# 1NC

### T - Restrictions

#### Restrictions on production must mandate a decrease in the quantity produced

Lars E.R Anell (Chairman, WTO panel) 1989 “CANADA - IMPORT RESTRICTIONS ON ICE CREAM AND YOGHURT Report of the Panel adopted at the Forty-fifth Session of the CONTRACTING PARTIES on 5 December 1989 (L/6568 - 36S/68)

http://www.wto.org/english/tratop\_e/dispu\_e/88icecrm.pdf

The United States argued that Canada had failed to demonstrate that it effectively restricted domestic production of milk. The differentiation between "fluid" and "industrial" milk was an artificial one for administrative purposes; with regard to GATT obligations, the product at issue was raw milk from the cow, regardless of what further use was made of it. The use of the word "permitted" in Article XI:2(c)(i) required that there be a limitation on the total quantity of milk that domestic producers were authorized or allowed to produce or sell. The provincial controls on fluid milk did not restrict the quantities permitted to be produced; rather dairy farmers could produce and market as much milk as could be sold as beverage milk or table cream. There were no penalties for delivering more than a farmer's fluid milk quota, it was only if deliveries exceeded actual fluid milk usage or sales that it counted against his industrial milk quota. At least one province did not participate in this voluntary system, and another province had considered leaving it. Furthermore, Canada did not even prohibit the production or sale of milk that exceeded the Market Share Quota. The method used to calculate direct support payments on within-quota deliveries assured that most dairy farmers would completely recover all of their fixed and variable costs on their within-quota deliveries. The farmer was permitted to produce and market milk in excess of the quota, and perhaps had an economic incentive to do so. 27. The United States noted that in the past six years total industrial milk production had consistently exceeded the established Market Sharing Quota, and concluded that the Canadian system was a regulation of production but not a restriction of production. Proposals to amend Article XI:2(c)(i) to replace the word "restrict" with "regulate" had been defeated; what was required was the reduction of production. The results of the econometric analyses cited by Canada provided no indication of what would happen to milk production in the absence not only of the production quotas, but also of the accompanying high price guarantees which operated as incentives to produce. According to the official publication of the Canadian Dairy Commission, a key element of Canada's national dairy policy was to promote self-sufficiency in milk production. The effectiveness of the government supply controls had to be compared to what the situation would be in the absence of all government measures.

The plan changes how energy is produced, rather than restricting how much is produced

Voting issue -

#### Including regulations is a limits disaster

William Offutt Doub (Former United States Representative to the Southern Interstate Nuclear Board, principal in the law firm of Doub and Muntzing, which he formed in 1977. Previously he was a partner in the law firm of LeBoeuf, Lamb, Leiby and MacRae. He was a member of the U.S. Atomic Energy Commission in 1971 - 1974. He served as a member of the Executive Advisory Committee to the Federal Power Commission in 1968 - 1971 and was appointed by the President of the United States to the President's Air Quality Advisory Board in 1970) 1976 “Energy Regulation: A Quagmire for Energy Policy” Annual Review of Energy Vol. 1: 715-725 (Volume publication date November 1976) DOI: 10.1146/annurev.eg.01.110176.003435

FERS began with the recognition that federal energy policy must result from concerted efforts in all areas dealing with energy, not the least of which was the manner in which energy is regulated by the federal government. Energy selfsufficiency is improbable, if not impossible, without sensible regulatory processes, and effective regulation is necessary for public confidence. Thus, the President directed that "a comprehensive study be undertaken, in full consultation with Congress, to determine the best way to organize all energy-related regulatory activities of the government." An interagency task force was formed to study this question. With 19 different federal departments and agencies contributing, the task force spent seven months deciphering the present organizational makeup of the federal energy regulatory system, studying the need for organizational improvement, and evaluating alternatives. More than 40 agencies were found to be involved with making regulatory decisions on energy. Although only a few deal exclusively with energy, most of the 40 could significantly affect the availability and/or cost of energy. For example, in the field of gas transmission, there are five federal agencies that must act on siting and land-use issues, seven on emission and effluent issues, five on public safety issues, and one on worker health and safety issues-all before an onshore gas pipeline can be built. The complexity of energy regulation is also illustrated by the case of Standard Oil Company (Indiana), which reportedly must file about 1000 reports a year with 35 different federal agencies. Unfortunately, this example is the rule rather than the exception.

#### Precision: Only direct prohibition is a restriction – key to predictability

Sinha (former judge of the Supreme Court of India) 2006 “Union Of India & Ors vs M/S. Asian Food Industries”

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus:

"It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

### Framework

#### Our interpretation is that the affirmative must solely defend the instrumental adoption of a plan by the United States federal government and claim advantages solely from that adoption

Ericson ‘3 (Jon, Dean Emeritus, College of Liberal Arts – California Polytechnic U., The Debater’s Guide, Third Edition, p. 4)

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

#### Policy involvement is inevitable -- activists need to proactively engage in the language and structure of policy-making for effective counter-hegemonic advocacy to be effective. Structural racism only makes this requirement more valuable

Themba-Nixon 2000, Makani, Executive Director of The Praxis Project, Former California Staffer,  Colorlines. Oakland: Jul 31, 2000.Vol.3, Iss. 2; pg. 12

The flourish and passion with which she made the distinction said everything. Policy is for wonks, sell-out politicians, and ivory-tower eggheads. Organizing is what real, grassroots people do. Common as it may be, this distinction doesn't bear out in the real world. Policy is more than law. It is any written agreement (formal or informal) that specifies how an institution, governing body, or community will address shared problems or attain shared goals. It spells out the terms and the consequences of these agreements and is the codification of the body's values-as represented by those present in the policymaking process. Given who's usually present, most policies reflect the political agenda of powerful elites. Yet, policy can be a force for change-especially when we bring our base andcommunity organizing into the process. In essence, policies are the codification of power relationships and resource allocation. Policies are the rules of the world we live in. Changing the world means changing the rules. So, if organizing is about changing the rules and building power, how can organizing be separated from policies? Can we really speak truth to power, fight the right, stop corporate abuses, or win racial justice without contesting the rules and the rulers, the policies and the policymakers? The answer is no-**and double no for people of color.** Today, racism subtly dominates nearly every aspect of policymaking. From ballot propositions to city funding priorities, policy is increasingly about the control, de-funding, and disfranchisement of communities of color. What Do We Stand For? Take the public conversation about welfare reform, for example. Most of us know it isn't really about putting people to work. The right's message was framed around racial stereotypes of lazy, cheating "welfare queens" whose poverty was "cultural." But the new welfare policy was about moving billions of dollars in individual cash payments and direct services from welfare recipients to other, more powerful, social actors. Many of us were too busy to tune into the welfare policy drama in Washington, only to find it washed up right on our doorsteps. Our members are suffering from workfare policies, new regulations, and cutoffs. Families who were barely getting by under the old rules are being pushed over the edge by the new policies. Policy doesn't get more relevant than this. And so we got involved in policy-as defense. Yet we have to do more than block their punches. We have to start the fight with initiatives of our own. Those who do are finding offense a bit more fun than defense alone. Living wage ordinances, youth development initiatives, even gun control and alcohol and tobacco policies are finding their way onto the public agenda, thanks to focused community organizing that leverages power for community-driven initiatives. **-** Over 600 local policies have been passed to regulate the tobacco industry. Local coalitions have taken the lead by writing ordinances that address local problems and organizing broad support for them. - Nearly 100 gun control and violence prevention policies have been enacted since 1991**. -** Milwaukee, Boston, and Oakland are among the cities that have passed living wage ordinances: local laws that guarantee higher than minimum wages for workers, usually set as the minimum needed to keep a family of four above poverty. These are just a few of the examples that demonstrate how organizing for local policy advocacy has made inroads in areas where positive national policy had been stalled by conservatives. Increasingly, the local policy arena is where the action is and where activists are finding success. Of course, corporate interests-which are usually the target of these policies-are gearing up in defense. Tactics include front groups, economic pressure, and the tried and true: cold, hard cash. Despite these barriers, grassroots organizing can be very effective at the smaller scale of local politics. At the local level, we have greater access to elected officials and officials have a greater reliance on their constituents for reelection. For example, getting 400 people to show up at city hall in just about any city in the U.S. is quite impressive. On the other hand, 400 people at the state house or the Congress would have a less significant impact. Add to that the fact that all 400 people at city hall are usually constituents, and the impact is even greater. Recent trends in government underscore the importance of local policy. Congress has enacted a series of measures devolving significant power to state and local government. Welfare, health care, and the regulation of food and drinking water safety are among the areas where states and localities now have greater rule. Devolution has some negative consequences to be sure. History has taught us that, for social services and civil rights in particular, the lack of clear federal standards and mechanisms for accountability lead to uneven enforcement and even discriminatory implementation of policies. Still, there are real opportunities for advancing progressive initiatives in this more localized environment. Greater local control can mean greater community power to shape and implement important social policies that were heretofore out of reach. To do so will require careful attention to the mechanics of local policymaking and a clear blueprint of what we stand for. Getting It in Writing Much of the work of framing what we stand for takes place in the shaping of demands. By getting into the policy arena in a proactive manner, we can take our demands to the next level. Our demands can become law, with real consequences if the agreement is broken. After all the organizing, press work, and effort, a group should leave a decisionmaker with more than a handshake and his or her word. Of course, this work requires a certain amount of interaction with "the suits," as well as struggles with the bureaucracy, the technical language, and the all-too-common resistance by decisionmakers. Still, if it's worth demanding, it's worth having in writing-whether as law, regulation, or internal policy. From ballot initiatives on rent control to laws requiring worker protections, organizers are leveraging their power into written policies that are making a real difference in their communities. Of course, policy work is just one tool in our organizing arsenal, but it is a tool we simply can't afford to ignore. Making policy work an integral part of organizing will require a certain amount of retrofitting. We will need to develop the capacity to translate our information, data, and experience into stories that are designed to affect the public conversation. Perhaps most important, we will need to move beyond fighting problems and on to framing solutions that bring us closer to our vision of how things should be. And then we must be committed to making it so.

#### Focus on identity over policy considerations replicates the essentialism the 1ac criticizes by homogenizing the situated differences of native perspectives into a violent monolith. Privileging the messenger over the message turns the aff

**Grande '0** Sandy, "American Indian identity and intellectualism: the quest for a new red pedagogy" QUALITATIVE STUDIES IN EDUCATION, 2000, VOL. 13, NO. 4, 343–359

**The problem, however, is that since racial groups are not stable or homogeneous entities and racial differences are equally unstable effects of social and economic contradictions, the matter of ‘‘drawing lines ’’ becomes equally fraught with the same power-politics inherent in the system of Whitestream imperialism**. Without the structures of a broader cultural critique, **subjects are left to duke it out over the relativistic discourses of voice and authenticity. More significantly, the endless struggles over legitimacy have been so consumed with the ‘‘ messenger ’’ that the all important ‘‘message ’’ has long been forgotten**. **This is not a small, or simple, outcome as messages from Indian country need to be heard, particularly as assaults on tribal land, resources, and rights continue to be waged.** The issue of identity is, thus, not incidental but, in fact, central to the state of American Indian intellectualism and scholarship.

**Disciplinary constraints are paradoxically liberating -- they facilitate a ludic antagonism within a frame of clash. The litmus test for offense against framework should be whether or not it leaves predictable ground for the negative to engage in tactical argumentation - we don't want them to tell us what arguments we could have run, we prefer to make our own strategies in advance**

**Armstrong '0** (Paul B., Dean and Professor of Literature at Brown University, New Literary History, 31: 211–223, “The Politics of Play: The Social Implications of Iser’s Aesthetic Theory”)

**The ideal polis of play would be a community of difference based on nonconsensual reciprocity. The politics of play would entail the pursuit of this ideal. Such a politics offers an important response to the alternatives widely thought to represent the primary options available for addressing the challenges of difference.** An ideal of play based on nonconsensual reciprocity opposes Habermas’s notion that cultural oppositions constitute new literary history 220 a condition of fragmentation that should be overcome by noncoercive, cooperative negotiation guided by the goal of agreement.7 Iser’s explica- tion of the values of doubling suggests that Habermas errs in assuming that consensus is an implicit ideal of language that successful communi- cative action undistorted by force aims to bring about. Differences may not be the result of a splitting off of faculties in the interests of specialization, but may reﬂect irreconcilable oppositions between games based on mutually incompatible rules, assumptions, and aims. Habermas’s goal of establishing conditions of undistorted communi- cation where no force rules other than the force of the better argument may still be valuable. But its value arises not because agreement about the “better argument” will result from uncoerced exchanges or even because power can ever be banished from such interactions (as the contradiction in the formula “no force other than . . .” implicitly recognizes). Rather, as an attempt to establish conditions of reciprocity that rule out violent intervention to decide the to-and-fro of an exchange, Habermas’s model of uncoerced negotiation would facilitate play in Iser’s sense of a potentially ever-renewing doubling of positions which resist synthesis or uniﬁcation. The counterﬂow of various forms of play that Iser describes would help to establish and maintain such exchanges not by banishing force—an impossible dream—but by setting up interactions between opposing assertions of power that would counter each other’s will to dominance. ***A play-space of reciprocally interacting positions offers an alternative to the model of consensus as an image of how communication undistorted by violence might enable differences to engage one another. Such a play-space also opposes the notion that the only alternative to the coerciveness of consensus must be to advocate the sublime powers of rule-breaking***.8 Iser shares Lyotard’s concern that to privilege harmony and agreement in a world of heterogeneous language games is to limit their play and to inhibit semantic innovation and the creation of new games**. Lyotard’s endorsement of the “sublime”—the pursuit of the “unpresentable” by rebelling against restrictions, defying norms, and smashing the limits of existing paradigms—is undermined by contradic- tions, however, which Iser’s explication of play recognizes and addresses**. The paradox of the unpresentable, as Lyotard acknowledges, is that it can only be manifested through a game of representation. The sublime is, consequently, in Iser’s sense, an instance of doubling**. If violating norms creates new games, this crossing of boundaries depends on and carries in its wake the conventions and structures it oversteps. The sublime may be uncompromising, asocial, and unwilling to be bound by limits, but its pursuit of what is not contained in any order or system makes it dependent on the forms it opposes**. 221 the politics of play ***The radical presumption of the sublime is not only terroristic in refusing to recognize the claims of other games whose rules it declines to limit itself by. It is also naive and self-destructive in its impossible imagining that it can do without the others it opposes. As a structure of doubling, the sublime pursuit of the unpresentable requires a play-space that includes other, less radical games with which it can interact. Such conditions of exchange would be provided by the nonconsensual reciprocity of Iserian play. Iser’s notion of play offers a way of conceptualizing power which acknowledges the necessity and force of disciplinary constraints without seeing them as unequivocally coercive and determining***.

### Visibility

#### Next off, visibility – The battle for the public sphere is over—the public lost. Movements are coopted from within or externally targeted for eradication as soon as they become visibile. Rejecting politics is the only political act

**The Invisible Committee, ‘7** [an anonymous group of French professors, phd candidates, and intellectuals, in the book “The Coming Insurrection” published by Semiotext(e) (attributed to the [Tarnac Nine](http://en.wikipedia.org/wiki/Tarnac_Nine) by the French police), <http://tarnac9.noblogs.org/gallery/5188/insurrection_english.pdf>]

Whatever angle you look at it from, **there's no escape from the present. That's** not the least of its virtues. For those who want absolutely to have hope, it knocks down every support. Those who claim to have solutions are proven wrong almost immediately. It's understood that now everything can only go from bad to worse. "There's no future for the future" is the wisdom behind an era that for all its appearances of extreme normalcy has come to have about the consciousness level of the first punks. The sphere of political representation is closed. From left to right, it's the same nothingness acting by turns either as the big shots or the virgins, the same sales shelf heads, changing up their discourse according to the latest dispatches from the information service. Those who still vote give one the impression that their only intention is to knock out the polling booths by voting as a pure act of protest. And we've started to understand that in fact it’s only against the vote itself that people go on voting. Nothing we've seen can come up to the heights of the present situation; not by far. By its very silence, the populace seems infinitely more 'grown up' than all those squabbling amongst themselves to govern it do. Any Belleville chibani 1 is wiser in his chats than in all of those puppets’ grand declarations put together. The lid of the social kettle is triple-tight, and the pressure inside won’t stop building. The ghost of Argentina’s Que Se Vayan Todos 2 is seriously starting to haunt the ruling heads. The fires of November 2005 will never cease to cast their shadow on all consciences. Those first joyous fires were the baptism of a whole decade full of promises. The media’s “suburbs vs. the Republic” myth, if it’s not inefficient, is certainly not true. The fatherland was ablaze all the way to downtown everywhere, with fires that were methodically snuffed out. Whole streets went up in flames of solidarity in Barcelona and no one but the people who lived there even found out about it. And the country hasn’t stopped burning since. Among the accused we find diverse profiles, without much in common besides a hatred for existing society; not united by class, race, or even by neighborhood. What was new wasn’t the “suburban revolt,” since that was already happening in the 80s, but the rupture with its established forms. The assailants weren’t listening to anybody at all anymore, not their big brothers, not the local associations assigned to help return things to normal. No “SOS Racism which only fatigue, falsification, and media omertà 4 could feign putting an end. The whole series of nocturnal strikes, anonymous attacks, wordless destruction, had the merit of busting wide open the split between politics and the political. No one can honestly deny the obvious weight of this assault which **made no demands**, and had no message other than a threat which had nothing to do with politics. But you’d have to be blind not to see what is **purely political** about this **resolute negation of politics,** and you’d certainly have to know absolutely nothing about the autonomous youth movements of the last 30 years. Like abandoned children we burned the first baby toys of a society that deserves no more respect than the monuments of Paris did at the end of Bloody Week 5 -- and knows it. There’s **no social solution** to the present situation. First off because the vague aggregate of social groupings, institutions, and individual bubbles that we designate by the anti-phrase “society” has no substance, because there’s no language left to express common experiences with. It took a half-century of fighting by the Lumières to thaw out the possibility of a French Revolution, and a century of fighting by work to give birth to the fearful “Welfare State.” Struggles creating the language in which the new order expresses itself. Nothing like today. Europe is now a de-monied continent that sneaks off to make a run to the Lidl 6 and has to fly with the low-cost airlines to be able to keep on flying. **None of the “problems” formulated in the social language are resolvable**. The “retirement pensions issue,” the issues of “precariousness,” the “youth” and their “violence” can only be kept in suspense as long as the ever more surprising “acting out” they thinly cover gets managed away police-like. No one’s going to be happy to see old people being wiped out at a knockdown price, abandoned by their own and with nothing to say. And those who’ve found less humiliation and more benefit in a life of crime than in sweeping floors will not give up their weapons, and prison won’t make them love society. The rage to enjoy of the hordes of the retired will not take the somber cuts to their monthly income on an empty stomach, and will get only too excited about the refusal to work among a large sector of the youth. And to conclude, no guaranteed income granted the day after a quasi-uprising will lay the foundations for a new New Deal, a new pact, and a new peace. The social sentiment is rather **too evaporated** for all that. As their solution, they’ll just never stop putting on the pressure, to make sure nothing happens, and with it we’ll have more and more police chases all over the neighborhood. The drone that even according to the police indeed did fly over Seine-Saint-Denis 7 last July 14 th is a picture of the future in much more straightforward colors than all the hazy images we get from the humanists. That they took the time to clarify that it was not armed shows pretty clearly the kind of road we’re headed down. The country is going to be cut up into ever more air-tight zones. Highways built along the border of the “sensitive neighborhoods” already form walls that are invisible and yet able to cut them off from the private subdivisions. Whatever good patriotic souls may think about it, the management of neighborhoods “by community” is most effective just by its notoriety. The purely metropolitan portions of the country, the main downtowns, lead their luxurious lives in an ever more calculating, ever more sophisticated, ever more shimmering deconstruction. They light up the whole planet with their whorehouse red lights, while the BAC 8 and the private security companies’ -- read: militias’ -- patrols multiply infinitely, all the while benefiting from being able to hide behind an ever more disrespectful judicial front. The catch-22 of the present, though perceptible everywhere, is denied everywhere. Never have so many psychologists, sociologists, and literary people devoted themselves to it, each with their own special jargon, and each with their own specially missing solution. It’s enough just to listen to the songs that come out these days, the trifling “new French music,” where the petty-bourgeoisie dissects the states of its soul and the K’1Fry mafia 9 makes its declarations of war, to know that this coexistence will come to an end soon and that a decision is about to be made. This book is signed in the name of an imaginary collective. Its editors are not its authors. They are merely content to do a little clean-up of what’s scattered around the era’s common areas, around the murmurings at bar-tables, behind closed bedroom doors. They’ve only determined a few necessary truths, whose universal repression fills up the psychiatric hospitals and the painful gazes. They’ve made themselves scribes of the situation. It’s the privilege of radical circumstances that justice leads them quite logically to revolution. It’s enough just to say what we can see and not avoid the conclusions to be drawn from it.

#### To make politics visible is to coopt it by giving resistance an object – this understanding allows resistance to be framed, to be declared a failure and prevents the imperceptible politics of anti-pedagogy

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In this sense **imperceptible politics does not necessarily differ from or oppose other prevalent forms of politics, such as state-oriented politics, micropolitics, identity politics, cultural and gender politics, civil rights movements, etc**. And indeed **imperceptible politics connects with all these various forms of political engagement and intervention in an opportunistic way: it deploys them to the extent that they allow the establishment of spaces outside representation**; that is, spaces which do not primarily focus on the transformation of the conditions of the double-R axiom (rights and representation) but on the insertion of new social forces into a given political terrain. In the previous chapter we called this form of politics outside politics: the politics which opposes the representational regime of policing. Imperceptibility is the everyday strategy which allows us to move and to act below the overcoding regime of representation. **This everyday strategy is inherently anti-theoretical; that is, it resists any ultimate theorisation, it cannot be reduced to** one **successful and necessary form of politics** (such as state-oriented politics or micropolitics, for example). **Rather, imperceptible politics is genuinely empiricist, that is it is always enacted as ad hoc practices which allow the decomposition of the representational strategies in a particular field and the composition of events which cannot be left unanswered by the existing regime of control. If imperceptible politics resists theorisation and is ultimately empiricist, what then are the criteria for doing imperceptible politics? There are** three **dimensions which characterise imperceptible politics: objectlessness,** totality, **trust**. **Firstly, imperceptible politics is objectless, that is it performs political transformation without primarily targeting a specific political aim (such as transformation of a law or institution, or a particular claim for inclusion**, etc). **Instead imperceptible politics proceeds by materialising its own political actions through contagious and affective transformations.** **The object of its political practice is its own practices. In this sense, imperceptible politics is non-intentional - and therein lies its difference from state-oriented politics or the politics of civil rights movements**, for example - **it instigates change through a series of everyday transformations which can only be codified as having a central political aim or function in retrospect**. Secondly, imperceptible politics addresses the totality of an existing field of power. This seems to be the difference between imperceptible politics and micropolitics or other alternative social movements: imperceptible politics is not concerned with containing itself to a molecular level of action; it addresses the totality of power through the social changes which it puts to work in a particular field of action. The distinction between molar and molecular (Deleuze and Guattari, 1987, p. 275) has only analytical significance from the perspective of imperceptible politics. In fact imperceptible politics is both molar and molecular, because by being local situated action it addresses the whole order of control in a certain field. Imperceptible politics is located at the heart of a field of power and at the same time it opens a way to move outside this field by forcing the transformation of all these elements which are constitutive of this field. In this sense, imperceptible politics is a driving force which is simul­taneously both present and absent. We described this in the previous chapter by exploring the importance of speculative figurations for the practice of escape. On the everyday level of escape (a level we called in this chapter imperceptible politics) speculative figuration can be translated into trust. This is the third characteristic of **imperceptible politics**; it **is driven by a firm belief in the importance and truthfulness of its actions, without seeking any evidence for, or conducting any investigation into its practices. This is trust. Imperceptible politics is driven by trust in something which seems to be absent from a particular situation. Imperceptible politics operates around a void, and it is exactly the conversion of this void into everyday politics that becomes the vital force for imperceptible politics.**

#### Red pedagogy makes it worse – cements Western epistemology for academics

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Grande further initiates the articulation of a critical theory of indigenista in response to feminisms that overlook colonization as the primary basis of current and historical oppression of Indigenous women. Focusing instead on a “universal” patriarchy or postmodern “linguistic play and difference” (p. 137), recent formulations of feminist thought constitute what Grande calls “a theory of property holders” (p. 148) that denies the persistence of economic exploitation and, accordingly, colonization. While revolutionary feminisms (those with a Marxist, materialist foundation) maintain this economic understanding, they are altogether insufficient for addressing the far reaches of colonization and its consequences. Therefore she proposes undertaking a Red pedagogy that encompasses valuable knowledge contained in Indigenous experience and world-views, seen as essential by Grande for transforming capitalist social relations between humankind and all of Creation. ¶ I certainly appreciate much of Grande’s thought, as her writing resonates with some of my own critiques of postmodern and critical theory. I also welcome her historical materialist analysis of past and present social relations. This text indeed marks a significant contribution to critical education theory and Indigenous academic work, yet I cannot help but ask: who is it written for? ¶ Though she positions herself among other Indigenous scholars, Grande’s theory is articulated through a Western epistemic frame. The language and content is accessible only to an academic audience and as such, seems to be written “for” critical theorists rather than Indigenous people or communities.

#### That academic tie forecloses aff solvency

**Occupied UC Berkeley 2k9.** <http://anticapitalprojects.wordpress.com/2009/11/19/the-necrosocial/>, the necrosocial: civic life, social death, and the UC, nov. 19

Totally managed death. A machine for administering death, for the proliferation of technologies of death. As elsewhere, things rule. Dead objects rule. In this sense, it matters little what face one puts on the university—whether Yudof or some other lackey. These are merely the personifications of the rule of the dead, the pools of investments, the buildings, the flows of materials into and out of the physical space of the university—each one the product of some exploitation—which seek to absorb more of our work, more tuition, more energy. The university is a machine which wants to grow, to accumulate, to expand, to absorb more and more of the living into its peculiar and perverse machinery: high-tech research centers, new stadiums and office complexes. And at this critical juncture the only way it can continue to grow is by more intense exploitation, higher tuition, austerity measures for the departments that fail to pass the test of ‘relevancy.’ But the ‘**irrelevant’** departments also have their place.  With their ‘pure’ motives of knowledge for its own sake, they perpetuate the blind inertia of meaning ostensibly detached from its social context.  As the university cultivates its cozy relationship with capital, war and power, these discourses and research programs play their own role, **co-opting and containing** radical potential.  And so we attend lecture after lecture about how ‘discourse’ produces ‘subjects,’ ignoring the most obvious fact that we ourselves are produced by this discourse about discourse which leaves us believing that it is only words which matter, words about words which matter.  The university gladly permits the precautionary lectures on biopower; on the production of race and gender; on the reification and the fetishization of commodities.  A taste of the poison serves well to inoculate us against any confrontational radicalism.  And all the while power weaves the invisible nets which contain and **neutralize all thought and action**, that bind revolution inside books, lecture halls. There is no need to speak truth to power when power already speaks the truth.  The university is a graveyard–así es. The graveyard of liberal good intentions, of meritocracy, opportunity, equality, democracy. Here the tradition of all dead generations weighs like a nightmare on the brain of the living. We graft our flesh, our labor, our debt to the skeletons of this or that social cliché. In seminars and lectures and essays, we pay tribute to the university’s ghosts, the ghosts of all those it has excluded—the immiserated, the incarcerated, the just-plain-fucked. They are summoned forth and banished by a few well-meaning phrases and research programs, given their book titles, their citations.  This is our gothic—we are so morbidly aware, we are so practiced at stomaching horror that the horror is thoughtless. In this graveyard our actions will never touch, will never become the conduits of a movement, if we remain permanently barricaded within prescribed identity categories—our force will be dependent on the limited spaces of recognition built between us.  Here we are at odds with one another socially, each of us: students, faculty, staff, homebums, activists, police, chancellors, administrators, bureaucrats, investors, politicians, faculty/ staff/ homebums/ activists/ police/ chancellors/ administrators/ bureaucrats/ investors/ politicians-to-be.  That is, we are students, or students of color, or queer students of color, or faculty, or Philosophy Faculty, or Gender and Women Studies faculty, or we are custodians, or we are shift leaders—each with our own office, place, time, and given meaning.  We form teams, clubs, fraternities, majors, departments, schools, unions, ideologies, identities, and subcultures—and thankfully each group gets its own designated burial plot.  Who doesn’t participate in this graveyard?

#### Their arguments artificially construct us as dependent on the necessity of their advocacy – ultimately depoliticizes us

**Hershock '99**, East-West Center, 1999.  [“Changing the way society changes”, *Journal of Buddhist Ethics*, 6, 154; <http://jbe.gold.ac.uk/6/hershock991.html>]

The trouble is that, like other technologies biased toward control, the more successful legislation becomes, the more it renders itself necessary. Because it aims at rigorous definition -- at establishing hard boundaries or limits -- crossing the threshold of legislative utility means creating conditions under which the definition of freedom becomes so complex as to be self-defeating. Taken to its logical end, legally-biased social activism is thus liable to effect an infinite density of protocols for maintaining autonomy, generating a matrix of limits on discrimination that would finally be conducive to what might be called "axiological entropy" -- a state in which movement in any direction is equally unobstructed *and* empty of dramatic potential. Contrary to expectations, complete "freedom of choice" would not mean the elimination of all impediments to meaningful improvisation, but rather an erasure of the latter's conditions of possibility. The effectiveness and efficiency of "hard," control-biased technologies depend on our using natural laws -- horizons of possibility -- as fulcrums for leveraging or dictating changes in the structure of our circumstances. Unlike improvised contributions to changes taking place in our situation, dictating the terms of change effectively silences our situational partners. Technological authority thus renders our circumstances mute and justifies ignoring the contributions that might be made by the seasons or the spiritual force of the mountains to the meaning -- the direction of movement -- of our ongoing patterns of interdependence. With the "perfection" of technically-mediated control, our wills would know no limit. We would be as gods, existing with no imperatives, no external compulsions, and no priorities. We would have no reason to do one thing first or hold one thing, and not another, as most sacred or dear. Such "perfection" is, perhaps, as fabulous and unattainable as it is finally depressing. Yet the vast energies of global capital are committed to moving in its direction, for the most part quite uncritically. The consequences -- as revealed in the desecration and impoverishing of both 'external' and 'internal' wilderness (for instance, the rainforests and our imaginations) -- are every day more evident. The critical question we must answer is whether the "soft" technologies of legally-biased and controlled social change commit us to an equivalent impoverishment and desecration. The analogy between the dependence of technological progress on natural laws and that of social activism on societal laws is by no means perfect. Except among a scattering of philosophers and historians of science, for example, the laws of nature are not viewed as changeable artifacts of human culture. But for present purposes, the analogy need only focus our attention on the way legal institutions -- like natural laws -- do not prescriptively determine the shape of all things to come, but rather establish generic limits for what relationships or states of affairs are factually admissible. Laws that guarantee certain "freedoms" necessarily also prohibit others. Without the fulcrums of *unallowable* acts, the work of changing a society would remain as purely idealistic as using wishful thinking to move mountains. Changing legal institutions at once forces and enforces societal reform. By affirming and safeguarding those freedoms or modes of autonomy that have come to be seen as generically essential to 'being human', a legally-biased social activism cannot avoid selectively limiting the ways we engage with one another. The absence of coercion may be a basic aim of social activism, but if our autonomy is to be guaranteed both fair and just, its basic strategy must be one of establishing non-negotiable constraints on how we co-exist. Social activism is thus in the business of striking structural compromises between its ends and its means -- between particular freedoms and general equality, and between practical autonomy and legal anonymity. By shifting the locus of freedoms from unique persons to generic citizens -- and in substantial sympathy with both the Platonic renunciation of particularity and the scientific discounting of the exceptional and extraordinary -- social activist methodology promotes dramatic anonymity in order to universally realize the operation of 'blind justice'. Much as hard technologies of control silence the contributions of wilderness and turn us away from the rewards of a truly joint improvisation of order, the process of social activism reduces the relevance of the always unique and unprecedented terrain of our interdependence. This is no small loss. The institutions that guarantee our generic independence effectively pave over those vernacular relationships through which our own contributory virtuosity might be developed and shared -- relationships out of which the exceptional meaning of our immediate situation might be continuously realized. In contrast with Buddhist emptiness -- a practice that entails attending to the mutual relevance of all things -- both the aims and strategies of social activism are conducive to an evacuation of the conditions of dramatic virtuosity, a societal depletion of our resources for meaningfully improvised and liberating intimacy with all things.

#### The alternative is the invisibility and imperceptible politics of anti-pedagogy – solves the K best

**Bickel 4** [“From artist to A/r/tographer : an autoethnographic ritual inquiry into writing on the body”, Barbara Bicket, Degree Master of Arts - MA¶ Program Curriculum Studies, Master’s Thesis, 2004]

I have unconsciously enacted an anti-pedagogical performance in my ¶ resistance to teaching. The practice of anti-pedagogy, is a negative label that has ¶ been applied to Freud and his relationship to pedagogy. Felman (1997) points out ¶ well how: ¶ This one-sidedly negative interpretation of the relation of psychoanalysis to ¶ pedagogy fails to see that every true pedagogue is in effect an antipedagogue, not just because every pedagogy has historically emerged as a ¶ critique of pedagogy.. .but because, in one way or another, every pedagogue ¶ stems from its confrontation with the impossibility of teaching, (p. 20) ¶ In reflecting pedagogically on knowledge Felman states that the Western ¶ pedagogical rationalist ideal culminates in Hegel's philosophical didactic concept of ¶ "absolute knowledge" and that this absolute knowledge then completes all that there ¶ is to know. She then brings in Lacan's conception of the unconscious as "knowledge ¶ which can't tolerate one's own knowing that one knows (Seminar, Feb. 19, 1974; ¶ unpublished)"(p. 24) and that" human knowledge is, by definition,... that which ¶ rules out any possibility of ... eradicating its own ignorance" (pp. 24-25). The poetic ¶ pedagogy of Lacan and the imperative of Freud's pedagogy as defined by Felman is ¶ "to learn from and through the insight which [like the poet and the artist] does not know its own meaning, [to learn] from and through the knowledge which is not ¶ entirely in mastery-in possession-of itself (p. 40-41). ¶ Felman continues and likens teaching to analysis, in that it has to deal with ¶ resistances to knowledge and that ignorance is a desire to ignore. She claims that the ¶ revolutionary pedagogy articulated by Freud was that "ignorance itself can teach us ¶ something-become itself instructive (p. 26). She ends her argument with the ¶ pedagogical question of "How can I turn ignorance into an instrument of teaching?" ¶ (p. 27). ¶ As an artist coming into the field of Education I searched for theories of ¶ education that defined and encompassed a transformative model of education. ¶ Felman and Freud chose to write, theorize and enter the domain of Education with a ¶ desire to contribute and have an impact. This validates for me the significance of ¶ Education as a transformative discipline, and the importance of the field of ¶ Education being open to learn from creative, diverse and critical voices from outside ¶ the profession. Reluctant to identify as an (art) teacher, I agree with and feel ¶ validated by Freud's theoretical statement on the impossibility of teaching as a ¶ profession. At the same time, through a/r/tography, I am thrust into questioning my ¶ pedagogical location, bias and impact within my own practice of "anti-pedagogical ¶ performance. ¶ The methods that I employ in my research inquiry are containers for arational or unconscious knowledge to emerge within. The structure and act of writing ¶ the thesis opened the self-analytic component, revealing resistance, emotion, ignoreance, and forgotten and excluded forms of knowledge. The "psychoanalytic mode of investigation and learning" is not in line with traditional pedagogical theory and ¶ practice. It proceeds similar to this thesis, "through breakthroughs, leaps, ¶ discontinuities, regressions, and deferred action (p. 23)."

### Counterplan

#### We are resolved that the United States Congress should act on authority granted in United States v. Mazurie to pass legislation modeled on the sovereignty provisions in the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, H.R. 205 stipulating that exclusive federal trust over energy production in Indian Country unduly infringes on tribal sovereignty, effectively delegating the option to assume regulatory authority over energy production to tribal governments.

#### The counterplan competes -- it asserts tribal sovereignty while offering tribes the option to maintain the federal trust restrictions on the basis of their independent governmental review

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**Effective environmental enforcement requires the ability to regulate comprehensively in Indian Country, without regard to land ownership or tribal enrollment. The authority of a tribe over its members is clear, but tribal jurisdiction over nonmembers is often contested**. Because the extent of governmental jurisdiction is controversial everywhere, it is not surprising that **the civil jurisdiction of tribal governments is a controversial and evolving topic**. This paper will principally examine congressionally authorized exercises of tribal authority in the environmental regulatory field. 2. Jumping to the *Montana* Exceptions: The Narrowing of Inherent Sovereignty As a Basis for Tribal Regulation of Nonmembers. **In *Montana v. United States*,[[1]](#footnote-1)[1] the Supreme Court established the benchmark for determining tribal authority over** nonmembers.[[2]](#footnote-2)[2] This inquiry requires that three bases of tribal authority be examined: (1) express congressional delegation, (2) taxation, licensing, or other means [regulating] the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements, or (3) **conduct of non‑Indians on fee lands within [the] reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe**.[[3]](#footnote-3)[3] **Tribal civil jurisdiction over nonmembers has been strongly linked to the concept of inherent tribal sovereignty as articulated in *Montana v. United States***.[[4]](#footnote-4)[4] In particular, two of the exceptions to *Montana's* general rule, the consensual relationship exception and the threatening conduct exception, have come to be known as *Montana* Exceptions 1 and 2. It is important to recognize that reliance on these exceptions oversimplifies both the *Montana* decision itself and current federal common law on tribal civil jurisdiction over nonmembers. Moreover, recent Supreme Court opinions[[5]](#footnote-5)[5] do two things: First, they narrow practically to vanishing point the situations in which a tribe has *inherent* civil regulatory authority over nonmembers under the second *Montana* exception. Second, the opinions cast doubts on tribal inherent civil regulatory authority over nonmembers on tribal land. The result of these two opinions is that the first or second *Montana* exceptions probably must apply for a tribe to use inherent powers to regulate nonmembers even on trust land. The attenuation of inherent tribal sovereignty in U.S. Supreme Court jurisprudence is a subject of other papers and is touched upon in the discussion below concerning the Court's two major tribal jurisdiction decisions in 2001. **The confused and increasingly narrow application for inherent tribal sovereignty makes it important to consider available statutes authorizing or delegating powers to Indian tribes. The predictable resistance to tribal environmental authority warrants basing that authority on statutory authorizations or delegation, rather than inherent authority supported by the two *Montana* exceptions.** 3. Reexamining the First Part of the *Montana* Test: Congress Has Authorized Tribes to Exercise Certain Authorities. When attempting to establish tribal authority over nonmembers, the tendency has been to focus on the *Montana* exceptions. However, as our following review of cases illustrates, the Court has repeatedly recognized and acknowledged congressional authorization or delegation as an alternate basis for tribal authority over nonmembers. a. *Mazurie* and the ' 1161 (Liquor Ordinance) Authorization. The leading case on delegation to tribes of authority over non‑Indians is *United States v. Mazurie*.[[6]](#footnote-6)[6] The Mazuries operated a bar on fee land within the Wind River Reservation in Wyoming. They were denied a tribal liquor license by the tribe under its option to regulate the introduction of liquor into Indian Country. The United States prosecuted them and obtained a conviction for violating 18 U.S.C. ' 1154. The *Mazurie* opinion focuses on the phrase in ' 1154 exempting fee‑patented lands in non‑Indian communities within Indian reservations from the Indian liquor laws. For our purposes the important statute is 18 U.S.C. ' 1161. This provision is a 1953 congressional local‑option act that authorizes tribes, with the approval of the Secretary of the Interior, to regulate the introduction of liquor into Indian Country (so long as state law is not violated). Section 1161 exempts from federal prosecution acts in conformity . . . with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian Country, certified by the Secretary of the Interior, and published in the federal register. Note that this statute does not directly delegate authority to any tribe nor expressly approve any particular tribe's ordinance. However, it makes clear that tribal liquor ordinances, duly adopted, certified by the Secretary of the Interior, and published in the Federal Register will have legal effect for federal criminal law purposes. In Part IV of its opinion the Court held that Congress has the power to delegate its authority to tribes.[[7]](#footnote-7)[7] **Although the Court noted cases limiting the authority of Congress to delegate its legislative power**, discussed below, it upheld the delegation in ' 1161 as follows: **[W]hen Congress delegated its authority to control the introduction of alcoholic beverages into Indian Country, it did so to entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life. Clearly the distribution and use of intoxicants is just such a matter.** We need not decide whether this independent authority is itself sufficient for the tribes to impose Ordinance No. 26. It is necessary only to state that the independent tribal authority is quite sufficient to protect Congress' decision to vest in tribal councils this portion of its own authority to regulate Commerce . . . with the Indian tribes. *Cf.* *United States v. Curtiss‑Wright Export Corp*., [299 U.S. 304 (1936)]. The fact that the Mazuries could not become members of the tribe, and therefore could not participate in the tribal government, does not alter our conclusion.[[8]](#footnote-8)[8] *Mazurie* is a landmark case. **It upholds the authority of Congress to authorize tribes to exercise jurisdiction over non‑Indians when those matters affect the internal and social relations of tribal life.@[[9]](#footnote-9)[9] It imposes no requirement that a tribe possess inherent sovereignty over a subject in order to support congressional delegation; to the contrary, as the interpretation of the *Montana* exceptions have shown, the tests for inherent sovereignty are much narrower than Congress' ability to authorize tribal authority**.[[10]](#footnote-10)[10]

#### Tribal governments that lack the oversight capacity to regulate energy on their lands want to maintain the Trust Doctrine -- even in spite of its paternalism -- as a pragmatic means of asserting sovereignty without having to bear the costs of additional land management. The aff is a form of forced sovereignty that is unworkable for many tribes and represents an unfunded mandate.

**NCAI '12** National Congress of American Indians "In the United States: A Pressing Need to Develop Tribal Economies -- Regaining Sovereignty Over Our Land" @ Conference on The Significance of the UN Declaration on the Rights of Indigenous Peoples April 26-27

http://www.ncai.org/attachments/PolicyPaper\_ZaUKbiqVSBaoDXYLlfDvhjJaJRrptXYDVUsNsGkGWYDfLFRnStL\_UNDRIP%202012%20-%20NCAI%20Written%20Statement%20-%20LW%20042512f.pdf

**A policy change that could work today would be a process and guidelines allowing tribes to move out from under federal land transaction oversight by creating their own land leasing and right-of-way regulations and establishing their capacity to enforce them – resulting in delegated power over tribal lands** from the Secretary of the Interior. **There are precedents for tribes to take over and manage federal programs where they have demonstrated the capacity and desire to do so.** The most dynamic and effective recent programs have been supported by the collaborative efforts of the tribes and the U.S. Department of Health and Human Services (HHS). As provided in 25 USC §638, the Secretary of HHS can make payments under the Child Welfare Services Program directly to an Indian tribal organization within any State that has an approved plan for child welfare services.

**However, such self-determination policies must be useful and workable by the tribes**, and the approval processes to qualify for such programs must be acceptable to tribes. In comparison to the HHS 638 efforts noted above that have active participation by every tribe, **no tribe has entered into a Department of the Interior-managed Tribal Energy Resource Agreement (TERA)**, a mechanism created by law in 2005 that would allow tribes to review and approve leases, business agreements, and rights of way for energy development on tribal lands. **While there are many reasons the program has not been used, several considerations offered recently by a member of the Southern Ute Indian Tribal Council include the following:**

**1. Lack of federal funding for tribes that would be assuming duties and responsibilities of the United States.**

2. Lack of clarity of the definition of “inherent federal functions” that are specifically excluded from the authority obtained by a TERA tribe.

3. Required review processes that open tribal decisions to outside input and criticism.

**4. Lack of tribal capacity to perform the oversight functions** contemplated in a TERA and capacity standards that are vague or unclear.

5. An application and maintenance process that is **too time-consuming and distracting to merit disruption of ongoing tribal governmental challenges**.19

While the intent of the TERA program is promising, tribes have considered the program unworkable due to the lack of funding, bureaucratic requirements, and uncertainties.

**Clearly, tribes in the United States need the ability to move out from under the agreement-by-agreement land transaction oversight by the federal government**. Given tribes’ experience with both the 628 programs and the TERA program**, the following components of a self-determination policy for tribal land management should be considered:**

**1. Continue supporting those land management authorization processes and programs that tribes chose, for whatever reason, not to assume.**

**2. Create a clear application process that gives tribes the ability to demonstrate their management experience and capacity to operate government programs.**

**3. Establish a cost-sharing mechanism between the tribes and the Secretary of the Interior to support the functions that tribes are assuming from the federal government.**

4. Clarify the federal trust responsibility and how that trust responsibility will be maintained by the Department of the Interior while, at the same time, allowing tribes to manage their own land.

5. Create federal support for education and technical training efforts for tribal youth, veterans, and other citizens to learn the new technologies, resource management, and maintenance skills required to support land management offices and operations.

6. Create a clear “shot clock” approach for federal review of tribal applications, making approval effective after 180 days following submission unless disapproved by the Secretary of the Interior (or the Secretary’s delegate).

7. Clarify that Tribal lands are not “public lands” in order to establish clear lines of authority for all federal programs and regulations.

Legislation

In current legislation, the tribes recommend Congressional support for the rule recently proposed by the Secretary of the Interior to reform federal surface leasing regulations for American Indian lands that should streamline the approval process for home ownership, expedite economic development, and spur renewable energy development in Indian Country. Additionally, **tribes encourage Congress to pass the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, H.R. 205, which would allow tribes, if they choose, to exercise their political autonomy over lease approval on tribal lands.** We hope that applications for the sale of resources will also be given priority treatment in the DOI’s decision-making process.

#### HOWEVER we should be wary of historical analyses that treat the Doctrine as a static legal entity, today the Trust Doctrine functions as a means by which tribes can gain legal redress for some of the violence of colonial exploitation

**Clinton, '93** (Robert N., Barry Goldwater Prof. of Law @ Az State, “Redressing the Legacy of Conquest: A Vision Quest for a Decolonized Federal Indian Law,” 46 Ark. L. Rev. 77, L/N)

**Various assaults on the Indian way of life were justified based on the trusteeship rationale**. In Lone Wolf, for example, the Court justified the expropriation of tribal land and its redistribution to tribal members as allotments in severalty as well as the sale of the "surplus" land to non- Indians as "a mere change in the form of investment of Indian tribal property, the property of those who ... were in substantial effect the wards of the government." [FN175] In United States v. Clapox, [FN176] a district court justified the establishment of the administratively devised Courts of Indian Offenses, created by the Bureau of Indian Affairs without the benefit of authorizing statutes, on the ground that they were "mere educational and disciplinary instrumentalities, by which the government of the United States is endeavoring to improve and elevate the condition of these dependent tribes to whom it sustains the relation of guardian." [FN177] Indeed, **the Clapox court analogized the Indian reservation to "a school, and the Indians are gathered there, under the charge of an agent, for the purpose of acquiring the habits, ideas, and aspirations which distinguish the civilized from the uncivilized man." [FN178] As a result of the trusteeship and the obligations it allegedly imposed on the nation as the self-proclaimed superior civilization, the federal government assumed the white man's burden of leading its indigenous charges into a western enlightenment**. With that burden apparently went the plenary power to destroy Indian political organization, land holdings, culture, and the like, all under the banner of civilizing the savages. The trusteeship doctrine of this period therefore legitimated any destructive exercise of federal power on the grounds that it discharged the white man's burden of colonization. The trusteeship was no longer merely the description of legal status it had been during the early nineteenth century in Cherokee Nation. Furthermore, during this period, the trusteeship doctrine surely provided few legal protections for the colonized. **In the twentieth century, \*133 the trusteeship doctrine underwent still another change to facilitate limited legal recovery by Indian tribes to eliminate some of the excesses of colonization. As twentieth century federal Indian policy began to reject elements of its colonial past, the legal community began to seek theories for redressing past harms done to Indian tribes. This trend greatly accelerated with the increased world attention focused on human rights abuses** in the post-Holocaust world. Until recently**, the federal trusteeship provided a malleable legal theory for affording Indian tribes redress from past harms [FN179] and, sometimes, for reigning in, on behalf of Indian tribes, some of the residual excesses evident in the continuing federal management of Indian affairs**. [FN180] Thus, in the twentieth century, **the trusteeship doctrine assumed the additional role of providing a legal theory for the redress of harms done to Indians by the federal government, a role that flowed logically from the fiduciary nature of the described relationship. This new role played by the trusteeship doctrine obviously was not the legal function contemplated by Chief Justice Marshall's Cherokee Nation decision, which had cast significant doubt on the judicial enforceability of Indian rights at the behest of the tribes**. Given the chameleon-like nature of and complex roles played by the federal trusteeship doctrine over the course of American legal history, **it may not be sufficient only to identify it as a legacy of colonial oppression of Indian tribes and to condemn it to the oblivion of America's colonialist past. Although the doctrine has been destructive to Indian tribes and their cultures, it also has protected tribal communities by affording redressability for past wrongs**. For example, Chief Justice Marshall used the doctrine in Cherokee Nation in part to insinuate the federal government's obligation by treaty or otherwise to protect the sovereignty and lands of the Cherokee Nation from encroachment by the State of Georgia and its **\*134** citizens. Surely, this protective role, for which many tribes diligently negotiated in many of the treaties, does not represent a legacy of colonialism. Rather, it is a logical outgrowth of the political relationships created by such treaties and the course of dealings between the federal government and the tribes. Similarly, **while colonialism certainly caused the federal government to assume the management of many Indian minerals and resources, the legal doctrines derived from the trusteeship hold the federal government legally accountable for actual mismanagement of such Indian resources, and therefore, they should not be simplisticly condemned and eliminated as a vestige of colonialism**. Thus, dealing with the federal trusteeship in the visionary world of a decolonized federal Indian law poses significant conceptual problems. Certainly, the elements of the doctrine which justify the exercise of plenary federal authority, federal usurpation of the management of or decision making about Indian resources, or federal efforts to "enlighten" Indians by depriving them of their tribal traditions and culture represent a part of the legacy of conquest and properly should be jettisoned by a decolonized federal Indian law as relics of America's colonialist past. By contrast, **a decolonized federal Indian law still might retain those elements of the trusteeship under which the federal government justified its protection of the legal autonomy of communities from the onslaught of the legal authority of the states that surrounded them or under which it has sought to provide legal redress for harms caused by its past colonialist excesses.** Perhaps doctrinal labels less paternalistic than trusteeship, guardianship, wardship, or the like could be found to describe these legal theories, but, nevertheless**, these elements, which historically have been associated with the federal trusteeship over Indian affairs, should escape the scalpel of decolonization of federal Indian law.**

#### Forced de-regulation of energy restrictions on tribal lands under the guise of furthering tribal sovereignty is a Trojan horse that will be exploited by energy corporations to usher in a new wave of colonialism

**Awehali '6** (Brian, “Native Energy Futures Renewable Energy, Sovereignty, and the New rush on Indian Lands”, LiP, MDA)

**The trust relationship between the US and native tribes has been a crucial way for Native Americans to hold the government legally accountable, as evidenced by the many recent court losses suffered by the Department of the Interior and Treasury during the years-long Indian Trust Case filed by Eloise Cobell on behalf of more than 500,000 Native American landholders**. The trust relationship was originally imposed on Native Americans in 1887, after the passage of the Dawes Allotment Act. This act was a fairly straightforward (and successful) attempt to break down tribal unity by dispersing parcels of land to individual Indian “heads of household” who signed on to the government’s “tribal rolls.” **The land was not to be managed by Native Americans, however: It was held “in trust,” and the government was supposed to disburse to Native landholders the royalties generated by the leasing of their lands** to timber, mining, livestock, and energy interests. But for the most part, the government didn’t disburse the money, and now admits that at least $137 billion of it is simply missing. **Without the trust relationship, which among other things makes the government legally responsible for the money it manages, Cobell and her coplaintiffs could not have sued**. **The Energy Policy Act also shifts responsibility for environmental review and regulation from the federal to tribal governments. This, too, was promoted under the auspices of increasing tribal sovereignty, but it doesn’t take a genius to know that Native Americans won’t be any more successful in regulating the energy industry than the US government, a host of well-funded environmental groups, and the UN have been. In fact, it probably only takes a village-variety idiot to comprehend the predictably disastrous outcome of this shift for Native Americans. It’s hard to believe, in light of the relevant history, that an ever-avaricious energy industry—which has been all too willing to play a game of planetary ecological brinksmanship in the name of profit—places any value on tribal sovereignty unless there’s a way to exploit it. It’s hard to believe, after hundreds of years of plunder and unaccountability, that further deregulation, coupled with economic incentives, and even with the participation of some well-meaning “green” players on the field, is going to deliver anything but the predictable domination of Native Americans by white European economic powers.**

#### Only the counterplan enacts a Red Pedagogy that is an effective bulwark against the homogenizing conceptual imperialism of Whitestream America by effectively recognizing the unique relationships each tribal government to a legacy of federal policy-making that directly bears upon the condition of tribal sovereignty today.

**Grqande '0** Sandy, "American Indian identity and intellectualism: the quest for a new red pedagogy" QUALITATIVE STUDIES IN EDUCATION, 2000, VOL. 13, NO. 4, 343–359

The practice of ethnic fraud is believed to have become so widespread that some Native organizations have felt compelled to devise statements and enact policies standing against its proliferation.\* Though such statistics and their implications need to be taken seriously, communities should be cautious of the ill-effects of identity annexation and note that surveillance tactics ultimately work against those they were designed to protect. Most importantly, **obsessing over the politics of identity acts as a potent distracter from the deeper issues facing American Indian communities and as an effective deterrent to the building of political coalitions against Whitestream hegemony. In short, postmoderism, its relativizing of difference and insistence that, at base, ‘‘we are all the same ’’ has left American Indian scholars and their communities vulnerable to the forces of global capitalism**. Thus, while I recognize the need to distill the cages of essentialism**, it is imperative that other, more valid, measures of legitimacy be constructed so that the distinction of Indigenous peoples as tribal and sovereign nations is not lost. A cost–benefit analysis of essentialist and postmodern discourse indicates the dire need for a revolutionary theory and praxis that addresses the political need for sovereignty** and the socioeconomic urgency for building a transnational agenda. **In these efforts, it is critical that American Indians work to maintain their distinctiveness as tribal peoples of sovereign nations** (construct effective means of border patrolling) **while, at the same time, they move toward the building of political solidarity** and coalition (construct effective means of border crossing). **American Indian scholars can assist in this process, on the local level, by working to bring attention to the pressing concerns of Indian country** and, on a global level, by working toward the development of a common theoretical base.

### Neoliberalism K

#### Opening restricted zones is based on the idea of a calculable ecology that can be optimized by incentive schemes—this reduces all human thought to rational economic calculation

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In this chapter, our aim is to shed some light on how the neoliberal project reproduces itself ¶ theoretically and practically in the context of the government of the ecology. Given the everdeepening dual crises of environmental pollution and the over-use of natural resources¶ (including the exhaustion of non-renewable energy and material sources), unveiling the ¶ relationship between neoliberalism and ecological degradation—at both theoretical and policy ¶ levels—is crucial. Currently, the privatization of natural resources (viz. natural parks, forests) ¶ is being promoted; financial markets are finding their way into environmental policy and ¶ conservation (viz. payments for ecosystem services, biodiversity derivatives, species banking ¶ and carbon trade); and incentive schemes are being designed to provide the right signal to ¶ agents in their relationship with ecology (viz. the price-per-bag policy for household waste). ¶ Critically engaging with these numerous policies and their ideological sources will be possible¶ only if one subscribes to the understanding of neoliberalism as a project of economization as ¶ outlined above. This constitutes the essence of this chapter.

More specifically, the chapter argues that the global spread of neoliberalism as a set of ideas, ¶ interpretative grids, governmental interfaces, and institutional dispositifs in relation to ecology¶ is premised on the conceptualization of human behavior from a certain perspective, according ¶ to which the capacity of agents in understanding and responding to economic incentives is taken ¶ as a postulate, and every human decision is assumed reducible to a mere cost-benefit analysis. ¶ The chapter reads the widespread and resilient hold of the neoliberal epistemic grid within ¶ theory and policy-making by situating it, or “embedding” it, within the historical context of¶ intellectual continuities between neoliberal policies towards the use of ecology and the general ¶ postwar intellectual legacy of neoliberalism within the mainstream of the discipline of ¶ economics. For this purpose, it traces the historical genealogy of neoliberal reasoning back to ¶ the establishment of the Mont-Pèlerin Society in order to defend the idea of free market against ¶ the post-Great Depression hegemony of the Keynesian welfare state capitalism (the Beveridge ¶ Plan in the UK, New Deal in the USA, developmentalism in the Third World), by discussing ¶ the links, affinities, and differences among not only the usually-recognized Austrian, Chicago, ¶ and Virginia Schools, but also, and perhaps more controversially, the left-leaning and egalitarian ¶ post-Walrasian, or better-known as “mechanism-design,” approach. Indeed, the latter set of ¶ approaches, because they highlight the limits and failures of markets (arising mainly due to ¶ informational asymmetries) and advocate for the regulation of markets and the design and ¶ institution of “incentive-compatible” mechanisms that would substitute for markets, tend to be ¶ read as alternatives to the neoliberal creed. Nevertheless, what appears as an alternative from ¶ the neoliberalism-qua-marketization perspective, can be considered only as a variant from the ¶ perspective of our understanding of neoliberalism as a project/process of economization. The ¶ common thread that has held these diverse groups of intellectual networks together, the ¶ chapter argues, is the ultimate belief that relying on economic incentives would indeed produce ¶ a prosperous and harmonious society. In sum, this chapter invites the reader to understand ¶ neoliberalism as a governmental epistemic grid that aims to performatively bring to existence a ¶ particular calculative and calculable organization of the entire social field, including the ¶ ecology—as a governmental logic, while undoubtedly including marketization and privatization ¶ among its policy options, exhaustively entailing the economization of the political, the cultural ¶ and the natural, and performatively promoting calculative (and therefore calculable) behavior ¶ across all fields.

#### The aff is just opening the door to a neoliberal energy rush—tribal sovereignty is a smokescreen for cyclical violence and exploitation.

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Now jump forward with me, to April 2003, and the completion of the first large-scale native-owned wind turbine in history—the aforementioned Rosebud Sioux project, built in partnership with NativeEnergy, LLC. During the preceding 21 years, reports ranging from the cautionary to the apocalyptic about carbon emissions and global warming have piled up, and all but the most pig-headed of carbon-emitting industrialists now concede that a fossil fuel-based business model is soon going to be a lot less lucrative. NativeEnergy, which wants to help consumers “enjoy a climate neutral lifestyle,” was founded in 2000 with a mission “to get more wind turbines and other renewable energy systems built.” **There were no Native Americans present in the management of NativeEnergy** at the time of its founding. The multiphase wind development initiative, which began in earnest with the completion of the first wind turbine in 2003, was billed as a way to bring renewable energy–related jobs and training opportunities to the citizens of this sovereign nation, who are among the poorest in all of North America. NativeEnergy’s President and CEO Tom Boucher is an energy industry vet who formerly worked at Green Mountain Energy, a subsidiary of a company now controlled by oil industry giant BP and Nuon, a Netherlands-based energy company. Boucher was convinced there was profit to be made in alternative energy, and the Rosebud project was his test case. Boucher financed the project by selling, of all things, air. More specifically, he took advantage of the new “flexible emissions standards” created by the Kyoto Protocol. Essentially, the standards created tax-deductible pollution credits (or “green tags”) for ecologically responsible companies, which can then be sold to polluters wishing to “offset” their carbon dioxide generation without actually reducing their emissions. As you might expect from a company staffed largely by energy industry vets, NativeEnergy was fiscally crafty. In a novel accounting move, they bought from the Rosebud Sioux, at deep discount, all the green tag pollution credits that they speculated would be accrued over the lifespan of the Rosebud wind project—a total of 50,000 tons of carbon dioxide—then made a lump-sum, one-time funding commitment to the construction of the project. In an April 2003 interview with the Business Journal, Boucher would not divulge how deep the discount he got was, nor would he divulge the terms of subsequent sales of green tags. Since their first test case proved successful, NativeEnergy has moved forward with plans to develop a larger “distributed wind project,” located on eight different reservations. NativeEnergy also became a majority Indian-owned company in August 2005, when the pro-development Intertribal Council on Utility Policy (yes, Intertribal COUP), purchased a majority stake in the company on behalf of its member tribes. Pat Spears, the President of COUP and a member of the lower Brule Sioux tribe, described the purchase as “a great day for Native American people everywhere, because we are demonstrating that living in harmony with our Mother Earth is not only good for the environment, it is also good business. We look forward,” he added, “to bringing in more tribes as equity participants and taking NativeEnergy to the next level.” It’s probably no coincidence that this purchase coincided with that month’s passage of the 2005 Energy Policy Act, which contains native energy–specific provisions in its Title V. Supporters like Tex Hall, president of the National Congress of American Indians, touted the act as “one of the most important tribal pieces of legislation to hit Indian country in the past 20 years. [It] provides real incentives for energy companies to partner with Indian tribes in developing tribal resources.” Keeping in mind that tribal-owned companies are exempt from a great deal of the regulation, oversight, and competitive bidding stipulations that apply to other businesses, and that the legislation increases subsidies for wind energy in particular, the act leaves NativeEnergy ideally situated to exploit its tribal status. But there are a host of alarming provisions in the act. For starters, Section 1813 of Title V gives the US the obviously dangerous power to grant rights of way through Indian lands without permission from Indian tribes, if deemed to be in the strategic interests of an energy-related project. Other critics have derided the act as a fire sale on Indian energy, characterizing various incentives as a broad collection of subsidies for US energy companies, particularly those in Texas. And, according to a 2005 Democracy Now! interview with Clayton Thomas-Muller, Native Energy Organizer for the Indigenous Environmental Network, the act “rolls back the protections of the National Environmental Policy Act and the protections of the National Historic Preservation Act, both of which are critical pieces of legislation that grassroots indigenous peoples utilize to protect our sacred sites.” Most importantly, under the guise of promoting tribal sovereignty (leaving out those aspects of sovereignty that have little or nothing to do with economics), the act also releases the federal government from its traditional trust responsibility to tribes where resource development is concerned. The trust relationship between the US and native tribes has been a crucial way for Native Americans to hold the government legally accountable, as evidenced by the many recent court losses suffered by the Department of the Interior and Treasury during the years-long Indian Trust Case filed by Eloise Cobell on behalf of more than 500,000 Native American landholders. The trust relationship was originally imposed on Native Americans in 1887, after the passage of the Dawes Allotment Act. This act was a fairly straightforward (and successful) attempt to break down tribal unity by dispersing parcels of land to individual Indian “heads of household” who signed on to the government’s “tribal rolls.” The land was not to be managed by Native Americans, however: It was held “in trust,” and the government was supposed to disburse to Native landholders the royalties generated by the leasing of their lands to timber, mining, livestock, and energy interests. But for the most part, the government didn’t disburse the money, and now admits that at least $137 billion of it is simply missing. Without the trust relationship, which among other things makes the government legally responsible for the money it manages, Cobell and her coplaintiffs could not have sued. The Energy Policy Act also shifts responsibility for environmental review and regulation from the federal to tribal governments. This, too, was promoted under the auspices of increasing tribal sovereignty, but it doesn’t take a genius to know that Native Americans won’t be any more successful in regulating the energy industry than the US government, a host of well-funded environmental groups, and the UN have been. In fact, it probably only takes a village-variety idiot to comprehend the predictably disastrous outcome of this shift for Native Americans. It’s hard to believe, in light of the relevant history, that an ever-avaricious energy industry—which has been all too willing to play a game of planetary ecological brinksmanship in the name of profit—places any value on tribal sovereignty unless there’s a way to exploit it. **It’s hard to believe, after hundreds of years of plunder and unaccountability, that further deregulation, coupled with economic incentives**, and even with the participation of some well-meaning “green” players on the field, **is going to deliver anything but the predictable domination of Native Americans by white European economic powers**. In fact, I’ll go out on a limb and say that **the emerging Native American energy infrastructure looks more like the beginnings of a new rush on Indian lands than it does the advent of any kind of brave new sovereign era.**

#### The impact is extinction—focus on production and technology in the neoliberal frame generates crises and precludes other orientations

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As Marilyn Waring noted twenty years ago, under this system, when there is an ¶ environmental catastrophe, like the Exxon Valdez oil spill in Alaska, or the current BP oil ¶ spill in the Gulf, companies make an enormous profit cleaning up, or at least professing ¶ to do so. GDP goes up. If someone is sick, if they die a long, drawn-out death from ¶ cancer, there is profit to be made. There is no money to be made in human and ecological ¶ health and well-being. If communities grow their own food, the global food market ¶ significantly decreases; if people walk rather than drive, the oil and car companies don’t ¶ make money. If education is free, who benefits? Maybe most people, and the society at ¶ large, maybe even the environment, but not necessarily the shareholders. Therefore, it is ¶ much more economically efficient to let the market shape education. Today students take ¶ out larger and larger loans to buy more expensive books, to get less education engendered ¶ by fewer teachers. This is capitalist efficiency. The surplus is efficiently transferred from ¶ one segment of the population to another, those at the top. The same goes for letting the ¶ market shape energy policy. Those arguing today for market intervention in the climate ¶ crisis often fail to mention that it is absolutely already the market shaping energy policy. ¶ This is precisely the problem. It is very efficient for the market to extract oil at bargain ¶ prices from countries without militaries to stop them. It is very efficient, in terms of ¶ profit, to have the most vulnerable in society pay the costs of energy production, and to ¶ keep polluting, all the while terrifying people that new energy developments might be ¶ their only chance of economic survival. Nevermind where the real money goes and what ¶ happens with the boom goes bust.

The current version of capitalist ideology, which absorbs energy scholars (and ¶ even environmental socialists) often unwittingly, was consciously shaped to co-opt the ¶ language of social movements seeking freedom from the yolk of capitalism and ¶ imperialism. It is no surprise that the market would co-opt green rhetoric today. ¶ Economists having the greatest ideological influence on political debates and social ¶ science today, the architects of neoliberal ideology, have sought to re-write the history of ¶ capitalist development as “the constitution of liberty,” and the basis of free society ¶ (Hayek 1960; Friedman 1962; Van Horn, Mirowski, and Stapleford, eds. 2011). There ¶ can be no acknowledgement of slavery, racism, sexism, or ecological destruction among ¶ other issues, because all of these undermine the basic thesis neoliberal writers actively ¶ promote as political ideology. To make their argument, these writers must present ¶ capitalism as raising all boats, color-blind, gender-neutral, and free of class coercion, the ¶ globalization of which results in a “flat,” happy world, even if it is hot (Friedman 2005, ¶ 2008). Unfortunately, these ideas dominate the political sphere, and contemporary ¶ notions of organizational, community, and national development. In academia, many ¶ “theorists celebrate the alleged leveling of social differences owing to globalization”¶ (Pellow 2007, 41). The blinders imposed by this view continue to infect energy studies¶ despite the work of critical energy scholars.

Spreading capitalism thus becomes the solution for poverty associated with ¶ inequalities caused by oppression based on race, class, gender, and position in the world ¶ system, as well as the solution to environmental and energy crises. This is the basic ¶ modernization thesis. The Ecological Modernization Reader (Mol, Sonnenfeld, and ¶ Spaargaren 2009) presents these systematized views regarding the environmental crisis, ¶ which are increasingly influential in environmental sociology. York and Rosa (2003) and ¶ Foster (2012) have pointed out the empirical, theoretical, and philosophical roots of, and ¶ problems associated with this perspective as a basis for understanding ecological and ¶ social crises and solutions. But, we can expect this view to persist as long as social ¶ relations remain intact because the logic of modernization is seductive precisely because ¶ it is the logic of capitalism (Foster 1999b, 2002, 2009, 2012). The processes of ¶ capitalism, including its ideological developments, are the “background conditions” in ¶ which those integrated into the market economy live, as fish swim in water, they are the ¶ “social gravity” we might naturally feel is right, but don’t necessarily see, as much a part ¶ of our lives as the air we breathe (York and Clark 2006).

In contrast to the modernization thesis, environmental justice scholars, among ¶ other critical theorists and activists have sought to expose the mythological basis of ¶ neoliberalism and transcend the system. The work of environmental justice scholars, ¶ feminist ecologists, and ecological rift theorists, marshaling the empirical evidence, ¶ represent powerful critiques of the modernization thesis. Taken together with the insights ¶ in existing critical work on energy, they provide an alternative approach to energy that¶ belies the notion that “there is no alternative.” They share a common commitment, as ¶ social scientists and activists, to reality. Part of this reality is that “actual class and racial ¶ inequalities around the global and between North and South have only worsened in the ¶ past half-century—the same period during which the late modern state of capitalism took ¶ hold” (Pellow 2007, 41). Despite views that we live in a post-racial society, (or one ¶ where “men are finished and women are taking over” [Sohn 2011]), in fact economic ¶ globalization has “seriously undermined the gains of the civil rights and labor movement ¶ and the general antiracist struggle in the United States and undercut the global benefits of ¶ the anticolonial struggles occurring throughout the global South” (Pellow 2007, 43). ¶ Moreover, economic globalization and the intensified spread of ecological destruction ¶ “are intimately linked because the TNCs [transnational corporations] themselves were¶ the ones creating and pushing both globalization and toxins on the world markets, ¶ facilitating greater control over nations, communities, human bodies, and the natural ¶ world itself”(43).

Today, neoliberal mythology has severely hindered the development of a wider ¶ environmental justice consciousness in the broader public, and amongst activists and ¶ academics. In energy studies this view is especially pronounced in the focus on ¶ technology, carbon markets, voluntary certification schemes, and alternative energies that ¶ basically allow business to continue as usual (Foster 2002, 9-25; Rogers 2010; Holleman ¶ 2012). The critical literature emerging from what I call an energy justice perspective in ¶ ecological rift theory, systems ecology, feminist and critical human ecology, and ¶ environmental justice scholarship has drawn out the social and ecological crises of the ¶ current energy regime. This is in contrast to too many well-intentioned scholars and ¶ activists who buy into the main tenets of the modernization thesis, and thus are reluctant ¶ to break with capitalism as a system, or worse, they promote it, ignoring or ignorant of ¶ the enormous costs. This has led to the view that our task as environmentalists is getting ¶ economics to “internalize the externalities,” to bring under the pricing system the work of ¶ natural systems and human services (labor). For energy this means carbon markets and ¶ trade in other forms of pollution and raising energy prices. While it is clear that as long as ¶ we have this system, goals should include wealth redistribution and businesses ¶ shouldering the costs of their polluting practices, long-term, internalizing more of the ¶ world in the market system is a total death strategy. The logic of the market is clear. An ¶ energy justice movement, with the intention of healing the ecological rift and ¶ transcending social injustice, on the other hand has as its base the goal of “externalizing ¶ the internalities.” This is an ecological and social imperative.

Understanding the nature of the current system, Daniel Yergin’s worse-than-nothing approach to energy is the logical response of capital. Carbon markets and the ¶ new biotech boom also make sense. If the point is accumulation, sources of profit must ¶ be found at every turn and crises represent especially ripe opportunities (Klein 2007). The ¶ problem today is not capitalism’s lack of response to the climate crisis, capital was never ¶ developed as a system geared toward ecological reproduction or meeting human needs. It ¶ is a system geared toward profit at all cost and can have no rational response. The ¶ problem is that capitalism organizes so many of our productive activities in the first ¶ place. The sooner this is recognized, the sooner we can start thinking of real alternatives, ¶ and understand ourselves as subjects, not merely objects of the system, as protagonists of ¶ our own future. We can move beyond playing the passive consumers of the next product¶ capitalism has on offer, green or otherwise, packaged as a solution to energy crises. ¶ Examples like the carbon market schemes, or Daniel Yergin’s view of what constitutes ¶ energy revolution, make clear “that there’s no way we can just subcontract our ¶ environmental conscience to the new breed of green marketers” (McKibben 2010).

Energy and social inequality, the challenges of our generation

The social and ecological costs of our energy regime today are clear, though the ¶ ways these are both the result of and exacerbate social inequality and oppression are often ¶ misunderstood or ignored. While the future is unwritten, projections, if business ¶ continues as usual, indicate environmental and social catastrophe with much of the ¶ damage irreversible. Without significant social change, we should prepare for, among ¶ other depredations, increased warfare to secure energy resources to meet increased ¶ demand. The most recent British Ministry of Defence Strategic Trends report suggests ¶ that nations will increasingly use energy security “to challenge conventional ¶ interpretations on the legality of the use of force” (108). Environmentally and socially ¶ destructive energy sectors are projected to grow the next thirty years, such as nuclear ¶ energy and biofuel, while expected fossil fuel demand also goes only one way, up: ¶ Global Energy use has approximately doubled over the last ¶ 30 years and, by 2040, demand is likely to grow by more ¶ than half again. Despite concerns over climate change, ¶ demand is likely to remain positively correlated to ¶ economic growth with fossil fuels, meeting more than 80% ¶ of this increase. Urban areas will be responsible for over ¶ 75% of total demand. (Strategic Trends, 106) ¶ Even a U.S. government official has recognized publicly that “our patterns of energy use ¶ create geopolitical instability. The ways we use energy are disrupting the climate system ¶ and threaten terrifying disruptions in decades to come” (Sandalow 2009).

These realities only partially illustrate energy’s extensive contribution to what K. ¶ William Kapp (1950) referred to as capitalism’s systemic “unpaid costs.” As Anderson ¶ (1976) put it: “the growth society operates as if it had tunnel vision and nearsightedness; ¶ the accumulation of capital is pursued without regard for the side-effects or for longrange consequences, leaving to nature and the larger community these uncalculated ¶ costs” (140). Prefiguring contemporary discussions and movement framing, Anderson ¶ referred to these accumulated unpaid costs, or externalities as “the ecological debt,” the ¶ result of the exploitation of both nature and humans for the sake of economic growth at ¶ all costs (142-43), undermining the natural and social conditions of production.

As indicated previously, with energy demand expected only to increase as the ¶ economy expands, the “unpaid costs” associated with its extraction and use will continue ¶ to accumulate, but on a scale heretofore unseen. The science is clear that if we do not ¶ severely curtail energy use, we will cross critical thresholds in the biosphere’s ability to ¶ recycle waste and regulate the earth’s temperature. The consequences of crossing such ¶ planetary boundaries will be irreversible (Hansen 2009; Solomon, et al. 2009; Cullen ¶ 2010; Foster 2011).

This is a new juncture in humanity’s relation to the rest of nature. However, the ¶ costs of climate change, among other environmental crises generated by energy ¶ production and use, which is driven largely by economic growth, already are visited upon ¶ communities and other social groups in a dramatically unequal way––this we may ¶ understand as a defining feature of energy injustice. This social inequality, indeed, is a ¶ necessary feature of capitalism, making human exploitation and the assault on the ¶ environment possible, and energy injustice inevitable in the current system:

“Environmental deterioration will continue so long as there is a class system, since the ¶ profits of environmental neglect accrue primarily to one class whereas the costs are borne ¶ primarily by another” (Anderson 1976, 139). Scholars studying the ecological and social ¶ rift of capitalism, including those working on environmental racism and feminist ecology, ¶ have expanded the understanding of how these processes are gendered and racialized. ¶ Work on unequal ecological exchange amply has demonstrated that inequality between ¶ nations and regions also increases the burdens of environmental injustice. Studies from ¶ all of these perspectives have drawn out inequalities embedded in our current patterns of ¶ energy decision-making, extraction, use, and waste disposal, documenting energy ¶ injustice through various theoretical lenses.

#### Vote neg to eschew neoliberal frameworks—they’re unsustainable and insulate decisionmaking from deliberation and alternative assumptions needed to solve

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The reduction of ecological valuation through a market mechanism (or various techniques) to a ¶ mere aggregation of individual subjective valuations—which is the main premise of neoliberal ¶ ideology—may be inappropriate for complex and uncertain phenomena ridden with ¶ incommensurabilities and inter- and intra-generational distributional conflicts, such as global ¶ warming, where individual valuations will have clear implications for all living beings. Indeed, ¶ in making decisions with substantial consequences pertaining to our current life as well as our ¶ future (such as the overall growth rate, distributional trajectories, technological path, ¶ consumption habits, risk attitude [say, vis-à-vis nuclear energy]), the market response or the ¶ aggregation of individuals’ valuation through a set of available techniques (e.g., the contingent ¶ valuation) may substantially differ from what could be derived through collective deliberation ¶ and negotiation of various stakeholders including the scientific community (see, e.g., ¶ Özkaynak, Adaman and Devine, 2012). This criticism applies not only to neoliberal positions ¶ that favor the current unequal distribution of power but also to the Post-Walrasian one which ¶ although concerned with distributional issues keeps relying on individualist ontologies of ¶ calculative and calculable agency. Indeed, there is a growing theoretical and applied literature ¶ arguing that in incommensurable cases, where all relevant aspects cannot be captured in a single ¶ dimension (such as those derived from monetary cost-benefit analyses), a multi-criteria ¶ methodology would seem better placed, as it will be possible to involve not only economic but ¶ also political, moral, scientific and cultural inputs from a variety of stakeholders (see, e.g., ¶ Martinez-Alier, Munda and O’Neil, 1999; Munda, 2008). The key promise of the multicriteria decision-making tool and other similar participatory and deliberatory dispositifs is that ¶ rather than finding a “solution” to a conflictual decision, they shed light on the multifaceted¶ dimensions of the problem at hand and thus facilitate the consensus-building process from ¶ below (see, e.g., Adaman, 2012). In this regard, they constitute a formidable path to be ¶ explored as an alternative to the surreptitiously normative neoliberal governmental dispositifs, ¶ designed by experts from above, under the assumption that all actors are calculative and ¶ calculable.

The current indiscriminate application of neoliberal policies over the entire scope of the social ¶ field has brought about such political, economic, cultural and ecological devastation that any ¶ type of reform suggestion along the line to halt this process is met with much welcoming by ¶ many of us—even if some of them are still acting as if economic incentives are the only viable ¶ policy tool in town. Consider the case of carbon markets, for example, where the cap is ¶ decided either through a scientific body or through aggregating individuals’ preferences. The ¶ fact of the matter is that, far from addressing the inefficiencies that emanate from opportunistic ¶ and manipulative activities, these mechanisms are vulnerable precisely because they end up¶ soliciting manipulative, predatory, and rent-seeking behavior (because they are designed to ¶ function under such behavioral assumptions in the first place). In other words, these solutions ¶ subject a commons such as global climate into the economic logic of markets and ¶ “performatively” turn it into an object of strategic-calculative logic (MacKenzie, Muniesa and ¶ Siu, 2007; Çalışkan and Callon, 2009; MacKenzie, 2009; Çalışkan and Callon, 2010; see also ¶ Spash, 2011). Consider, furthermore, the case of price-per-bag policies. Laboratory ¶ experiments and anthropological evidence both suggest that charging a price for some activity ¶ that should in fact be treated as a duty or a commitment may well create perverse results (see, ¶ e.g., Campbell, 1998; Bowles and Hwang, 2008). Monetizing the pollution-generating activity ¶ instead of limiting the use of plastic bags (along with an awareness program) may well result in ¶ an increase of the unwanted activity. Similarly, while nationalization is the trend in areas of ¶ natural resource extraction and energy production, many continue to argue for privatization ¶ and private-public partnerships instead. Nevertheless, the problem with the private versus ¶ public dichotomy, given our reading of the contemporary state as an agent of economization, is ¶ precisely that both forms, to the extent that they are informed by the different variants of ¶ neoliberal reason, serve to isolate these critical areas from the deliberations and political ¶ demands of various stakeholders and the general public, limiting the only channels for ¶ communication available to them to the price (or price-like) mechanisms. However, perhaps ¶ most importantly, neither can be immune towards all sorts of rent-seeking activities that occur ¶ behind the close doors of the technocracy that operates in the area where state shades into ¶ market in the various forms of dispositifs.

Needless to say, economic activities that generate pollution and consume energy are not recent ¶ phenomena that are exclusive to what is now increasingly being called the neoliberal era. If ¶ anything, postwar Keynesian developmentalism was possible precisely because of the ¶ availability of cheap oil, and is responsible for an enormous amount of environmental pollution ¶ and ecological degradation (Mitchell, 2011). In this sense, it would be wrong to present ¶ neoliberal as being the only responsible mode of governmentality for the dual crises of climate ¶ change and natural resource depletion. Yet, this does not change the fact that the neoliberal ¶ reason (in its free-market and mechanism-design variations) is pushing its agenda in an era ¶ where both of these crises are reaching catastrophic levels, and it is highly questionable whether ¶ neoliberal methods of handling the environmental pollution and the extraction crisis will be¶ capable of addressing long-term concerns.

### case

#### The 1AC’s pedagogy over-focuses on the damages of colonialism and the oppressed status of the indigenous – this shuts off any resistant value that their project may have – voting negative to reject their damage-narratives endorses a pedagogy of desire that is more liberatory

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(Eve, “Suspending Damage: A Letter to Communities”, Harvard Educational Review Vol. 79 No. 3 Fall 2009, dml)

Some scholars have built their careers around producing damage narratives of tribalized and detribalized peoples. Though it is no longer in fashion to frame research as “the problem with (insert tribe or urban community here)” as it was in past generations, the legacy of this approach is alive and well. (See also Harvey [1999] on “civilized oppression.”) Native communities, poor communities, communities of color, and disenfranchised communities tolerate this kind of data gathering because there is an implicit and sometimes explicit assurance that stories of damage pay off inmaterial, sovereign, and political wins. Many communities engage, allow, and participate in damage-centered research and in the construction of damage narratives as a strategy for correcting oppression. However, I worry that the theory of change itself may be unreliable and ineffective. It is a powerful idea to think of all of us as litigators, putting the world on trial, but does it actually work? Do the material and political wins come through? And, most importantly, are the wins worth the longterm costs of thinking of ourselves as damaged?¶ To offer a counterstory, my friend and Indigenous scholar Sandy Grande (personal communication, April 2008) shared with me that some of the narratives I would categorize as damage centered, she would categorize as stories of colonization; the after-effects and the colonizing are inextricably linked. Earlier, Grande (2004) wrote:¶ The “Indian Problem” is not a problem of children and families but rather, ﬁrst and foremost, a problem that has been consciously and historically produced by and through the systems of colonization: a multidimensional force underwritten by Western Christianity, deﬁned by White supremacy, and fueled by global capitalism. (p. 19)¶ Contemporary damage-centered narratives (of abuse, addiction, poverty, illness) in the United States can be directly tied to 400-plus years of occupation of Native lands, genocide, and colonization. Like Sandy, I can’t help but hear these stories within the context of this history, but I suspect that for many people, Native and non-Native, this context has been made invisible and natural. As in African American communities that have been coarsely expected to have “gotten over slavery by now,” Native American and First Alaskan communities are expected to have gotten over the past, which is reduced to the unfortunate birth pangs of a new nation, thus dismissing the very real and ongoing colonization of these communities to the corners of our imaginations (Tuck & Fine, 2007). ¶ Although, as I have noted, damage-centered research involves social and historical contexts at the outset, the signiﬁcance of these contexts is regularly submerged. Without the context of racism and colonization, all we’re left with is the damage, and this makes our stories vulnerable to pathologizing analyses (Kelley, 1997). Our evidence of ongoing colonization by research—absent a context in which we acknowledge that colonization—is relegated to our own bodies, our own families, our own social networks, our own leadership. After the research team leaves, after the town meeting, after the news cameras have gone away, all we are left with is the damage. ¶ I want to recognize that, particularly in Native communities, there was a need for research that exposed the uninhabitable, inhumane conditions in which people lived and continue to live. My ability to articulate this critique is due to the lessons and accomplishments that have been made on the backs of prior generations of communities and researchers. I have boundless respect for the elders who paved the way for respectful, mutually beneﬁcial research in Indigenous communities. I appreciate that, in many ways, there was a time and place for damage-centered research. However, in talking with some of these elders, they agree that a time for a shift has come, that damage-centered narratives are no longer sufﬁcient. We are in a new historical moment—so much so that even Margaret Mead probably would not do research like Margaret Mead these days. 1¶ Researching for Desire¶ In my own autobiographical performance projects, I identify this chiasmatic shift in the possibility that all those performances I did about getting bashed only provided knowledge of subjugation, serving almost as an advertisement for power: “Don’t let this happen to you. Stay in the closet.” . . . I decided to write more about the gratiﬁcations of same-sex relationships, to depict intimacy and desire, the kinds of subjugated knowledges we don’t get to see on the afterschool specials and movies of the week that parade queer bruises and broken bones but shy away from the queer kiss.¶ Craig Gingrich-Philbrook, “Auto-ethnography’s Family Values” (2005)¶ One alternative to damage-centered research is to craft our research to capture desire instead of damage. I submit that a desire-based framework is an antidote to damage-centered research. An antidote stops and counteracts the effects of a poison, and the poison I am referring to here is not the supposed damage of Native communities, urban communities, or other disenfranchised communities but the frameworks that position these communities as damaged. ¶ As I will explore, desire-based research frameworks are concerned with understanding complexity, contradiction, and the self-determination of lived lives. Considering the excerpt from Craig Gingrich-Philbrook (2005), desirebased frameworks defy the lure to serve as “advertisements for power” by documenting not only the painful elements of social realities but also the wisdom and hope. Such an axiology is intent on depathologizing the experiences of dispossessed and disenfranchised communities so that people are seen as more than broken and conquered. This is to say that even when communities are broken and conquered, they are so much more than that—so much more that this incomplete story is an act of aggression. ¶ Several solid examples of such depathologizing work come to mind. 2 In these examples, typical scripts of blame are ﬂipped, and latent assumptions about responsibility are provoked. For instance, in her study of the relationships between privatization of the public sphere and constructed public perceptions of women who are responsible for the death of their children, Sarah Carney (2006) argues: ¶ Race, class and gender work in combination within a current (U.S.) social and political moment that favors privatization and the withdrawal of public support to frame and construct various images of “natural” women, of “good” and “bad” mothers, and of female responsibility; and these now-familiar images work to support/bolster state policies regarding shrinking social assistance, and allow the state to place the burden for caring back on the backs of women, particularly women who are poor and of color. (p. 11)

#### Performative pedagogy fails in the context of a debate -- there is no rigorous criteria for deciding whether or not we have sufficiently "performed" red pedagogy, and a focus on embodiment collapses in rhetorical futility

**Medina and Perry '11** Mia, University of British Columbia, Carmen, Indiana University "Embodiment and Performance in Pedagogy Research: Investigating the Possibility of the Body in Curriculum Experience" Journal of Curriculum Theorizing Volume 27, Number 3, 2 http://www.academia.edu/470170/Embodiment\_and\_performance\_in\_pedagogy\_The\_possibility\_of\_the\_body\_in\_curriculum

Jean-Luc Nancy (1994) reminds us that **our endeavour to write about embodiment fails before it begins, as the body is impenetrable** by the means that we have at our disposal — words,ink, page, computer. And we would add that **the endeavour to talk about the body is also challenging if not futile, due to the discourses that we have at the ready, that is, the dominant discourses of the mind**. In the face of this methodological predicament, Caroline Fusco (2008)regrets that **in educational research a “discursive and material disinfecting and cleansing take[s] place” in the transcription of body and space to written or visual texts** (p. 160). In the following analysis, we acknowledge the limitations of representing research in the written and visualformat of a journal article, but embrace the affordances that analytic discourses and written text provide. In this way, we aspire to contribute to a much larger conversation that necessarily extends beyond these two authors, beyond this study, and beyond the modalities of written andvisual texts.

#### The notion that all indigenous peoples "just want to be left alone" betrays complicity with the stereotype of noble savage that ignores the way in which modern indigenous cultures have become profoundly integrated both culturally and politically with modern communication technology and political interests

**Langton '5** Marcia, Foundation Chair in Australian Indigenous Studies, University of Melbourne "Aboriginal Art and Film The Politics of Representation" Rouge Press, Marcia Langton http://www.rouge.com.au/6/aboriginal.html

The first category is the experience of the Aboriginal person interacting with other Aboriginal people in social situations located largely within Aboriginal culture. **There is never a totally closed Aboriginal experience**, however, because even the few remaining Pintubi living traditionally in the Western Desert know of, have seen and have some explanation of the fences, windmills, four-wheel drive vehicle tracks and other evidence which whites leave behind. They know, too, that they have kinfolk living in remote Northern Territory settlements such as Kintore and Papunya or in the outstations, who have adopted some whitefella technology and ways of doing things. I have been asked by Aboriginal people in such situations, ‘Why do white people have curtains on their windows?’ and ‘Why do white people wear sunglasses?’ Usually there is no one to explain. Not knowing much at first hand about whites, Aboriginal people in remote regions develop some extraordinary theories about whites. ‘Who are these strangers?’ they ask. As a second category of cultural and textual construction of things Aboriginal**, there are the familiar stereotypes and the constant stereotyping, iconising and mythologising of Aboriginal people by white people who have never had any substantial first-hand contact with Aboriginal people. These icons of Aboriginality are produced by Anglo-Australians, not in dialogue with Aboriginal people, but from other representations such as the ‘Stone Age savage’, the ‘dying "race"**’, the ‘one-penny stamp-Aborigine’, the Pelaco Shirt Aborigine, (24) *Venus Half Caste* (Leonard Man’s 1963 book),The Cinesound News Service caricatures, *Crocodile Dundee I* (1986) and *II* (1988), ‘the received wisdom’. They are inherited, imagined representations. ‘All Aborigines are dirty, drunk and useless, and they’re going to die out anyway,’ say some white people without hesitation or qualification.A third category is those constructions which are generated when Aboriginal and non-Aboriginal people engage in actual dialogue, be it at a supermarket checkout or in a film co-production. In these exchanges, the individuals involved will test imagined models of the other to find some satisfactory way of comprehending the other. It is in these dialogues – and in the world of film the co-production *Two Laws* is an example – that working models of Aboriginality are constructed as ways of seeing Aboriginal people, but both the Aboriginal subject and the non-Aboriginal subject are participating. Can films, videos and television re-educate people to be non-racist and eliminate racism? Why do so many Australian institutions remain racist after years of anti-discrimination legislation and rejection of racist notions in education programs? Perhaps we should ask, rather, why are some people not racist? Indeed, for the purposes of this essay, it is important to recognise that there are some people who are not racist, and who take the anti-racist sentiment in the film and television industry further. This points to the importance of the argument on intersubjectivity and intertextuality: the need to test imagined models against each other. **The question we should be asking is: what informs the mythologies and symbols? The answer has to do with the stance of the participant within the dominant culture, within the colony.** For instance, Aboriginal life in modern Australia has been described as ‘welfare colonialism’, and the encapsulation of Aboriginal society as ‘internal colonisation’. Although this kind of analysis could be applied at one level to the economic condition of some Aboriginal people, there are other clear social and economic formations. The hunting and gathering mode is one, even though it is now supplemented by art production and by social security entitlements which enable the purchase of store-bought foods. Whatever the economic conditions, the discourse is colonial. The term discourse is used here in the sense meant by Michel Foucault as a system of power. The subject speaks back, and the dominant culture is informed by Aboriginal cultural practices, particularly practices of resistance.*Signs and Aboriginality* **Our different stance in history shapes the models we use. All representations are derived from, and react against, historical representations and historical symbols of Aboriginality.** From inside, a culture is ‘felt’ as normative, not deviant. It is European culture which is different for an Aboriginal person. Aboriginal people had no eugenicist theory, no need to theorise a racial superiority to justify exploitations or land theft. Now, of course, some Aboriginal people even think in racial rather than social terms, in exclusive rather than inclusive terms. For instance, ‘yella fella’ is a racial term for a part-Aboriginal person that is used in some restricted contexts in remote Australia. And, of course, Aboriginal people have no pyramid-like hierarchy of social and technological evolution, no ‘Stone Age’, ‘Iron Age’, etc. The closest some Aboriginal people might come is to talk of the people in the bush as ‘myalls’ because of their lack of knowledge of white society. **Aboriginal people**, such as those at Yuendumu (a community on the edge of the Tanami Desert in Central Australia) and Ernabella (a community in South Australia), to name just two communities, **have adopted computer, satellite and television technology and certainly have no conception of themselves as ‘Stone Age’. What the non-Aboriginal subject often fails consciously to articulate is a model of ‘European’ or whatever the case might be – British, Irish, Vietnamese, Italian. And he/she also fails very often to allow Aboriginal people to articulate their own models of what they perceive ‘Europeans’ to be.**

#### Refuse any affirmative claim to "starting point" or "prerequisite" -- those notions erect a hierarchy that makes true performative pedagogy impossible

**Medina and Perry '11** Mia, University of British Columbia, Carmen, Indiana University "Embodiment and Performance in Pedagogy Research: Investigating the Possibility of the Body in Curriculum Experience" Journal of Curriculum Theorizing Volume 27, Number 3, 2 http://www.academia.edu/470170/Embodiment\_and\_performance\_in\_pedagogy\_The\_possibility\_of\_the\_body\_in\_curriculum

**The notion of assemblage with Deleuze and Guattari’s nomadic thought can be understood as the “performed organization of language (enunciation) and ‘content’ (material and conceptual bodies)”** (Leander & Rowe, 2006, p. 437). We use this understanding to frame our examinationof how things happen within a dramatic encounter. George Marcus and Erkan Saka (2006)inform our use of the concept of assemblage, suggesting that it focuses “ attention on the always-emergent conditions of the present .... while preserving some concept of the structural soembedded in the enterprise of social science research ” (pp. 101-102). In this study, we look atthe emerging relationship between the organization of partial assemblage (the emergingembodied social constructs), in relation to larger assemblages or organized institutions (largersocial performances outside of the dramatic encounter). We maintain that **it is important toconsider the relationship between language and bodies “on the same level” (Deluze & Guattari,1987, as cited in Leander & Rowe p. 437), and always in flux and motion. In alignment withnomadic thought, we attempt to avoid the notions of beginnings and endings** or hierarchiesbetween language and bodies. **In this light, we are looking at relationships not in terms of fixedmeanings, but as emerging, evolving, and unfinished within the experience under analysis.**

#### Review requirements don’t undermine tribal sovereignty – they maximize tribal public participation

**Fosland, 12** - Law Clerk to Chief Judge David W. Gratton, Idaho Court of Appeals, 2011– 2012; J.D., cum laude, Gonzaga University School of Law, 2011 (Benjamin J. Fosland, A Case of Not-So-Fatal Flaws: ReEvaluating the Indian Tribal Energy and Self-Determination Act, 48 IDAHO L. REV. 447 (2012), <http://www.uidaho.edu/~/media/Files/orgs/Law/law-review/2012-symposium/Fosland.ashx>)

The required incorporation of public “notice-and-comment” periods into the structure of a resource agreement has also given some analysts cause for concern. 110 These public-input requirements obligate the Secre- tary to receive comments on the proposed resource agreement itself, 111 as well as the Department of Interior’s decision regarding approval of the resource agreement. 112 The tribes must incorporate processes to allow for public comment before final tribal approval of leases, rights-ofway, and any other development instruments, 113 and also must incorporate these comment periods as a part of the environmental review process tribes must establish under a resource agreement. 114 Finally, interested parties have the ability under ITEDSA to petition the Secretary to review a tribe’s compliance with a resource agreement after the parties have exhausted tribal remedies. 115 The argument has been made that these public-input requirements “conflict sharply with tribal selfgovernance” and will prevent many tribes from taking advantage of the resource agreement system. 116 But the requirements are unlikely to have the decisive effect predicted by some of ITEDSA’s critics. The incorporation of public input into the decision making process is not in conflict with tribal self-governance because comments received cannot dictate the final decision. In regard to the Secretary’s obligation, input from tribal and non-tribal sources is not determinative of whether the Secretary ultimately approves a resource agreement. 117 Similarly, public input in regard to the final approval of development instruments or environmental effects cannot dictate tribal decisions. 118 So, the belief that public “notice-and-comment” periods will effectively usurp decisionmaking authority from the tribe is incorrect. The purpose of these “notice-and-comment” periods is to gather information, not to dictate a substantive outcome. 119 The process requirements of tribal environmental review under ITEDSA were created to track the requirements of the National Environmental Policy Act (NEPA). 120 This was at least in part because NEPA no longer applies once the Secretary of the Interior approves a resource agreement. 121 One of NEPA’s core principles, as Professor Royster has observed, is that more information leads to better decision making. 122 It focuses on process, not on achieving a substantive outcome. 123 The tribes’ environmental review process will similarly focus not on a substantive outcome, but rather on creating decisions that are “made in light of full environmental information.” 124 Furthermore, a tribe with a resource agreement in place will be responsible for final approval of development instruments and the environmental review process. 125 This means that public comments “will be reviewed in light of tribal values, priorities, and decisions, rather than filtered through a federal lens.” 126

#### Turn – litigation

#### a. Review requirements decrease nuisance suits against tribes

**Fosland, 12** - Law Clerk to Chief Judge David W. Gratton, Idaho Court of Appeals, 2011– 2012; J.D., cum laude, Gonzaga University School of Law, 2011 (Benjamin J. Fosland, A Case of Not-So-Fatal Flaws: ReEvaluating the Indian Tribal Energy and Self-Determination Act, 48 IDAHO L. REV. 447 (2012), <http://www.uidaho.edu/~/media/Files/orgs/Law/law-review/2012-symposium/Fosland.ashx>)

It is also notable, in regard to possible challenges, that the “notice-and-comment” procedures incorporated into ITEDSA may actually serve to reduce the chances of “nuisance suits by disgruntled neighbors.” 132 By incorporating a process through which people and organizations affected by the proposed development can voice their concerns, a tribe may satisfy many of those affected by its decisions. The comment process would “allow those who oppose or fear tribal actions generally to make their misgivings part of the record.” 133 This process could, in many cases, make decisions made by the tribe that much easier to swallow for those adversely affected by development and reduce the number of challenges and amount of litigation associated with tribal resource development.

#### b. that bankrupts tribes – erases gains from economic development and turns their sovereignty advantage

**Layton, 2k** - A thesis submitted to the Faculty of The National Law Center of The George Washington University in partial satisfaction of the requirements for the degree of Master of Laws (O. Wes., "The Thorny Gift: Analysis of The EPA's Intent to Empower Indian Tribal Governments With Clean Air Act Regulatory Authority Over Non-Tribal Lands and Immunize Tribal Governments From CAA Citizen Suits" <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA379984>)

The practice of allowing private citizens the right to challenge government agency decisions (especially environmental enforcement decisions) is so prevalent, that it is seen as a fundamental right. If tribes adamantly insist on barring any private challenge of its regulatory authority, this will assuredly fuel a heated debate on whether Congress was wise to grant tribal governments such power. An event with the right sort of sympathetic plaintiff could generate enough public outcry could force Congress to either rescind tribal authority or curtail tribal sovereign immunity. Rescinding regulatory authority could be used as ammunition by those opposed to the expansion of Indian tribal sovereignty and self-government. Should Congress waive immunity and subject tribal governments to section 304 suits, Indian tribal governments would not only be susceptible to legitimate challenge but also nuisance suits, which would quickly overtax limited tribal resources. An overburdened tribal government could find itself forced to either abandon the regulatory program, or simply capitulate whenever its decisions or actions are challenged. Should either event occur, the critics of tribal sovereignty would likely see the result as evidence that Indian tribes are not capable of performing the more complex tasks required of a modern governing body. Even if a future cry of injustice doesn't bring an end to tribal CAA regulatory authority, the inability of private parties to challenge tribal regulatory actions would make reservations less attractive prospects for commercial development.

# 2NC

## t

### 2NC brightline

#### LITMUS TEST—can you comply? If you can, it is regulation, not restriction

**Mohammed 7** - Kerala High Court Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997 Equivalent citations: AIR 1997 Ker 121 Author: P Mohammed Bench: P Mohammed, <http://indiankanoon.org/doc/255504/?type=print>)

10. Microlight aircrafts or hang gliders shall not be flown over an assembly of persons or over congested areas or restricted areas including cantonment areas, defence installations etc. unless prior permission in writing is obtained from appropriate authorities. These provisions do not create any restrictions. There is no total prohibition of operation of microlight aircraft or hang gliders. The distinction between 'regulation' and 'restriction' must be clearly perceived. The 'regulation' is a process which aids main function within the legal precinct whereas 'restriction' is a process which prevents the function without legal sanction. Regulation is allowable but restriction is objectionable. What is contained in the impugned clauses is, only regulations and not restrictions, complete or partial. They are issued with authority conferred on the first respondent, under Rule 133A of the Aircraft Rules consistent with the provisions contained in the Aircraft Act 1934 relating to the operation, use etc. of aircrafts flying in India. Microlight aircrafts, hang gliders and powered hang gliders are all coming within the definition of 'aircraft' contained in Section 2( 1) of the Act. Section 5 of the Act authorises the Central Government to make rules regulating among other things use and operation of aircraft and lor securing the safety of aircraft operation. Rule 133A authorises the first respondent to issue directions relating to the operation and use of the aircraft. Thus the analysis of the above provisions would sufficiently indicate that the impugned clauses contained in Exts. P4 and P5 arc purely measures regulating the use and operation of aircrafts.

### 2nc limits

#### Including energy regulations adds five million research hours

Tugwell 88 Franklin Tugwell joined The Asia Foundation's Board of Trustees in 2010. Dr. Tugwell has served as the President and CEO of Winrock International since 1999. Previously, Dr. Tugwell was the executive director of the Heinz Endowments of Pittsburgh, the founder and president of the Environment Enterprises Assistance Fund, and as a senior consultant for International Projects and Programs at PG&E Enterprises. He served as a deputy assistant administrator at USAID (1980-1981) and as a senior analyst for the energy program at the U.S. Office of Technology Assessment (1979-1980). Dr. Tugwell was also a professor at Pomona College and an adjunct distinguished professor at the Heinz School of Carnegie Mellon University. Additionally, he serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. He also serves on the Board of Eucord (European Cooperative for International Development). Dr. Tugwell received a PhD in political science from Columbia University. “The Energy Crisis and the American Political Economy,” ISBN 0-8047-1500-9

Finally, administering energy regulations proved a costly and cumbersome endeavor, exacting a price all citizens had to pay. As the energy specialist Paul MacAvoy has noted: "More than 300,000 firms were required to respond to controls, ranging from the three dozen major refining companies to a quarter of a million retailers of petroleum products. The respondents had to file more than half a million reports each year, which probably took more than five million man-hours to prepare, at an estimated cost alone of $80 mil- lion."64 To these expenditures must be added the additional costs to the government of collecting and processing these reports, monitor- ing compliance, and managing the complex process associated with setting forth new regulations and adjudicating disputes. All to- gether, it seems likely that the administrative costs, private and public, directly attributable to the regulatory process also exceeded $1 billion a year from 1974 to 1980.65

#### Including energy regs is too big---it’s torture for the neg

Edwards 80 Opinion in BAYOU BOUILLON CORP. v. ATLANTIC RICHFIELD CO. Court of Appeal of Louisiana, First Circuit. May 5

Comprehending the applicability and complexity of federal energy regulation necessitates both a stroll down the tortuous legislative path and a review of legal challenges so numerous as to require the establishment of a Temporary Emergency Court of Appeals.

#### That destroys education---too much to comprehend

Stafford 83 G. William is an Associate at Ross, Marsh and Foster. Review of “Federal Regulation of Energy” by William F. Fox, Jr, http://felj.org/elj/Energy%20Journals/Vol6\_No2\_1985\_Book\_Review2.pdf

It may safely be said that any effort to catalogue "the entire spectrum of federal regulation of energy"' in a single volume certainly requires an enterprising effort on the part of the author. In this regard, Mr. Willam F. Fox, Jr., an Associate Professor of Law at Catholic University of America, has undertaken an examination of a vital aspect of United States policy in Federal Regulation of Energy, published in 1983 with an annual pocket supplement available. Despite the complex nature of the subject of his work, Mr. Fox has prepared a text that provides a significant description of many aspects of federal energy regulatory policy. Initially, the book's title may prove somewhat misleading in that it approaches the subject from an historical perspective focused more on substantive than procedural issues. Although a reader gets the impression that the author at time has tried to do too much -at least from the standpoint of the energy practitioner- the historical and technical insights it offers the student of federal energy relation are valuable. Moreover; its detailed explanations of the methods used to tneet federal energy goals are useful for those in the position of initiating energy policy. This strength notwithstanding, it appears unlikely that an energy law practitioner would benefit significantly from its use, other than from its historical point of view. A general impression is that the author may have been overly ambitious in his effort to undertake the monumental task of evaluating laws, regulations, and significant judicial decisions in a single work.

### 2nc precision

#### Prefer our Anell evidence---he defines ‘restriction on production’---they don’t---key to predictability

Haneman 59 J.A.D. is a justice of the Superior Court of New Jersey, Appellate Division. “Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.¶ HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

### AT: CI – ‘conditions on production’

#### Conditions and restrictions are distinct—key to predictability

Pashman, justice – New Jersey Supreme Court, 3/25/’63

(Morris, “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. LEXIS 479)

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed.

Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added)

## case

### Xt damage pedagogy

**The 1AC claims to deploy a red pedagogy within the debate space – our Tuck evidence delineates two competing variants of this pedagogy –**

**A) Damage pedagogy – this is characteristic of the 1AC – they place a focus on the destructive effects of status quo practices of colonialism – this over-codes indigenous subjectivity into being unable to respond to the overwhelming power of coloniality**

**B) Desire pedagogy – this instead affirms the creative potential of the indigenous subject unencumbered by coloniality and refuses to assign power to the structures they describe – this is the best way to solve**

Pelevin ‘2 **(Victor, Leo Kropywiansky, post-Soviet science fiction author, Buddhist scholar, “Victor Pelevin” Interview, BOMB Magazine, Issue 79 Spring 2002, , LITERATURE** [**http://www.bombsite.com/issues/79/articles/2481**](http://www.bombsite.com/issues/79/articles/2481)**) [m leap]**

VP Since it happened a long time before I started to write, **there’s no way to determine how it affected my writing**. However, the effect of this book was really fantastic. **There’s an expression “out of this world**.” This book was totally out of the Soviet world. **The evil magic of any totalitarian regime is based on its presumed capability to embrace and explain all the phenomena, their entire totality, because explanation is control. Hence the term totalitarian**. So **if there’s a book that takes you out of this totality of things explained and understood, it liberates you because it breaks the continuity of explanation and thus dispels the charms. It allows you to look in a different direction for a moment, but this moment is enough to understand that everything you saw before was a hallucination** (though what you see in this different direction might well be another hallucination). The Master and Margarita was exactly this kind of book and it is very hard to explain its subtle effect to anybody who didn’t live in the USSR. Solzhenitsyn’s books were very anti-Soviet, but they didn’t liberate you, they only made you more enslaved as they explained to which degree you were a slave. The Master and Margarita didn’t even bother to be anti-Soviet yet reading this book would make you free instantly. **It didn’t liberate you from some particular old ideas, but rather from the hypnotism of the entire order of things**.

**This also accesses their pedagogy arguments**

**Tuck 9** – State University of New York

(Eve, “Suspending Damage: A Letter to Communities”, Harvard Educational Review Vol. 79 No. 3 Fall 2009, dml)

Depathologizing studies such as Carney’s resist all-too-easy, one-dimensional narratives of damage in order to expose ongoing structural inequity. Desirebased research frameworks, by contrast, can yield analyses that upend commonly held assumptions of responsibility, cohesiveness, ignorance, and paralysis within dispossessed and disenfranchised communities. Desire, yes, accounts for the loss and despair, but also the hope, the visions, the wisdom of lived lives and communities. Desire is involved with the not yet and, at times, the not anymore. In many desire-based texts (Anzaldúa, 1987; Cheng, 2001; Didion, 2005; Williams, 1992) there is a ghostly, remnant quality to desire, its existence not contained to the body but still derived of the body. Desire is about longing, about a present that is enriched by both the past and the future. It is integral to our humanness. 3

## Cp

### nb

**Only the counterplan enacts a Red Pedagogy that is an effective bulwark against the homogenizing conceptual imperialism of Whitestream America by effectively recognizing the unique relationships each tribal government to a legacy of federal policy-making that directly bears upon the condition of tribal sovereignty today.**

**Grqande '0** Sandy, "American Indian identity and intellectualism: the quest for a new red pedagogy" QUALITATIVE STUDIES IN EDUCATION, 2000, VOL. 13, NO. 4, 343–359

The practice of ethnic fraud is believed to have become so widespread that some Native organizations have felt compelled to devise statements and enact policies standing against its proliferation.\* Though such statistics and their implications need to be taken seriously, communities should be cautious of the ill-effects of identity annexation and note that surveillance tactics ultimately work against those they were designed to protect. Most importantly, **obsessing over the politics of identity acts as a potent distracter from the deeper issues facing American Indian communities and as an effective deterrent to the building of political coalitions against Whitestream hegemony. In short, postmoderism, its relativizing of difference and insistence that, at base, ‘‘we are all the same ’’ has left American Indian scholars and their communities vulnerable to the forces of global capitalism**. Thus, while I recognize the need to distill the cages of essentialism**, it is imperative that other, more valid, measures of legitimacy be constructed so that the distinction of Indigenous peoples as tribal and sovereign nations is not lost. A cost–benefit analysis of essentialist and postmodern discourse indicates the dire need for a revolutionary theory and praxis that addresses the political need for sovereignty** and the socioeconomic urgency for building a transnational agenda. **In these efforts, it is critical that American Indians work to maintain their distinctiveness as tribal peoples of sovereign nations** (construct effective means of border patrolling) **while, at the same time, they move toward the building of political solidarity** and coalition (construct effective means of border crossing). **American Indian scholars can assist in this process, on the local level, by working to bring attention to the pressing concerns of Indian country** and, on a global level, by working toward the development of a common theoretical base.

### a2: permutation - do both

**Our counterplan is functionally and pedagogically competitive -- the removal of restrictions advocated by the 1AC would end the land management for energy production -- that is something that we should be able to test. Our Grande evidence indicates that the one-size-fits-all pedagogy of the affirmative glosses over historical and cultural differences in the tribes which means that only the counterplan offers a way to recognize the heterogeneity within the indigenous colonial experience**

**Third -- there is a substantive difference between the permutation and the counterplan -- ending the Trust Doctrine first eliminates the possible use of the Trust Doctrine to hold the federal government accountable to its treaty obligations as well as place early-stage tribal energy development within the federal budgeting process -- doing both is impossible and only the counterplan solves anti-colonial contestation**

**Pata, '9** (Jackie, Executive Director of the National Congress of American Indians, “Senate Indian Affairs Committee Hearing: Oversight Hearing on Tribal Priorities in the FY2010 Budget,” March 12, 2009 Federal News Service, Lexis/Nexis).

NCAI appreciates the opportunity to provide testimony to the Indian Affairs Committee on the FY 2010 budget. The budget of the United States either does or does not support the self‐determination of tribes. The recommendations in this FY 2010 Indian Country budget request are based on honoring the mutual promises between American Indian and Alaska Native tribal governments and the United States through the federal trust relationship**. The recommendations are also founded on the hope and promise of self‐determination: federal investment in tribal sovereignty and self‐determination is not only fair and just, but it is an investment to close historic disparities in well‐being through the most successful federal Indian policy in U.S. history. We look forward to working with Congress to strengthen tribal governments, improve Indian communities, and ensure the federal trust responsibilities to Indian tribes are honored in the appropriations process.**

### a2: conditionality means you are not red pedagogy

**This argument is nonsensical and has zero evidentiary support -- the idea that indigenous peoples are unable to change their minds, form "even... if" statements or test arguments from multiple positions represents complicity with exactly the sort of stereotyping they criticize and links them worse into our Langton criticism of their attempt to construct an undifferentiated Other**

**This links worse to them -- permutations effectively attempt to agree with our arguments while at the same time they deny them on other flows -- if they win this argument it is an independent reason to vote negative**

**Conditionality is good for reasons of argumentative fairness -- the 2ac has a lot of latitude to re-explain and spin arguments -- we should have that same latitude by collapsing down to different positions in the block -- wasting 1NC time hurts us more than it does them**

**Exploring an argument from multiple viewpoints is vital to true performative pedagogy -- the fact that they fail to do so is a reason that their red pedagogy is worthless since every aff debate is a repetition of an argument the community is already well familiar with -- only multiple tests of argument can create relevant knowledge**

**Medina and Perry '11** Mia, University of British Columbia, Carmen, Indiana University "Embodiment and Performance in Pedagogy Research: Investigating the Possibility of the Body in Curriculum Experience" Journal of Curriculum Theorizing Volume 27, Number 3, 2 http://www.academia.edu/470170/Embodiment\_and\_performance\_in\_pedagogy\_The\_possibility\_of\_the\_body\_in\_curriculum

The body in pedagogy and research is a site of learning, of experiencing, of becoming. Furthermore, the role of the body in research needs to be acknowledged and considered beyondits role as signifier. As we have seen here, **by looking at the relationship between body and space, new perspectives and trajectories in our interpretations of students’ learning moments emerge**. As argued at the beginning of this paper, the body, like any signifier, exists in relation to its environment: therefore, space matters. Acknowledging the role of space can help us open up our understanding of the body as “ being-in-the-world ” in order to move to a fuller perspective onbodies and texts.In mapping people ’ s performances, particularly in relation to embodiment, it was helpfulto reflect back with the participants, considering a specific moment, to talk about how theyconstructed their contributions and who became implicated in the performance. We were less interested in hearing what they felt the performance was about, than what they thought was happening and how that “happening” gets constructed. **The influence of nomadic thought has helped us understand how people function in these dynamics, and the hybrid nature of people’s performative worlds. This is significant as we think of the role of the body in the construction of space and subjectivity, as opposed to simply the representation of such notions**. Participants (in this case, educators) in this classroom-based drama activity, engaged in learning about drama and pedagogy, using both the physical and visual discourses of performance, and the textual discourses of reflection.As we progress in this field, we are looking at ways to analyse bodies in movement as well as when they are static. This challenge involves developing new methods of analysis but also new methods of dissemination. With the proliferation of online journals these challenges have become more realisable**. As we receive information in more and more diverse and dynamic forms, an engagement with ideas around embodiment, a continuation of the inquiry put forwardhere, becomes ever more relevant**.

# 1NR

### AT: Ableism

#### Backlash – Censoring certain words transforms politics into a fight over language rather than the institutions that generate true violence.

**Brown 1** [Wendy Brown, professor at UC-Berkeley, 2001 Politics Out of History, p. 35-36]JFS

“Speech codes kill critique,” Henry Louis Gates remarked in a 1993 essay on hate speech. Although Gates was referring to what happens when hate speech regulations, and the debates about them, usurp the discursive space in which one might have offered a substantive *political* response to bigoted epithets, his point also applies to prohibitions against questioning from within selected political practices or institutions. But turning political questions into moralistic ones—as speech codes of any sort do—not only prohibits certain questions and mandates certain genuflections, it also expresses a profound hostility toward political life insofar as it seeks to preempt argument with a legislative and enforced truth. And the realization of that patently undemocratic desire can only and always convert emancipatory aspirations into reactionary ones. Indeed, it insulates those aspirations from questioning at the very moment that Weberian forces of rationality and bureaucratization are quite likely to be domesticating them from another direction. Here we greet a persistent political paradox: the moralistic defense of critical practices, or of any besieged identity, weakens what it strives to fortify precisely by sequestering those practices from the kind of critical inquiry out of which they were born. Thus Gates might have said, “Speech codes, born of social critique, kill critique.” And, we might add, contemporary identity-based institutions, born of social critique, invariably become conservative as they are forced to essentialize the identity and naturalize the boundaries of what they once grasped as a contingent effect of historically specific social powers. But moralistic reproaches to certain kinds of speech or argument kill critique not only by displacing it with arguments about abstract rights versus identity-bound injuries, but also by configuring political injustice and political righteousness as a problem of remarks, attitude, and speech rather than as a matter of historical, political-economic, and cultural formations of power. Rather than offering analytically substantive accounts of the forces of injustice or injury, they condemn the manifestation of these forces in particular remarks or events. There is, in the inclination to ban (formally or informally) certain utterances and to mandate others, a politics of rhetoric and gesture that itself symptomizes despair over effecting change at more significant levels. As vast quantities of left and liberal attention go to determining what socially marked individuals say, how they are represented, and how many of each kind appear in certain institutions or are appointed to various commissions, the sources that generate racism, poverty, violence against women, and other elements of social injustice remain relatively unarticulated and unaddressed. We are lost as how to address those sources; but rather than examine this loss or disorientation, rather than bear the humiliation of our impotence, we posture as if we were still fighting the big and good fight in our clamor over words and names. Don’t mourn, moralize

#### Thus, permutation – acknowledge oppressiveness of wording but don’t vote for it – Language is reversible – The introduction of injurious language simultaneously introduces the prospect of contestation – Their erasure avoids the prospect of contestation

**Butler 97** (Judith, Excitable Speech, UC-Berkeley, p. 2)

One is not simply fixed by the name that one is called. In being called an injurious name, one is derogated and demeaned. But the name holds out another possibility as well: by being called a name, one is also, paradaoxically, given a certain possibility for social existence, initiated into a temporal life of language that exceeds the prior purposes that animate that call. Thus the injurious address may appear to fix or paralyze the one it hails, but it may also produce an unexpected and enabling response. If to be addressed is to be interpellated, then the offensive call runs the risk of inaugurating a subject in speech who comes to use language to counter the offensive call. When the address is injurious, it works its force upon the one in injures.

#### Giving meaning to language can’t be done in a situation where one person defines words on behalf of others – environments where individuals can concede new ideas about language is key to education – liberation is only possible with a consistent effort, not a strategic discourse

**Freire in ‘70**

(Paulo, Brazilian educator and influential theorist of critical pedagogy*, Pedagogy of the Opressed*, 1970)

If it is in speaking their word that people, by naming the world, transform it dialogue imposes itself as the +way by which they achieve significance as human beings. Dialogue is thus an existential necessity. And since dialogue is the encounter in which the united reflection and action of the dialoguers are addressed to the world which is to be transformed and humanized, this dialogue cannot be reduced to the act of one person’s “depositing” ideas in another; nor can it become a simple exchange of ideas to be “consumed” by the discussants. Nor yet is it a hostile, polemical argument between those who are committed neither to the naming of the world, nor to the search for truth, but rather to the imposition of their own truth. Because dialogue is an encounter among women and men who name the world, it must not be a situation where some name on behalf of others. It is an act of creation; it must not serve as a crafty instrument for the domination of one person by another. The domination implicit in dialogue is that of the world by the dialoguers; it is conquest of the world for the liberation of humankind.

Dialogue cannot exist, however, in the absence of a profound love for the world and for people. The naming of the world, which is an act of creation and re-creation, is not possible if it is not infused with love.[[4]](http://www.marxists.org/subject/education/freire/pedagogy/ch03.htm#n4)Love is at the same time the foundation of dialogue and dialogue itself. It is thus necessarily the task of responsible Subjects and cannot exist in a relation of domination. Domination reveals the pathology of love: sadism in the dominator and masochism in the dominated. Because love is an act of courage, not of fear, love is commitment to others. No matter where the oppressed are found, the act of love is commitment to their cause — the cause of liberation. And this commitment, because it is loving, is dialogical. As an act of bravery, love cannot be sentimental; as an act of freedom, it must not serve as a pretext for manipulation. It must generate other acts of freedom; otherwise, it is not love. Only by abolishing the situation of oppression is it possible to restore the lovewhich that situation made impossible. If I do not love the world — if I do not love life — if I do not love people — I cannot enter into dialogue.

On the other hand, dialogue cannot exist without humility. The naming of the world, through which people constantly re-create that world, cannot be an act of arrogance. Dialogue, as the encounter of those addressed to the common task of learning and acting, is broken if the parties (or one of them) lack humility. How can I dialogue if I always project ignorance onto others and never perceive my own? How can I dialogue if I regard myself as a case apart from others — mere “its” in whom I cannot recognize other “I"s? How can I dialogue if I consider myself a member of the in-group of pure men, the owners of truth and knowledge, for whom all non-members are “these people” or “the great unwashed"? How can I dialogue if I start from the premise that naming the world is the task of an elite and that the presence of the people in history is a sign of deterioration, thus to be avoided? How can I dialogue if I am closed to — and even offended by — the contribution of others? How can I dialogue if I am afraid of being displaced, the mere possibility causing me torment and weakness? Self-sufficiency is incompatible with dialogue. Men and women who lack humility (or have lost it) cannot come to the people, cannot be their partners in naming the world**.** Someone who cannot acknowledge himself to be as mortal as everyone else still has a long way to go before he can reach the point of encounter. At the point of encounter there are neither utter ignoramuses nor perfect sages; there are only people who are attempting, together, to learn more than they now know.

### AT: Perm

**INCLUDING ANY ELEMENT of the political strategy of the 1AC ONLY RISKS short-circuiting the radical potential of the alternative by making protest visible. Invisibility is a precondition for freedom of action**

**The Invisible Committee, ‘7** [an anonymous group of French professors, phd candidates, and intellectuals, in the book “The Coming Insurrection” published by Semiotext(e) (attributed to the [Tarnac Nine](http://en.wikipedia.org/wiki/Tarnac_Nine) by the French police), <http://tarnac9.noblogs.org/gallery/5188/insurrection_english.pdf>]

**Stay invisible.** Put anonymity on the offense. In a demonstration, a unionist pulls the mask off an anonymous protester who had just broken a window: “Assume responsibility for what you’re doing instead of hiding yourself.” To be visible is to be out in the open – that is, above all **to be vulnerable**. When the leftists of all nations continually make their cause more “visible” – whether that of the **homeless**, of **women**, or of **immigrants** – in the hope that it will get taken care of, they’re doing **exactly the opposite** of what they ought to. To not be visible, but rather to turn to our advantage the anonymity we’ve been relegated to, and with conspiracies, nocturnal and/or masked actions, to make it into an unassailable attack-position. The fires of November 2005 offer a model. No leader, no demands, no organization, but words, gestures, complicities. To be nothing socially is **not** a **humiliating** condition, the source of some tragic lack of recognition (to be recognized: but by who?), **but on the contrary is the precondition for maximum freedom of action.** Not signing your name to your crimes, but only attaching some imaginary acronym – people still remember the ephemeral BAFT (Tarterets AntiCop Brigade) – is a way to preserve that freedom. Obviously, one of the regime’s first defensive maneuvers was to create a “suburban slum” subject to treat as the author of the “riots of November 2005.” Just take a look at the ugly mugs of those who are someone in this society if you want help understanding the joy of being no one.

**Visibility is suicide for political resistance – the sphere of political representation is fundamentally closed and functions as an echo chamber to simply reproduce the same failed strategies that allow for the continued consolidation of power among elites. The permutation is inevitably coopted**

**The Invisible Committee, ‘7** [an anonymous group of French professors, phd candidates, and intellectuals, in the book “The Coming Insurrection” published by Semiotext(e) (attributed to the [Tarnac Nine](http://en.wikipedia.org/wiki/Tarnac_Nine) by the French police), <http://tarnac9.noblogs.org/gallery/5188/insurrection_english.pdf>]

Whatever angle you look at it from, **there's no escape from the present.** That's not the least of its virtues. For those who want absolutely to have hope, it knocks down every support. Those who claim to have solutions are proven wrong almost immediately. It's understood that now everything can only go from bad to worse. "There's no future for the future" is the wisdom behind an era that for all its appearances of extreme normalcy has come to have about the consciousness level of the first punks. **The sphere of political representation is closed**. From left to right, it's the same nothingness acting by turns either as the big shots or the virgins, the same sales shelf heads, changing up their discourse according to the latest dispatches from the information service. Those who still vote give one the impression that their only intention is to knock out the polling booths by voting as a pure act of protest. And we've started to understand that in fact it’s only against the vote itself that people go on voting. Nothing we've seen can come up to the heights of the present situation; not by far. By its very silence, the populace seems infinitely more 'grown up' than all those squabbling amongst themselves to govern it do. Any Belleville chibani 1 is wiser in his chats than in all of those puppets’ grand declarations put together. The lid of the social kettle is triple-tight, and the pressure inside won’t stop building. The ghost of Argentina’s Que Se Vayan Todos 2 is seriously starting to haunt the ruling heads. The fires of November 2005 will never cease to cast their shadow on all consciences. Those first joyous fires were the baptism of a whole decade full of promises. The media’s “suburbs vs. the Republic” myth, if it’s not inefficient, is certainly not true. The fatherland was ablaze all the way to downtown everywhere, with fires that were methodically snuffed out. Whole streets went up in flames of solidarity in Barcelona and no one but the people who lived there even found out about it. And the country hasn’t stopped burning since. Among the accused we find diverse profiles, without much in common besides a hatred for existing society; not united by class, race, or even by neighborhood. What was new wasn’t the “suburban revolt,” since that was already happening in the 80s, but the rupture with its established forms. The assailants weren’t listening to anybody at all anymore, not their big brothers, not the local associations assigned to help return things to normal. No “SOS Racism which only fatigue, falsification, and media omertà 4 could feign putting an end. The whole series of nocturnal strikes, anonymous attacks, wordless destruction, had the merit of busting wide open the split between politics and the political. No one can honestly deny the obvious weight of this assault which **made no demands**, and had no message other than a threat which had nothing to do with politics. But you’d have to be blind not to see what is **purely political** about this **resolute negation of politics,** and you’d certainly have to know absolutely nothing about the autonomous youth movements of the last 30 years. Like abandoned children we burned the first baby toys of a society that deserves no more respect than the monuments of Paris did at the end of Bloody Week 5 -- and knows it. There’s **no social solution** to the present situation. First off because the vague aggregate of social groupings, institutions, and individual bubbles that we designate by the anti-phrase “society” has no substance, because there’s no language left to express common experiences with. It took a half-century of fighting by the Lumières to thaw out the possibility of a French Revolution, and a century of fighting by work to give birth to the fearful “Welfare State.” Struggles creating the language in which the new order expresses itself. Nothing like today. Europe is now a de-monied continent that sneaks off to make a run to the Lidl 6 and has to fly with the low-cost airlines to be able to keep on flying. **None of the “problems” formulated in the social language are resolvable**. The “retirement pensions issue,” the issues of “precariousness,” the “youth” and their “violence” can only be kept in suspense as long as the ever more surprising “acting out” they thinly cover gets managed away police-like. No one’s going to be happy to see old people being wiped out at a knockdown price, abandoned by their own and with nothing to say. And those who’ve found less humiliation and more benefit in a life of crime than in sweeping floors will not give up their weapons, and prison won’t make them love society. The rage to enjoy of the hordes of the retired will not take the somber cuts to their monthly income on an empty stomach, and will get only too excited about the refusal to work among a large sector of the youth. And to conclude, no guaranteed income granted the day after a quasi-uprising will lay the foundations for a new New Deal, a new pact, and a new peace. The social sentiment is rather **too evaporated** for all that. As their solution, they’ll just never stop putting on the pressure, to make sure nothing happens, and with it we’ll have more and more police chases all over the neighborhood. The drone that even according to the police indeed did fly over Seine-Saint-Denis 7 last July 14 th is a picture of the future in much more straightforward colors than all the hazy images we get from the humanists. That they took the time to clarify that it was not armed shows pretty clearly the kind of road we’re headed down. The country is going to be cut up into ever more air-tight zones. Highways built along the border of the “sensitive neighborhoods” already form walls that are invisible and yet able to cut them off from the private subdivisions. Whatever good patriotic souls may think about it, the management of neighborhoods “by community” is most effective just by its notoriety. The purely metropolitan portions of the country, the main downtowns, lead their luxurious lives in an ever more calculating, ever more sophisticated, ever more shimmering deconstruction. They light up the whole planet with their whorehouse red lights, while the BAC 8 and the private security companies’ -- read: militias’ -- patrols multiply infinitely, all the while benefiting from being able to hide behind an ever more disrespectful judicial front. The catch-22 of the present, though perceptible everywhere, is denied everywhere. Never have so many psychologists, sociologists, and literary people devoted themselves to it, each with their own special jargon, and each with their own specially missing solution. It’s enough just to listen to the songs that come out these days, the trifling “new French music,” where the petty-bourgeoisie dissects the states of its soul and the K’1Fry mafia 9 makes its declarations of war, to know that this coexistence will come to an end soon and that a decision is about to be made. This book is signed in the name of an imaginary collective. Its editors are not its authors. They are merely content to do a little clean-up of what’s scattered around the era’s common areas, around the murmurings at bar-tables, behind closed bedroom doors. They’ve only determined a few necessary truths, whose universal repression fills up the psychiatric hospitals and the painful gazes. They’ve made themselves scribes of the situation. It’s the privilege of radical circumstances that justice leads them quite logically to revolution. It’s enough just to say what we can see and not avoid the conclusions to be drawn from it.

**WE ARE POLITICS YOU ARE POLICING – the logic of your system is broken, and we must escape it lest we fall back into the same traps of reinforcing the minoritization of the Muslim Brotherhood within a majoritarian framework that forces them to consent to the democratic will of a xenophobic US policy community who will appropriate their consent for oppression. ONLY a politics which refuses the trap of political representation has the possibility of emancipation -- this is a prior question and STARTING POINT is key**

**Tsianos et al. ‘8** Vassilis, teaches sociology at the University of Hamburg, Germany, Dimitris Papadopoulos teaches social theory at Cardiff University, Niamh Stephenson teaches social science at the University of New South Wales. “Escape Routes: Control and Subversion in the 21st Century” Pluto Press

**To escape policing and start doing politics necessitates dis-identi- fication - the refusal of assigned, proper places for participation in society.** As indicated earlier, **escape functions** not as a form of exile, nor as mere opposition or protest, but **as an interval which interrupts everyday policing** (Ranciere, 1998). **Political disputes - as distinct from disputes over policing - are not concerned with rights or repre­sentation or with the construction of a majoritarian position in the political arena. They are not even disputes over the terms of inclusion or the features of a minority. They occur prior to inclusion,** beyond the terms of the double-R axiom, **beyond the majority-minority duality.** They are disputes over the existence of those who have no part (and in this sense they are disputes about justice in a Benjaminian sense of the word, Benjamin, 1996a). **Politics arises from the emergence of the miscounted, the imperceptible, those who have no place within the normalising organisation of the social realm. The refusal of represen­tation is a way of introducing the part which is outside of policing, which is not a part of community, which is neither a minority nor intends to be included within the majority. Outside politics is the way to escape the controlling and repressive force of** contemporary politics (that is of **contemporary policing); or else it is a way to change our senses, our habits, our practices in order to experiment together with those who have no part, instead of attempting to include them into the current regime of control. This emergence fractures normalising, police logic. It refigures the perceptible, not so that others can finally recognise one's proper place in the social order, but to make evident the incommensurability of worlds, the incommensurability of an existing distribution of bodies and subjectivities with the principle of equality.** **Politics is a refusal of representation. Politics happens beyond, before representation.** Outside politics is the materialisation of the attempt to occupy this space outside the controlling force of becoming majoritarian through the process of representation. **If we return to our initial question of how people contest control, then we can say that when regimes of control encounter escape they instigate processes of naming and representation. They attempt to reinsert escaping subjectivities into the subject-form. Outside politics arises as people attempt to evade the imposition of control through their subsumption into the subject-form. This is not an attempt simply to move against or to negate representation.** Nor is it a matter of introducing pure potential and imagination in reaction to the constraining power of control. **Rather, escape is a constructive and creative movement - it is a literal, material, embodied movement towards something which cannot be named, towards something which is fictional.** Escape is simultaneously in the heart of social transformation and outside of it. Escape is always here because it is non-literal, witty and hopeful.

### Impact

#### Their arguments artificially construct us as dependent on the necessity of their advocacy – ultimately depoliticizes us

**Hershock '99**, East-West Center, 1999.  [“Changing the way society changes”, *Journal of Buddhist Ethics*, 6, 154; <http://jbe.gold.ac.uk/6/hershock991.html>]

The trouble is that, like other technologies biased toward control, the more successful legislation becomes, the more it renders itself necessary. Because it aims at rigorous definition -- at establishing hard boundaries or limits -- crossing the threshold of legislative utility means creating conditions under which the definition of freedom becomes so complex as to be self-defeating. Taken to its logical end, legally-biased social activism is thus liable to effect an infinite density of protocols for maintaining autonomy, generating a matrix of limits on discrimination that would finally be conducive to what might be called "axiological entropy" -- a state in which movement in any direction is equally unobstructed *and* empty of dramatic potential. Contrary to expectations, complete "freedom of choice" would not mean the elimination of all impediments to meaningful improvisation, but rather an erasure of the latter's conditions of possibility. The effectiveness and efficiency of "hard," control-biased technologies depend on our using natural laws -- horizons of possibility -- as fulcrums for leveraging or dictating changes in the structure of our circumstances. Unlike improvised contributions to changes taking place in our situation, dictating the terms of change effectively silences our situational partners. Technological authority thus renders our circumstances mute and justifies ignoring the contributions that might be made by the seasons or the spiritual force of the mountains to the meaning -- the direction of movement -- of our ongoing patterns of interdependence. With the "perfection" of technically-mediated control, our wills would know no limit. We would be as gods, existing with no imperatives, no external compulsions, and no priorities. We would have no reason to do one thing first or hold one thing, and not another, as most sacred or dear. Such "perfection" is, perhaps, as fabulous and unattainable as it is finally depressing. Yet the vast energies of global capital are committed to moving in its direction, for the most part quite uncritically. The consequences -- as revealed in the desecration and impoverishing of both 'external' and 'internal' wilderness (for instance, the rainforests and our imaginations) -- are every day more evident. The critical question we must answer is whether the "soft" technologies of legally-biased and controlled social change commit us to an equivalent impoverishment and desecration. The analogy between the dependence of technological progress on natural laws and that of social activism on societal laws is by no means perfect. Except among a scattering of philosophers and historians of science, for example, the laws of nature are not viewed as changeable artifacts of human culture. But for present purposes, the analogy need only focus our attention on the way legal institutions -- like natural laws -- do not prescriptively determine the shape of all things to come, but rather establish generic limits for what relationships or states of affairs are factually admissible. Laws that guarantee certain "freedoms" necessarily also prohibit others. Without the fulcrums of *unallowable* acts, the work of changing a society would remain as purely idealistic as using wishful thinking to move mountains. Changing legal institutions at once forces and enforces societal reform. By affirming and safeguarding those freedoms or modes of autonomy that have come to be seen as generically essential to 'being human', a legally-biased social activism cannot avoid selectively limiting the ways we engage with one another. The absence of coercion may be a basic aim of social activism, but if our autonomy is to be guaranteed both fair and just, its basic strategy must be one of establishing non-negotiable constraints on how we co-exist. Social activism is thus in the business of striking structural compromises between its ends and its means -- between particular freedoms and general equality, and between practical autonomy and legal anonymity. By shifting the locus of freedoms from unique persons to generic citizens -- and in substantial sympathy with both the Platonic renunciation of particularity and the scientific discounting of the exceptional and extraordinary -- social activist methodology promotes dramatic anonymity in order to universally realize the operation of 'blind justice'. Much as hard technologies of control silence the contributions of wilderness and turn us away from the rewards of a truly joint improvisation of order, the process of social activism reduces the relevance of the always unique and unprecedented terrain of our interdependence. This is no small loss. The institutions that guarantee our generic independence effectively pave over those vernacular relationships through which our own contributory virtuosity might be developed and shared -- relationships out of which the exceptional meaning of our immediate situation might be continuously realized. In contrast with Buddhist emptiness -- a practice that entails attending to the mutual relevance of all things -- both the aims and strategies of social activism are conducive to an evacuation of the conditions of dramatic virtuosity, a societal depletion of our resources for meaningfully improvised and liberating intimacy with all things.

### Alt Solves

#### Grande specifically dismisses Elder indigenous intellectuals – who solve sufficiently, but without a tie to critical theory. Proves Alt can solve.

**Beauline-Sterling 12** [Rebecca Beauline-Sterling is an MA student at York University. She self-describes as “an Indigenous woman negotiating her way through academia”. She is also a contributor to NeoAmericanist: A Review of¶ Red Pedagogy: Native American Social and Political Thought by Sandy Grande – Originally published in the Vol. 6 no. 1 (Spring/Summer 2012) issue. http://www.neoamericanist.org/review/red-pedagogy]

Grande calls for an expansion of “the intellectual borders of [I]ndigenous intellectualism” (p. 3). I hope that this does not mean that Indigenous intellectuals – our Elders, knowledge keepers and emerging leaders existing primarily outside of the university – are insufficient in their “intellectualism” and must engage with critical theory as Grande has done in this text. Certainly it is important that Indigenous people create and find spaces within the academy to formulate and share knowledge grounded in their own world-views. Most of us will have no choice but to engage with whitestream theories, though some of us will find ways to work through or around them. Universities are important and difficult places for that reason. In the same way, Grande’s text is an incredible contribution. But academia, critical theory and the university are not the only means by which we can remember, revitalize and share our knowledges for the purposes of decolonization, a promise of “the good life” for generations to come. ¶ We must be careful in how we relate to our own people, how in our own theorizing we ostensibly place value (or not) on the rich knowledge sometimes hidden in our families and communities. How we write reflects how we relate, just as who we write for reflects who we consider as part of that relation.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
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