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#### a. Interpretation and violation---the affirmative should defend the desirability of topical government action

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

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

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

#### “Restrict” is to prevent

Corpus Juris Secundum, 1931

(Volume 54, p. 735)

RESTRICT: To confine; to limit; to prevent (a person or thing) from passing a certain limit in any kind of action; to restrain; to restrain without bounds.

#### Restriction is more than augmentation – must curtail

James P. Terry, 2009 (Ave Maria Law Review, Spring 2009, Retrieved 6/1/2013, Lexis/Nexis)

Although congressional legislation has operated to augment presidential powers in the foreign affairs field much more frequently than it has to curtail them, the rule is not without its exceptions. Disillusionment with presidential policy in the context of the Vietnamese conflict led Congress to legislate restrictions that not only limited the President's discretion to use troops abroad in the absence of a declaration of war, but also limited his economic and political powers through curbs on his authority to declare national emergencies. n109

#### “War powers” refers to the authority to use military force

Waxman, Professor of Law, Columbia Law School, 13

(Matthew, Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power To Threaten War,” Draft, Forthcoming in YALE LAW JOURNAL, vol. 123 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777, accessed 8-28-13, CMM)

As to the constitutional issues, there is wide agreement among legal scholars on¶ the general historical saga of American war powers – by which I mean here the authority¶ to use military force, and not the specific means or tactics by which war is waged once¶ initiated7 – though there remains intense disagreement about whether this is an optimistic¶ or pessimistic story from the perspective of constitutional values and protection of¶ American interests. Generally speaking, the story goes like this: The Founders placed¶ decisions whether actively to engage in military hostilities in Congress’s hands, and¶ Presidents mostly (but not always) respected this allocation for the first century and a half¶ of our history.8 At least by the Cold War, however, Presidents began exercising this¶ power unilaterally in a much wider set of cases, and Congress mostly allowed them to;9¶ an effort to realign legislatively the allocation after the Vietnam War failed, and today the¶ President has a very free hand in using military force that does not rise to the level of¶ “war” (in constitutional terms, which is usually confined to large-scale and long-duration¶ uses of ground forces).10 From a functional standpoint, this dramatic shift in¶ constitutional power is seen as either good, because decisions to use force require policy¶ dexterity inherent in the presidency, or bad, because unilateral presidential decisions to¶ use force are more prone than congressionally-checked ones to be dangerously rash.11

#### Debate over a controversial point of action creates argumentative stasis—the resolution is key to decision making

Steinberg and Freely 08

(David L., lecturer of communication studies – University of Miami, and Austin J.,Boston based attorney who focuses on criminal, personal injury and civil rights law, “Argumentation and Debate: Critical Thinking for Reasoned Decision Making” p. 45//wyoccd)

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

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

Steinberg and Freely 08

(David L., lecturer of communication studies – University of Miami, and Austin J.,Boston based attorney who focuses on criminal, personal injury and civil rights law, “Argumentation and Debate: Critical Thinking for Reasoned Decision Making” p. 9-10//wyoccd)

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

#### Debate needs middle of the road constraints; unbridled affirmation destroys dialogue that are key to political discussion

Hanghoj 08

(Thorkild Hanghøj, Phd, DREAM (Danish Research Centre on Education and Advanced Media Materials at the Institute of Literature, Media and Cultural Studies at the University of Southern Denmark. 2008 http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf//wyoccd)

Debate games are often based on pre-designed scenarios that include descriptions of issues to be debated, educational goals, game goals, roles, rules, time frames etc. In this way, debate games differ from textbooks and everyday classroom instruction as debate scenarios allow teachers and students to actively imagine, interact and communicate within a domain-specific game space. However, instead of mystifying debate games as a “magic circle” (Huizinga, 1950), I will try to overcome the epistemological dichotomy between “gaming” and “teaching” that tends to dominate discussions of educational games. In short, educational gaming is a form of teaching. As mentioned, education and games represent two different semiotic domains that both embody the three faces of knowledge: assertions, modes of representation and social forms of organisation (Gee, 2003; Barth, 2002; cf. chapter 2). In order to understand the interplay between these different domains and their interrelated knowledge forms, I will draw attention to a central assumption in Bakhtin’s dialogical philosophy. According to Bakhtin, all forms of communication and culture are subject to centripetal and centrifugal forces (Bakhtin, 1981). A centripetal force is the drive to impose one version of the truth, while a centrifugal force involves a range of possible truths and interpretations. This means that any form of expression involves a duality of centripetal and centrifugal forces: “Every concrete utterance of a speaking subject serves as a point where centrifugal as well as centripetal forces are brought to bear” (Bakhtin, 1981: 272). If we take teaching as an example, it is always affected by centripetal and centrifugal forces in the on-going negotiation of “truths” between teachers and students. In the words of Bakhtin: “Truth is not born nor is it to be found inside the head of an individual person, it is born between people collectively searching for truth, in the process of their dialogic interaction” (Bakhtin, 1984a: 110). Similarly, the dialogical space of debate games also embodies centrifugal and centripetal forces. Thus, the election scenario of The Power Game involves centripetal elements that are mainly determined by the rules and outcomes of the game, i.e. the election is based on a limited time frame and a fixed voting procedure. Similarly, the open-ended goals, roles and resources represent centrifugal elements and create virtually endless possibilities for researching, preparing, presenting, debating and evaluating a variety of key political issues. Consequently, the actual process of enacting a game scenario involves a complex negotiation between these centrifugal/centripetal forces that are inextricably linked with the teachers and students’ game activities. In this way, the enactment of The Power Game is a form of teaching that combines different pedagogical practices (i.e. group work, web quests, student presentations) and learning resources (i.e. websites, handouts, spoken language) within the interpretive frame of the election scenario. Obviously, tensions may arise if there is too much divergence between educational goals and game goals. This means that game facilitation requires a balance between focusing too narrowly on the rules or “facts” of a game (centripetal orientation) and a focusing too broadly on the contingent possibilities and interpretations of the game scenario (centrifugal orientation). For Bakhtin, the duality of centripetal/centrifugal forces often manifests itself as a dynamic between “monological” and “dialogical” forms of discourse. Bakhtin illustrates this point with the monological discourse of the Socrates/Plato dialogues in which the teacher never learns anything new from the students, despite Socrates’ ideological claims to the contrary (Bakhtin, 1984a). Thus, discourse becomes monologised when “someone who knows and possesses the truth instructs someone who is ignorant of it and in error”, where “a thought is either affirmed or repudiated” by the authority of the teacher (Bakhtin, 1984a: 81). In contrast to this, dialogical pedagogy fosters inclusive learning environments that are able to expand upon students’ existing knowledge and collaborative construction of “truths” (Dysthe, 1996). At this point, I should clarify that Bakhtin’s term “dialogic” is both a descriptive term (all utterances are per definition dialogic as they address other utterances as parts of a chain of communication) and a normative term as dialogue is an ideal to be worked for against the forces of “monologism” (Lillis, 2003: 197-8). In this project, I am mainly interested in describing the dialogical space of debate games. At the same time, I agree with Wegerif that “one of the goals of education, perhaps the most important goal, should be dialogue as an end in itself” (Wegerif, 2006: 61).

#### b. Vote neg

#### Preparation and clash—changing the topic post facto manipulates balance of prep, which structurally favors the aff because they speak last and permute alternatives—strategic fairness is key to engaging a well-prepared opponent

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

#### Simulated national security law debates preserve agency and enhance decision-making---avoids cooption

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

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

## K

#### The silence of the aff on the question of how colonialism was produced through the genocide of Native Americans is highly problematic- the call to come before decolonization bases the aff’s moral system on the continued benefit of genocidal occupation

Morgensen 2010

[Morgensen, Scott, 2k10, GLQ: A Journal of Lesbian and Gay Studies, Volume 16, Number 1-2, “Settler Homonationalism: Theorizing Settler Colonialism within Queer Modernities, 2010.]

Denaturalizing settler colonialism will mark it as not a fait accompli but a process open to change. While settlement suggests the appropriation of land, that history was never fixed: even the violence of allotment failed to erase collective Native land claims, just as land expropriation is being countered by tribal governments reacquiring sovereign land. In turn, as Thomas King and Paul Carter suggest, settlement narrates the land, and, as storytelling, it remains open to debate, End Page 122 such as in Native activisms that sustain Indigenous narratives of land or tell new stories to denaturalize settler landscapes. The processes of settler colonialism produce contradictions, as settlers try to contain or erase Native difference in order that they may inhabit Native land as if it were their own. Doing so produces the contortions described by Deloria, as settler subjects argue that Native people or their land claims never existed, no longer exist, or if they do are trumped by the priority of settler claims. Yet at the same time settler subjects study Native history so that they may absorb it as their own and legitimate their place on stolen land. These contradictions are informed by the knowledge, constantly displaced, of the genocidal histories of occupation. Working to stabilize settler subjectivity produces the bizarre result of people admitting to histories of terrorizing violence while basing their moral systems on continuing to benefit from them. The difference between conservative and liberal positions on settlement often breaks between whether non-Natives feel morally justified or conscionably implicated in a society based on violence. But while the first position embraces the status quo, the second does nothing necessarily to change it. As Smith pointedly argues, "It is a consistent practice among progressives to bemoan the genocide of Native peoples, but in the interest of political expediency, implicitly sanction it by refusing to question the illegitimacy of the settler nation responsible for this genocide." In writing with Kehaulani Kauanui, Smith argues that this complicity continues, as progressives have critiqued the seeming erosion of civil liberties and democracy under the Bush regime. How is this critique affected if we understand the Bush regime not as the erosion of U.S. democracy but as its fulfillment? If we understand American democracy as predicated on the genocide of indigenous people? . . . Even scholars critical of the nation-state often tend to presume that the United States will always exist, and thus they overlook indigenous feminist articulations of alternative forms of governance beyond the United States in particular and the nation-state in general. Smith and Kauanui remind us here that Indigenous feminists crucially theorize life beyond settler colonialism, including by fostering terms for national community that exceed the heteropatriarchal nation-state form. Non-Natives who seek accountable alliance with Native people may align themselves with these stakes if they wish to commit to denaturalizing settler colonialism. But as noted, their more frequent effort to stabilize their identities follows less from a belief that settlement is natural than from a compulsion to foreclose the Pandora's box of contradictions End Page 123 they know will open by calling it into question. In U.S. queer politics, this includes the implications of my essay: queers will invoke and repeat the terrorizing histories of settler colonialism if these remain obscured behind normatively white and national desires for Native roots and settler citizenship.

#### Their illusion to the White/Black binary assimilates and suppresses indigenous peoples leading to worse oppression against minority groups and constantly continues to reify colonialism

Alcoff ‘03

[Linda Martin, Syracuse University Department of Philosophy, “Latino/AS, Asian Americans, and the Black-White Binary” The Journal of Ethics 7, 5.2.2003. <http://link.springer.com/content/pdf/10.1023%2FA%3A1022870628484.pdf >//wyo-hdm]

The reality of race in the U.S. has always been more complicated than black/white. The initial exclusionary laws concerning testimony in court, as mentioned earlier, grouped “blacks, mulattoes, and Native Americans.” The Chinese laborers brought to the West in the 1800’s had speciﬁc rulings and ideological justiﬁcations used against them, restricting their right not only to vote or own property but even to marry other Chinese. This latter ruling outlasted slavery and was justiﬁed by invoking images of Asian overpopulation. To avoid reproduction, Chinese women were allowed to come as prostitutes but not as wives, a restriction no other group faced. The Mexicans defeated in the Mexican–American War were portrayed as cruel and cowardly barbarians, and although the Treaty of Guadalupe–Hidalgo ratiﬁed in 1848 guaranteed the Mexicans who stayed in the U.S. full rights of citizenship, like the treaties with Native Americans neither local governments nor the federal courts upheld the Mexicans right to vote or respected the land deeds they held before the Treaty.18 By the time of the Spanish– American War of 1898 the image of barbarism used against Mexicans was consistently attributed to a Latin-Catholic heritage and expanded for use throughout Latin American and the Caribbean, thus subsequently affecting the immigrant populations coming from these countries as well as justifying U.S. claims of hegemony in the region.19 The so-called Zoot Suit riots in Los Angeles in 1943 targeted Mexicans and their ethnically speciﬁc style of dress. The attempts made to geographically sequester and also to forcibly and totally assimilate Native American groups were not experienced by any other group, and had their own ideological justiﬁcations that combined contradictory images of the Great Chain of Being with the romanticized Noble Savage. Native peoples were represented as vanquished, disappearing, and thus of no account. The paradigm of an antiblack racism intertwined with slavery does not help to illuminate these and other speciﬁc experiences of other nonwhite groups, where ideologies often relied on charges of evil, religious backwardness, horde mentalities, being a disappearing people, and other projections not used in regard to African Americans. The hegemony of the black/white paradigm has stymied the development of an adequate account of the diverse racial realities in the U.S., and weakened the general theories of racism which attempt to be truly inclusive. This has had a negative effect on our ability to develop effective solutions to the various forms racism can take, to make common cause against ethnic and race based forms of oppression and to create lasting coalitions, and has recently played a signiﬁcant role in the demise of afﬁrmative action. I will support these claims further in what follows.

#### Lack of decolonization results in ongoing genocide, assimilation and annihilation of indigenous peoples and culture- k2 solve environmental degradation, heterosexism, classism, racism, sexism and militarism

Churchill 96 (Ward, Prof. of Ethnic Studies @ U. of Colorado, Boulder BA and MA in Communications from Sangamon State, “From a Native Son”,mb)

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. 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 precontact times between Indians, and the practice was broadened to include those of both African and European origin—and ultimately Asian origin as well—once contact occurred. Those who were naturalized by marriage or adoption were considered members of the group, pure and simple. This was always the Indian view. The Europeans and subsequent Euroamerican settlers viewed things rather differently, however, and foisted off the notion that Indian identity should be determined primarily by “blood quantum,” an outright eugenics code similar to those developed in places like Nazi Germany and apartheid South Africa. Now that’s a racist construction if there ever was one. Unfortunately, a lot of Indians have been conned into buying into this 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 is not to kill, the object being to demonstrate personal bravery, something that could be done only against a live opponent. There’s no honor to be had in killing another person, because a dead person can’t hurt you. There’s no risk. This is not to say that nobody ever died or was seriously injured in the fighting. They were, just as they are in full contact contemporary sports like football and boxing. Actually, these kinds of Euro- American games are what I would take to be the closest modern parallels to traditional inter-Indian warfare. For Indians, it was a way of burning excess testosterone out of young males, and not much more. So, militarism in the way the term is used today is as alien to native tradition as smallpox and atomic bombs. Not only is it perfectly reasonable to assert that a restoration of Indian control over unceded lands within the United States would do nothing to perpetuate such problems as sexism and classism, but the reconstitution of indigenous societies this would entail stands to free the affected portions of North America from such maladies altogether. Moreover, it can be said that the process should have a tangible impact in terms of diminishing such oppressions elsewhere. The principle is this: sexism, racism, and all the rest arose here as a concomitant to the emergence and consolidation of the Eurocentric nation-state form of sociopolitical and economic organization. Everything the state does, everything it can do, is entirely contingent on its 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 relation within itself. It follows that the 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.

#### Our first priority is to give back the land.

#### Decolonization must be our ethical first priority, any form of liberation that perpetuates the occupation of Indigenous territory is only colonialism in another form. The demand to end the occupation of First American lands is a necessary prerequisite to solving other forms of oppression and any form of positive social change

Churchill 96 (Ward, Prof. of Ethnic Studies @ U. of Colorado, Boulder BA and MA in Communications from Sangamon State, “From a Native Son”,mb)

The question which inevitably arises with regard to indigenous land claims, especially in the United States, is whether they are “realistic.” The answer, of course is , “No, they aren’t.” Further, no form of decolonization has ever been realistic when viewed within the construct of a colonialist paradigm. It wasn’t realistic at the time to expect George Washington’s rag-tag militia to defeat the British military during the American Revolution. Just ask the British. It wasn’t realistic, as the French could tell you, that the Vietnamese should be able to defeat U.S.-backed France in 1954, or that the Algerians would shortly be able to follow in their footsteps. Surely, it wasn’t reasonable to predict that Fidel Castro’s pitiful handful of guerillas would overcome Batista’s regime in Cuba, another U.S. client, after only a few years in the mountains. And the Sandinistas, to be sure, had no prayer of attaining victory over Somoza 20 years later. Henry Kissinger, among others, knew that for a fact. The point is that in each case, in order to begin their struggles at all, anti-colonial fighters around the world have had to abandon orthodox realism in favor of what they knew to be right. To paraphrase Bendit, they accepted as their agenda, a redefinition of reality in terms deemed quite impossible within the conventional wisdom of their oppressors. And in each case, they succeeded in their immediate quest for liberation. The fact that all but one (Cuba) of the examples used subsequently turned out to hold colonizing pretensions of its own does not alter the truth of this—or alter the appropriateness of their efforts to decolonize themselves—in the least. It simply means that decolonization has yet to run its course, that much remains to be done. The battles waged by native nations in North America to free themselves, and the lands upon which they depend for ongoing existence as discernible peoples, from the grip of U.S. (and Canadian) internal colonialism are plainly part of this process of liberation. Given that their very survival depends upon their perseverance in the face of all apparent odds , American Indians have no real alternative but to carry on. They must struggle, and where there is struggle here is always hope. Moreover, the unrealistic or “romantic” dimensions of our aspiration to quite literally dismantle the territorial corpus of the U.S. state begin to erode when one considers that federal domination of Native North America is utterly contingent upon maintenance of a perceived confluence of interests between prevailing governmental/corporate elites and common non- Indian citizens. Herein lies the prospect of long-term success. It is entirely possibly that the consensus of opinion concerning non-Indian “rights” to exploit the land and resources of indigenous nations can be eroded, and that large numbers of non-Indians will join in the struggle to decolonize Native North America. Few non- Indians wish to identify with or defend the naziesque characteristics of US history. To the contrary most seek to deny it in rather vociferous fashion. All things being equal, they are uncomfortable with many of the resulting attributes of federal postures and actively oppose one or more of these, so long as such politics do not intrude into a certain range of closely guarded selfinterests. This is where the crunch comes in the realm of Indian rights issues. Most non-Indians (of all races and ethnicities, and both genders) have been indoctrinated to believe the officially contrived notion that, in the event “the Indians get their land back,” or even if the extent of present federal domination is relaxed, native people will do unto their occupiers exactly as has been done to them; mass dispossession and eviction of non-Indians, especially Euro-Americans is expected to ensue. Hence even progressives who are most eloquently inclined to condemn US imperialism abroad and/or the functions of racism and sexism at home tend to deliver a blank stare of profess open “disinterest” when Indigenous land rights are mentioned. Instead of attempting to come to grips with this most fundamental of all issues the more sophisticated among them seek to divert discussion into “higher priority” or “more important” topics like “issues of class and gender equality” in with “justice” becomes synonymous with a redistribution of power and loot deriving from the occupation of Native North America even while occupation continues. Sometimes, Indians are even slated to receive “their fair share” in the division of spoils accruing from expropriation of their resources. Always, such things are couched in terms of some “greater good” than decolonizing the .6 percent of the U.S. population which is indigenous. Some Marxist and environmentalist groups have taken the argument so far as to deny that Indians possess any rights distinguishable from those of their conquerors. AIM leader Russell Means snapped the picture into sharp focus when he observed n 1987 that: so-called progressives in the United States claiming that Indians are obligated to give up their rights because a much larger group of non-Indians “need” their resources is exactly the same as Ronald Reagan and Elliot Abrams asserting that the rights of 250 million North Americans outweigh the rights of a couple million Nicaraguans (continues). Leaving aside the pronounced and pervasive hypocrisy permeating these positions, which add up to a phenomenon elsewhere described as “settler state colonialism,” the fact is that the specter driving even most radical non-Indians into lockstep with the federal government on questions of native land rights is largely illusory. The alternative reality posed by native liberation struggles is actually much different: While government propagandists are wont to trumpet—as they did during the Maine and Black Hills land disputes of the 1970s—that an Indian win would mean individual non-Indian property owners losing everything, the native position has always been the exact opposite. Overwhelmingly, the lands sought for actual recovery have been governmentally and corporately held. Eviction of small land owners has been pursued only in instances where they have banded together—as they have during certain of the Iroquois claims cases—to prevent Indians from recovering any land at all, and to otherwise deny native rights. Official sources contend this is inconsistent with the fact that all non-Indian title to any portion of North America could be called into question. Once “the dike is breached,” they argue, it’s just a matter of time before “everybody has to start swimming back to Europe, or Africa or wherever.” Although there is considerable technical accuracy to admissions that all non-Indian title to North America is illegitimate, Indians have by and large indicated they would be content to honor the cession agreements entered into by their ancestors, even though the United States has long since defaulted. This would leave somewhere close to two-thirds of the continental United States in non-Indian hands, with the real rather than pretended consent of native people. The remaining one-third, the areas delineated in Map II to which the United States never acquired title at all would be recovered by its rightful owners. The government holds that even at that there is no longer sufficient land available for unceded lands, or their equivalent, to be returned. In fact, the government itself still directly controls more than one-third of the total U.S. land area, about 770 million acres. Each of the states also “owns” large tracts, totaling about 78 million acres. It is thus quite possible— and always has been—for all native claims to be met in full without the loss to non-Indians of a single acre of privately held land. When it is considered that 250 million-odd acres of the “privately” held total are now in the hands of major corporate entities, the real dimension of the “threat” to small land holders (or more accurately, lack of it) stands revealed. Government spokespersons have pointed out that the disposition of public lands does not always conform to treaty areas. While this is true, it in no way precludes some process of negotiated land exchange wherein the boundaries of indigenous nations are redrawn by mutual consent to an exact, or at least a much closer conformity. All that is needed is an honest, open, and binding forum—such as a new bilateral treaty process—with which to proceed. In fact, numerous native peoples have, for a long time, repeatedly and in a variety of ways, expressed a desire to participate in just such a process. Nonetheless, it is argued, there will still be at least some non-Indians “trapped” within such restored areas. Actually, they would not be trapped at all. The federally imposed genetic criteria of “Indian –ness” discussed elsewhere in this book notwithstanding, indigenous nations have the same rights as any other to define citizenry by allegiance (naturalization) rather than by race. Non-Indians could apply for citizenship, or for some form of landed alien status which would allow them to retain their property until they die. In the event they could not reconcile themselves to living under any jurisdiction other than that of the United States, they would obviously have the right to leave, and they should have the right to compensation from their own government (which got them into the mess in the first place). Finally, and one suspects this is the real crux of things from the government/corporate perspective, any such restoration of land and attendant sovereign prerogatives to native nations would result in a truly massive loss of “domestic” resources to the United States, thereby impairing the country’s economic and military capacities (see “Radioactive Colonialism” essay for details). For everyone who queued up to wave flags and tie on yellow ribbons during the United States’ recent imperial adventure in the Persian Gulf, this prospect may induce a certain psychic trauma. But, for progressives at least, it should be precisely the point. When you think about these issues in this way, the great mass of non-Indian in North America really have much to gain and almost nothing to lose, from the success of native people in struggles to reclaim the land which is rightfully ours. The tangible diminishment of US material power which is integral to our victories in this sphere stands to pave the way for realization of most other agendas from anti-imperialism to environmentalism, from African American liberation to feminism, from gay rights to the ending of class privilege- pursued by progressives on this continent. Conversely, succeeding with any or even all of these other agendas would still represent an inherently oppressive situation in their realization is contingent upon an ongoing occupation of Native North America with the consent of Indian people. Any North American revolution which failed to free indigenous territory from non-Indian domination would be simply a continuation of colonialism in another form. Regardless of the angle from which you view the matter, the liberation of Native North America, liberation of the land first and foremost, is the key to fundamental and positive social changes of many other sorts. One thing they say, leads to another. The question has always been, of course, which “thing” is to be the first in the sequence. A preliminary formulation for those serious about radical change in the United State might be “First Priority to First Americans.” Put another way this would mean, “US out of Indian Country.” Inevitably, the logic leads to what we’ve all been so desperately seeking: The United States- at least what we’ve come to know it- out of North America all together. From there is can be permanently banished from the planet. In its stead, surely we can join hands to create something new and infinitely better. That’s our vision of “impossible realism,” isn’t it time we all worked on attaining it?

**The alt is the first priority and the very existence of the U.S. makes their impacts inevitable**

Churchill ‘03

[Ward, Codirector of the Colorado Chapter of the American Indian Movement. Prof. of Ethnic Studies and American Indian Studies @ U. of Colorado, Boulder BA and MA in Communications from Sangamon State, “Acts of Rebellion: The Ward Churchill Reader”, p 263-5//wyo-hdm]

I am here, however, as may have been gleaned from my opening quotation of George Manuel, to discuss a reality left unmentioned not only by Mao, but by analysts of almost every ideological persuasion. This is **the existence of** yet another world, a world composed of **a plethora of indigenous peoples**, several thousand of us, **each of whom constitutes a nation** in our own right. 3 Taken together, these nations **comprise a** nonindustrial “**Fourth World**,” a “Host World” **upon whose territories and** with whose **natural resources each of the other three**, the **worlds of** modern **statist sociopolitical and economic organization**, **have been constructed**. 4 In substance, the very existence of any state—and it doesn’t matter a bit **whether it is fascist, liberal**. To put it another way, the denial of indigenous rights, both national and individual, is integral to **the** creation and **functioning of the world** order which has evolved over the past thousand years or so, and which democratic, or marxist in orientation—**is** absolutely **contingent upon usurpation of the material and political rights of every indigenous nation within its boundaries**—is even now projecting itself in an ever more totalizing manner into our collective future. 5 We say, and I believe this includes all of us here, that we oppose this prospect, that we oppose what was once pronounced by the papacy to be the “Divine Order” of things, what England’s Queen Victoria asserted was the worlds “Natural Order, ” what George Bush, following Adolf Hitler, described as a “New World Order, ” what Bill Clinton and Newt Gingrich have sought to consummate behind alphabet soup banalities like GATT and NAFTA and the MAI. In other words, we are opposed to the entire system presently “coordinated” by bodies like the World Bank and the International Monetary Fund and the Trilateral Commission. 6 We say we oppose all of this, and, with at least equal vehemence, **we announce our opposition to** more **particularized byproducts of the trajectory** of increasingly consolidated corporate statism, or statist corporatism, or whatever else it might be more properly called, that we as a species are presently locked into. The litany is all too familiar: an increasingly **rampant** homogenization and **commodification of** our **culture**s and communities; the ever more **wanton devastation** and toxification **of our environment**; **a**n already overburdening, highly **militarized and** steadily **expanding police apparatus**, **both public and private**, attended by an historically unparalleled degree of social regimentation and an astonishingly rapid growth in the prison-industrial complex; **conversion of** our **academic institutions into** veritable **“votechs” churning out little more than military/corporate fodder**; unprecedented concentration of wealth and power…. We say we oppose it all, root and branch, and of course we are, each of us in our own way, entirely sincere in the statement of our opposition. But, with that said, and in many cases even acted upon, what do we mean? Most of us here identify ourselves as “progressives, ” so let’s start with the term “progressivism” itself. We don’t really have time available to go into this very deeply, but I’ll just observe that it comes from the word “progress, ” and that the progression involved is basically to start with what’s already here and carry it forward. The underlying premise is that the social order we were born into results from the working of “iron laws” of evolution and, however unpalatable, is therefore both necessary and inevitable. By the same token, these same deterministic forces make it equally unavoidable that what we’ve inherited can and will be improved upon. 7 The task of progressives, having apprehended the nature of the progression, is to use their insights to hurry things along. This isn’t a “liberal” articulation. It’s what’s been passing itself off as a radical left alternative to the status quo for well over a century. It forms the very core of Marx’s notion of historical materialism, as when he observes that feudalism was the social precondition for the emergence of capitalism and that capitalism is itself the essential precondition for what he conceives as socialism. Each historical phase creates the conditions for the next; that’s the crux of the progressive proposition. 8 Now you tell me, how is that fundamentally different from what Bush and Clinton have been advocating? Oh, I see. You want to “move forward” in pursuance of another set of goals and objectives than those espoused by these self-styled “centrists. ” Alright. I’ll accept that that’s true. Let me also state that I tend to find the goals and objectives advanced by **progressives** immensely preferable to anything advocated by Bush or Clinton. Fair enough? However, I must go on to observe that the differences at issue are not fundamental. They are not, as Marx would have put it, of “the base. ” Instead, they are superstructural. They **represent remedies to symptoms rather than causes**. In other words, **they do not derive from a** genuinely **radical critique of our situation**—remember, **radical means to go to the root of any phenomenon** in order **to understand it** 9 —and thus cannot offer a genuinely radical solutions. This will remain true regardless of the fervor with which progressive goals and objectives are embraced on, or the extremity with which they are pursued. Radicalism and extremism are, after all, not really synonyms. Maybe I can explain what I’m getting at here by way of indulging in a sort of grand fantasy. Close your eyes for a moment and **dream** along **with me that** the current progressive agenda has been realized. Never mind how, let’s just dream that it’s been fulfilled. Things like **racism, sexism, ageism, militarism, classism,** and the sorts of **corporatism** with which we are now afflicted have been abolished. The police have been leashed **and the prison-industrial complex dismantled**. Income disparities have been eliminated across the board, decent housing and healthcare are available to all, an amply endowed educational system is actually devoted to teaching rather than indoctrinating our children. The whole nine yards. Sound good? You bet. Nonetheless, there’s still a very basic—and I daresay uncomfortable—question which must be posed: **In this** seemingly rosy **scenario**, **what**, exactly, **happens to** the rights of **native peoples?** Face it, to envision the **progressive transformation** of “American society” **is to presuppose that “America”**—that is, the United States—**will continue to exist**. And, self-evidently, the existence of **the United States is**, as it has always been and must always be, **predicated** first and foremost **on denial of the** right of **self-determining existence to every indigenous nation within its purported borders**.

## Case

#### First, Squo solves—prison reform coming at federal and state level

The Economist 8/17/13

[The Economist, “Prison reform: An unlikely alliance of left and right,” The Economist, 17 August 2013, [http://www.economist.com/news/united-states/21583701-america-waking-up-cost-mass-incarceration-unlikely-alliance-left-and //](http://www.economist.com/news/united-states/21583701-america-waking-up-cost-mass-incarceration-unlikely-alliance-left-and%20//) wyo-ch]

The high cost of mass incarceration has attracted attention from both left and right. In March Rand Paul, a Republican senator, and Patrick Leahy, a Democratic one, introduced the Justice Safety-Valve Act of 2013, which would let judges impose sentences below the mandatory minimum. In July Mr Leahy, along with Dick Durbin and Mike Lee, a Democrat from Illinois and a Republican from Utah, introduced the Smarter Sentencing Act of 2013. It would, among other things, shorten mandatory minimums and expand the safety-valve. And this week, in a speech before the American Bar Association, Mr Holder announced a clutch of reforms. More elderly federal inmates are to be released early. More effort will be made to help ex-convicts re-enter society, in the hope that this will curb re-offending. Pointless rules making it harder for ex-cons to find homes or jobs will be reconsidered. And most important, low-level, non-violent drug offenders without ties to gangs or cartels will no longer be charged with crimes that trigger mandatory minimums. Texas won’t hold ’em As Mr Holder noted, these policy shifts mirror similar ones that more than half of all American states have enacted over the past decade. The wave began with Texas—then as now led by Mr Perry—which in 2003 passed a law sending people convicted of possessing less than a gram of drugs to probation rather than prison. In 2007 Texas allocated $241m for drug-treatment and alternatives to prison for non-violent offenders. Between 2003 and 2011 violent crime in Texas fell by 14.2%. The state’s prison population has also declined steadily. Sentencing reform passed in Georgia—where one in 13 adults is imprisoned, on probation or on parole—will save the state an estimated $264m over the next five years. Kentucky’s is forecast to save the state $400m while reducing its prison population by 3,000 over the next ten years.

#### Their understanding is flawed and can never solve without institutional reform: reducing racism to a particular standpoint de-emphasizes the importance of how racist assumptions exist in different dimensions. Undoing racism requires large-scale societal change.

Kerner 07

(Ina, presented at De/Konstruktionen von Okzidentalismus, Humboldt-Universität zu Berlin, “Challenges of Critical Whiteness Studies,” June 2007, <http://translate.eipcp.net/strands/03/kerner-strands01en/print>) /Wyo-MM

**When reading Critical Whiteness scholarship, it** sometimes **seems that critical self-positioning on the part of whites was more or less the solution to problems** of white/black-racism in Germany. I hold that **this overestimates the personal dimension – and de-emphasizes** that **there might be much more to be done, things that** by far **transcend** the **possibilities of individual acts and individual change. Because if** we assume that **racism has the three dimensions** that I have suggested, then **undoing racism requires much more than personal attempts to give away or share one’s privileges.** **It includes reworking racist assumptions, images, stereotypes and ascriptions on a societal level**, in other words **replacing racist knowledge by non-racist knowledge**; it **also includes undoing institutionalized forms of racism and their effects, like exclusive immigration and citizenship laws, or structural forms of discrimination;** and finally, it includes the need for subjects who don’t reproduce the above. So in fact, when employing such a more-dimensional account of racism, a whole new, and actually broadened concept of white privilege suggests itself. In the light of the three dimensions that I have mentioned, **white privilege cannot be reduced to a resource**, something that individuals have or don’t have, like a weightless, invisible knapsack full of maps, codebooks, visas, clothes and blank checks (cf. McIntosh 1989) that they carry with them on their way through life – even though such resources can surely be part of it.[7] Rather, **white privilege entails two** more **aspects**. First, and **this refers to the institutional dimension of racism, the structuring of parts of the way through live itself**, like elevators for some where others have to climb the steps, or like tunnels and bridges with restricted access based on group membership. Second, **referring to the epistemic dimension, a reformulated notion of white privilege entails the structuring of societal perceptions about who will make it far on this way through life and who won’t**, perceptions of who is supposed to get ahead, and who is supposed to stay behind. In general, I hold that such perceptions aren’t necessarily mirrored in people’s self-perceptions and identities – but they nevertheless influence the elements, the range of possibilities that each of us has for constructing our identities or our relations to ourselves.[8] Therefore, they can have great influence on the ways in which we want to and can live our lives.

#### Aff can’t solve, focusing on blackness leads to understanding, but has no possibility of liberation

**Wilderson,**

Frank  B.  Wilderson  III,  activist‐author‐scholar‐academic

Afro-Pessimism, <http://uc-ipc.com/members/2008/06/23/afro-pessimism/>, accessed 4-9-2012,WYO/JF

**Afro-Pessimism theorizes Blackness as a position of accumulation and fungibility (Saidiya Hartman); as condition—or relation—of ontological death;** rather than celebrate it as an identity of cultural plenitude. One of the guiding questions of my engagement with Afro-Pessimism is: How are the political stakes of analysis and aesthetics raised and altered if we theorize the structural relation between Blacks and Humanity as an antagonism (an irreconcilable encounter) as opposed to a conflict? The following question was asked on a graduate student exam for a Critical Theory Seminar, entitled “Sentient Objects and the Crisis of Critical Theory,” that I taught Fall Quarter 2006. Question: Why are the theorists under consideration [in this seminar] called “Afro-Pessimists,” and what characteristics do they have in common? “**Afro-Pessimists are framed as such…because they theorize an antagonism, rather than a conflict—i.e. they perform a kind of ‘work of understanding’ rather than that of liberation, refusing to posit seemingly untenable solutions to the problems they raise.”** “[The Afro-Pessimists argue] **that violence toward the black person happens gratuitously, hence without former transgression, and the even if the means of repression change** (plantation was replaced by prison, etc.), **that doesn’t change the structure of the repression itself. Finally** (and this is important in terms of the self-definition of the white person), **a lot of repression happens on the level of representation, which then infiltrates the unconscious of both the black and the white person…Since these structures are ontological, they cannot be resolved (**there is no way of changing this unless the world as we know it comes an end…); this is why the [Afro-Pessimist relational-schema] would be seen as the only true antagonism (while other repressive relations like class and gender would take place on the level of conflict—they can be resolved, hence they are not ontological).”

# 2NC

### 2NC Dialouge

#### Constraints on debate, like framework, are important because unbridled approaches to debate loses the political benefits. We need to meet in the middle to interplay the teaching and educational aspects of debate- Hanghoj 08

#### Dialogue is critical to affirming any value—shutting down deliberation devolves into a rebellious totalitarianism and reinscribes oppression

Morson 04

(Northwestern Professor, work ranges over a variety of areas: literary theory (especially narrative); the history of ideas, both Russian and European; a variety of literary genres incuding relation of literature to philosophy. 2004 Bakhtin viewed the whole process of “ideological” (in the sense of ideas and values, however unsystematic) Development as an endless dialogue. As teachers, we find it difficult to avoid a voice of authority, however much we may think of ours as the rebel’s voice, because our rebelliousness against society at large speaks in the authoritative voice of our subculture. We speak the language and thoughts of academic educators, even when we imagine we are speaking in no jargon at all, and that jargon, inaudible to us, sounds with all the overtones of authority to our students. We are so prone to think of ourselves as fighting oppression that it takes some work to realize that we ourselves may be felt as oppressive and overbearing, and that our own voice may provoke the same reactions that we feel when we hear an authoritative voice with which we disagree. So it is often helpful to think back on the great authoritative oppressors and reconstruct their self-image: helpful, but often painful. I remember, many years ago, when, as a recent student rebel and activist, I taught a course on “The Theme of the Rebel” and discovered, to my considerable chagrin, that many of the great rebels of history were the very same people as the great oppressors. There is a famous exchange between Erasmus and Luther, who hoped to bring the great Dutch humanist over to the Reformation, but Erasmus kept asking Luther how he could be so certain of so many doctrinal points. We must accept a few things to be Christians at all, Erasmus wrote, but surely beyond that there must be room for us highly fallible beings to disagree. Luther would have none of such tentativeness. He knew, he was sure. The Protestant rebels were, for a while, far more intolerant than their orthodox opponents. Often enough, the oppressors are the ones who present themselves and really think of themselves as liberators. Certainty that one knows the root cause of evil: isn’t that itself often the root cause? We know from Tsar Ivan the Terrible’s letters denouncing Prince Kurbsky, a general who escaped to Poland, that Ivan saw himself as someone who had been oppressed by noblemen as a child and pictured himself as the great rebel against traditional authority when he killed masses of people or destroyed whole towns. There is something in the nature of maximal rebellion against authority that produces ever greater intolerance, unless one is very careful. For the skills of fighting or refuting an oppressive power are not those of openness, self-skepticism, or real dialogue. In preparing for my course, I remember my dismay at reading Hitler’s Mein Kampf and discovering that his self-consciousness was precisely that of the rebel speaking in the name of oppressed Germans, and that much of his amazing appeal – otherwise so inexplicable – was to the German sense that they were rebelling victims. In our time, the Serbian Communist and nationalist leader Slobodan Milosevic exploited much the same appeal. Bakhtin surely knew that Communist totalitarianism, the Gulag, and the unprecedented censorship were constructed by rebels who had come to power. His favorite writer, Dostoevsky, used to emphasize that the worst oppression comes from those who, with the rebellious psychology of “the insulted and humiliated,” have seized power – unless they have somehow cultivated the value of dialogue, as Lenin surely had not, but which Eva, in the essay by Knoeller about teaching The Autobiography of Malcolm X, surely had. Rebels often make the worst tyrants because their word, the voice they hear in their consciousness, has borrowed something crucial from the authoritative word it opposed, and perhaps exaggerated it: the aura of righteous authority. If one’s ideological becoming is understood as a struggle in which one has at last achieved the truth, one is likely to want to impose that truth with maximal authority; and rebels of the next generation may proceed in much the same way, in an ongoing spiral of intolerance.

#### Dialogue is the biggest impact—the process of discussion opens up agency and recognizes difference

Morson 04

(Northwestern Professor, work ranges over a variety of areas: literary theory (especially narrative); the history of ideas, both Russian and European; a variety of literary genres incuding relation of literature to philosophy. 2004 http://www.flt.uae.ac.ma/elhirech/baktine/0521831059.pdf#page=331//wyoccd)

A belief in truly dialogic ideological becoming would lead to schools that were quite different. In such schools, the mind would be populated with a complexity of voices and perspectives it had not known, and the student would learn to think with those voices, to test ideas and experiences against them, and to shape convictions that are innerly persuasive in response. This very process would be central. Students would sense that whatever word they believed to be innerly persuasive was only tentatively so: the process of dialogue continues.We must keep the conversation going, and formal education only initiates the process. The innerly persuasive discourse would not be final, but would be, like experience itself, ever incomplete and growing. As Bakhtin observes of the innerly persuasive word: Its creativity and productiveness consist precisely in the fact that such a word awakens new and independent words, that it organizes masses of our words from within, and does not remain in an isolated and static condition. It is not so much interpreted by us as it is further, that is, freely, developed, applied to new material, new conditions; it enters into interanimating relationships with new contexts. . . . The semantic structure of an innerly persuasive discourse is not finite, it is open; in each of the new contexts that dialogize it, this discourse is able to reveal ever newer ways to mean. (DI, 345–6) We not only learn, we also learn to learn, and we learn to learn best when we engage in a dialogue with others and ourselves. We appropriate the world of difference, and ourselves develop new potentials. Those potentials allow us to appropriate yet more voices. Becoming becomes endless becoming. We talk, we listen, and we achieve an open-ended wisdom. Difference becomes an opportunity (see Freedman and Ball, this volume). Our world manifests the spirit that Bakhtin attributed to Dostoevsky: “nothing conclusive has yet taken place in the world, the ultimate word of the world and about the world has not yet been spoken, the world is open and free, everything is in the future and will always be in the future.”3 Such a world becomes our world within, its dialogue lives within us, and we develop the potentials of our ever-learning selves. Letmedraw some inconclusive conclusions, which may provoke dialogue. Section I of this volume, “Ideologies in Dialogue: Theoretical Considerations” and Bakhtin’s thought in general suggest that we learn best when we are actually learning to learn. We engage in dialogue with ourselves and others, and the most important thing is the value of the open-ended process itself.

#### Student debate about war powers is critical to overall American Political Development---influences the durable shifts in checks and balances

Dominguez and Thoren 10 Casey BK, Department of Political Science and IR at the University of San Diego and Kim, University of San Diego, Paper prepared for the Annual Meeting of the Western Political Science Association, San Francisco, California, April 1-3, 2010, “The Evolution of Presidential Authority in War Powers”, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1580395

Students of American institutions should naturally be interested in the relationships between the president and Congress. However, the evolution of war powers falls into a category of inquiry that is important not just to studies of the presidency or to students of history, but also to the field of American Political Development. Among Orren and Skowronek’s recommendations for future work in American Political Development, they argue that “shifts in governing authority,” including and especially shifts in the system of checks and balances, “are important in historical inquiry, because they are a constant object of political conflict and they set the conditions for subsequent politics, especially when shifts are durable” (Orren and Skowronek 2004, 139). How an essential constitutional power, that of deploying military force, changed hands from one institution to another over time, would certainly seem to qualify as a durable shift in governing authority. Cooper and Brady (1981) also recommend that researchers study change over time in Congress’ relations to the other branches of government.

#### This year’s resolution offers a crucial opportunity for political engagement --- policy relevant debate about war powers decision-making is critical to hold the government accountable for their hypocrisy --- only engaging specific proposals and learning the language of the war-machine solves

--we can use these categories to critique them; simulation does not undercut our potential for critique

--have to roll-play the enemy to know their language and learn their strategies

Mellor, European University Institute Graduate Student, 13

(Ewan E. Mellor, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs,” Paper Prepared for BISA Conference 2013, http://www.academia.edu/4175480/Why\_policy\_relevance\_is\_a\_moral\_necessity\_Just\_war\_theory\_impact\_and\_UAVs, accessed 10-20-13, CMM)

This section of the paper considers more generally the need for just war theorists to engage with policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. It draws on John Kelsay’s conception of just war thinking as being a social practice,35 as well as on Michael Walzer’s understanding of the role of the social critic in society.36 It argues that the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.”37 ¶ Kelsay argues that: [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38 ¶ He also argues that “good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 This is important as it highlights the need for just war scholars to engage with the ongoing operations in war and the specific policies that are involved. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”40 in terms of being able to discuss it and judge it in moral terms. ¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. The just war theorist, as a social critic, must be involved with his or her own society and its practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 the just war theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted.42 It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to demonstrate its hypocrisy and to show the gap that exists between its practice and its values.43 The tradition itself provides a set of values and principles and, as argued by Cian O’Driscoll, constitutes a “language of engagement” to spur participation in public and political debate.44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis.¶ Engaging with the reality of war requires recognising that war is, as Clausewitz stated, a continuation of policy. War, according to Clausewitz, is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued.47 Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship.48 This engagement must bring just war theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers, however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition the policy-makers will be forced to account for their decisions and justify them in just war language. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 it is incumbent upon just war theorists to ensure that the public are informed and are capable of holding their political leaders to account. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, it is precisely because it is “our country” that we are “especially obligated to criticise its policies.”51 ¶ Conclusion ¶ This paper has discussed the empirics of the policies of drone strikes in the ongoing conflict with those associate with al Qaeda. It has demonstrated that there are significant moral questions raised by the just war tradition regarding some aspects of these policies and it has argued that, thus far, just war scholars have not paid sufficient attention or engaged in sufficient detail with the policy implications of drone use. As such it has been argued that it is necessary for just war theorists to engage more directly with these issues and to ensure that their work is policy relevant, not in a utilitarian sense of abdicating from speaking the truth in the face of power, but by forcing policy makers to justify their actions according to the principles of the just war tradition, principles which they invoke themselves in formulating policy. By highlighting hypocrisy and providing the tools and language for the interpretation of action, the just war tradition provides the basis for the public engagement and political activism that are necessary for democratic politics.52

#### Other educational forums are failing, that means debate is crucial to in-depth education of presidential authority that allows for effective checks on abuse.

Adler, professor of political science at Idaho State University, 5

(David Gray, “The Law: Textbooks and the President’s Constitutional Powers,” Presidential Studies Quarterly 35, no. 2 ( June), Wilson Online Library, accessed 5-24-13, CMM)

Each year, approximately one million college and university students across the¶ United States enroll in an introductory course on American government and politics. For¶ many, and perhaps most of these students, “Political Science 101” will represent their¶ only exposure to the principles and practices of American government. What they carry¶ away from that experience in the form of lectures, classroom discussions, and reading¶ assignments will significantly inform and shape their comprehension of government and¶ politics, and perhaps mold their behavior as citizens. Assuming that students read the¶ textbooks assigned to them, it is a fair deduction that their impressions and understanding¶ of governmental powers—legislative, executive, and judicial—will be influenced by¶ authors’ descriptions and explanations, even accounting for instructors’ corrections and¶ clarifications of textbook discussion and commentary. If true, we might wonder how presidential¶ power is discussed, portrayed, and described in 101 textbooks. How will student¶ readers, transformed into citizens, and perhaps active and participatory citizens, come to¶ understand the constitutional powers vested in the Office of the Presidency? In the face¶ of sweeping assertions of executive power by recent presidents, this is no mean question.¶ Indeed, it is a question of great moment, particularly in the age of a “War on Terrorism”¶ which is principally, if not exclusively designed, shaped, and conducted by the president,¶ and at a juncture in history when presidents, like candidates for the office, claim increasing¶ responsibilities and powers in both foreign and domestic affairs, and when the public¶ imposes rising and demanding expectations—security, economic, cultural, and social—¶ on the nation’s chief executive. Then too, there is the seminal claim of a unilateral executive¶ power to wage preemptive war that must be considered and evaluated. ¶¶¶ In a republican form of government, which emphasizes the premise and promise¶ of self-governance, there is, as Thomas Jefferson contended, a great need for education.¶ Moreover, if it is true, as James Madison explained in Federalist no. 51, that the overarching¶ problem confronting a republic is the issue of persuading the government to¶ obey the law, and that the attainment of that goal requires a principal reliance on the¶ citizenry, how is an unarmed or untutored citizen expected to police presidential assertions¶ of power? The rise of what scholars have variously described as the “imperial presidency”¶ (Schlesinger 1973), the “textbook presidency” (Cronin 1975), and the “personal¶ presidency” (Lowi 1985), in short, what James McGregor Burns described as “presidential¶ government” (Burns 1966), has infused Madison’s challenge with a sense of urgency.¶ Viewed in that light, we are entitled to wonder whether 101 textbooks will equip students¶ with enough knowledge about the president’s constitutional powers to recognize¶ executive exaggeration, deceit, and sophistry, as well as aggrandizement, abuse, and¶ usurpation of power. ¶¶¶Thirty years ago, Thomas E. Cronin wrote a widely read and admired book, The¶ State of the Presidency, in which he explained the concept of the “textbook presidency”¶ (Cronin 1975, 24). Professor Cronin observed: “The textbook presidency describes and¶ extols a chief executive who is generally benevolent, omnipotent, omniscient and highly¶ moral.” “Textbooks,” as Cronin noted, “summarize current thinking and guide the work¶ of contemporary researchers. For more than twenty years after the Franklin D. Roosevelt¶ presidency, most textbook treatments of the presidency seriously inflated and unrealistically¶ interpreted presidential competence and beneficence.” As a consequence, Cronin¶ believed, there emerged a consensus among academics that¶ If society and our system were to be led, they suggested, leadership would have to come¶ from the White House. Whatever strengthened the president’s hand, strengthened the¶ nation. Introductory American government textbooks and related political writings in the¶ 1950s and 1960s endorsed the activist, purposeful, power maximizing model of presidential¶ leadership. They often glorified the manipulative leader, and almost all of them exaggerated¶ to some degree past and future presidential performance. Such distortion risked¶ misleading students and leaders alike about the invention and carrying out of creative civic¶ and political responsibilities. Moreover, these writings hardly prepared the nation for the¶ abuses of presidential power witnessed during the late 1960s and early 1970s. Perhaps some¶ of the distorted interpretations of what a president could and should accomplish actually¶ encouraged some of these abuses. (Cronin 1975, 24) ¶¶¶¶ Academe’s “textbook devotion,” what Cronin later described in a revised edition¶ of The State of the Presidency as “the cult of the presidency,” mirrored the public view of¶ the office (Cronin 1980, 76). In the wake of Cold War incidents, American citizens¶ “looked to presidential leadership with a mixture of awe, support and trust. Where else¶ could they look?” But the admiration, Cronin explained, served to promote unrealistic¶ expectations and “false notions and myths.” There was little expression in the literature¶ about “the possibility of the abuse of power” and the consequent need for improving¶ checks and balances. What was missing in the textbooks, Cronin observed, “was a better¶ sense of proportion and a respectful skepticism about what it was that a president could¶ achieve” (Cronin 1980, 770). ¶¶¶¶ A random survey of some twenty American government textbooks largely confirms¶ Professor Cronin’s observations and findings. There remains remarkably little concern¶ about the abuse of presidential power in spite of scandals, travesties, and transgressions¶ that the nation has endured from Vietnam, Watergate, and Iran-Contra to unbridled¶ claims of executive power in foreign and domestic affairs. Professor Cronin’s study was¶ not primarily concerned with the way in which the “textbook presidency” portrayed the¶ president’s constitutional power, but that is the principal purpose of this essay. This¶ review reveals two broad themes. First, most textbooks reflect an inattentiveness to, a¶ general disregard of, and perhaps an underappreciation for the importance of the president’s¶ constitutional powers. With few exceptions (e.g., Berman and Murphy 2003;¶ Hudson 2004; Landy and Milkis 2004), textbooks offer little more than a cursory review¶ of the president’s constitutional powers. The treatment of the presidential roles in warmaking¶ and foreign affairs receives disproportionate coverage, to be sure, but even those¶ discussions leave students in doubt about the constitutional allocation of foreign affairs¶ and war-making powers between the president and Congress. Tellingly, these accounts¶ are located in chapters devoted to discussion of presidential, not congressional, powers,¶ despite the fact that the Constitution vests in the Congress, not the president, the principal¶ authority to formulate, manage, and conduct the nation’s foreign relations (Adler¶ and George 1996). The textbook arrangement likely reflects the practice and pattern of¶ executive domination of American foreign policy, and it may also reflect authorial preference¶ for, and celebration of, an expansive executive. The textbook treatment of the¶ president’s constitutional authority, moreover, virtually ignores the debates in the Constitutional¶ Convention and various writings contemporaneous with the framing of the¶ Constitution, including the Federalist Papers, which illuminate the meaning of constitutional¶ provisions. Incredibly, the texts ignore altogether Federalist nos. 69 and 75—¶ the two essays most critical to any effort to comprehend the constitutional blueprint for¶ foreign affairs. In Federalist no. 69, for example, Alexander Hamilton engaged in a¶ minute analysis of presidential power in foreign policy as a means of distinguishing the¶ president’s relatively meager powers from the full body of authority possessed by the¶ king of England. The most dramatic distinction, Hamilton observed, is to be found in¶ the fact that the king may engage his country in war, but in the United States, that discretionary¶ authority is vested solely in Congress (Hamilton, Madison, and Jay 1937,¶ Federalist no. 69, 448). And in Federalist no. 75, it fell again to Hamilton, the darling¶ among enthusiasts of a strong executive, to lay bare the essential reason why the Constitution¶ does not grant to the president the nation’s foreign affairs authority:¶ The history of human conduct does not warrant that exalted opinion of human virtue which¶ would make it wise in a nation to commit interests of so delicate and momentous a kind,¶ as those which concern its intercourse with the rest of the world, to the sole disposal of¶ a magistrate created and circumstanced as would be a president of the United States.¶ (Hamilton, Madison, and Jay 1937, Federalist no. 75, 487) ¶¶¶¶ There is, in the troubling omission of those Federalist Papers, an important consequence¶ for students as citizens, and it is one that pervades textbook discussions of¶ presidential actions: the lack of normative yardsticks, analyses, and critiques. There is¶ precious little in the way of normative commentary; as a result, students are deprived¶ of critical tools that they might utilize as a means of measuring and evaluating the¶ constitutionality of executive actions. Since when did effective scholarship shrink from¶ offering and defending a viewpoint? With the exception of William Hudson’s text,¶ American Democracy in Peril (Hudson 2004, 291-331), and perhaps a few others, few¶ textbooks employ normative language and judgments such as “aggrandizement,”¶ “abuse,” and “usurpation” of power. Most texts prefer vanilla descriptions to constitutional¶ critiques and criticisms. As a consequence of this scholarly reticence students,¶ it seems, are vulnerable to presidential assertions of constitutional power. They are largely¶ untutored and thus unequipped to pose citizen challenges to executive claims of¶ authority. ¶¶¶¶This essay is duly obliged to acknowledge, of course, that textbook disregard of¶ the president’s constitutional powers may be attributed to the remarkable influence¶ of Richard Neustadt’s pioneering work, Presidential Power, a book in which he¶ asserted that presidential power rests not on formal constitutional grants but rather¶ on the “power to persuade” (Neustadt 1960, 32). As a consequence of this understanding,¶ it is familiar, Professor Neustadt evinced virtually no interest in constitutional¶ powers and limitations. On the contrary, Neustadt’s Presidential Power was¶ a virtual political manual written in the tradition of Machiavelli’s The Prince, in¶ which he explained how a president might acquire, maintain, and exercise power. Above¶ all, it was devoted to the effort to maximize power. The celebration of a strong presidency¶ exercising personal, not constitutional, power remains a core principle in 101¶ textbooks, despite the prominence in recent years of presidential abuses, scandals, and¶ failures. ¶¶¶¶ The second theme that emerges, and the focal point of the remainder of this essay,¶ is the problem of confused and misleading claims and characterizations of presidential¶ power derived from the Constitution. Students’ confusion about the metes and bounds¶ of presidential power will render them vulnerable to sweeping assertions of executive¶ power. As a consequence, they will be unable to perform their duties as Madisonian¶ Monitors. Let us turn our attention to four areas of concern: (1) claims about presidential¶ domination of American foreign policy, (2) assertions about presidential power to¶ initiate war, (3) characterizations and assertions about the “executive power” of the president,¶ and (4) mischaracterizations about historic episodes involving the assertions of¶ broad presidential powers.

#### An unaccountable executive results in massive policy errors –guarantees a wave of new wars and abusive policies.

Chehab, Georgetown Law Center, 12

[Ahmad, 3-30-12, “Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572, p.30-3, accessed 9-15-13, TAP]

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147

Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced 33 prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153

Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making.

[Tom note – Sunstein, University of Chicago and Harvard University law professor]

### 2NC- Topical Version

#### There is obviously a topical version of affirmative- There affirmative would agree with the assessment that indefinite detention is bad, placing statutory restrictions on the war powers authority of the President of the United States in terms of gitmo. Another topical version of affirmative would be one that placed restrictions or overturned rulings that allowed indefinite detainment in the first place.

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

Orly **Lobel**, University of San Diego Assistant Professor of Law, 200**7**, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

V. RESTORING CRITICAL OPTIMISM IN THE LEGAL FIELD

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

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

### 2NC- State K2 Solve Racism

**The state is not inherently racist—many state structures exist that facilitate coexistence of different ethnic and racial groups. It is possible to improve the state.**

**Dean 06** (Jodi, Professor of Political Science, Hobart and William Smith College, “Is the state racist by nature?”) http://jdeanicite.typepad.com/i\_cite/2006/03/is\_the\_state\_ra.html#more

I don't think so. Overall, I think Old reads **the state as** such as fascist--**rooted in an racial identity that seeks** to establish its (impossible) unity through **the violent annihilation of difference**. This **isn't convincing** to me **because there are**, in fact, **multicultural states and constitutions that seek promote or preserve different ethnicities**. And, I don't read all claims made in terms of the inhabitants of a state (of its citizenry or people) as necessarily racialized or racializing, though they can be. Yet, I have a number of more specific problems with Old's view. First, **I don't think there is such a beast as the modern state**. As I understand it, there have been different kinds of states. The fact that there are different states recognized within the UN, say, or part of the international arena, does not mean that the states are states in the same way; it does not mean that, the efforts of hegemons to the contrary, all states are based in nations; nor does it mean that all nations are totalities or even wanna-be totalities. This suggests, then, **that there is not one form or nature of the state that even could be considered racist**. Second, and consequently, it seems important here to consider differences among state forms and histories. China, for example, didn't take its structure from religious-race wars. Anti-colonial and anti-imperial struggle impacted the state forms that arose in their wake. Third, **the ability to wage total war and annihilate other races doesn't seem to me to characterize the structure or goals of most states**. If so, then we would find the vast majority to be failure as states. Now, maybe they are failures, but surely for other reasons. Contemporary international relations theorists Mark Laffey and Jutta Weldes (in their chapter to the book Empire's New Clothes) can help this discussion. Rejecting the all too limited Westphalian model of states, they point out that the sovereignty narrative is state-centric: **Many social processes**--such as the internationalization of capital or modernity--and relations--such as those of gender, class, race, or colonialism--**transcend state boundaries in complex and significant ways.** Indeed, reflection on the past three hundred or so years--since Westphalia--indicates that the dominant political form has in any case been the imperial state and empire rather than the sovereign state. Laffey and Weldes also take up the Eurocentricism of Westphalian sovereignty, **rejecting the idea that the territorial state arose in Europe and was imposed on the rest of the world. Why? Because this model neglects the persistent and integral relations between Europe and the non-European world and their joint role in generating the characteristic social forms of modernity, including the state itself**. As Fernando Coronil observes, for example: "**Since the European conquest of the Americans, the West and its peripheries have been mutually constituted through processes of imperial transculturation and capital accumulation** that continue, in different forms, in the present." **They also observe the limitation of a state centered approach to analyzing state violence** (a point relevant to Old's claim regarding total war) European states have used foreign military and security manpower. **Recruiting local soldiers and police forces from within colonized territories was integral to imperial relations between Europe and non-Europe** throughout the period marked by the so-called Westphalian sovereign state, as the British empire in India attests...**the sovereignty narrative obscures the international constitution of state power, a routine practice in the history of imperial relations.**

**Understanding institutional policy is key to reform of racial hierarchies**

**Winant 2k** (Howard, Temple University “Race and Race Theory” Annual Review of Sociology, 2000, http://www.soc.ucsb.edu/faculty/winant/Race\_and\_Race\_Theory.html)

To summarize **the racial formation approach**: (1) It **views the meaning of race and the content of racial identities as unstable** and politically contested; (2) It **understands racial formation as the intersection**/conflict **of racial "projects" that combine** representational/**discursive elements with** structural/**institutional ones**; (3) It **sees these intersections as** iterative **sequences of interpretations** ("articulations") **of the meaning of race that are open to many types of agency**, from the individual to the organizational, **from the local to the global.** If we are **to understand the changing significance of race** at the end of the 20th century, **we must develop a more effective theory of race. The racial formation perspective** at least **suggests** some **directions** in which such a theory should be pursued. As in the past, racial theory today is shaped by the large-scale sociopolitical processes it is called upon to explain. Employing a racial formation perspective, it is possible to glimpse a pattern in present global racial dynamics. That pattern looks something like the following: in the period during and after WWII an enormous challenge was posed to established systems of rule by racially-defined social movements around the world. Although these movement challenges achieved some great gains and precipitated important reforms in state racial policy, neither the movements nor the reforms could be consolidated. At the end of the century the world as a whole, and various national societies as well, are far from overcoming the tenacious legacies of colonial rule, apartheid, and segregation. All still experience continuing confusion, anxiety, and contention about race. Yet the legacies of epochal struggles for freedom, democracy, and human rights persist as well. Despite the enormous vicissitudes that demarcate and distinguish national conditions, historical developments, roles in the international market, political tendencies, and cultural norms, **racial differences** often **operate** as they did in centuries past: **as a way of restricting the political influence**, not just of racially subordinated groups, but **of all those at the bottom end of the system of social stratification.** In the contemporary era, **racial beliefs and practices have become** far more **contradictory and complex**. The "old world racial order" has not disappeared, but it has been seriously disrupted and changed. **The legacy of democratic, racially oriented movements, and anti-colonialist initiatives** throughout the world's South, **remains a force to be reckoned with. But the** incorporative (or if one prefers this term, "**hegemonic**") **effects of decades of reform-oriented state racial policies have** had a profound effect as well: they have **removed much of the motivation for sustained, anti-racist mobilization.** In this unresolved situation, **it is unlikely that attempts to address worldwide dilemmas of race** and **racism by ignoring** or "transcending" **these themes, for example by adopting** so-called **"colorblind"** or "differentialist" **policies, will have much effect.** In the past the centrality of race deeply determined the economic, political, and cultural configuration of the modern world. Although recent decades have seen a tremendous efflorescence of movements for racial equality and justice, **the legacies of centuries of racial oppression have not been overcome.** Nor is a vision of racial justice fully worked out. Certainly the idea that such justice has already been largely achieved -- as seen in the "colorblind" paradigm in the US, the "non-racialist" rhetoric of the South African Freedom Charter, the Brazilian rhetoric of "racial democracy," or the emerging "racial differentialism" of the European Union -- remains problematic. **Will race ever be "transcended"? Will the world ever "get beyond" race? Probably not. But the entire world still has a chance of overcoming the stratification, the hierarchy, the** taken-for-granted **injustice and inhumanity that** so often **accompanies the "race concept."** Like religion or language, **race can be accepted as part of the** spectrum of the **human condition, while it is simultaneously** and categorically **resisted as a means of stratifying national or global societies. Nothing is more essential in the effort to reinforce democratic commitments, not to mention global survival and prosperity, as we enter a new millennium.**

#### Progressivism is possible, and it depends on effective decision-making, so T turns the case

Clark, professor of law – Catholic University, ‘95

(Leroy D., 73 Denv. U.L. Rev. 23)

I must now address the thesis that there has been no evolutionary progress for blacks in America. Professor Bell concludes that blacks improperly read history if we believe, as Americans in general believe, that progress--racial, in the case of blacks--is "linear and evolutionary." n49 According to Professor Bell, the "American dogma of automatic progress" has never applied to blacks. n50 Blacks will never gain full equality, and "even those herculean efforts we hail as successful will produce no more than temporary 'peaks of progress,' short-lived victories that slide into irrelevance." n51

**Progress** toward reducing racial discrimination and subordination **has never been "automatic**," if that refers to some natural and inexorable process without struggle. Nor has progress ever been strictly "linear" in terms of unvarying year by year improvement, because the combatants on either side of the equality struggle have varied over time in their **energies, resources, capacities, and** the **quality of their plans.** Moreover, neither side could predict or control all of the variables which accompany progress or non-progress; some factors, like World War II, occurred in the international arena, and were not exclusively under American control.

With these qualifications, and a long view of history, blacks and their white allies achieved two profound and **qualitatively different leaps forward** toward the goal of equality: the end of slavery, and the Civil Rights Act of 1964. Moreover, despite open and, lately, covert resistance, black progress has never been shoved back, in a qualitative sense, to the powerlessness and abuse of periods preceding these leaps forward. n52

#### Structural antagonism destroys progressivism and re-entrenches racism—we can acknowledge every problem with the status quo, but adopt a pragmatic orientation towards solutions

Clark, professor of law – Catholic University, ‘95

(Leroy D., 73 Denv. U.L. Rev. 23)

A Final Word

Despite Professor Bell's prophecy of doom, I believe he would like to have his analysis proven wrong. However, he desperately leans on a tactic from the past--laying out the disabilities of the black condition and accusing whites of not having the moral strength to act fairly. That is the ultimate theme in both of his books and in much of his law review writing. That tactic **not only lacks full force** against today's complex society, it also becomes, for many whites, an **exaggerated claim that racism is the sole cause** of black misfortunes. n146 Many whites may feel about the black condition what many of us may have felt about the homeless: dismayed, but **having no clear answer** as to how the problem is to be solved, and feeling individually powerless if the resolution calls for massive resources that we, personally, lack. Professor Bell's two books may confirm this sense of powerlessness in whites with a limited background in this subject, because Professor **Bell does not offer a single programmatic approach** toward changing the circumstance of blacks. He presents only startling, unanalyzed prophecies of doom, which will easily garner attention from a controversy-hungry media. n147

It is much harder to exercise imagination to create viable strategies for change. n148 Professor Bell sensed the despair that the average--especially average black--reader would experience, so he put forth rhetoric urging an "unremitting struggle that leaves no room for giving up." n149 His contention is ultimately hollow, given the total sweep of his work.

At some point it becomes **dysfunctional** to refuse giving any credit to the very positive abatements of racism that occurred with white support, and on occasion, white leadership. Racism thrives in an atmosphere of insecurity, apprehension about the future, and inter-group resentments. Unrelenting, unqualified accusations only add to that negative atmosphere. **Empathetic** and more generous **responses are possible** in an atmosphere of support, security, and a sense that advancement is possible; the greatest progress of blacks occurred during the 1960s and early 1970s when the economy was expanding. Professor Bell's "analysis" is really only accusation and "harassing white folks," and is undermining and destructive. There is no love--except for his own group--and there is a constricted reach for an understanding of whites. There is only rage and perplexity. No bridges are built--only righteousness is being sold.

A people, black or white, are capable only to the extent they believe they are. Neither I, nor Professor Bell, have a crystal ball, but I do know that creativity and a drive for change are very much linked to a belief that they are needed, and to a belief that they can make a difference. The future will be shaped by past conditions and the actions of those over whom we have no control. Yet it is not fixed; it will also be shaped by the attitudes and energy with which we face the future. Writing about race is to engage in a power struggle. It is a non-neutral political act, and one must take responsibility for its consequences. Telling whites that they are irremediably racist **is not** mere "**information**"; **it** is a force that **helps create the future it predicts.** If whites believe the message, feelings of futility could overwhelm any further efforts to seek change. I am encouraged, however, that the motto of the most articulate black spokesperson alive today, Jesse Jackson, is, "Keep hope alive!" and that much of the strength of Martin Luther King, Jr. was his capacity to "dream" us toward a better place.

# 1NR

#### Ow/s the aff- violence committed against Native people must be understood as qualitatively different than the marginalizations that occur to other minority groups- key to recognizing the colonialist privilege these groups seek to attain on stolen land

Sandy Grande. “American Indian Geographies of Power: At the Crossroads of Indigena and Mestizaje.” Harvard Educational Review, 70:4. Winter 2000.

In this article, Sandy Marie Anglas Grande outlines the tensions between American Indian epistemology and critical pedagogy. She asserts that the deep structures of critical pedagogy fail to consider an Indigenous perspective. In arguing that American Indian scholars should reshape and reimagine critical pedagogy, Grande also calls for critical theorists to reexamine their epistemological foundations. Looking through these two lenses of critical theory and Indigenous scholarship, Grande begins to redefine concepts of democracy, identity, and social justice. Until Indians resolve for themselves a comfortable modern identity that can be used to energize reservation institutions, radical changes will not be of much assistance. (Deloria & Lytle, 1984, p. 266) Our struggle at the moment is to continue to survive and work toward a time when we can replace the need for being preoccupied with survival with a more responsible and peaceful way of living within communities and with the everchanging landscape that will ever be our only home. (Warrior, 1995, p. 126) Broadly speaking, this article focuses on the intersection between dominant modes of critical pedagogy' and American Indian intellectualism.2 At present, critical theories are often indiscriminately employed to explain the sociopolitical conditions of all marginalized peoples. As a result, many Indigenous scholars view the current liberatory project as simply the latest in a long line of political endeavors that fails to consider American Indians as a unique populations Thus, while critical pedagogy may have propelled mainstream educational theory and practice along the path of social justice, I argue that it has muted and thus marginalized the distinctive concerns of American Indian intellectualism and education. As such, I argue further that the particular history of imperialism enacted upon Indigenous peoples requires a reevaluation of dominant views of democracy and social justice, and of the universal validity of such emancipatory projects - including critical pedagogy. It is not that critical pedagogy is irrelevant to Indigenous peoples, as they clearly experience oppression, but rather that the deep structures of the "pedagogy of oppression" fail to consider American Indians as a categorically different population, virtually incomparable to other minority groups. To assert this is not to advocate any kind of hierarchy of oppression but merely to call attention to the fundamental difference of what it means to be a sovereign and tribal people within the geopolitical confines of the United States.

#### The alternative sparks global decolonization movements that are critical to averting environmental collapse and extinction

Tinker ‘96

[George E. Tinker, Iliff School of Technology, 1996, Defending Mother Earth: Native American Perspectives on Environmental Justice, ed. Jace Weaver, p. 171-72//wyo-hdm]

My suggestion that we take the recognition of indigenous sovereignty as a priority is an overreaching one that involves more than simply justice for indigenous communities around the world. Indeed, such a political move will necessitate a rethinking of consumption patterns in the North, and a shift in the economics of the North will cause a concomitant shift also in the Two-thirds World of the South. The relatively simple act of recognizing the sovereignty of the Sioux Nation and returning to it all state-held lands in the Black Hills (for example, National Forest and National Park lands) would generate immediate international interest in the rights of the indigenous, tribal peoples in all state territories. In the United States alone it is estimated that Indian nations still have legitimate (moral and legal) claim to some two-thirds of the U.S. land mass. Ultimately, such an act as return of Native lands to Native control would have a significant ripple effect on other states around the world where indigenous peoples still have aboriginal land claims and suffer the ongoing results of conquest and displacement in their own territories. American Indian cultures and values have much to contribute in the comprehensive reimagining of the Western value system that has resulted in our contemporary ecojustice crisis. The main point that must be made is that there were and are cultures that take their natural environment seriously and attempt to live in balance with the created whole around them in ways that help them not overstep environmental limits. Unlike the West’s consistent experience of alienation from the natural world, these cultures of indigenous peoples consistently experienced themselves as part of the that created whole, in relationship with everything else in the world. They saw and continue to see themselves as having responsibilities, just as every other creature has a particular role to play in maintaining the balance of creation as an ongoing process. This is ultimately the spiritual rationale for annual ceremonies like the Sun Dance or Green Corn Dance. As another example, Lakota peoples planted cottonwoods and willows at their campsites as they broke camp to move on, thus beginning the process of reclaiming the land humans had necessarily trampled through habitation and encampment. We now know that indigenous rainforest peoples in what is today called the state of Brazil had a unique relationship to the forest in which they lived, moving away from a cleared area after farming it to a point of reduced return and allowing the clearing to be reclaimed as jungle. The group would then clear a new area and begin a new cycle of production. The whole process was relatively sophisticated and functioned in harmony with the jungle itself. So extensive was their movement that some scholars are now suggesting that there is actually very little of what might rightly be called virgin forest in what had been considered the “untamed” wilds of the rainforest. What I have described here is more than just a coincidence or, worse, some romanticized falsification of Native memory. Rather, I am insisting that there are peoples in the world who live with an acute and cultivated sense of their intimate participation in the natural world as part of an intricate whole. For indigenous peoples, this means that when they are presented with the concept of development, it is sense-less. Most significantly, one must realize that this awareness is the result of self-conscious effort on the part of the traditional American Indian national communities and is rooted in the first instance in the mythology and theology of the people. At its simplest, the worldview of American Indians can be expressed as Ward Churchill describes it: Human beings are free (indeed, encouraged) to develop their innate capabilities, but only in ways that do not infringe upon other elements – called “relations,” in the fullest dialectical sense of the word – of nature. Any activity going beyond this is considered as “imbalanced,” a transgression, and is strictly prohibited. For example, engineering was and is permissible, but only insofar as it does not permanently alter the earth itself. Similarly, agriculture was widespread, but only within norms that did not supplant natural vegetation. Like the varieties of species in the world, each culture has contributed to make for the sustainability of the whole. Given the reality of eco-devastation threatening all of life today, the survival of American Indian cultures and cultural values may make the difference for the survival and sustainability for all the earth as we know it. What I have suggested implicitly is that the American Indian peoples may have something of values – something corrective to Western values and the modern world system – to offer to the world. The loss of these gifts, the loss of the particularity of these peoples, today threatens the survivability of us all. What I am most passionately arguing is that we must commit to the struggle for the just and moral survival of Indian peoples as peoples of the earth, and that this struggle is for the sake of the earth and for the sustaining of all life. It is now imperative that we change the modern value of acquisitiveness and the political systems and economics that consumption has generated. The key to making this massive value shift in the world system may lie in the international recognition of indigenous political sovereignty and self-determination. Returning Native lands to the sovereign control of Native peoples around the world, beginning in the United States, is not simply just; the survival of all may depend on it.

### Link

#### Third, Race issues are more complex than black and white- The affirmative’s negates the reality of other people of color through their discourse in the 1AC

Alcoff ‘03

[Linda Martin, Syracuse University Department of Philosophy, “Latino/AS, Asian Americans, and the Black-White Binary” The Journal of Ethics 7, 5.2.2003.//wyo-hdm]

The discourse of social justice in regard to issues involving race has been dominated in the U.S. by what many theorists name the “black/white paradigm,” which operates to govern racial classifications and racial politics in the U.S., most clearly in the formulation of civil rights law but also in more informal arenas of discussion. Juan Perea defines this paradigm as the conception that race in America consists, either exclusively or primarily, of only two constituent racial groups, the Black and White . . . In addition, the paradigm dictates that all other racial identities and groups in the United States are best understood through the Black/White binary paradigm. He argues that this paradigm operates even in recent anti-racist theory such as that produced by Andrew Hacker, Cornel West, and Toni Morrison, though it is even clearer in works by liberals such as Nathan Glazer. Openly espousing this view, Mary Francis Berry, former chair of the U.S. Civil Rights Commission, has stated that the U.S. is comprised of “three nations, one Black, one White, and one in which people strive to be something other than Black to avoid the sting of White Supremacy.”6 To understand race in this way is to assume that racial discrimination operates exclusively through anti-black racism. Others can be affected by racism, on this view, but the dominance of the black/white paradigm works to interpret all other effects as “collateral damage” ultimately caused by the same phenomena, in both economic and psychological terms, in which the given other, whether Latino/a, Asian American, or something else, is placed in the category of “black” or “close to black.” In other words, there is basically one form of racism, and one continuum of racial identity, along which all groups will be placed. The black/white paradigm can be understood either descriptively or prescriptively (or both): as making a descriptive claim about the fundamental nature of racializations and racisms in the U.S., or as prescribing how race shall operate and thus enforcing the applicability of the black/white paradigm.7 Several Latino/a and Asian American theorists, such as Elaine Kim, Gary Okihiro, Elizabeth Martinez, Juan Perea, Frank Wu, Dana Takagi, and community activists such as Bong Hwan Kim have argued that the black/white paradigm is not adequate, certainly not sufficient, to explain racial realities in the U.S. They have thus contested its claim to descriptive adequacy, and argued that the hegemony of the black/white paradigm in racial thinking has had many deleterious effects for Latino/as and Asian Americans.

#### Aff recreates racial divisions- leaves no interspace for those who don’t meet defined categories of African American

Sexton 10

Jared Sexton Crit Sociol 2010 36: 87

However, the notion of an ‘endemic’ black-white model of racial thought is something of **a social fiction** – one might say a misreading – that depends upon a reduction of the sophistication of the paradigm in question. Once that reduction is performed, the fiction can be deployed for a range of political and intellectual purposes (Kim 2006). In addressing the call to displace the black-white paradigm, we may recognize that its purported institutionalization indicates more about the enduring force of anti-blackness (Gordon 1995, 1998) than the insistence of black scholars, activists or communities more generally.9 When broaching the ‘explanatory difficulty’ (Omi andWinant 1993: 111) of present-day racial politics, then, one wonders exactly who and what is addressed by the demand to go ‘beyond black and white’. One finds a litany of complicating factors and neglected subjects, but it is accompanied by a failure to account cogently for the implications of this newfound complexity. The recently appointed Dean of the Wayne State University Law School, Frank Wu, has written: ‘“beyond black and white” is an oppositional slogan … it names itself ironically against the prevailing tradition…It is easy enough to argue that society needs a new paradigm, but it is much harder to explain how such an approach would work in actual practice.’ (Wu 2006: xi) It is harder still to explain why such an approach should be adopted. In fact, the implementation of the ‘new paradigm’ of racial theory seems **unfeasible** because it does not – and perhaps cannot – develop a coherent ethical justification as an attempt to analyze and contest racism. Taken together, these ambiguities beg a key question: what economy of enunciation, what rhetorical distribution of sanctioned speaking positions and claims to legitimacy are produced by the injunction to end ‘biracial theorizing’ (Omi and Winant 1994: 154)? In pursuing this question, consider the following provocation by another noted legal scholar, MariMatsuda (2002), offered at a 1997 symposium on critical race theory at the Yale Law School: When we say we need to move beyond Black and white, this is what a whole lot of people say or feel or think: ‘Thank goodness we can get off that paradigm, because those Black people made me feel so uncomfortable. I know all about Blacks, but I really don’t know anything about Asians, and while we’re deconstructing that Black-white paradigm, we also need to reconsider the category of race altogether, since race, as you know, is a constructed category, and thank god I don’t have to take those angry black people seriously anymore’ (Matsuda 2002: 395). It is important to note that this contention, like those of Ture and Hamilton and Wu above, is not issued against progressive political coalition, but rather is drawn from a sympathetic meditation on the need for more adequate models of racial analysis and strategies of multiracial alliance-building in and beyond the US context.What Matsuda polemically identifies are dangers attendant to the unexamined desire for new analyses and the anxious drive for alliance, namely, the tendency to gloss over discrepant histories, minimize inequalities born of divergent structural positions, and disavow the historical centrality and uniqueness of anti-blackness for the operations of ‘global white supremacy’ (Mills 1998). Matsuda urges the refusal of what historian DavidHollinger (2003) has coined the ‘one-hate rule’ or the presumption of ‘the monolithic character of white racism’. By calling to question the motive force of a nominally critical intervention on the black-white paradigm, Matsuda traces a fault line in the field formation of Asian American Studies that marks an opening for the present inquiry. It seems that the question of anti-black racism troubles contemporary efforts at mediation among the non-white – between black and non-black communities of color – and interpolates ‘Asian American panethnicity’ (Espiritu 1992) in ways that exceed even the immanent critique of that conceptual touchstone and principle of organization (Lowe 1996; Ono 1995). If one of the benefits of a reconstructed racial theory addressing ‘the increasing complexity of racial politics and racial identity today’ (Omi and Winant 1994: 152) is its capacity to grasp ‘antagonisms and alliances among racially defined minority groups’ (1994: 154), that political-intellectual enterprise **is not without hazard**.

#### They say our focus on land is bad but- There’s no chance of offense here, land provides the internal link to all facets of Indigenous culture and ways of life

Bradford ‘03

[William, Chiricahua Apache. LL.M., 2001, Harvard Law School; Ph.D., 1995, Northwestern University; J.D., 2000, University of Miami. Assistant Professor of Law, Indiana University, Indianapolis, Indiana, "With a Very Great Blame on Our Hearts": n1 Reparations, Reconciliation, and an American Indian Plea for Peace with Justice; 27 Am. Indian L. Rev. 1; Lexis//wyo-hdm]

The relationship between the land and Indian people is fundamental to their physical and cultural survival as distinct, autonomous groups. Indian land is constitutive of the Indian cultural identity n111 and designative of the boundaries of the Indian cultural universe. n112 Indian land transmits knowledge about history, links people to their ancestors, and provides a code of appropriate moral behavior. From the moment of first contact with European "discoverers," [\*26] Indians proclaimed a sacred responsibility to preserve and transmit Indian land, and with it, identity, religion, and culture, to successive generations. n113 The discharge of that responsibility was compromised by federal policies of land acquisition ranging from fraud and deceit to expropriation and outright theft. Throughout the seventeenth and early eighteenth centuries, prudence directed Euro-Americans to formally recognize militarily potent Indian tribes as independent societies and accord them diplomatic recognition as sovereigns. n114 Even subsequent to the defeats of France in the Seven Years' War in 1763 and Britain in the War of Independence in 1781, the Euro-American foothold in North America remained tenuous, and ongoing military insecurity stymied territorial ambitions while stifling any notions of conquest. Moreover, the United States' land hunger was largely slaked by available space within the original thirteen colonies, and land acquisitions from Indian tribes were of necessity accomplished by treaties of cession n115 after peaceful negotiations. n116 [\*27] Still, if during its first several decades of existence the fledgling government was obliged to recognize the sovereignty of Indian nations and to respect Indian land titles as a matter of international and domestic law, n117 from the moment of its creation the United States was crafting legal solutions to the "problems caused by the . . . fact that the Indians were here when the white man arrived[.]"

#### We do not link to their intersectionality argument- I said in cross-x that I will not define what a native American is because I do not think they should be tied down to land, we do not deny people multiple identities, I am white and native doesn’t mean I am not still native

#### We must decolonize education by centering minority epistemologies which is key to intersectionality

Richardson 12 (Troy A, Associate Professor, College of Agriculture and Life Sciences (CALS), Cornell University, "Disrupting the Coloniality of Being: Toward De-colonial Ontologies in Philosophy of Education." Studies in Philosophy and Education 31.6 (2012): 539-551)OG

Countering hierarchical social and educational relations in contexts of racialization is¶ outlined by Margonis (1999, 2000, 2011a, b) as an ontological project and philosophers of¶ education invested in a critical analysis of the intersections of race, class and colonialism¶ are indebted to his thinking. I think it is important to read Margonis as fostering a¶ de-colonial position in philosophy of education and his call for a dialogical pedagogical¶ practice is crucially important for shifting the location of philosophical knowledge generation and the languages of education. ß Marked 19:32 ß Indeed, Margonis’ dialogical (2007, 2011a, b)¶ project for anti-assimilatory education would suggests multilingualism to assist in moving¶ from the hegemonic languages of philosophy (German, French and English) to Indigenous¶ languages, African-American Vernacular English, creole and Chicano Spanish. Accordingly, his call for dialogue is in direct conversation with Mignolo (2000) and MaldonadoTorres (2004, 2009). For each of these thinkers, coming into and becoming through a¶ dialogical relation re-situates being by exposing and disrupting the colonialist claims that¶ Indigenous and African and African diaspora peoples were or are primitive. Likewise,¶ dialogue resituates being by placing minoritized knowledge systems and forms of being at¶ the center of relationships of learning.¶ Dialogue and multilingualism in the service of more expansive discussions of being¶ cannot then be grounded in a pre-formulated or normalized (continental) existentialist¶ language of philosophy. Rather, dialogue can be outlined according to a de-colonial¶ attitude (Maldonado-Torres 2007, 262) which takes as its primary effort the assertion of¶ the languages which relate those knowledge systems and forms of being that have been¶ conceived as outside or below the domain of Being. Dialogue conceived with a decolonial¶ attitude would necessitate bi- or multilingualism to undermine the ways in which the term¶ ‘‘enigma’’ is used to dismiss and denigrate minoritized knowledges and forms of life. As I¶ will elaborate below, multilingualism should be rethought according to languaging¶ (Mignolo 2000). Following the work of Khatibi (1999) and Anzaldua (1987) Mignolo has¶ used the terms languaging and bilanguaging to signal a shift away from a strictly technical¶ project for linguistic communication or translation (see also Sandoval 2000). For each of¶ these thinkers, bilanguaging operates to re-position being according to the ways of life of¶ the minoritized. In this way, African Americans, Latina/os and Native Americans are not¶ enigmas for philosophers of education but opportunities and invitations for a formulation¶ of being that is non-assimilationist to the privileged and hegemonic languages of¶ philosophy.¶ Dialogue and the Decolonial Attitude¶ Maldonado-Torres (2007) speaks of a Du Bois (1999) inspired de-colonial attitude that¶ ‘‘demands responsibility and the willingness to take many perspectives and [the] points of¶ view of those whose very existence is questioned and produced as insigniﬁcant’’ (262).¶ While dialogue is not explicitly named here, it is an assumed element in developing the¶ decolonial attitude. Indeed, elsewhere Maldonado-Torres (2004) elaborates how ‘‘radical¶ critique should take dialogical form’’ whereby philosophers ‘‘make space for the¶ enunciation of non-Western cosmologies and for the expression of different cultural,¶ political and social memories’’ (51). Du Bois (1999) is for Maldonado-Torres (2007) one¶ who made spaces for the memories of African and African diaspora peoples through a¶ radical form of dialogue. From this dialogue a different direction for the articulation and¶ formulation of African American forms of being was charted.¶ Moreover, as Maldonado-Torres (2007) goes on to note, Du Bois’ dialogue enabled ‘‘the¶ creation of black institutions in the United States as well as furthering Pan-African visions¶ and struggles’’ (262). Du Bois fostered and called forth spaces for Pan-African visions,¶ providing a ‘‘fundamental shift in perspective that leads one to see the world anew in a way¶ that targets its evil in a new way and gives us a better sense of what to do next’’¶ (Maldonado-Torres 2007, 262). On Maldonado-Torres’ (2004, 2007) reading, the institution building Du Bois achieved was a realization of a radicalized form of dialogue where¶ the knowledges, terms and forms of being expressed by African and African diaspora¶ peoples provide the intellectual, philosophical and ontological force for these projects.¶ There is in Maldonado-Torres’s description here an important complementarity to¶ Margonis’ (2011a, b) notion of being in dialogue with the sentiments and existential¶ situations of racialized/colonized peoples. Indeed, Margonis (2011a, b) echoes some of this¶ Du Boisian de-colonial attitude when he writes ‘‘educators would do well to invite broad¶ and cacophonous forms of interaction in the classroom; a mix of conservative, artistic,¶ comedic, and narrative patterns in the classroom gives a broader range of points of contact¶ with students’’ (3). Margonis arrives at this call for a cacophonous classroom in large part¶ through his careful reading and reworking of Freire’s (1993) notion of dialogue. ‘‘Freire’s¶ description of egalitarian, de-colonizing dialogue,’’ he writes, provide ‘‘means for setting¶ in motion social spaces of focused, passionate intellectual intensity’’ (Margonis 2011a, b,¶ 3). Like Maldonado-Torres (2004, 2007) the insistence here on dialogue as crucial to¶ providing the space for engagements with multiple intellectual traditions is crucial for¶ Margonis. As I have suggested above however, this space for dialogue has not prompted a¶ stance which works to expose the coloniality of being operating in Rousseau (1984) or¶ Heidegger (1962). Again, Margonis (2007, 2011a, b) seems to limit a more radical¶ understanding of dialogue provokes an anti-assimilationist stance toward Rousseau’s¶ (1984) and Heidegger’s (1962) philosophies of being. In this way, Margonis (1999, 2009)¶ inadvertently de-couples a particular existentialist philosophical discourse from its relationship to colonialism.¶ In stating this, I am not suggesting that Margonis, I or Maldonado-Torres (2007, 2009)¶ could easily ‘‘ﬁx’’ the discourse of primitive in Heidegger for example (1962) as a way to¶ deploy him otherwise. As Bernasconi (2005) has warned, we cannot simply enact a¶ ‘‘surgical [philosophical] operation’’ (243) to smooth over these tensions for a more¶ ‘‘inclusive’’ Heideggerian existentialism. A de-colonial dialogue can be more attentive to¶ shifts toward bilanguaging in the enunciations and learning of Indigenous, African and¶ African diaspora and Latino/a traditions of being.¶ Bilanguaging and/as Border Thinking for Trans-Ontologies¶ Finally, Mignolo (2000) identiﬁes the space of dialogue as a site of ‘‘border thinking’’ and¶ ‘‘bilanguaging.’’ Anticipating Maldonado-Torres’ (2004) idea of a more radical form of¶ dialogue, bilanguaging is ‘‘a form of life possible in the fractures of a hegemonic (national¶ or imperial) language’’ that ‘‘draw[s] in something that is beyond sound, syntax and¶ lexicon’’ (Mignolo 2000, 264). Margonis (2011a, b) pedagogy of cacophony solicits a form¶ of border thinking and hints at this idea of bilanguanging, but his philosophical framework¶ has not been fractured in ways that would shift us away from the Rousseauean (1994) and¶ Heideggerian (1962) coloniality of being. Dialogical practice as focused intellectual¶ intensity would seem to entail the kind of bilanguaging Mignolo (2000) speaks of here to¶ achieve a decolonial dialogue. This would more fully attend to the way trans-ontologies¶ undermine the coloniality of being enacted through professional philosophy. Taken¶ together, a decolonial trans-ontology is an emergent form of being stemming from a border¶ thinking and bilanguaging.¶ In the context of the United States and the Americas more broadly, it is not only an¶ intellectual and pedagogical project that would provide the opportunity for trans-ontologies¶ to emerge. An anti-assimilatory pedagogy seeking cacophony would entail a shift in¶ location to those physical borders where the complex forms and languages of being¶ continuously emerge. That is, philosophers and teachers would situate themselves where¶ African American youth are not conceived as enigmas. In this sense, Margonis’ (2007,¶ 2011a, b) teachers would not only seek a cacophonous classroom, but the cacophonous,¶ creative, driven and constructive locations of African American, Indigenous and Latono/a¶ being. Through radical dialogues in these shifted locations we learn the pre-situations of¶ such youth. Learning with minoritized youth in this way entails forms of bilanguaging¶ wherein European ontologies lose something of their habitability. In those, perhaps ﬂeeting¶ moments, decolonial trans-ontologies are more clearly recognized as the future which¶ denies the coloniality of being.¶ The processes of radical dialogue (Maldonado-Torres 2004) and bilanguaging (Mignolo¶ 2000) for trans-ontologies underscores the potentialities of a de-colonial turn in philosophy¶ of education. ‘‘The de-colonial turn,’’ writes Maldonado-Torres (2007), ‘‘marks the¶ deﬁnitive entry of enslaved and colonized subjectivities into the realm of thought at before¶ unknown institutional levels’’ (262). Margonis’ (1999, 2007, 2011a, b) efforts for antioppressive pedagogical practices and philosophical frameworks serves as an important¶ moment in a de-colonial turn in philosophy of education. Continuing with him toward a¶ critique of the coloniality of being provide a way to move past the terms of enigma and¶ primitive to decolonial trans-ontologies in philosophy of education.

### Perm

#### Third, the permutation is the colonialist status quo, stripping the alternative of its intellectualism and adding the native identity as just another marginalized voice, this also applies to the second perm they read

Sandy Grande. “American Indian Geographies of Power: At the Crossroads of Indigena and Mestizaje.” Harvard Educational Review, 70:4. Winter 2000.

Corporate Commodification

The forces of both ethnic fraud and cultural encroachment operate to create a climate ripe for the corporate commodification of American Indianness. While this commodification takes many forms, it is perhaps most visible in the marketing of Indian narratives, particularly publishing, in which literary/cultural forms of Indian intellectualism have been historically favored over critical forms. For instance, Indigenous scholar Elizabeth Cook-Lynn (1998) questions why the same editors and agents who solicit her "life story" also routinely reject her scholarly work. She writes, "While I may have a reasonable understanding why a state-run university press would not want to publish research that has little good to say about America's relationship to tribes.... I am at a loss to explain why anyone would be more interested in my life story (which for one thing is quite unremarkable)" (p. 121). The explanation, of course, is that the marketable narrative is that which subscribes to the Whitestream notion of Indian as romantic figure, and not Indian as scholar and social critic. Such a predisposition works to favor not only cultural/literary forms of American Indian intellectualism over critical forms, but also the work of "fraudulent" Indians over that of "legitimate" American Indian scholary. Cook-Lynn (1998) argues that, just as the rights to our land remain in the hands of the Whitestream government, the rights to our stories remain in non-Indian enclaves. Deloria (1998) similarly contends that what passes in the academic world as legitimate scholarship on American Indians is often the product of average scholars (often White) advocating a predetermined anti-Indian agenda2 and "fraudulent" Indians. That such work has been allowed to corner the market raises the question of who controls access to the intellectual property of American Indian peoples. Deloria himself asks, "Who is it that has made such people as Adolph Hungry Wolf, Jamake Highwater, Joseph Epes Brown, Su Bear, Rolling Thunder, Wallace Black Elk, John Redtail Freesoul, Lynn Andrews, and Dhyani Ywahoo the spokespeople of American Indians?" (p. 79). He responds by naming Whitestream America as both patron and peddler of the Hollywood Indian. He writes, "They [the fraudulent Indians] represent the intense desire of Whites to create in their own minds an Indian they want to believe in" (p. 79). As such, the market is flooded with tragic stories of lost cultures, intimate narratives of "frontier life," and quasi-historic accounts of the Native Americans' plight. Such stories are told and retold as part of America's dark and distant past, a bygone era of misguided faith where cultural genocide is depicted as an egregious but perhaps unavoidable consequence of the country's manifest destiny toward democracy. While I would never argue that stories depicting the truth of Native peoples' tragic experiences (e.g., Indian boarding schools, the Trail of Tears) do not deserve a central place in the telling of American history, such accounts become problematic in the wider context of Whitestream consumption of Indian history. Why are these stories the ones most often presented as the prime-time programs in the commodified literary network of Indian history? What is gained by focusing on these particular aspects of White domination and Indian subjugation? I argue that such stories serve several purposes, none of which contributes to the emancipatory project of American Indians. First, by propagating the romantic image of American Indians and concomitantly marginalizing the work of Indigenous intellectuals and social critics, Whitestream publishers maintain control over the epistemic frames that define Indians, and thus over the fund of available knowledge on American Indians. Second, such control is underwritten by the understanding that American Indian intellectualism exists as a threat to the myth of the everevolving democratization of Indian-White relations, and to the notion that cultural genocide is a remnant of America's dark and distant past. Third, the often oversimplified accounts of Indian history, framed in good-v.-badguy terms, allow the consumer to fault rogue groups of dogmatic missionaries and wayward military officers for the slow but steady erosion of Indigenous life, thereby distancing themselves and mainstream government from the ongoing project of cultural genocide. Finally, the focus on Indian history allows the Whitestream to avoid issues facing American Indians in the twenty-first century. As a result, Indians as a modern people remain invisible, allowing a wide array of distorted myths to flourish as contemporary reality - for example, that all the "real" Indians are extinct, that the surviving Indians are all alcoholic-drug addicts who have forsaken traditional ways to become budding capitalists, gaming entrepreneurs, and casino owners - and find their way into public discourse. At the same time these images are circulated, the intensive, ongoing court battles over land, natural resources, and federal recognition are ignored, fueling the great lie of twenty-first century democracy - that America's "Indian problem" has long been solved. Discussion. The forces of identity appropriation, cultural encroachment, and corporate commodification pressure American Indian communities to employ essentialist tactics and construct relatively fixed notions of identity, and to render the concepts of fluidity and transgression highly problematic. It is evident from the examples above that the notion of fluid boundaries has never worked to the advantage of Indigenous peoples: federal agencies have invoked the language of fluid or unstable identities as the rationale for dismantling the structures of tribal life and creating greater dependency on the U.S. government; Whitestream America has seized its message to declare open season on Indians, thereby appropriating Native lands, culture, spiritual practices, history, and literature; and Whitestream academics have now employed the language of postmodern fluidity to unwittingly transmute centuries of war between Indigenous peoples and their respective nation-states into a "genetic and cultural dialogue" (Valle & Torres, 1995, p. 141). Thus, in spite of its aspirations to social justice, the notion of a new cultural democracy based on the ideal of mestizaje represents a rather ominous threat to American Indian communities.