# ADA Nationals Round 6 v Houston BJ

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**HOSTILITY requires the VIOLENCE CURRENTLY happen it is distinct from POTENTIAL FUTURE conflict – prefer this definition**

**1973 WAR POWERS RESOLUTION**

TITLE 50. WAR AND NATIONAL DEFENSE CHAPTER 33. WAR POWERS RESOLUTION¶ [Go to the United States Code Service Archive Directory](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/mungo/formEP.do?cmd=2E434C3B434F4445533B555341524348&docNo=1&risb=21_T17870016019&cmdfmt=prthex&twi=0&format=GNBFI)¶ 50 USCS § 1543¶ § 1543. Reporting requirement
(a) Written report; time of submission; circumstances necessitating submission; information reported. In the absence of a declaration of war, in any case in which United States Armed Forces are introduced--
   (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;
   (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or
   (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation

#### Contextually, distinct from future conflict

Nash, Legal Advisor to Department of State, 95 (American Journal of International Law¶ January, 1995¶ 89 A.J.I.L. 96¶ LENGTH: 20285 words U.S. PRACTICE: CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW NAME: MARIAN NASH (LEICH) \* BIO:¶ \* Office of the Legal Adviser, Department of State.)

Furthermore, the structure of the War Powers Resolution (WPR) recognizes and presupposes the existence of unilateral Presidential authority to deploy armed forces "into hostilities or into situations where imminent involvementin hostilities is clearly indicated by the circumstances." [50 U.S.C. § 1543](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T17870972707&homeCsi=7416&A=0.03377475170446753&urlEnc=ISO-8859-1&&citeString=50%20USC%201543&countryCode=USA&_md5=00000000000000000000000000000000)(a)(1). The WPR requires that, in the absence of a declaration of war, the President must report to Congress within 48 hours of introducing armed forces into such circumstances and must terminate the use of United States armed forces within 60 days (or 90 days, if military necessity requires additional time to effect a withdrawal) unless Congress permits otherwise. Id. § 1544(b). This structure makes sense only if the President may introduce troops into hostilities or potential hostilities without prior authorization by [\*124] the Congress: the WPR regulates such action by the President and seeks to set limits to it. [n2](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.181064.52658660433&target=results_DocumentContent&returnToKey=20_T17870972774&parent=docview&rand=1375058101357&reloadEntirePage=true#n2)¶ To be sure, the WPR declares that it should not be "construed as granting any authority to the President with respect to the introduction of United StatesArmed Forces into hostilities or into situations wherein involvement inhostilitiesis clearly indicated by the circumstances." [50 U.S.C. § 1547](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T17870972707&homeCsi=7416&A=0.03377475170446753&urlEnc=ISO-8859-1&&citeString=50%20USC%201547&countryCode=USA&_md5=00000000000000000000000000000000)(d)(2). But just as clearly, the WPR assumes that the President already has such authority, and indeed the WPR states that it is not "intended to alter the constitutional authority of the . . . President." Id. § 1547(d)(1). Furthermore, although the WPR announces that, in the absence of specific authorization from Congress, the President may introduce armed forces into hostilities only in "a national emergency created by attack upon the United States, its territories or possessions, or itsarmed forces," id. § 1541(c), even the defenders of the WPR concede that this declaration -- found in the "Purpose and Policy" section of the WPR -- either is incomplete or is not meant to be binding. See, e.g., Cyrus R. Vance, Striking the Balance: Congress and the President Under the War Powers Resolution, [133 U. Pa. L. Rev. 79, 81 (1984).](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T17870972707&homeCsi=7416&A=0.03377475170446753&urlEnc=ISO-8859-1&&citeString=133%20U.%20Pa.%20L.%20Rev.%2079,at%2081&countryCode=USA&_md5=00000000000000000000000000000000) [n3](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.181064.52658660433&target=results_DocumentContent&returnToKey=20_T17870972774&parent=docview&rand=1375058101357&reloadEntirePage=true#n3)

#### Distinct from maintaining conflict

**War Powers Resolution 73**

TITLE 50. WAR AND NATIONAL DEFENSE CHAPTER 33. WAR POWERS RESOLUTION¶ [Go to the United States Code Service Archive Directory](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/mungo/formEP.do?cmd=2E434C3B434F4445533B555341524348&docNo=2&risb=21_T17870987695&cmdfmt=prthex&twi=0&format=GNBFI)¶ 50 USCS § 1541

§ 1541.  Purpose and policy

(a) Congressional declaration. It is the purpose of this joint resolution [[50 USCS §§ 1541](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T17870987695&homeCsi=6362&A=0.7405164275963435&urlEnc=ISO-8859-1&&citeString=50%20USC%201541&countryCode=USA&_md5=00000000000000000000000000000000) et seq.] to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Congressional legislative power under necessary and proper clause. Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) Presidential executive power as Commander-in-Chief; limitation. The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

**This hostility must include an exchange of fire**

Garrison 13 ( Dr. Arthur H. Garrison, Assistant Professor of Criminal Justice at Kutztown University. Dr. Garrison received a B.A. from Kutztown University, M.S. from West Chester University, and a Doctorate of Law and Policy from Northeastern University. Dr. Garrison is author of Supreme Court Jurisprudence in Times of National Crisis, Terrorism, and War: A Historical Perspective (2011) (Lexington Books)., Cumberland Law Review¶ 2012 - 2013¶ Cumberland Law Review¶ 43 Cumb. L. Rev. 375¶ LENGTH: 50426 words ARTICLE: THE HISTORY OF EXECUTIVE BRANCH LEGAL OPINIONS ON THE POWER OF THE PRESIDENT AS COMMANDER-IN-CHIEF FROM WASHINGTON TO OBAMA NAME: ARTHUR H. GARRISON [n1](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n1" \t "_blank)

In line with the position of the State Department in the Ford and Reagan Administrations, Koh made clear that "hostilities" can be defined as a situation in which"units of the U.S. Armed Forces are actively engaged in exchanges of fire with opposing units of hostile forces." [n369](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n369" \t "_blank) But engagements that include exchanges of fire are not the same because there is a "distinction between full military encounters and more constrained operations, [and] 'intermittent military engagements' do not require withdrawal of forces under the resolution's 60-day rule." [n370](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n370" \t "_blank) Koh asserted that this approach to the WPR has been a historical approach by prior administrations for the past "36 years since Leigh and Hoffmann provided their analysis" of the WPR and the Obama Administration "was thus operating within this longstanding tradition of executive branch interpretation when he relied on these understandings in his legal explanation to Congress on June 15, 2011." [n371](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n371" \t "_blank) During questioning, Koh made it clear that boots on the ground and risk, per se, does not trigger "hostilities" under the WPR. He explained:¶ But going to the earlier point which you made, which is when someone is firing, when there are boots on the ground, does that per se rise to the level of hostilities, the testimony that I gave points to in prior administrations in situations in Lebanon, [\*474] Grenada, the Persian Gulf tanker controversy, Bosnia, Kosovo, all were circumstances in which there were more casualties, more boots on the ground, many, many hundreds of more munitions dropped, and those were not deemed, under those circumstances to be hostilities. It is on that basis that we have come here saying that we think that this factual situation, unique factual situation, limited in these ways fits within the frame of hostilities as has been understood that therefore it does not trigger the 60-day limit.[n372](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n372" \t "_blank) . . . .¶ But I think the critical point here is that what we are arguing here simply is the provisions of the statute from our perspective are not triggered, therefore we don't even get to the question of whether the constitutionality of the statute is in play. We have no intention in this situation to raise that issue, and we are operating as a matter of good faith statutory interpretation based on the very unusual facts present here. [n373](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n373" \t "_blank)¶ Koh concluded that there are four questions that aid in determining if the 60-day rule applies to a deployment of U.S. forces into situations that may be hostile: (1) Is the mission limited?; (2) Is exposure to casualties and combat limited?; (3) Is the risk of military escalation limited?; and (4) Is the means or power with which military force is applied limited? [n374](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n374" \t "_blank) Koh applied these four criteria and concluded the following: First, the U.S. was providing "a constrained and supporting role in a NATO-led multinational civilian protection operation [with a] limited purpose" tailored by a U.N. National Security Resolution. Second, this involvement "to date . . . ha[s] not involved U.S. casualties or a threat of significant U.S. casualties." Third, the forces used in the action have "not involved the presence of U.S. ground troops, or any significant chance of escalation into a broader conflict." And finally, the situation does not present the kind of open-ended military engagement that produced the WPR (i.e., the history of Vietnam). [n375](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n375" \t "_blank) Therefore, "the Libya operation did not fall within the War Powers Resolution's automatic 60-day pullout rule." [n376](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.539910.0674947369&target=results_DocumentContent&returnToKey=20_T17871140724&parent=docview&rand=1375061564441&reloadEntirePage=true" \l "n376" \t "_blank)

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#### Legal solutions merely mask sovereign power and legitimatize exclusion and genocidal tendencies

Kohn, 6 -- University of Florida political science assistant professor

[Margaret, "Bare Life and the Limits of the Law," Theory & Event, 9:2, 2006, muse.jhu.edu/journals/theory\_and\_event/v009/9.2kohn.html, accessed 9-12-13, mss]

Giorgio Agamben is best known for his provocative suggestion that the concentration camp – the spatial form of the state of exception - is not exceptional but rather the paradigmatic political space of modernity itself.  When Agamben first made this claim in Homo Sacer (1995), it may have seemed like rhetorical excess. But a decade later in the midst of a permanent war on terror, in which suspects can be tried by military tribunals, incarcerated without trial based on secret evidence, and consigned to extra-territorial penal colonies like Guantanamo Bay, his characterization seems prescient. The concepts of bare life, sovereignty, the ban, and the state of exception, which were introduced in Homo Sacer, have exerted enormous influence on theorists trying to make sense of contemporary politics. Agamben recently published a new book entitled State of Exception that elaborates on some of the core ideas from his earlier work. It is an impressive intellectual history of emergency power as a paradigm of government. The book traces the concept from the Roman notion of iustitium through the infamous Article 48 of the Weimar constitution to the USA Patriot Act. Agamben notes that people interned at Guantanamo Bay are neither recognized as prisoners of war under the Geneva Convention nor as criminals under American law; as such they occupy a zone of indeterminacy, both legally and territorially, which, according to Agamben, could only be compared to the Jews in the Nazi Lager (concentration camps) (4). Agamben's critique of the USA Patriot Act, at least initially seems to bare a certain resemblance to the position taken by ACLU-style liberals in the United States. When he notes that "detainees" in the war on terror are the object of pure de factorule and compares their legal status to that of Holocaust victims, he implicitly invokes a normative stance that is critical of the practice of turning juridical subjects into bare life, e.g. life that is banished to a realm of potential violence. For liberals, "the rule of law" involves judicial oversight, which they identify as one of the most appropriate weapons in the struggle against arbitrary power. Agamben makes it clear, however, that he does not endorse this solution. In order to understand the complex reasons for his rejection of the liberal call for more fairness and universalism we must first carefully reconstruct his argument. State of Exception begins with a brief history of the concept of the state of siege (France), martial law (England), and emergency powers (Germany). Although the terminology and the legal mechanisms differ slightly in each national context, they share an underlying conceptual similarity. The state of exception describes a situation in which a domestic or international crisis becomes the pretext for a suspension of some aspect of the juridical order. For most of the bellicose powers during World War I this involved government by executive decree rather than legislative decision. Alternately, the state of exception often implies a suspension of judicial oversight of civil liberties and the use of summary judgment against civilians by members of the military or executive. Legal scholars have differed about the theoretical and political significance of the state of exception. For some scholars, the state of exception is a legitimate part of positive law because it is based on necessity, which is itself a fundamental source of law. Similar to the individual's claim of self-defense in criminal law, the polity has a right to self-defense when its sovereignty is threatened; according to this position, exercising this right might involve a technical violation of existing statutes (legge) but does so in the name of upholding the juridical order (diritto). The alternative approach, which was explored most thoroughly by Carl Schmitt in his books Political Theology and Dictatorship, emphasizes that declaring the state of exception is the perogative of the sovereign and therefore essentially extra-juridical. For Schmitt, the state of exception always involves the suspension of the law, but it can serve two different purposes. A "commissarial dictatorship" aims at restoring the existing constitution and a "sovereign dictatorship" constitutes a new juridical order. Thus, the state of exception is a violation of law that expresses the more fundamental logic of politics itself. Following Derrida, Agamben calls this force-of-law. What exactly is the force-of-law? Agamben suggests that the appropriate signifier would be force-of-law, a graphic reminder of the fact that the concept emerges out of the suspension of law. He notes that it is a "mystical element, or rather a fictio by means of which law seeks to annex anomie itself." It expresses the fundamental paradox of law: the necessarily imperfect relationship between norm and rule. The state of exception is disturbing because it reveals the force-of-law, the remainder that becomes visible when the application of the norm, and even the norm itself, are suspended. 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. 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 andanomie. 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) 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. 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.

#### Sanitization of US policy leads to endless violence and imperialism – turns case

Bacevich, 5 -- Boston University international relations professor

[A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), The New American Militarism: How Americans Are Seduced by War, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "military metaphysics"-a tendency to see international problems as military problems and to discount the likelihood of finding a solution except through military means. To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day American militarism has deep roots in the American past. It represents a bipartisan project. As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

#### The 1AC is a typical leftist response to international oppression that remains silent in the face of the ongoing colonization of native North America – returning native lands must be the first priority

Churchill ‘96

Ward Churchill 1996 (former Professor of Ethnic Studies at University of Colorado, Boulder), From a native son: selected essays in indigenism, 1985-1995

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.

### Case

#### The 1ac paints an image of the suffering native- this recreation of tragedy ensures future colonialism and death because it places the government in a position of power over the native body

Lyons 4

(Scott Lyons (Leech Lake Ojibwe) is assistant professor of writing and rhetoric at Syracuse University in New York, where he also teaches Native American Studies., “Scott Lyons: Leech Lake storytelling was poor journalism”, June 5, <http://www.startribune.com/stories/1519/4812709.html>)

It is reasonable to insist upon accurate, balanced and hopeful representations of one's group. No community wants to be characterized in essentially negative fashion, much less have its youth lumped together as "lost." But the problem is compounded when the group represented is American Indians, who have suffered under the weight of negative imagery for over 500 years. From "soulless heathen" to "bloodthirsty savage" to "noble savage" to "drunken Indian" to "lost youth," the parade of imagery crafted by the dominant group -- and we must admit that these images never originate from Native sources -- is relentless. In other words, from the Indian perspective, this latest round is nothing new. Just relentless. It is also typical. Consider the way the series was composed as a tragedy. (I'm talking about literary form now, so think back to your old high school English class.) As a particular type of narrative, with certain features and forms, a tragedy like "Hamlet" or "Death of a Salesman" is meant to elicit strong emotions from its audience -- Aristotle identified them as pity and fear -- by presenting a human being facing insurmountable odds and ending up in certain defeat. The protagonist is undone by his "tragic flaw" -- the Greeks called this hamartia, and one example would be hubris or pride -- usually a bad decision made somewhere that comes back to haunt the hero. Tragedy's appeal to audiences lies in its ability to produce catharsis, the purging of emotions, which is why people enjoy crying at sad movies. One appreciates tragedy for its ability to arouse feelings of pity and fear as the tragic tale unfolds, while simultaneously feeling reassured that the world isn't going to change. That last component is crucial: With the tragic hero dead in the end, there's no impending change. Audiences are just supposed to feel bad ... which actually feels good ... then reflect upon "values." The Lost Youth were composed as classically tragic figures, and they appealed directly to the emotions of pity and fear. One pitied Sierra Goodman, who only wanted loving parents, and feared Jesse Tapio, who drank, listened to Tupac Shakur, picked fights, and called his victims "white boy" and "whitey." Tragic flaws included the decision of teens to drink or take drugs (the principal antagonist of every single story in the series), the consumption of youth culture (rap, heavy metal, goth, etc.), and the suspiciously ubiquitous presence of Fetal Alcohol Syndrome (passed on by apparently evil mothers). In the stories, the past functioned as a backdrop -- not as history, but as Fate. Thus, there's no need for serious investigation of how things came to be the way they are (i.e., the dams, the trees, the land, the disenfranchisement). Root causes? Irrelevant. Historical explanations? Unnecessary. Non-Indian responsibility? Forget about it! No, the "Lost Youth" are simply doomed because of cruel fates and tragic flaws. So dry your eyes, purge that emotion, and pass the popcorn. Oh, and by the way, the Indian Child Welfare Act is bad, because Indian parents are bad, and federal funding can offer no help to a community of poverty. Probably best to ban alcohol on the reservation and start praying for help. Let's discuss values. What a wonderful tragedy! But poor journalism. It would be a mistake to assume that, just because the series was based on real people and actual events, it depicted "reality." Most of Shakespeare's plays were based on "real" things too, but no one reads them as fact. The crucial point is to recognize that the series was written, put down in words by a writer, sitting at a computer, surrounded by scads of paper, who had to take all of his interviews, data, reports and the like, and fashion them into a readable story for his audience. What Larry Oakes ended up fashioning -- that is, writing -- was a tragedy. Representing Indians in the tragic mode is nothing new -- think "Last of the Mohicans" or "Dances with Wolves" -- because the "Vanishing Indian" was never meant to have a future in the first place. This is how culture has always supported colonialism. To the extent that Natives are perceived as perched on the brink of extinction, settlers can feel secure in their knowledge that this really was an "empty continent," thus justifying their presence on it. Purging one's emotions over the awful effects of colonization is part of the process of justification -- hence, the persistent proliferation of tragic narratives. Indian protest to these representations, however, is the telling of a different tale. This counterstory is about people who refuse to be defined out of existence or blamed for their own victimization. It tells of a real community rich and complex in experience: living life, raising children, dealing with problems, and deserving respect. It would be good if mainstream publications started listening to that story instead of rehearsing old tragedies. In addition to producing fewer protests, it would also have the virtue of showing some respect for Native teenagers, who these days are finding it in very short supply.

#### ---Link --- plan ends land alienation restrictions.

http://en.wikipedia.org/wiki/Johnson\_v.\_M'Intosh

The case is one of the most influential and well-known decisions of the Marshall Court, a fixture of the first-year curriculum in nearly all US law schools. Marshall's prosaic and eminently quotable opinion lays down the foundations of the doctrine of aboriginal title in the United States, and the related discovery doctrine. However, the vast majority of the opinion is dicta; as valid title is a basic element of the cause of action for ejectment, the holding does not extend to the validity of M'Intosh's title, much less the property rights of the Piankeshaw. Thus, all that the opinion holds with respect to aboriginal title is that it is inalienable, a principle that remains well-established law in nearly all common law jurisdictions.

#### ---Eliminating land alienation restrictions puts individual Indian owners in a prisoner’s dilemma forcing the sale of tribal lands and the destruction of indigenous culture. Alienation restrictions are critical to insulate tribes from market exploitation.

Anderson & Parker 2012

Terry L., Dominic P., Lessons in Fiscal Federalism from Indian Country, prepared for the Handbook of Law and Economics, http://www.minneapolisfed.org/indiancountry/pastevents/2012\_Aug27/Anderson-Parker\_Lessons\_in\_Fiscal\_Federalism\_%20Paper.pdf

One dimension on which trusteeship may benefit tribes is through its restraint on alienability. Typically economists view restraints on alienation as a limit on the potential to gain from trade. Because trust lands cannot be alienated, parcels cannot be sold to producers who might value it more, consolidated to take advantage of scale economies except through leasing, or used as collateral in capital markets. These restraints on alienation, however, do come with a benefit not captured in individual trades, because restraints on alienation may help preserve customs and culture. Consider, for example, zoning rules which in effect limit alienability for certain uses. Though zoning rules may disallow more valuable land uses, they may preserve the character of community. Without them, individual owners would be faced with the “prisoner’s dilemma.” In the context of American Indians, McChesney (1992, 120) puts it this way: “A priori, the individual Indian owner of land may be in a prisoner’s dilemma, the dominant strategy being to sell, even though all would be better off agreeing not to sell to preserve an Indian way of life.” If an individual Indian sold his or her land to a non-Indian who did not share the same cultural norms, the costs of tribal collective action could rise. If cultural assets—preserving the “Indian way of life”— have value, that value is best assessed at the tribal level where local information can give a more accurate measure of the cultural asset’s value and where collective agents can be better held accountable optimizing that value.

---Elimination of energy regulation causes corporate takeover of indigenous lands, destruction of sovereignty and self determination --- Turns 100% of case.

Awehali 2006

Brian, NATIVE ENERGY FUTURES: Renewable Energy & the New Rush on Indian Lands, http://loudcanary.com/2006/06/05/native-energy-futures/

It’s hard to believe, in light of the relevant history, that an ever-avaricious energy industry—which has been all too willing to play a game of planetary ecological brinksmanship in the name of profit—places any value on tribal sovereignty unless there’s a way to exploit it. It’s hard to believe, after hundreds of years of plunder and unaccountability, that further deregulation, coupled with economic incentives, and even with the participation of some well-meaning “green” players on the field, is going to deliver anything but the predictable domination of Native Americans by white European economic powers. In fact, I’ll go out on a limb and say that the emerging Native American energy infrastructure looks more like the beginnings of a new rush on Indian lands than it does the advent of any kind of brave new sovereign era. But don’t take my word for it. Take it from Billy Connelly, the senior advisor on marketing and communications for NativeEnergy, the company, you’ll recall, that helped usher in the dawn of this renewable energy rush. When asked during a March 2006 phone interview why the demonstration of a potentially viable renewable energy economy on Native American lands wasn’t simply an example of small businesses laying the groundwork for the eventual control and megaprofits of major corporations, Connelly sighed and said simply, “I’d be pleasantly surprised if this didn’t follow that age-old pattern.” Perhaps, at a minimum, tribes can attain a modicum of energy independence from the development of wind, solar, and other renewable energy infrastructure on their lands. And there may well be a way to ride Native American renewable energy resources to a future of true tribal sovereignty. But it won’t come from getting into bed with, and becoming indebted to, the very industry currently driving the planet to its doom.

---You are ethically obligated to reject the commodification of tribal land --- Alienation restrictions prevent forced relocation and loss of grazing permits that eviscerate tribal culture from the inside out.

Mills 2011

Andrew D., Wind Energy in Indian Country: Turning to Wind for the Seventh Generation, Submitted in partial satisfaction of the requirements for the degree of Master of Science, Berkley, The Energy and Resource Group

Polanyi identifies two types of commodities, the genuine commodities, which are produced by humans for the purpose of exchange in markets and the fictitious commodities of land, labor and money. For centuries commodities have been bought and sold in markets while the use of land and labor have been regulated by social norms. Land is another word for nature and is therefore not a human made commodity while labor, is simply another word for employment of human beings. Polanyi argues that society is comprised of these fictitious commodities. The idea that they can be organized or self-regulated, via the price mechanism of supply and demand, is an attempt to disembed the fictitious commodities from society. Any attempt to disembed these commodities has disastrous consequences: To allow the market mechanism to be the sole director of the fate of human beings and their natural environment… would result in the demolition of society…. [Labor] cannot be shoved about, used indiscriminately, or even left unused without affecting also the human individual who happened to be the bearer of that particular commodity. In disposing of a man’s labor power the system would incidentally, dispose of the physical, psychological, and moral entity ‘man’ attached to that tag. Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation through vice, perversion, crime, and starvation. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted…, the power to produce food and raw materials destroyed (Karl Polanyi quoted in Block 2001, 75-6). Polanyi argues that there is a moral impediment to disembedding the economy from society. It is simply wrong to treat nature and human beings as objects whose value is determined entirely by the market. Subordinating the organization of nature and human beings to market forces violates principles that have governed societies for centuries: nature and human life have almost always been recognized as having a sacred dimension (Block 2001, xvii – xxxix). In trying to understand the impacts of energy development on families that were directly impacted by energy development on the Navajo Nation, a group of anthropologists in the early 1980’s applied enthoscience methods to unearth the social impacts of energy development. Instead of applying a cost benefit analysis approach whereby the economic value of the social costs were compared to the economic benefits of energy development, the researchers recognized that they must begin with a framework that allows for some costs to a way of life to not have a simple monetary value. Essentially they recognized that what determines the quality of life in not always based on the monetary value of resources. Instead, if energy development were to occur and cause impacts, certain mitigating steps would need to be in place to prevent severe deterioration in the way of life for families impacted by energy development. The researchers evaluated the impacts by first establishing the possible costs to the way of life. Then instead of looking at benefits to offset the costs, they evaluated possible mitigations to the costs that would be required before the impacted families could even begin to assess any benefits that would accompany energy development (Schoepfle et al. 1984, 887-8). The most severe impacts of energy development were found to be forced relocations of families from land that was going to mined, reductions in the numbers of livestock, and denial of access to traditional lands (ibid). The researchers found that the loss of grazing permits was the most threatening outcome in the possible impacts of energy development. The permits were important due to the way the grazing permits were linked to many other dimensions such as lifestyle, kinship, housing, animals, and sacred places (ibid, 894). The authors of the study do not conclude that the adverse impacts of energy development on families necessarily precludes energy development, but their work in the context of Polanyi’s theories of development help to understand why after 13,000 relocations of Navajo families in the past three decades on the Navajo Nation7 many within the Navajo Nation oppose continuing energy development.

## 2NC

### A2 Negative State Action

#### Thinking that we can reform the state only marginalizes and coopts the voices of the oppressed. We have to completely reject the system.

Nayar 99 Copyright (c) 1999 Transnational Law & Contemporary Problems Transnational Law & Contemporary Problems Fall, 1999 9 Transnat'l L. & Contemp. Probs. 599. “SYMPOSIUM: RE-FRAMING INTERNATIONAL LAW FOR THE 21ST CENTURY: Orders of Inhumanity” Jayan Nayar (Ph. D from the University of Cambridge, Professor of International Development Law and Human Rights and the University of Warwick) cylab.info/u/JQ/texts/Nayar-\_Orders\_of\_Inhumanity.doc)

Thus, just as the aspirations of most anti-colonial elite leaderships were infused with the colonizer's visions of human progress--the languages of "statehood," of "modernization," of "institution building, and the like--so too now the languages of the elites of "civil society" reflect the terrain as demarcated by contemporary world-orderists. Development, democracy, human rights, NGO "networks," even "education" and "law," are all contemporary slogans that are repeated in the hope of a progressive civilizational movement toward human emancipation. And increasingly, these "transnational," even "global," languages of human emancipation are formulated and articulated within professional sites of resistance and activism that stand as mirrors of ordering institutions; for the government committee there are the NGO forums, for the ministerial conference there is the "alternative" conference of civil society delegates, for the business/corporate coalition with government there are the similar NGO partnerships. The play of critique and legitimization, of compromise and cooperation, of review and reformulation, is thereby enabled, taking on a [\*625] momentum and a rationale of its own, becoming an activity of grand proportions where the activity itself becomes a reason for, and object of perpetuation. To be outside of these circles of "communication" is deemed to be without "voice," which is for the critic, an unacceptable silencing. To be inside these circles, however, entails a constant torment of co-option, betrayal and appropriation of voice.

### A2 Perm

#### Only confronting issues of sovereignty allows us to break free of the circular political practices that entrench genocidal practices

Wadiwel 02 (Dinesh Joesph, completing a doctorate at the University of Western Sydney, 2K2, “Cows and Sovereignty: Biopower and Animal Life” Borderlands E-Journal Vol. 1 # 2 <http://www.borderlandsejournal.adelaide.edu.au/vol1no2_2002/wadiwel_cows.html>)

Such a political program has far reaching consequences, both for Western sovereignty, and the way that the business of politics is conducted. The living population of the earth has inherited a vision of sovereign power, which has spread cancerously into even the most seemingly inaccessible aspects of everyday life. This vision commands all, claims legitimacy for all, and determines the conduct of living for all within its domain. Politics ‘as we know it’ is caught inextricably in the web of sovereign power, in such a way that it seems that modern political debate cannot help but circulate around the same, routine issues: "What is the appropriate legislative response?"; "Is it within the State’s powers to intervene in this particular conflict?"; "How can we ensure the citizen’s rights are maintained in the face of the state?". To challenge such an encompassing and peremptory political discourse — where every question implies the sovereign absolutely, and every decision made refers to life itself — would require the most intensive rethinking of the way in which territory, governance and economy are imagined. In this sense, whilst Agamben’s analysis of bare life, and Foucault’s theory of bio-power, provide a means by which to assess the condition of non-human life with respect to sovereign power, the political project must reach beyond these terms, and embrace an intertwining of the human and the non-human: an intersection which may be found in the animal life shared by both entities.

### A2 law good

#### Legalism DA

Ugo Mattei 3, Alfred and Hanna Fromm Professor of International and Comparative Law, U.C. Hastings; Professore Ordinario di Diritto Civile, Università di Torino A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance, ic.ucsc.edu/~rlipsch/pol160A/Mattei.pdf

This essay attempts to develop a theory of imperial law that is able to explain postCold War changes in the general process of Americanization in legal thinking. My claim is that “imperial law” is now a dominant layer of world-wide legal systems.1 Imperial law is produced, in the interest of international capital, by a variety of both public and private institutions, all sharing a gap in legitimacy, sometimes called the “democratic deficit.” Imperial law is shaped by a spectacular process of exaggeration, aimed at building consent for the purpose of hegemonic domination. Imperial law subordinates local legal arrangements world-wide, reproducing on the global scale the same phenomenon of legal dualism that thus far has characterized the law of developing countries. Predatory economic globalization is the vehicle, the all-mighty ally, and the beneficiary of imperial law. Ironically, despite its absolute lack of democratic legitimacy, imperial law imposes as a natural necessity, by means of discursive practices branded “democracy and the rule of law,” a reactive legal philosophy that outlaws redistribution of wealth based on social solidarity.2 At the core of imperial law there is U.S. law, as transformed and adapted after the Reagan-Thatcher revolution, in the process of infiltrating the huge periphery left open after the end of the Cold War. A study of imperial law requires a careful discussion of the factors of penetration of U.S. legal consciousness world-wide, as well as a careful distinction between the context of production and the context of reception3 of the variety of institutional arrangements that make imperial law. Factors of resistance need to be fully appreciated as well.¶ I. AMERICAN LAW: FROM LEADERSHIP TO DOMINANCE The years following the Second World War have shown a dramatic change in the pattern of world hegemony in the law. Leading legal ideas, once produced in Continental Civilian Europe and exported through the periphery of the world, are now for the first time produced in a common law jurisdiction: the United States.4 There is little question that the present world dominance of the United States has been economic, military, and political first, and legal only in a more recent moment, so that a ready explanation of legal hegemony can be found with a simple Marxist explanation of law as a superstructure of the economy.5 Nevertheless, the question of the relationship between legal, political, and economic hegemony is not likely to be correctly addressed within a cause-and-effect paradigm.6 Ultimately, addressing this question is a very important area of basic jurisprudential research because it reveals some general aspects about the nature of law as a device of global governance.¶ Observing historical patterns of legal hegemony allows us to critique the distinction between two main patterns of governance through the law (and of legal transplants).7 Scholars of legal transplants have traditionally distinguished two patterns. The first is law as dominance without hegemony, in which the legal system is ultimately a coercive apparatus asserting political and economic power without consent. This area of inquiry and this model have been used to explain the relationship between the legal system of the motherland and that of the colonies within imperialistic colonial enterprises. The opposing pattern, telling a story of consensual voluntary reception by an admiring periphery of legal models developed and provided for at the center, is usually considered the most important pattern of legal transplants. It is described by stressing on the idea of consent within a notion of “prestige.”8¶ Little effort is necessary to challenge the sufficiency of this basic taxonomy in introducing legal transplants. Law is a detailed and complex machinery of social control that cannot function with any degree of effectiveness without some cooperation from a variety of individuals staffing legal institutions. These individuals usually consist of a professional elite which either already exists or is created by the hegemonic power. Such an elite provides the degree of consent to the reception of foreign legal ideas that is necessary for any legal transplant to occur. Hence, the distinction between imperialistic and non-imperialistic transplants is a matter only of degree and not of structure. In order to understand the nature of present legal hegemony, it is necessary to capture the way in which the law functions to build a degree of consent to the present pattern of international economic and political dominance.9¶ In this essay I suggest that a fundamental cultural construct of presumed consent is the rhetoric of democracy and the rule of law utilized by the imperial model of governance, 10 triumphant worldwide together with the neo-American model of capitalism developed by the Reagan and Thatcher revolution early in the 1980s. I argue that the last twenty years have produced the triumph in global governance of reactive, politically irresponsible institutions, such as the courts of law, over proactive politically accountable institutions such as direct administrative apparatuses of the State.11¶ This essay attempts to open a radical revision of some accepted modes of thought about the law as they appear today, at what has been called “the end of history.”12 Its aim is to discuss some ways in which global legality has been created in the present stage of world-wide legal development. It will show how democracy and the rule of law, in the present legal landscape, are just another rhetoric of legitimization of a given international dynamic of power. It will also denounce the present unconscious state in which the law is produced and developed by professional “consent building” elites. The consequences of such unconsciousness are creating a legal landscape in which the law is “naturally” giving up its role of constraining opportunistic behavior of market actors. This process results in the development of faked rules and institutions that are functional to the interests of the great capital and that dramatically enlarge inequality within society. I predict that such a legal environment is unable to avoid tragic results on a global scale such as those outlined in the well-known parable of the tragedy of the commons.13¶ My object of observation is a legal landscape in transition. I wish to analyze this path of transition from one political setting (the local state) to another political setting (world governance) in which American-framed reactive institutions are asserting themselves as legitimate and legitimating governing bodies, which I call imperial law. Imperial law is the product of a renowned alliance between state and economic institutions, a cooperative game in which a very limited number of powerful players are at play.14 While in the ages of colonialism such political battles for international hegemony were mostly carried on with an open use of force and political violence (in such a way that final extensive conflict between superpowers was unavoidable), in the age of globalization and of economic Empire political violence has been transformed into legal violence.

#### The affirmatives faith in the legal system is misplaced. They posit a static form of legality that violently aims to order and control socio-economicly identified populations without accepting inherent difference.

Gordon 87, Robert Gordon, Professor of Law at Stanford, “Unfreezing Legal Reality: Critical Approaches to Law,” Florida State University Law Review, Vol 15 No 3. 1987, lexis

Now a central tenet of CLS work has been that the ordinary discourses of law -- debates over legislation, legal arguments, administrative and court decisions, lawyers' discussions with clients, legal commentary and scholarship, etc. -- all contribute to cementing this feeling, at once despairing and complacent, that things must be the way they are and that major changes could only make them worse. Legal discourse accomplishes this in many ways. First by endlessly repeating the claim that law and the other policy sciences have perfected a set of rational techniques and institutions that have come about as close as we are ever likely to get to solving the problem of domination in civil society. Put another way, legal discourse paints an idealized fantasy of order according to which legal rules and procedures have so structured relations among people that such relations may primarily be understood as instituted by their consent, their free and rational choices. Such coercion as apparently remains may be explained as the result of necessity -- either natural necessities (such as scarcity or the limited human capacity for altruism) or social necessities. For example, in a number of the prevailing discourses, the ordinary hierarchies of workplace domination and subordination are explained: (1) by reference to the contractual agreement of the parties and to their relative preferences for responsibility versus leisure, or risk taking versus security; (2) by the natural distribution of differential talents and skills (Larry Bird earns more as a basketball player because he is better); and (3) by the demands of efficiency in production, which are said to require extensive hierarchy for the purposes of supervision and monitoring, centralization of investment decisions, and so forth. There are always some residues of clearly unhappy [\*199] conditions -- undeserved deprivation, exploitation, suffering -- that cannot be explained in any of these ways. The discourses of law are perhaps most resourceful in dealing with these residues, treating them as, on the whole, readily reformable within the prevailing political options for adjusting the structures of ordinary practices -- one need merely fine tune the scheme of regulation, or deregulation, to correct them. But the prevailing discourse has its cynical and worldly side, and its tragic moments, to offset the general mood of complacency. In this mood it resignedly acknowledges that beyond the necessary minimum and the reformable residues of coercion and misery there is an irreducible, intractable remainder -- due to inherent limits on our capacity for achieving social knowledge, or for changing society through deliberate intervention, or for taking collective action against evil without suffering the greater evil of despotic power. These discourses of legal and technical rationality, of rights, consent, necessity, efficiency, and tragic limitation, are of course discourses of power -- not only for the obvious reasons that law's commands are backed by force and its operations can inflict enormous pain, but because to have access to these discourses, to be able to use them or pay others to use them on your behalf, is a large part of what it means to possess power. Further, they are discourses that -- although often partially constructed, or extracted as concessions, through the pressure of relatively less powerful groups struggling from below -- in habitual practice tend to express the interests and the perspectives of the powerful people who use them. The discourses have some of the power they do because some of their claims sound very plausible, though many do not. The claim, for example, that workers in health-destroying factories voluntarily "choose," in any practical sense of the term, the risks of the workplace in return for a wage premium, is probably not believed by anyone save those few expensively trained out of the capacity to recognize what is going on around them. In addition, both the plausible and implausible claims are backed up in the cases of law and of economics and the policy sciences by a quite formidable-seeming technocratic apparatus of rational justification -- suggesting that the miscellany of social practices we happen to have been born into in this historical moment is much more than a contingent miscellany. It has an order, even if sometimes an invisible one; it makes sense. The array of legal norms, institutions, procedures, and doctrines in force, can be rationally derived from the principles of regard for individual autonomy, utilitarian [\*200] efficiency or wealth creation, the functional needs of social order or economic prosperity, or the moral consensus and historical traditions of the community. There are several general points CLS people have wanted to assert against these discourses of power. First, the discourses have helped to structure our ordinary perceptions of reality so as to systematically exclude or repress alternative visions of social life, both as it is and as it might be. One of the aims of CLS methods is to try to dredge up and give content to these suppressed alternative visions. Second, the discourses fail even on their own terms to sustain the case for their relentlessly apologetic conclusions. Carefully understood, they could all just as well be invoked to support a politics of social transformation instead. n3 Generally speaking, the CLS claims under this heading are that the rationalizing criteria appealed to (of autonomy, functional utility, efficiency, history, etc.) are far too indeterminate to justify any conclusions about the inevitability or desirability of particular current practices; such claims, when unpacked, again and again turn out to rest on some illegitimate rhetorical move or dubious intermediate premise or empirical assumption. Further, the categories, abstractions, conventional rhetorics, reasoning modes and empirical statements of our ordinary discourses in any case so often misdescribe social experience as not to present any defensible pictures of the practices that they attempt to justify. Not to say of course that there could be such a thing as a single correct way of truthfully rendering social life as people live it, or that CLS writers could claim to have discovered it. But the commonplace legal discourses often produce such seriously distorted representations of social life that their categories regularly filter out complexity, variety, irrationality, unpredictability, disorder, cruelty, coercion, violence, suffering, solidarity and self-sacrifice. n4 [\*201] Summing up: The purpose of CLS as an intellectual enterprise is to try to thaw out, or at least to hammer some tiny dents on, the frozen mind sets induced by habitual exposure to legal practices -- by trying to show how normal legal discourses contribute to freezing, and to demonstrate how problematic these discourses are.

### Authoritarianism

#### The affirmative’s faith in the legal system actively contributes to authoritarianism. The law and legal interpretation are violent, ensuring the dominance of existing powerful interests and killing off alternative visions of justice.

Henderson 91, Lynne Henderson, Professor of Law at the Indiana School of Law at Bloomington, “Authoritarianism and the Rule of Law,” The Indiana Law Journal, 1991

The lack of scholarly acknowledgment, until very recently, of Cover's suggestion that law has too often been a mechanism for state violence and human oppression indicates the difficulty legal scholars have in acknowledging that law can be oppressive as a matter of course, rather than as an occasional exception. n146 Perhaps no other scholar has been more concerned with the violent and punitive nature of law than Cover. His journey began with his study of judicial enforcement of the fugitive slave laws in Justice Accused n147 and ended in an assertion that law was not an instrument of the state. He wrote that he was an "anarchist . . . with anarchy understood to mean the absence of rulers, not the absence of law." n148 By this statement, Cover may have meant to reiterate Paine's statement that it is the Rule of Law that is king, but it seems to have rested more on Cover's belief that law is a site of struggle over meaning. n149 For Cover, law was not state power or even an instrument of government, but rather is any social understanding of normative authority: n150 "[T]here is a radical dichotomy between the social organization of law as power and the organization of [\*404] law as meaning." n151 Further, "in the domain of legal meaning, it is force and violence that are problematic." n152 Law was the normative and interpretive commitment of a community; it was meaning accompanied by such strong commitment that it could lead to active resistance to other interpretations. While pure legal meaning was, for Cover, divorced from power and coercion, judicial violence had to be tested against community commitments. n153 Because, for Cover, "[a] legal world is built only to the extent that there are commitments that place bodies on the line," n154 violence might be the only way to assure the dominance of one legal interpretation over another. One need not accept that law is whatever someone is prepared to put her body on the line for to gain an appreciation of Cover's exposure of the punitive and oppressive aspects of the American constitutional system or the authoritarian nature of the judiciary and the state. Cover argued that the state sought to control law, its means of social control, in part through its "imperfect monopoly over the domain of violence." n155 He asserted that judges invoke and implement state violence by insisting on obedience to their orders and sacrificing "legal meaning to the interest in public order." n156 Judges, according to Cover, most typically applied a "statist" approach to law, denying the efficacy of alternative community interpretations. n157 But legal meanings developed by committed communities were law as much as the meanings developed by the courts. He noted, "the jurisgenerative principle by which legal meaning proliferates . . . never exists in isolation from violence. Interpretation always takes place in the shadow of coercion. . . Courts, at least the courts of the state, are characteristically 'jurispathic,'" n158 literally killing off alternative legal meanings. n159 Cover also described a kind of "process authoritarianism" by describing the jurisdictional reasons given by judges to "place the violence of administration beyond the reach of 'law.'" n160 He argued that judges promoted substantive authoritarianism through procedure, both by asserting their own power to punish and by deferring to state violence. Judges, by using "jurisdictional excuses to avoid disrupting the orderly deployment of state power and privilege," reinforced authoritarianism.

### 2NC Alt

#### Returning native lands collapses the colonial structure of the US and leads towards progress on other social issues – solves all major impacts

Churchill ‘96

Ward Churchill 1996 (former Professor of Ethnic Studies at University of Colorado, Boulder), From a native son: selected essays in indigenism, 1985-1995

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. Were dropping plastic and aluminum cans as we went? Like I said, lets 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 pre-contact 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 anti-Indian 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 principles 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.**

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