### T

##### FIRST OFF IS TOPICALITY—

##### Our interpretation is that debate is a game which should revolve around the topic. Our interpretation is that the affirmative should defend some type of statutory or judicial restrictions on the war powers authority of the President of the U.S. in one or more of the following areas: targeted killing, indefinite detention, offensive cyber operations, or introduction of armed forces into hostilities.

##### “USFG should” means they should defend topical action

Jon M. ERICSON, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., 3 [*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 though 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.

##### They don’t meet statutory restriction

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

##### Judicial means the court

WEST’S LAW 08 [West's Encyclopedia of American Law, edition 2. http://legal-dictionary.thefreedictionary.com/judicial]

Relating to the courts or belonging to the office of a judge; a term pertaining to the administration of justice, the courts, or a judge, as in judicial power.

A judicial act involves an exercise of discretion or an unbiased decision by a court or judge, as opposed to a ministerial, clerical, or routine procedure. A judicial act affects the rights of the parties or property brought before the court. It is the interpretation and application of the law to a particular set of facts contested by litigants in a court of law, resulting from discretion and based upon an evaluation of the evidence presented at a hearing.

Judicial connotes the power to punish, sentence, and resolve conflicts.

##### AND The plan is not presidential authority

##### Detention requires congressional authorization - Executive does not have the authority to detain

Gonzalez 4 ARTURO J. GONZÁLEZ, counsel et al April 2004 Supreme Court of the United States On Writ Of Certiorari

RUMSFELD, v. PADILLA BRIEF AMICUS CURIAEOF FRED KOREMATSU, THE BAR ASSOCIATION OF SAN FRANCISCO, THE ASIAN LAW CAUCUS, THE ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA,

ASIAN PACIFIC ISLANDER LEGAL OUTREACH, AND THE JAPANESE AMERICAN CITIZENS

LEAGUE IN SUPPORT OF RESPONDENTS April 2004 <http://jenner.com/system/assets/assets/5417/original/18.pdf?1321652398>

The history of the detention of Japanese American citizens during World War II, and the legislation that followed, demonstrate that the Executive Branch does not have the unilateral power to detain an American citizen indefinitely, without charges or access to counsel.

The internment of 120,000 American citizens of Japanese descent during World War II was one of the darkest moments in American history. The American people have recognized that the indefinite detention of these citizens, without charges, was not justified. Indeed, to prevent such acts, Congress repealed the Emergency Detention Act of 1950.

##### B. This is a voter

##### Limits are necessary. Presidential authority is an essential limit. Otherwise, everything related to war is topical

At best their extra T

##### Our interpretation is best because it’s key to preserve *productive* debate—

##### Modest predictability of the resolution is worth potential substantive tradeoff. Topicality creates space for relevant debate.

Toni M. MASSARO, Professor of Law, University of Florida, 89 [August, 1989, “Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?” *Michigan Law Review*, 87 Mich. L. Rev. 2099, Lexis]

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice.52 Some even question the whole notion of justifying a legal decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and expe-rience.53 I do not intend to enter this important jurisprudential de-bate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations.

My first thought is that the rule-of-law model is only a model. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable.54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly open-ended. "Relevance," "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" - to name only a few legal concepts - hardly admit of precise definition or consistent, predictable application. Rather, they represent a weaker, but still constraining sense of the rule-of-law model. Most rules are guidelines that establish spheres of relevant conversation, not mathematical formulas.

Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles.55

As a practical matter, therefore, our rules often are ambiguous and fluid standards that offer substantial room for varying interpretations. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers,56 all of which may go un-stated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal.

Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant.57 The solution to this "empathy gap" was legislative action to make the law more specific - more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations.58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers - in this example, women - and hence most vulnerable to unempathetic ad hoc rulings.

A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some procedural regularity - "law for law's sake" - because it lends stasis and structure to our often chaotic lives. Even within our most intimate relationships, we both establish "rules," and expect the other party to follow them.59 Breach of these unspoken agreements can destroy the relationship and hurt us deeply, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create expectations, and their consistent application fulfills the expectations. The modest predictability that this sort of "formalism" provides actually may encourage human relationships.60

### K

#### The aff is strategically silent on the issue of Native American exploitation, perpetuating the eradication of the Native American culture and population.

Churchill 96 (Ward Churchill, Professor of Ethnic Studies at University of Colorado Boulder, Masters in Communication at Sangamon State, From a Native Son, pp. 520-30, 1996)

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, lets 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 . Lets 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.

#### The origin of indefinite detention is seen as a process of detaining the enemy, the affirmative glosses over the spectacle of indefinite detention as a archeological and biopolitical issue, our criticism believes that for the archeological approach to work it must go beyond its referent objects and explore the native captivity of indigenous people as a geological origin of criticism.

Newcomb 11 Steve Newcomb “Andrew Jackson and the USA Global War Bill” 6/2/11, http://indiancountrytodaymedianetwork.com/2011/06/02/andrew-jackson-and-usa-global-war-bill

In March 2011, the U.S. government filed a response brief to two appeals by two Guantanamo Bay detainees. They had been convicted of "providing material support for terrorism" and their defense contended that the charge was not a war crime subject to military tribunal jurisdiction. The defense argued that the U.S. government was obliged to cite historical evidence demonstrating that "providing support to an enemy" had been previously treated by the United States as a war crime. In its March 2011 response, the United States created an explicit connection between the Seminole Indians and al Qaeda under the label of "terrorism," and cited a single historical example to support its theory. (See "History and Tradition in American Military Justice" by Samuel T. Morrison.) That precedent was the prosecution and hanging of two British subjects under Major General Andrew Jackson’s command during his unauthorized invasion of Florida. In an effort to make their precedent fit, the U.S. military commission prosecutors offered two examples of what they claimed to be "terrorism,"—the Seminole Indians resisting Jackson’s invasion in 1818 and al Qaeda in 2001. In 1818, without authorization, U.S. Major General (later President) Andrew Jackson led an invasion of Spanish-claimed territory in Florida, thereby igniting the First Seminole War. Jackson did so to capture "fugitive slaves" and to invade and attack the Seminole and Miccosukee nations. During the invasion, Jackson captured two British subjects (Alexander Arbuthnot and Robert Ambrister) who had been living among the Seminoles. Letters found aboard Arbuthnot’s schooner, in which he had advocated for Seminole land and treaty rights, were used as evidence against him. Because the Seminoles were deemed by Jackson to be "enemies" of the United States, and because the two British subjects had supported those "enemy" Indians who were resisting Jackson’s invasion of Florida, a military panel decided that the two men deserved to be executed. Ambrister was initially sentenced to death, but this was reversed and he was then sentenced to 50 lashes and one year hard labor. However, Jackson unilaterally overturned that sentence and had Ambrister hanged anyway. Given that neither Arbuthnot nor Ambrister were U.S. citizens, and owed no duty of allegiance to the United States—and that they were arrested in an illegal US invasion of Spanish claimed territory—their conduct was not a "war crime" under international law. Despite this, they were executed by Jackson. The U.S. government's attempt this past March to analogize al Queda with the Seminole people was a terrible distortion. Worse still is the parallel between Andrew Jackson charging and hanging Arbuthnot and Ambrister for "aiding the enemy" and current U.S. congressional legislation now moving quickly toward passage. Not only have US government attorneys wrongly converted Seminoles into al Qaeda, but the Congress is now about to pass legislation that would treat all humans on the planet as potential detainees for aiding those deemed by the United States to be "enemies." The proposed legislation would make The Authorization for the Use of Military Force of September 2001 a permanent feature of U.S. law. It would make due process protections under the U.S. Constitution unavailable to anyone detained. The scope of the legislation appears to be anybody, anytime, anywhere. A bill authorizing a regime of global war was added to the National Defense Authorization Act of 2011 (H.R. 1540) by House Armed Services Committee Chairman Howard "Buck" McKeon (R-CA). The Act passed the House last week and now moves to the U.S. Senate. Another such bill was recently put forward by U.S. Senator John McCain (R-AZ). The new war authorization will allow the United States to wage war "wherever there are terrorism suspects in any country around the world without an expiration date, geographical boundaries or connection to the 9/11 attacks or any other specific harm or threat to the United States," the ACLU said recently. According to a May 9 article by Laura Pitter in "The Hill" newspaper ("Proposed McKeon and McCain legislation won’t make us safer"), the bills put forward by congressman McKeon and Senator McCain "would expand who the U.S. says it is at war with and mandate military detention for broadly defined terrorist suspects based on scant evidence." Hearsay evidence will also be admissible. By means of a permanent war authorization, indigenous peoples, and their allies, who advocate for self-determination and for the protection of Indigenous resources (lands, water, minerals, etc.) against colonial and corporate exploitation could be accused by the United States of "supporting terrorism," and thereby come under attack or be seized by the U.S. military and end up being held as detainees. The legislation would further ratify and intensify the U.S. policy of treating Indigenous peoples’ issues as a matter of national security. On May 25, Congressman Ron Paul (R-TX) said of the overall situation of the United States at this time, "The last nail is being driven into the coffin of the American Republic."

#### We should honor the survivors of sexual colonialism by prioritizing anti-colonialism. Native rape survivors understand sexual violence as a weapon of war that has been used against Native communities for the last five hundred years.

Deer 5 (Sarah Deer, Staff Attorney @ Tribal Law and Policy Institute, Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law, MARCH 11, <http://www.law.suffolk.edu/highlights/stuorgs/lawreview/docs/Deer.pdf#search='sovereignty%20of%20the%20soul>, P. 457-459, 2005 )

In order to analyze the legal response to sexual violence in Indian country,it is important to examine the 500 year history of rape of Native American women by Europeans. One of the historical angles from which to begin this analysis is the arrival of Christopher Columbus. Columbus is one of the major symbols of colonization in the Western hemisphere. Columbus’́ arrival not only represents the destruction of indigenous cultures, but also the beginning of rape of Native American women by European men. A passage from the diary of one of Columbus aristocratic friends who accompanied him on the second voyage describes one such encounter: When I was in the boat, I captured a very beautiful Carib woman . . . having brought her into my cabin, and she being naked as is their custom, I conceived desire to take my pleasure. I wanted to put my desire to execution, but she was unwilling for me to do so, and treated me with her nails in such wise that I would have preferred never to have begun. But seeing this . . . I took a rope-end and thrashed her well, following which she produced such screaming and wailing as would cause you not to believe your ears. Finally we reached an agreement such that, I can tell you, she seemed to have been raised in a veritable school of harlots . . . . 13 So right away, upon contact, we are seeing immediate rape. We continue to see rape used as a tool of colonization and a tool of war against Native peoples for the next several hundred years, until the present day. Historian Susan Armitage writes, It is well documented that Spanish-Mexican soldiers in Spanish California and New Mexico used rape as a weapon of conquest.î14 The legal community recognizes that rape is used as a weapon in war and international tribunals have address the issue.15 This legal analysis, however, is rarely applied to historical events. There are instances throughout history of using rape and sexual violence as a means of destroying a people, of rendering them unable to protect their lives and their resources, especially as a means to remove them from land that was desired. Another historian, Albert L. Hurtado, notes of the California gold rush, part of the invading population was imbued with a conquest mentality, fear and hatred of Indians that in their minds justified the rape of Indian women.î16 Much change has been attempted in the Anglo-American approach to sexual assault in the last thirty years,17 but things have not really changed for Native American woman in about 500 years. Those in the anti-rape movement often talk about rape as an “equal opportunity” crime.18 Such sentiment, however, is a little short-sighted in that those in the anti-rape movement need to look at the specific impact of sexual violence on marginalized populations and indigenous populations. We also need to acknowledge that the United States was founded, in part, through the use of sexual violence as a tool, that were it not for the widespread rape of Native American women, many of our towns, counties, and states might not exist. This kind of analysis informs not only indigenous scholars, but also anti-rape scholars. Thus, critical to contemporary anti-rape dialogues is the inclusion of a historical analysis of colonization. Language of the early European explorers and invaders makes numerous references to the land of this continent as virgin land or a woman available for seizure and invasion. 19 The terminology used to describe so-called explorations and settlements sometimes has violent sexual connotations. 20 In fact, the language used in illustrating colonization often parallels the language of sexual violence. For example, words like seize, conquer, and possess are used to describe both rape and colonization. In fact, when speaking with Native American women who have survived rape, it is often difficult for them to separate the more immediate experience of their assault from the larger experience that their people have experienced through forced removal, displacement, and destruction. Both experiences are attacks on the human soul; both the destruction of indigenous culture and the rape of a woman connote a kind of spiritual death that is difficult to describe to those who have not experienced it.

#### Mental Health problems produced through colonialism means another form exclusion of the Native body.

Hilton 11 (Blake T. Hilton, prof @ Univ of Central Oklahoma, Frantz Fanon and Colonialism: A Psychology of Oppression, Journal of Scientific Psychology 45, Sept 2011, <http://www.psyencelab.com/images/Frantz_Fanon_and_Colonialism.pdf>)

<Psychopathology Fanon, in Les Damnés de la Terre, begins the chapter ―Colonial War and Mental Disorders‖ explaining, For many years to come we shall be bandaging the countless and sometimes indelible wounds inflicted on our people by the colonialist onslaught‖ (Fanon, 1961, p. 181). This quote brings to light the necessity for decolonization and psychological healing‖ in Algeria as well as North America. Compared to other minority groups, the Native Americans [have] are plagued with an extremely high prevalence of mental disorders; research and aid in this area is scarce, and in great need, due to its critical implications. The purpose of this section is to examine the most significant mental disorders and maladaptive behaviors present in the Native American population, and to demonstrate a likely etiology. Fanon (1952) proffers, A normal black child, having grown up with a normal family, will become abnormal at the slightest contact with the white world‖ (p. 122). Furthermore, Fanon (1961) explains the presence of mental disorders in the colonized as a result of colonialism constantly forcing them to ask the question, Who am I in reality?‖ (p. 182). More modern research by Tafoya and Vecchio (2005) describes the etiology of mental disorders and maladaptive behaviors among the Native Americans as a result of genocidal U.S. policies toward native people . . . [leading to] unresolved grief,‖ (p. 56) further explaining, The dynamics of unresolved grief includes symptoms and manifestations that affect every aspect of an individual‘s life‖ (p. 56). Fanon (1961) hypothesizes, backed with knowledge of the Algerian‘s pre-independence struggles, that until a revolution occurs, oppressed, colonized people will turn inward and commit destructive acts amongst themselves. In essence, these theories propose that abnormal behavior exhibited by the colonized is due to the creation of an internal,‖ unresolved conflict. The fact that the Native American population possesses extremely high rates of many mental disorders compared to their majority/minority counterparts adds validity to the generalization of Fanon‘s theory. Given the Native Americans have yet to organize a revolutionary-type decolonization, this internal conflict remains unhealed in many cases; thus posing as one explanation for the high prevalence of mental disorders and abnormal behaviors amongst the Native Americans (Beals et al., 2005; Duran et al., 2004; Henderson et al., 1998; Kunitz, Gabriel, McCright, & Levy, 2009; McGoldrick, Giordano, & Garcia-Preto, 2005; Olson & Wahab, 2006). Although the majority of the oppressive, traumatic events‖ previously discussed arguably had no direct effect on the more modern Native American population, this grief can be passed down transgenerationally, through parental modeling, social learning, and the heritability of many disorders. In the early 19th century, President Thomas Jefferson worked tirelessly proposing many acts attempting to ban the sale of whiskey to the Native Americans due to their unruly and destructive behaviors while drinking (Wallace, 1999). Jefferson‘s proposals imply that the high prevalence of substance use amongst the Native Americans is not just a recent ―issue,‖ and that for centuries the Native Americans have turned to the use and abuse of various substances, perhaps to provide relief for intrinsic unresolved grief. Research suggests that Native American‘s have the highest prevalence of a positive family history for alcoholism among all ethnic groups in the U.S., and, as a group, possess the highest rates of all alcohol-related disorders of any minority or majority (Hasin, Stinson, Ogburn, & Grant, 2007; Wall, Garcia-Andrade, Wong, Lau, & Ehlers, 2000). This maladaptive pattern of substance use by the Native Americans is not limited to adults alone, as their children/adolescents conjointly possess the highest rates of drug use (Oetting, Edwards, Goldstein, & Garcia-Mason, 1980). Alcohol/substance dependence, possessing a high heritability, provides a conceptual basis for these adolescents‘ ―top-ranking‖ rates when compared to other groups (Nurnberger et al., 2004). Suicide/suicidal ideation and mood and anxiety disorders can perhaps be seen either as sequential results of the chronic substance abuse patterns seen in the Native American population, or as exhibitions of unresolved grief. In addition to substance-related disorders, the Native American people hold tremendously high rates of mood and anxiety disorders, and are at an increased risk for suicidal behaviors. Duran et al. (2004) found that in a sample of 489 women in primary care, Alaska Native and American Indian women had significantly higher rates of anxiety disorders and anxiety/depression comorbidity than their non-American Indian/Alaska Native counterparts. Furthermore, Beals et al. (2005) found that in a study of 3,084 American Indians, 43.5% had a lifetime prevalence of any depressive, anxiety, or substance use disorder. A study conducted by Olson and Wahab (2006) suggests that Native Americans (as a group) experience the highest rates of suicide of all ethnic groups in the United States. Similarly, Tafoya and Vecchio (2005) suggest that suicide, suicidal ideation, and suicidal gestures are a direct result of the unresolved grief of the Native American. These elevated rates of anxiety disorders, mood disorders, and suicidal ―behaviors‖ are all potential repercussions of the oppression of the Native American people. Fanon‘s theory suggesting the ―usefulness‖ of solidarity, decolonization, and violence to assist in resolving grief provides a logical explanation for the increased prevalence of these disorders throughout the Native American population. Fanon (1961) states, prior to a revolutionary uprising (something not yet organized by the Native Americans), ―The colonized subject will first train this aggressiveness sedimented in his muscles against his own people... this is the period when black turns on black‖ (p. 15). This proposition by Fanon is useful in explaining the high incidence of intrinsic, self-defeating behaviors exhibited by the Native Americans such as conduct disorder, substance-related disorders, mood and anxiety disorders, violence, homicide, and suicide (Bachman, 1992; Hasin et al., 2007; Olson & Wahab, 2006; Tafoya & Vecchio, 2005; Wall et al. 2000). Conclusion Throughout the course of his life and work, Frantz Fanon employed his thoughts and analysis toward the multifarious ―components‖ of colonialism. Colonization alone can have detrimental effects on the identity and psyche of indigenous people. Native American oppression resulting from colonialism seems to have presented itself in a multitude of facets: compartmentalization, dehumanization, segregation, covert and/or overt racism, cultural assimilation, sterilizations, denials of religious freedoms, and countless massacres. The current, exigently negative state of the Native American psyche is perhaps due to the minute amount of elapsed time since their ―legally dehumanized‖ status (just over a century ago); prior to the civil rights case Standing Bear vs. Crook in 1879 Native Americans were yet to be considered human beings under U.S. law (Brown, 1970). Recounting these historical acts of oppression aids in explaining the overwhelming rates of mental illness in the Native American population today. The struggles endured by the indigenous Algerians and Native Americans are not that of a category to be taken lightly and must be understood psychologically to ensure the well-being of these indigenous people, as well as to aid in the prevention of such catastrophes in the future. Until this psychological grief is resolved, high rates of mental illness, violence, suicide, and homicide will plague the Native American people. In A Letter to a German Friend Albert Camus stated, ―I should like to be able to love my country and still love justice‖ (Camus, 1974, p. 5). This quote summarizes the mindset of Camus, a French Algerian, and that of a United States citizen conscious of the oppression endured by the Native American. The summation of Frantz Fanon‘s work on the psychology of oppression and racism resulting from colonialism is best summarized in the argument that ―world powers,‖ in any sense of the term, become aware of the potential effects their actions have on indigenous people. Therefore, it is imperative that we hold the knife of knowledge at the throat of colonialism, to the point at which it loosens its hold on oppressed, indigenous populations.>

#### Only having a willingness to exterminate the settler can ensure the destruction of U.S. colonialism.

Meister, 11 (Robert Meister, prof of Social and Political Thought @ UC Santa Cruz, After Evil: A Politics of Human Rights, p. google books, note: ev is gender-modified)

<The Roots of Genocide The secular logic of genocide arises from the moral psychology of place and race within the colonial project. To understand this, we can rely, once again, on Melanie Klein’s concept of projective identification, discussed in earlier chapters. The essential idea (restated in Klein’s terminology) is that the settler re-experiences his [their] own aggression toward the native in the form of fear of the native’s hostility toward him [the settler]. In fearing the native’s “primitive” racism (which is already a response to colonization), the settler defends against guilt for displacing the native. By identifying himself as the object of his own feelings toward the native, the settler re-experiences them as feelings of racial antipathy on the part of the natives. In the dialectic of race and place, the role of the colonist is to think, “These people hate us because of our […].” “Race” is the term of art that fills in the political blank: it acquires whatever biological, religious, linguistic, or cultural content is necessary to describe a difference between the settler and the native placeholder that precedes the settler’s occupation of the native’s place.65 The settler perfectly understands the depth of these ascribed feelings of racialized hatred, for they are merely his own original feelings projected onto others. It should be noted that two imaginaries of genocide are embedded in such an account of projective identification.66 The first is the genocide of the native against the settler – the racially motivated “massacres” of innocents by savages that are the foundation of settler colonialist lore. The second is the massacre of natives by settlers. The unconscious moral logic of the colonial experience bases the settlers’ genocide against the native on the settlers’ repressed fear or fantasy of being subjected to genocidal actions by the native. In his now classic *Wretched of the Earth*, Franz Fanon theorized that in order to liberate himself from colonialism the (black) native must embrace this projected willingness to exterminate the (white) settler.67 Fanon urges the “good native” to embrace the “bad” identity that embodies the settler’s terror. Jean-Paul Sartre famously read this claim as the next stage in revolutionary consciousness and saw the native’s will to fight the colonist to the death as a higher form of the totalizing dialectic of master and slave described by Hegel and Marx.68 Read in the broader context, however, Fanon’s argument is that the settler/native dialectic is distinct from, and even potentially broader than, that of master and slave. In Black Faces, White Masks he sets forth the paradigm of anticolonial struggle as lacking the mutuality of recognition present in the Hegelian-Marxist view of class struggle. Here the master laughs at the consciousness of the slave. What he wants from the slave is not recognition but work. In the same way, the slave here is in no way identifiable with the slave who loses himself in the object and finds in his work the source of his liberation. The Negro wants to be like the master. Therefore he is less independent than the Hegelian slave. In Hegel the slave turns away from the master and turns toward the object. Here the slave turns towards the master and abandons the object.69 In colonialism the relationship is not initially one of *subjugation* mediated by something they have in common, an object which is simultaneously the product of the slave’s labor and the object of the master’s need; rather, it is based on originary *displacement* – of one occupying the place of another, both physically and psychically. Fanon demonstrates that the conceptual root of genocide lies in the prior lack-of-relation between native and settler as mutually exterior occupants of the same ground. Fanon’s theory of colonialism is thus less an extrapolation of Sartre’s (and Hegel’s) account of the struggle for recognition from master/slave to white/black than an anticipation of Levinas’s ethical argument (discussed in chapter 5) against the politics of recognition and particularly against Hegel’s view that inclusion based on mutual respect is the ethical goal of the struggle for recognition.70 According to Levinas, the philosophy that regards recognition as the end of struggle is itself a formula for murder because it does not ask about the struggle’s beginning. It does not ask, in particular, whether one has already taken the place of the other whom one will eventually recognize as another self.71 Fanon’s argument anticipates the later position of Levinas by taking the “totalizing discourse” of white/black and, most generally, self/other outside the special context of relations of production (master/slave, capitalist/worker) and placing them in the arguably more general context of occupying a space in which the other, as such, does not (or need not) exist at all except as a projection of the self, an alter ego. In this context, which is typical of the colony, the willingness of the native to exterminate or expel the settler is simply a return-to-sender of the genocidal message of the colonialism itself.>

#### Only decolonization can solve other forms of oppression within settler culture.

Churchill, 3 (Ward Churchill, I am Indigenist: Notes on the Ideology of the Fourth World, Acts of Rebellion: The Ward Churchill Reader, p. \_\_\_\_\_)

<Not only is it perfectly reasonable to assert that a restoration of native control over unceded lands within the U. S. 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 things elsewhere. The principle is this: sexism, racism, and all the rest arose here as concomitants to the emergence and consolidation of the eurocentric state form of sociopolitical and economic organization. Everything the state does, everything it can do, is entirely contingent upon 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 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 upon nonindians. A brief aside: anyone with doubts as to whether it’s possible to bring about the dismemberment from within of a superpower state in this day and age ought to sit down and have a long talk with a guy named Mikhail Gorbachev. It would be better yet if you could chew the fat with Leonid Brezhnev, a man who we can be sure would have replied in all sincerity—only three decades ago—that this was the most outlandish idea he’d ever heard. Well, look on a map today, and see if you can find the Union of Soviet Socialist Republics. It ain’t there, my friends. Instead, you’re seeing, and you’re seeing it more and more, the reemergence of the very nations Léon Trotsky and his colleagues consigned to the “dustbin of history” clear back at the beginning of the century. These megastates are not immutable. They can be taken apart. They can be destroyed. But first we have to decide that we can do it, and that we will do it. So, all things considered, when indigenist movements like AIM advance slogans like “U. S. Out of North America, ” **nonindian radicals shouldn’t 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 at their word, that they really are at some deep level or other aligned—all protestations to the contrary notwithstanding—with the mentality which 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.>

### Case

#### The prisoners are not bare life—there are rules that prevent true reduction

Halit Tagma 09, Professor of Political Science, Arizona State , “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pp. 407-435

Thus in some respects, prisoners of the "war on terror" might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical re-evaluation of the (non) space of Guántanamo. If in the classical Foucauldian teminology sovereign power is about "taking or granting life," and biopower is about "letting live and making life," then what can be said about the power operating in Guántanamo that "forces to live" when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, barely, alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry. The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such "health benefits" could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interro- gation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from com- mitting suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.61 Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to "defend detainees as you would yourself against a hostile act or intent, death, or serious bodily harm."62 Therefore it is correct to say that what goes in Guantánamo Bay is neither "letting live" nor "taking life," but instead "making live," or even "forcing to live."¶ Agamben argues that camps are places where sovereign "power confronts nothing but pure life."63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the re- ports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.64 Whereas Agamben's statement on "zones of indistinction" would lead us to think that any- thing goes in the camp, this is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example, what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on.66 This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on "exceptional times requiring exceptional measures." In- stead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

#### The state of exception can be contained

Jennifer Mitzen 11, PhD, University of Chicago, Associate Professor of Political Science at Ohio State University, Michael E. Newell, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” PDF

But what Agamben has potentially overlooked is the conversation between the government, public and media concerning the state of exception. Waever’s desecuritization theory tells us that it is possible for continued debate and media coverage to desecuritize a threat in whole or in part (Waever, 1995). As the War on Terror progressed, more academics and government officials began to speak out against the usefulness of interrogations, the reality of the terrorist threat and the morality of the administration’s policies. Some critics suggested that the terrorist threat was not as imminent as the Administration made it appear, and that “…fears of the omnipotent terrorist…may have been overblown, the threat presented within the United States by al Qaeda greatly exaggerated” (Mueller, 2006). Indeed, as Mueller points out, there have been no terrorist attacks in the United States five years prior and five years after September 11th. The resignation of administration officials, such as Jack Goldsmith, who, it was later learned, sparred with the administration over Yoo’s torture memos, their wiretapping program and their trial of suspected terrorists also contributed to this shift in sentiment (Rosen, 2007). The use of the terms “torture,” and “prisoner abuse,” that began to surface in critical media coverage of the War on Terror framed policies as immoral. As the public gradually learned more from media coverage, academic discourse, and protests from government officials, the administration and its policies saw plummeting popularity in the polls. Two-thirds of the country did not approve of Bush’s handling of the War on Terror by the end of his presidency (Harris Poll) and as of February 2009 two-thirds of the country wanted some form of investigation into torture and wiretapping policies (USA Today Poll, 2009).¶ In November 2008 a Democratic President was elected and Democrats gained substantial ground in Congress partly on promises of changing the policies in the War on Terror. Republican presidential nominees, such as Mitt Romney, who argued for the continuance of many of the Bush administration’s policies in the War on Terror, did not see success at the polls. Indeed, this could be regarded as Waever’s “speech-act failure” which constitutes the moment of desecuritization (Waever, 1995). In this sense, Agamben’s warning of “pure de-facto rule” in the War on Terror rings hollow because of one single important fact: the Bush administration peacefully transferred power to their political rivals after the 2008 elections. The terrorist threat still lingers in the far reaches of the globe, and a strictly Agamben-centric analysis would suggest that the persistence of this threat would allow for the continuance of the state of exception. If Agamben was correct that the United States was under “pure de-facto rule” then arguably its rulers could decide to stay in office and to use the military to protect their position. Instead, Bush and his administration left, suggesting that popular sovereignty remained intact.

#### Built-in checks prevents the state of exceptioanlism.

Dickinson, ‘4 (University of Cincinnati, Central European History, 37:1, Academic Search Elite)

In short, the continuities between early twentieth—century biopolitical discourse and the practices of the welfare state in our own time are unmistakable. Both are instances of the “disciplinary society” and of biopolitical, regulatory, social—engineering modernity, and they share that genealogy with more authoritarian states, including the National Socialist state, but also fascist Italy, for example. And it is certainly fruitful to view them from this very broad perspective. But that analysis can easily become superficial and misleading, because it obfuscates the profoundly different strategic and local dynamics of power in the two kinds of regimes. Clearly the democratic welfare state is not only formally but also **substantively quite different** from totalitarianism. Above all, again, it has nowhere developed the fateful, radicalizing dynamic that characterized National Socialism (or for that matter Stalinism), the psychotic logic that leads from economistic population management to mass murder. Again, there is always the potential for such a discursive regime to generate coercive policies. In those cases in which the regime of rights does not successfully produce “health,” such a system can and historically does create compulsory programs to enforce it. But again, there are political and policy potentials and constraints in such a structuring of biopolitics that are very different from those of National Socialist Germany. Democratic biopolitical regimes require, enable, and incite a degree of self—direction and participation that is functionally incompatible with authoritarian or totalitarian structures. And this pursuit of biopolitical ends through a regime of democratic citizenship does appear, historically, **to have imposed increasingly narrow limits on coercive policies,** and to have generated a “logic” or **imperative of increasing liberalization.**

#### -- Biopower does not result in bare-life

Ojakangas, ‘5 (Helsinki Collegium for Advanced Studies in Finland, Mika, “Impossible Dialogue on Bio-power,” Foucault Studies, No. 2, p. 5-28, May)

Moreover, life as the object and the subject of bio‐power – given that life is everywhere, it becomes everywhere – is in no way bare, but is as the synthetic notion of life implies, the multiplicity of the forms of life, from the nutritive life to the intellectual life, from the biological levels of life to the political existence of man. Instead of bare life, the life of bio‐power is a plenitude of life, as Foucault puts it.Agamben is certainly right in saying that the production of bare life is, and has been since Aristotle, a main strategy of the sovereign power to establish itself – to the same degree that sovereignty has been the main fiction of juridico‐institutional thinking from Jean Bodin to Carl Schmitt. The sovereign power is, indeed, based on bare life because it is capable of confronting life merely when stripped off and isolated from all forms of life, when the entire existence of a man is reduced to a bare life and exposed to an unconditional threat of death. Life is undoubtedly sacred for the sovereign power in the sense that Agamben defines it. It can be taken away without a homicide being committed. In the case of bio‐power, however, this does not hold true. In order to function properly, bio‐power cannot reduce life to the level of bare life, because bare life is life that can only be taken away or allowed to persist – which also makes understandable the vast critique of sovereignty in the era of bio‐power. Bio‐power needs a notion of life that corresponds to its aims. What then is the aim of bio‐power? Its aim is not to produce bare life but, as Foucault emphasizes, to “multiply life”,45 to produce “extra‐life.”46 Bio‐power needs, in other words, a notion of life which enables it to accomplish this task. The modern synthetic notion of life endows it with such a notion. It enables bio‐power to “invest life through and through”, to “optimize forces, aptitudes, and life in general without at the same time making them more difficult to govern.” 47 It could be argued, of course, that instead of bare life (zoe) the form of life (bios) functions as the foundation of bio‐power. However, there is no room either for a bios in the modern bio‐political order because every bios has always been, as Agamben emphasizes, the result of the exclusion of zoe from the political realm. The modern bio‐political order does not exclude anything – not even in the form of “inclusive exclusion”. As a matter of fact, in the era of bio‐politics, life is already a bios that is only its own zoe. It has already moved into the site that Agamben suggests as the remedy of the political pathologies of modernity, that is to say, into the site where politics is freed from every ban and “a form of life is wholly exhausted in bare life.”48 At the end of Homo Sacer, Agamben gives this life the name “form‐of‐life”, signifying “always and above all possibilities of life, always and above all power”, understood as potentiality (potenza).49 According to Agamben, there would be no power that could have any hold over men’s existence if life were understood as a “form‐of‐life”. However, it is precisely this life, life as untamed power and potentiality, that bio‐power invests and optimizes. If bio‐power multiplies and optimizes life, it does so, above all, by multiplying and optimizing potentialities of life, by fostering and generating “forms‐of‐life”.