Here, I’d advance the straightforward premise that the land rights of “First Americans” should serve as a first priority for everyone seriously committed to accomplishing positive change in North America. But before I suggest everyone jump off and adopt this priority, I suppose it’s only fair that I interrogate the converse of the proposition: if making things like class inequity and sexism the preeminent focus of progressive action in North America inevitably perpetuates the internal colonial structure of the United States, does the reverse hold true? I’ll state unequivocally that it does not. There is no indication whatsoever that a restoration of indigenous sovereignty in Indian Country would foster class stratification anywhere, least of all in Indian Country. In fact, all indications are that when left to their own devices, indigenous peoples have consistently organized their societies in the most class-free manners. Look to the example of the Haudenosaunee (Six Nations Iroquois Confederacy). Look to the Muscogee (Creek) Confederacy. Look to the confederations of the Yaqui and the Lakota, and those pursued and nearly perfected by Pontiac and Tecumseh. They represent the very essence of enlightened egalitarianism and democracy. Every imagined example to the contrary brought forth by even the most arcane anthropologist can be readily offset by a couple of dozen other illustrations along the lines of those I just mentioned. Would sexism be perpetuated? Ask one of the Haudenosaunee clan mothers, who continue to assert political leadership in their societies through the present day. Ask Wilma Mankiller, current head of the Cherokee nation, a people that traditionally led by what were called “Beloved Women.” Ask a Lakota woman—or man, for that matter—about who it was that owned all real property in traditional society, and what that meant in terms of parity in gender relations. Ask a traditional Navajo grandmother about her social and political role among her people. Women in most traditional native societies not only enjoyed political, social, and economic parity with men, they often held a preponderance of power in one or more of these spheres. Homophobia? Homosexuals of both genders were (and in many settings still are) deeply revered as special or extraordinary, and therefore spiritually significant, within most indigenous North American cultures. The extent to which these realities do not now pertain in native societies is exactly the extent to which Indians have been subordinated to the mores of the invading, dominating culture. Insofar as restoration of Indian land rights is tied directly to the reconstitution of traditional indigenous social, political, and economic modes, you can see where this leads: the relations of sex and sexuality accord rather well with the aspirations of feminist and gay rights activism. How about a restoration of native land rights precipitating some sort of “environmental holocaust”? Let’s get at least a little bit real here. If you’re not addicted to the fabrications of Smithsonian anthropologists about how Indians lived, or George Weurthner’s Eurosupremacist Earth First! Fantasies about how we beat all the wooly mammoths and mastodons and saber-toothed cats to death with sticks, then this question isn’t even on the board. I know it’s become fashionable among Washington Post editorialists to make snide references to native people “strewing refuse in their wake” as they wandered nomadically about the “prehistoric” North American landscape. What is that supposed to imply? That we, who were mostly “sedentary agriculturalists” in any event. We’re dropping plastic and aluminum cans as we went? Like I said, let’s get real. Read the accounts of early European arrival, despite the fact that it had been occupied by 15 or 20 million people enjoying a remarkably high standard of living for nobody knows how long: 40,000 years? 50,000 years? Longer? Now contrast that reality to what’s been done to this continent over the past couple of hundred years by the culture Weurthner, the Smithsonian, and the Post represent, and you tell me about environmental devastation. That leaves militarism and racism. Taking the last first, there really is no indication of racism in traditional Indian societies. To the contrary, the record reveals that Indians habitually intermarried between groups, and frequently adopted both children and adults from other groups. This occurred in precontact times between Indians, and the practice was broadened to include those of both African and European origin—and ultimately Asian origin as well—once contact occurred. Those who were naturalized by marriage or adoption were considered members of the group, pure and simple. This was always the Indian view. The Europeans and subsequent Euroamerican settlers viewed things rather differently, however, and foisted off the notion that Indian identity should be determined primarily by “blood quantum,” an outright eugenics code similar to those developed in places like Nazi Germany and apartheid South Africa. Now that’s a racist construction if there ever was one. Unfortunately, a lot of Indians have been conned into buying into this antiIndian absurdity, and that’s something to be overcome. But there’s also solid indication that quite a number of native people continue to strongly resist such things as the quantum system. As to militarism, no one will deny that Indians fought wars among themselves both before and after the European invasion began. Probably half of all indigenous peoples in North America maintained permanent warrior societies. This could perhaps be reasonably construed as “militarism,” but not, I think, with the sense the term conveys within the European/Euro-American tradition. There were never, so far as anyone can demonstrate, wars of annihilation fought in this hemisphere prior to the Columbian arrival, none. In fact, it seems that it was a more or less firm principle of indigenous warfare not to kill, the object being to demonstrate personal bravery, something that could be done only against a live opponent. There’s no honor to be had in killing another person, because a dead person can’t hurt you. There’s no risk. This is not to say that nobody ever died or was seriously injured in the fighting. They were, just as they are in full contact contemporary sports like football and boxing. Actually, these kinds of Euro-American games are what I would take to be the closest modern parallels to traditional inter-Indian warfare. For Indians, it was a way of burning excess testosterone out of young males, and not much more. So, militarism in the way the term is used today is as alien to native tradition as smallpox and atomic bombs. Not only is it perfectly reasonable to assert that a restoration of Indian control over unceded lands within the United States would do nothing to perpetuate such problems as sexism and classism, but the reconstitution of indigenous societies this would entail stands to free the affected portions of North America from such maladies altogether. Moreover, it can be said that the process should have a tangible impact in terms of diminishing such oppressions elsewhere. The principle is this: sexism, racism, and all the rest arose here as a concomitant to the emergence and consolidation of the Eurocentric nation-state form of sociopolitical and economic organization. Everything the state does, everything it can do, is entirely contingent on its maintaining its internal cohesion, a cohesion signified above all by its pretended territorial integrity, its ongoing domination of Indian Country. Given this, it seems obvious that the literal dismemberment of the nation-state inherent to Indian land recovery correspondingly reduces the ability of the state to sustain the imposition of objectionable relations within itself. It follows that realization of indigenous land rights serves to undermine or destroy the ability of the status quo to continue imposing a racist, sexist, classist, homophobic, militaristic order on non-Indians.

#### Native rights are a pre-req to immigrants

Byrd 11 [Jodi A., Associate Professor of English and American Indian Studies at the University of Illinois at Urbana-Champaign, *The Transit of Empire: Indigenous Critiques of Colonialism*, 2011, p 201-203] // myost

The introduction of Orientalism into the context of the Americas and the construction of “native” otherness as foreign to and excluded from the United States implies a colonial and imperial construct of the place and movements of peoples. But it is an implied colonial discourse that depends upon racial categories to incorporate native peoples as part of, though marginal to, the U.S. melting pot of immigrants that now exists on indigenous peoples’ own lands. Edward Said argues that “the Orient is an integral part of European material civilization and culture. Orientalism expresses and represents that part culturally and even ideologically as a mode of discourse with supporting institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracies and colonial styles.”50 And though Said considers American Orientalism less dense and less established than the European variety, his definition is useful here in considering how such material culture shapes U.S. understandings of “native” peoples as part of a larger “Asiatic” influence and threat. But even if those knowledges that produce Orientalizing narratives about American Indians refer to colonial bureaucracies and colonial styles, the American Indian version of a remapped “Orientalism” also contains a racializing component that is necessary to contextualize. As a narrative of racist, colonialist, and imperialist supremacy, Manifest Destiny transformed indigenous peoples from citizens of separate, external sovereign nations into racial minorities within and subject to the internal structures of the United States. The orientalizing cacophonies that remap indigenous peoples as part of an early wave of Asian immigrants perform an originary racialization of indigenous peoples as they are recast as immigrants who may or may not be full citizens. In Race and Manifest Destiny, Reginald Horsman identifies the narrative of Manifest Destiny as a process of racialization that constructed the “American” as inheritor of the Anglo-Saxon lineage. Accompanying that racialization of the “American” into Anglo-Saxon whiteness was the racialization of the other as the savage, inferior “Indian” who would, sadly, fall by the wayside as civilization advanced.51 By identifying Manifest Destiny as primarily a narrative fixated on the process of constituting and cohering racial categories, Horsman establishes one of the tenets that has enabled the slippage between colonization and racialization to propagate within postcolonial, critical race, and critical whiteness studies. As the United States stretched and exceeded its own boundaries under the rubric of Manifest Destiny, indigenous peoples and nations, who were initially externally colonized, had to be imaginatively and legally incorporated into the internal of the U.S. nation-state. They had to be worlded as other and worlded anew as cultures and races that add to the distinctive mosaic of U.S. multiculturalism, with the additional distinction implied here that the United States does not and would not enter into treaties with its own citizens. On a fundamental level, then, the process of racialization that reinforced the U.S. destiny to spread from sea to sea served a larger function by turning indigeneity into a “racial” category, a transformation that equates the distinctions of indigenous nations as sovereign and independent with that of every other racialized and diasporic arrival to be mediated within U.S. citizenry. This process of racialization, embedded within the Orientalizing cacophonies justifying the transit of U.S. empire, has particular significance to how postcolonialism and altermodernity are articulated and discussed by European, American, and diasporic theorists concerned with creating intersectional insurrections that parallel class struggles with race, gender, and sexuality in order to create the common within the global.52

#### Genocidal assaults on indigenous populations set the foundation for serial policy failure in imperialist campaigns abroad—risks extinction

Street 4 [Paul, writes on imperialism, racism, and thought control for ZNet, “Those Who Deny the Crimes of the Past,” 11 March 2004, <http://www.zcommunications.org/those-who-deny-the-crimes-of-the-past-by-paul-street>] // myost

It is especially important to appreciate the significance of the vicious, often explicitly genocidal "homeland" assaults on native-Americans, which set foundational racist and national-narcissist patterns for subsequent U.S. global butchery, disproportionately directed at non-European people of color. The deletion of the real story of the so-called "battle of Washita" from the official Seventh Cavalry history given to the perpetrators of the No Gun Ri massacre is revealing. Denial about Washita and Sand Creek (and so on) encouraged US savagery at Wounded Knee, the denial of which encouraged US savagery in the Philippines, the denial of which encouraged US savagery in Korea, the denial of which encouraged US savagery in Vietnam, the denial of which (and all before) has recently encouraged US savagery in Afghanistan and Iraq. It's a vicious circle of recurrent violence, well known to mental health practitioners who deal with countless victims of domestic violence living in the dark shadows of the imperial homeland's crippling, stunted, and indeed itself occupied social and political order. Power-mad US forces deploying the latest genocidal war tools, some suggestively named after native tribes that white North American "pioneers" tried to wipe off the face of the earth (ie, "Apache," "Blackhawk," and "Comanche" helicopters) are walking in bloody footsteps that trace back across centuries, oceans, forests and plains to the leveled villages, shattered corpses, and stolen resources of those who Roosevelt acknowledged as America's "original inhabitants." Racist imperial carnage and its denial, like charity, begin at home. Those who deny the crimes of the past are likely to repeat their offenses in the future as long as they retain the means and motive to do so. It is folly, however, for any nation to think that it can stand above the judgments of history, uniquely free of terrible consequences for what Ward Churchill calls "imperial arrogance and criminality." Every new U.S. murder of innocents abroad breeds untold numbers of anti-imperial resistance fighters, ready to die and eager to use the latest available technologies and techniques to kill representatives - even just ordinary citizens - of what they see as an American Predator state. This along with much else will help precipitate an inevitable return of US power to the grounds of earth and history. As it accelerates, the U.S. will face a fateful choice, full of potentially grave or liberating consequences for the fate of humanity and the earth. It will accept its fall with relief and gratitude, asking for forgiveness, and making true reparation at home and abroad, consistent with an honest appraisal of what Churchill, himself of native-American (Keetoowah Cherokee) ancestry, calls "the realities of [its] national history and the responsibilities that history has bequeathed": goodbye American Exceptionalism and Woodrow Wilson's guns. Or Americans and the world will face the likely alternative of permanent imperial war and the construction of an ever-more imposing U.S. fortress state, perpetuated by Orwellian denial and savage intentional historical ignorance. This savage barbarism of dialectically inseparable empire and inequality will be defended in the last wagon-train instance by missiles and bombs loaded with radioactive materials wrenched from lands once freely roamed by an immeasurably more civilized people than those who came to destroy.

#### The alternative is a decolonial pedagogy which situates land return as our first political priority.

Malott 8 [Curry, faculty member in Professional and Secondary Education at West Chester University, *A Call to Action: An Introduction to Education, Philosophy, and Native North America*, p. 88-91] // myost

While the similarities between a Marxist and an Indigenous dialectical (relational) study of human affairs are not hard to discern, there is one area of contestation less easily resolved, which brings us back to the central focus of this chapter: land, which also tends to be presented dualistically by Native scholars and activists. For example, Winona LaDuke (1992) describes industrial society, the result of primitive accumulation, as synthetic because it has been disconnected from the natural organic connection between people and the land where the settler-community represents the violent imposition of the inorganic. At the end of Chapter Ten, I put it like this: can the subordinate classes of the settler-community conceive of a way to liberate themselves from the grip of their own ruling class (the same ruling class that has exploited the labor power of the settler community in not only putting them to work in production, but as slaughterers and wealth extractors of everyone from American Indians to Iraqis) without continuing to deny Native Americans their Native American ancestral lands? Or, will a liberated settler-community working class continue to occupy 99% of Native land? Because North America's working class seems far from liberating itself from its ruling class, the cause of which has been associated with many interconnected factors including whiteness (see McLaren & Farahmandpur, 2005), such a consideration is a moot point. What is not a moot point, however, is how to work together. Winona LaDuke (1992) has addressed this issue situating the solution within a process of collective relearning and collaboration: I would argue that Americans of "foreign" descent must become Americans. That is not to become a patriot of the United States, a patriot of the flag, but a patriot to the land of this continent ... You were born here, you will not likely go away, or live anywhere else, and there are simply no more frontiers to follow. We must all relearn a way of thinking, a state of mind that is from this common ground ... If we are in this together, we must rebuild, redevelop, and reclaim an understanding/analysis which is uniquely ours. (p. 1) What this has, does, and could look like in practice is explored in detail here and in Chapter Four. Ultimately, LaDuke is challenging all of us to rethink the philosophies that inform the way we read the world and subsequently the choices we make in the world, which, for educators, translates into curriculum and pedagogy (what we teach and the way we teach it). For Churchill (2002), LaDuke's "common ground" is a unified (settlers and Natives) movement against the colonialist governments of the United States and Canada in support of Native land reclamation as dictated by international law. Churchill (2002) notes that fully one third of the United States is unceded Native land and thus proposes a land base that would not disrupt the financial heart of the U.S. that could be the new Native North America. The new Native America would of course be governed under Native law, which Churchill (2002) argues is, in its pre-Columbian state, inherently environmentalist, antiracist, anticapitalist/economic inequality, anti-homophobic and anti-sexist, in short, democratic, and would therefore probably be appealing to many people from the settler-community, who, contrary to popular opinion, would not be expected to give up their homes or small businesses if located on Native land. Aware of the erosive effect the colonizers' system of indoctrination has had on these egalitarian Native values, Churchill (2002) notes that "the extent to which these realities do not now pertain in native societies is exactly the extent to which Indians have been subordinated to the mores of the invading, dominating culture" (p. 379). Because the process of colonization has perverted traditional ways contributing to deep philosophical divisions among Native communities, where none were before, suggesting that land reclamation would result in an automatic return to traditional ways is, at best, romantic and naïve. However, this is not to suggest current arrangements are satisfactory. The fact that Native peoples, as a whole, based on every social indicator of oppression, such as poverty, are by far the most oppressed group in North America warrants serious attention and major changes, as does the suffering of many other groups in North America (and throughout the world, the focus of Chapter Four) such as African Americans, or Africans in America as Europeans are in America but not of America, as only those indigenous to the land can be. As this seems to be a simple "fact," deciphering who is European, who is African and who is "Indian" is not so clear-cut after five hundred years of intermingling. With these complexities in mind, as alluded to above by LaDuke, what is needed in this day and age are workable pedagogies of unity and accompanying philosophies of praxis. While land reclamation is undoubtedly part of the solution, alone, it is not enough. A radical social education is also needed for everyone, Native and non-Native alike. Such an education, outlined in Chapter Four, following critical pedagogy and Native American-conceived and -controlled tribal education systems, should be designed to facilitate the development of critical multicultural citizens, able to not only read the word, but their world as well, and therefore endowed with a land-centered revolutionary consciousness complete with the sense of empowerment needed to put it into action, that is, the restoration of dignity, justice, self-determination, and humanization generally in North America, both philosophically and geographically, and the possibility of a utopian future. Providing a more concrete place of departure for considering what the settler-Left's role might look in this process, through summarizing what he understands is the general sentiment of Native Nations engaged in land reclamation regarding non-native progressives and radicals, Churchill (2002) notes: ...When Indigenist movements like AIM advance slogans like "U.S. Out of North American," non-Indian radicals should not react defensively. They should cheer. They should see what they might do to help. When they respond defensively to sentiments like those expressed by AIM, what they are ultimately defending is the very government, the very order they claim to oppose so resolutely. And if they manifest this contradiction often enough, consistently enough, pathologically enough, then we have no alternative but to take them on their word: that they really are at some deep level or another aligned, all protestations to the contrary notwithstanding, with the mentality that endorses our permanent dispossession and disenfranchisement, our continuing oppression, our ultimate genocidal obliteration as self-defining and self-determining peoples. In other words, they make themselves part of the problem rather than becoming part of the solution. (p. 383) As Churchill alludes, the heart of the antagonistic relationship between settlers and communities Native to North America is control of ancestral lands. The significance of these land issues lies within the fact that settler/colonizer populations have overwhelmingly pursued an agenda of replacing the Native philosophies with foreign conceptions of land. While aware of the complexities that emerge when entire civilizations are brought together under dubious circumstances, addressed in the second half of this chapter, we continue by considering the two poles of perception (immigrant and Native) when considering land in post-Columbian North America and the historical development of the two in context.

#### Role of the ballot: this space is an opportunity to deploy Red Pedagogy, a praxis which foregrounds Native intellectualism. Red Pedagogy allows us to create a decolonized space. Vote for the team which best activates indigenous political agency.

Grande 8 [Sandy, Associate Professor of Education at Connecticut College, “Red Pedagogy: The Un-Methodology,” *Handbook of Critical and Indigenous Methodologies*, eds. Norman K. Denzin, Yvonna S. Lincoln, and Linda Tuhiwai Smith, p 249-250]

From the standpoint of Red pedagogy, the primary lesson in all of this is pedagogical. In other words, as we are poised to raise yet another generation in a nation at war and at risk, we must consider how emerging conceptions of citizenship, sovereignty, and democracy will affect the (re)formation of our national identity, particularly among young people in schools. As Mitchell (2001) notes, "The production of democracy, the practice of education, and the constitution of the nation-state" have always been interminably bound together. The imperative before us as citizens is to engage a process of unthinking our colonial roots and rethinking democracy. For teachers and students, this means that we must be willing to act as agents of transgression, posing critical questions and engaging dangerous discourse. Such is the basis of Red pedagogy. In particular, Red pedagogy offers the following seven precepts as a way of thinking our way around and through the challenges facing American education in the 21st century and our mutual need to define decolonizing pedagogies: 1. Red pedagogy is primarily a pedagogical project. In this context, pedagogy is understood as being inherently political, cultural, spiritual, and intellectual. 2. Red pedagogy is fundamentally rooted in indigenous knowledge and praxis. It is particularly interested in knowledge that furthers understanding and analysis of the forces of colonization. 3. Red pedagogy is informed by critical theories of education. A Red pedagogy searches for ways it can both deepen and be deepened by engagement with critical and revolutionary theories and praxis. 4. Red pedagogy promotes an education for decolonization. Within Red pedagogy, the root metaphors of decolonization are articulated as equity, emancipation, sovereignty, and balance. In this sense, an education for decolonization makes no claim to political neutrality but rather engages a method of analysis and social inquiry that troubles the capitalist-imperialist aims of unfettered competition, accumulation, and exploitation. 5. Red pedagogy is a project that interrogates both democracy and indigenous sovereignty. In this context, sovereignty is broadly defined as "a people's right to rebuild its demand to exist and present its gifts to the world ... an adamant refusal to dissociate culture, identity, and power from the land" (Lyons, 2000). 6. Red pedagogy actively cultivates praxis of collective agency. That is, Red pedagogy aims to build transcultural and transnational solidarities among indigenous peoples and others committed to reimagining a sovereign space free of imperialist, colonialist, and capitalist exploitation. 7. Red pedagogy is grounded in hope. This is, however, not the future-centered hope of the Western imagination but rather a hope that lives in contingency with the past—one that trusts the beliefs and understandings of our ancestors, the power of traditional knowledge, and the possibilities of new understandings. In the end, a Red pedagogy is about engaging the development of "community-based power" in the interest of "a responsible political, economic, and spiritual society." That is, the power to live out "active presences and survivances rather than an illusionary democracy." Vizenor's (1993) notion of survivance signifies a state of being beyond "survival, endurance, or a mere response to colonization" and of moving toward "an active presence ... and active repudiation of dominance, tragedy and victimry?" In these post-Katrina times, I find the notion of survivance—particularly as it relates to colonized peoples—to be poignant and powerful. It speaks to our collective need to decolonize, to push back against empire, and to reclaim what it means to be a people of sovereign mind and body. The peoples of the Ninth Ward in New Orleans serve as a reminder to all of us that just as the specter of colonialism continues to haunt the collective soul of America, so too does the more hopeful spirit of indigeneity.

### Case

#### Natives are the prisoners that remain after the guards have left – the AFF’s belief that legal remedies can resolve racists detention is misguided.

Mani 9 (Wowitan Yuha (American Name - David Swallow, Jr.) Tetoh Lakota of the Wa Naweg’a Band and lives on the Pine Ridge Indian Reservation in South Dakota, “[The Black Hills Are Everything!](http://www.russellmeansfreedom.com/2009/the-black-hills-are-everything-by-david-swallow/)”, <http://www.russellmeansfreedom.com/tag/prisoner-of-war-camp-344/>, Vance)

The Black Hills used to be occupied by the Crow Tribe.  That was way back, like in the 1700’s, even the 1600’s.  Then, the Black Hills were taken by the Shahiyela (the Cheyenne).  Then, the Lakota took them from the Cheyenne.  Finally, the white man took them from the Lakota. The Lakota look at the Black Hills as having spiritual power.  All the Plains Tribes look at them that way.  But the white man saw only the yellow rock called gold.  They tried to make deals to get the land in the Treaties of 1825, 1851, 1868, and even the Bradley Bill of the 1980’s. However, the only Treaty that should be recognized concerning the Black Hills is the Treaty of 1851.  At that time, all the tribes signed this Treaty and they signed it in a holy way.  The Lakota brought the Sacred White Buffalo Calf C’anunpa, the Cheyenne brought their 7 sacred arrows, and the Crow, Arikara, and other tribes brought their sacred bundles. They all held ceremonies before they held the pen.  They all agreed that no settlers should enter that sacred area, the Black Hills.  The way that Treaty was written, this became a non-negotiable matter from that time on.  No other Treaty would have the right to change that. But the government and homesteaders, the settlers and prospectors kept invading the Black Hills. As a result, the Federal Government renegotiated the terms and called it the Fort Laramie 1868 Treaty.  This time, the original signers of the 1851 Treaty didn’t want to sign.  Many were fighting.  There were no sacred ceremonies done and only one sacred c’anunpa, only one sacred prayer pipe, was present.The prospectors and homesteaders brought in whiskey to get many of the signers drunk so they would sign.  My grandfather told me all about this.  He saw it, personally. Mni wakan, sacred water, is what the Lakota called alcohol because it affected our people so strongly. So this is how we lost the Black Hills. Six years later, in 1874, General George Armstrong Custer took an expedition into the Black Hills which included a geologist and numerous miners.  What they found immediately caused a major gold rush and the white settlers and miners began pouring into the Black Hills.  The treaties were completely ignored. In 1876, the Indian Appropriations Act demanded the Sioux give back the Black Hills or starve under siege.  Then they ordered the destruction of all the buffalo herds.  By 1889, the Federal Government had forced the Lakota into prisoner of war camps which they now call Reservations.  According to government documents, Pine Ridge Indian Reservation is prisoner of war camp #344. Around 1990, I rode 7 years with many young people to the Crazy Horse Monument.  When we crossed our so-called homelands, we were stopped by the white landowners because we didn’t have their permission.  One old homesteader showed us his deed showing where he had bought the land from the Federal Government.  He told us that if we didn’t like it, we should go talk to the Federal Government who got it from the Louisiana Purchase. So, we lost our Black Hills.  Some said we sold them.  If so, I believe somebody took the money without any of us Lakota, Dakota, Nakota, Cheyenne or Arikara knowing it.  There is no money. In 1980, the United States Supreme Court said the Black Hills did rightfully belong to the Lakota.  They wanted to buy them from us but our People have refused that money.  The sacred Black Hills are not for sale. But that’s why the Bradley Bill was introduced in 1987 in Congress, to make it look good.  It supposedly would have let us live in the Black Hills while the Federal Government could still mine, trespass, and do whatever they wanted.  But even that was never approved. So, saying the Black Hills are ours and belong to us are just hollow, empty words.  If they are really ours, why can’t we live there?  It’s only occupied by white people with land deeds. We cannot even go to the Black Hills and exercise our spiritual ways.  We are forbidden.  We have to get permission from the Government and the BLM and then we have to follow their rules and regulations.  But if we are a sovereign nation like they said, we would have our own jurisdiction (county-state-reservation). If we do still own the Black Hills, we need a new treaty, to renegotiate a new treaty.  All the other treaties were violated or abandoned, often with the approval of Congress, without us knowing about it.  That’s not supposed to happen in nation to nation dealings. We have a treaty council, a council of elders, all kinds of councils but none of them are effective.  The government and state have kept us hungry and distracted with their projects which accomplish very little. Every other foreign nation conquered by the United States has received huge efforts towards rehabilitation and rebuilding.  Yet, while the U.S. cries about 20% unemployment, we have 80% unemployment.  We remain isolated and have living conditions which are as bad as or worse than any “third world country.”  Our life expectancy is only 48 years old for men and 52 years old for women. We are the longest prisoners of war in the world’s history.  It must change.  We need to be set free so we can deal with our own people and our children and their children. Unfortunately, most of our old people are in the spirit world.  Today, our young people have no knowledge of the treaties, the massacre of Wounded Knee, the struggle of Wounded Knee 2, or our history.  These are the reasons our culture is dying.  No one remembers the language, culture, virtues, or spirituality.  No one knows the real history. But they need to know.  If we are to survive, people need to understand.  When we’re talking about the Black Hills, it’s not just the land that was lost but our way of life.  It’s not just money.  Money is the least important thing.  We have lost our way of life. When we talk about the Black Hills, it is about everything.  That place is holy and sacred. Ho he’cetu yelo, I have spoken these words.

#### The AFF’s appeal to the law is an abstraction which necessarily devalues indigenous ways of life through the production of a binary of order/disorder, which propagates Western imperialism

Nunn 97 [Kenneth B., Professor of Law at the University of Florida College of Law, “Law as a Eurocentric Enterprise,” *Law and Inequality* 15 (Spring 1997): 323-370, Lexis] // myost

Dichotomous reasoning is a trait of Eurocentricity. n138 Not only are the usual dichotomies found within the law, n139 but the law itself is one half of a larger dichotomy. Law is set in opposition to "custom," which is then deemed inferior n140 since it is produced by habit and not reason. n141 Although European societies have their customs, they are thought to be superior to non-European societies, which do not have law, at least not in the European sense of the word. The absence of law in non-Western societies implies the absence of reason. While Western "law" is for the civilized, non-Western "custom" is for "savages" and "brutes." n142 Thus, dichotomy is central to the mythology of modern law. To quote Peter Fitzpatrick: Modern law emerges, in a negative exaltation, as universal in opposition to the particular, as unified in opposition to the diverse, as omnicompetent in contrast to the incompetent, and as controlling of what has to be controlled ... Law is imbued with this negative transcendence in its own myth of origin where it is imperiously set against certain "others" who concentrate the qualities it opposes. n143 The hierarchical structuring n144 of the law is readily apparent. Hierarchy is inherent in the very notion of positive law, which views law as a command from a superior to its inferiors. n145 But both positive and natural law n146 have order as their first principle. n147 In the Eurocentric mind, law is equal to order. n148 Consequently, law takes on a transcendent quality - it exists outside of and within the hierarchy it establishes. n149 There can be no order outside of the law, and law's order is imposed from the top down. Analytic reasoning n150 and extreme rational thought is also a key part of the law. This can be seen in the way in which court decisions are rendered in the form of some seemingly neutral test. n151 For example, in Shaw v. Reno, n152 the Supreme Court upheld the challenge of a white voter to North Carolina's legislative redistricting plan on the grounds that the plan violated his equal protection rights. n153 The Court held that the majority Black electoral district was a constitutionally impermissible classification on the basis of race by applying a three-part test. n154 The Court asked whether the state's concentration of a dispersed minority population in a single district disregarded traditional districting principles including: (1) "compactness," (2) "contiguity" and (3) "respect for political subdivisions." n155 In Shaw, it was the Court's reference to an abstracted and allegedly neutral test that enabled it to pick its way through the thickets of racial politics and determine that the North Carolina legislature's attempt to increase African American political representation was presumptively unconstitutional. The Court, in an opinion by Justice O'Connor, stated, "We emphasize that these criteria are important not because they are constitutionally required - they are not - but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines." n156 Here the Court privileges objectivity, as such, over subjectivity. The Court, however, fails to establish any connection between the objective nature of the factors it has chosen and the capability of those factors to illuminate whether a district has been gerrymandered on racial grounds. n157 It seems the Court would have accomplished more if it had simply asked the central question posed in the case: "What role did race play in the decision to create this district?" But such a straightforward approach would not be recognizable as "legal." The objectification n158 of the law is evident in the way that it is possible to talk about the law as an active force or separate and autonomous entity in Western societies. This gives rise to the mistaken belief that there is no law in non-Western societies. n159 In fact there is law, it is simply not objectified to the degree one finds in the West. In African societies the law is understood as part of the seamless web that binds the community together. n160 It is inconceivable to think of the law as an object, separate and distinct from custom, culture and morality. n161 Eurocentricity, however, insists on "the elevation of "the objects' in a sense encompassing not just a separate material thing but also a distinct constellation of action, such as law." n162 Consequently, to legalize is to objectify. From there it is a short step to abstraction. n163 Human cooperation, for example, is objectified in the law of contract. Once objectified, the legal document – the contract – becomes the reality. The contract takes significance over the social relationships it supposedly represents. n164 It replaces those relationships in the eyes of the court and becomes the sole or primary basis for the disposition of the case. n165 Although there is some room for the "intent of the parties" in contractual interpretation, its influence is limited to mediating between the language on the face of the contract and the underlying rules of contract. n166 Another example of the prevalence of abstraction within the law may be found in the wide-spread use of such concepts as "consideration" n167 in contracts or "reasonable doubt" n168 in criminal law. The common law itself is an abstraction. It results from the restatement of Anglo-Saxon customs in the opinions of English courts. Once so recorded, what was formerly custom is transformed into a "transcendent entity" - positive law - "operating and elaborated in officially contained systems which are incompatible with custom, although ... some custom-like modalities, survive." n169 So, instead of referring directly to custom, common law jurists refer to something derived from it, an abstraction of it. As law relies on abstraction, it also privileges complexity. Complexity and abstraction go hand in hand. n170 The transformation of English custom into the common law required a new professional class to navigate its complexity. n171 Indeed, "it was the extraordinary technicality of the common law that provided lawyers with their claim to expertise and served, by its very artificiality, to distinguish legal reasoning from the "common-sense" reason of the general populace." n172 Anyone who has ever looked at a law treatise cannot help but be impressed with the complexity of European-centered law. There are sections upon sections in any of the great multi-volumes works, such as Wigmore's Evidence. n173 This complexity is the direct result of the Eurocentric desire to abstract, to rationalize and to objectify. Finally, Eurocentric law is despiritualized and secular. n174 In fact, European positive law was impossible to conceptualize until God had been banished from the material world. n175 The creation of the Eurocentric concept of law was itself a process of desacralization. n176 God was no longer necessary to legitimate post-Enlighten-ment law: Enlightenment replaces God with nature. In terms of the origin myths of modern science, the deific obstacle to humanity's progress in knowledge is eliminated, constraining superstition gives way to incandescent truth, man unaided at last dares to know, and so on. n177

#### The plan’s deployment of legal reform does not limit sovereign power, but rather reinforces the power of exception which legitimizes abuses in the first place

Kohn 6 [Margaret, assistant professor of political science at the University of Florida-Gainesville, “Bare Life and the Limits of the Law,” *Theory and Event* 9.2 (2006): Project Muse] // myost

6. At this point it should be clear that Agamben would be deeply skeptical of the liberal call for more vigorous enforcement of the rule of law as a means of combating cruelties and excesses carried out under emergency powers. His brief history of the state of exception establishes that the phenomenon is a political reality that has proven remarkably resistant to legal limitations. Critics might point out that this descriptive point, even if true, is no reason to jettison the ideal of the rule of law. For Agamben, however, the link between law and exception is more fundamental; it is intrinsic to politics itself. The sovereign power to declare the state of exception and exclude bare life is the same power that invests individuals as worthy of rights. The two are intrinsically linked. The disturbing implication of his argument is that we cannot preserve the things we value in the Western tradition (citizenship, rights, etc.) without preserving the perverse ones. 7. Agamben presents four theses that summarize the results of his genealogical investigation. (1) The state of exception is a space devoid of law. It is not the logical consequence of the state's right to self-defense, nor is it (qua commissarial or sovereign dictatorship) a straightforward attempt to reestablish the norm by violating the law. (2) The space devoid of law has a "decisive strategic relevance" for the juridical order. (3) Acts committed during the state of exception (or in the space of exception) escape all legal definition. (4) The concept of the force-of-law is one of the many fictions, which function to reassert a relationship between law and exception, nomos and anomie. 8. The core of Agamben's critique of liberal legalism is captured powerfully, albeit indirectly, in a quote from Benjamin's eighth thesis on the philosophy of history. According to Benjamin, (t)he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real state of exception, and this will improve our position in the struggle against fascism. (57) 9. Here Benjamin endorses the strategy of more radical resistance rather than stricter adherence to the law. He recognizes that legalism is an anemic strategy in combating the power of fascism. The problem is that conservative forces had been willing to ruthlessly invoke the state of exception in order to further their agenda while the moderate Weimar center-left was paralyzed; frightened of the militant left and unwilling to act decisively against the authoritarian right, partisans of the rule of law passively acquiesced to their own defeat. Furthermore, the rule of law, by incorporating the necessity of its own dissolution in times of crisis, proved itself an unreliable tool in the struggle against violence. 10. From Agamben's perspective, the civil libertarians' call for uniform application of the law simply denies the nature of law itself. He insists, "From the real state of exception in which we live, it is not possible to return to the state of law. . ." (87) Moreover, by masking the logic of sovereignty, such an attempt could actually further obscure the zone of indistinction that allows the state of exception to operate. For Agamben, law serves to legitimize sovereign power. Since sovereign power is fundamentally the power to place people into the category of bare life, the law, in effect, both produces and legitimizes marginality and exclusion.

#### The AFF’s depoliticization of law is symptomatic of a nihilism that deprives life of all meaning

Mills 4 [Catherine, Lecturer in Philosophy at the University of New South Wales, “Contingency, Responsibility and the Law: A Response,” *borderlands e-journal* 3.1 (2004): http://www.borderlands.net.au/vol3no1\_2004/mills\_contingency.htm] // myost

8. It is precisely this recognition that underpins Giorgio Agamben’s critique of the increasing juridification of life: it is not merely that the law has been overextended in its domain of operation, such that it encroaches on more and more domains of our lifeworld, but that it has come to be wholly identified with life itself. Hence, in reference to a conflict between Scholem and Benjamin over the status of the law in Kafka, Agamben argues that the biopolitical status of law, in which law is indistinguishable from life itself, means that law is effectively ‘in force without significance’ (Agamben 1997: 51). By this, he means that in losing all transcendence the law becomes wholly identified with life and operates solely through the structure of the ban, such that the law simultaneously applies and suspends itself in its application. Agamben’s argument here, then, is not merely one of degree; it is not simply that he sees the extension of the law as been more complete than other critics of juridification. Rather, the identification of life and law has the consequence that the form of law itself is transformed. In taking up Benjamin’s insight that the exception has become the rule, he effectively posits a crisis in legitimation of the law. This crisis takes the form of nihilism, and this he argues is the danger that is becoming increasingly evident in the violence that so frequently haunts modern democracies. 9. Consequently, taking aim at his more deconstructive contemporaries, Agamben argues that the task of contemporary thought in not simply to recognize the state of abandonment in which we persist, but to overcome it. Within this he claims that it is necessary to distinguish between two forms of nihilism. (Agamben 1999a: 171) The first, which he calls ‘imperfect nihilism’ nullifies the law but maintains ‘the Nothing [that is, the emptiness of the law] in a perpetual and infinitely deferred state of validity’. (Think here of Derrida and particularly his essays on messianism and the force of law; see Mills, 2003 and forthcoming). The second form, which he calls ‘perfect nihilism’ overturns the Nothing, and does not even permit the survival of validity beyond meaning; perfect nihilism, as Benjamin states, ‘succeeds in finding redemption in the overturning of the Nothing’ (cited in Agamben 199a:171). The task that contemporary thought is faced with then is the thought of perfect nihilism, which overturns the law in force without significance that characterizes the ‘virtual’ state of exception of Western politics. 10. Importantly, the overturning of the law does not simply mean instituting a new law, and nor does it mean reinstating the lost law of a previous time ‘to recuperate alternative heredities’. (Agamben 1999b: 153) Both of these modes of progression would merely repeat the political aporia of abandonment that underpins bio-sovereign violence. Rather, the task of redeeming life from imperfect nihilism requires both the destruction of the past and the realization of ‘that which has never been’. (see Agamben 1999a, 1999b; Heller-Roazen 1999) As Thomas Carl Wall (1999: 156) writes of Agamben’s conception of the coming community, ‘without destiny and without essence, the community that returns is one never present in the first place.’ Similarly, it is only the inauguration of that which has never been, the not having been of the past, that will suffice to overturn the Nothing maintained by the law in force without significance and thereby restore human life to the unity of bios and zoe, a unity that itself has never yet been. As Agamben states ‘this – what has never happened – is the historical and wholly actual homeland of humanity’. (Agamben 1999b: 159; also see Agamben 1999c) 11. It is also in this context that Agamben’s rejection of Foucault’s gesture toward a new economy of bodies and pleasures takes on its real significance, for he sees this gesture as merely repeating the aporia of the sovereign ban and the bloody violence that attends it. Against Foucault’s provocative remarks at the end of History of Sexuality (Vol. 1) , Agamben argues that ‘the body is always already a biopolitical body and bare life, and nothing in it or the economy of its pleasure seems to allow us to find solid ground on which to oppose the demands of sovereign power’. (Agamben 1998: 187) In doing so, he rejects any notion of immanent resistance and argues instead for the necessity of a messianic event that disrupts the current nihilistic order without being of it. Consequently, then, he posits the necessity of the inauguration of a 'happy life', or ‘form-of-life’, understood as life restored to an original unity that has never been. For Agamben, happy life doesn’t partake in the distinction between natural life and political life, and has instead ‘reached the perfection of its own power and its own communicability’; (Agamben 2000: 114-115) happy life is life lived in the experience of its own unity, its own potentiality of ‘being-thus’. (Agamben 1993) As such, happy life amounts to the perfect nihilism necessary to the fulfilment of the task of overturning the law, which brings about the ‘small displacement’ that separates the messianic from our time. (Agamben 1999:164)