## \*\*\* 1NC

### 1NC—Topicality

#### FIRST OFF IS TOPICALITY—

#### Our interpretation is that debate is a game which should revolve around the topic. Our interpretation is that the affirmative should defend some type of statutory or judicial restrictions on the war powers authority of the President of the U.S.

#### “USFG should” means the debate is about a policy established by governmental means

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

The Proposition of Policy: Urging Future Action

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

#### B. Our interpretation is best—

#### 1. Predictability—ignoring the resolution opens up an infinite number of topics—this undermines our ability to have in-depth research on their arguments destroying the value of debate.

#### 2. Ground—the resolution exists to create fair division of aff and neg ground—any alternative framework allows the aff to pick a moral high ground that destroys neg offense.

#### Prefer specificity—simulation about war powers is uniquely empowering

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

2. Factual Chaos and Uncertainty¶ One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often **under-taught** in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a **broader set of tools,** such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to **swiftly and efficiently engage** in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. **Deeply humanistic theories underlie this approach**. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. **It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions** related to professional responsibility **that will confront them** in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet **it is vital for their future success to give students the ability to** create conditions of learning.

#### Our argument is a *deliberative* strategy to reach consensus about the best way to debate. Our argument is not that “the aff has violated a rule and are not allowed to debate this way”—instead we say “we think the model of debate you are proposing is not productive and a model that privileges predictable advocacies would create superior debate.” We then engage in a process of debate in order to decide whether the affirmative’s or negative’s version of debate would be better.

### K 1NC

#### The 1AC’s ontological critique of civil society and modern democracy argue that the Slave and the Black cannot be Human. That because humanity, freedom, and autonomy are qualities “built on the backs of black subjectivity”, that we should trash modern humanist strategies of expanding the circle of Humanity. The ontological form of the aff’s critique asks questions about Being—what it is and what it is possible to be. They say it is impossible to be a Black subject or a human without a slave.

#### We criticize the absoluteness of the ontological critique of the Human, the modern, and the Slave. Their absolute ontological division between Master and slave or human and slave does violence to slaves and dooms our political strategy to one of unsuccessful revolutionary violence.

#### A) Modernity and civil society

#### Our historical reading of the relationship between slavery and civil society and humanity honors the legacy of slave revolution. The Haitian revolution contained and expanded ideas trafficked in civil society of universal humanity.

Dash 10—J. Michael Dash, Africana Studies French, Social and Cultural Analysis @ NYU [Book Review: Universal Emancipation: The Haitian Revolution and The Radical Enlightenment *Slavery & Abolition* 31 (1) p. 142-143]

Universal Emancipation argues against the French appropriation of universalism as the exclusive product of the revolution of 1789. From the broad focus of Nesbitt’s narrative, the age of revolution becomes a truly global phenomenon and furthermore, the Haitian revolution surpassed that of the metropole in realising the goal of universal freedom. This is not a new story. Michel Rolph Trouillot, for instance, argued in 1995 ‘The Haitian revolution was the ultimate test to the universalist pretensions of both the French and the American revolutions’.1 Later, for another major scholar Laurent Dubois, the Haitian Revolution ‘represented the pinnacle of Enlightenment universalism’.2 Furthermore, C.L.R. James in the Black Jacobins reminded us that the revolutionary events in France’s colony would take the French Revolution further than was ever intended. The slaves of St Domingue were left out of the universalist claims of 1789 but they used its ideals to press for their freedom. As James put it, the slaves ‘had heard of the revolution and had construed it in their own image . . . they had caught the spirit of the thing. Liberty, equality, Fraternity’.3 Nesbitt asserts that there is nothing surprising about the fact that the slaves caught ‘the spirit of the thing’ since they ‘needed no interpreter’ but the fact that they were ‘on the so-called periphery of the modern world-system in 1791’ meant that the ‘truth of 1789 could be most fully comprehended’ (36). Furthermore, the Haitian revolution ‘serves to disprove the notion that there was any single ‘Enlightenment project’ but ‘a variegated complex of multiple “enlightenments”’ (20). Consequently, the former slaves of St Domingue were not ‘passively parroting ideas imported from France’ but ‘autonomously exercised their faculty of judgement in order to illuminate the universal implications of the natural rights tradition in ways unthinkable for the North American or Parisian political class’ (60). In rejecting a ‘linear filiation’ between Enlightened Europe and savage colony, Nesbitt scrambles centres and peripheries and challenges the silencing of the Haitian Revolution by asserting that ‘it succeeded in displacing the center of modernity . . . not only for a small peripheral island but for the entire world system’ (131). The revolution is rendered ‘thinkable’ through an intricate discussion of the universally operative nature of Spinoza’s concept of natural law and Kantian universalism, which meant human beings were free ‘to define themselves in their differential singularity’ (101). For Nesbitt the abstract concept of freedom or liberte emanating from Europe was reinterpreted by the ex-slaves of St Domingue as libete and formed the basis for the creation of a self-regulating egalitarian bossale state. In this regard, he ventures where historians of the Haitian revolution fear to tread. For historians, the impact of ideas on the revolution is hard to quantify and is therefore underplayed. He speculates that political awareness came through such ‘transnational Atlantic sites’ as waterfronts and marketplaces. The slaves then transformed this Enlightenment-derived liberty into the idea of absolute freedom for post-plantation St Domingue. Since Universal Emancipation depends on no new research into the circumstances of the Haitian revolution, Nesbitt depends heavily on the work of Carolyn Fick and the late Gerard Barthelemy to make his case for the importance popular insurgency in the making of the revolution. In their refusal of large-scale agrarian capitalism, the exslaves produced an egalitarian peasant system that could harmonise social relations without recourse to government, police, or legal code. He follows Bathelemy in citing social strategies, such as the refusal of technological innovation, the subdivision of property from generation to generation, and active caco resistance to the outside world that supported bossale egalitarianism. Haitian peasant society is presented as a maroon enclave beyond the reach of the liberal individualism and boundless consumerism of the West. This seems a puzzling departure from both Eugene Genovese and Michel-Rolph Trouillot who are cited at other times with approval. Genovese argued in From Rebellion to Revolution that the great achievement of the Haitian revolution was the attempt to create a modern black state and not continue the restorationist practices of marronage.4 Similarly, Trouillot has argued that those who insist on the isolation of the moun andeyo or the ‘dualist sociologists’ have ‘missed the depth of penetration of urban civil society’ by the peasantry.5 In both instances, Haitian peasants are seen to be part of a global process and not the world’s indigestible other. The modern heroes of Nesbitt’s spirited narrative of mass-based revolution are the agronomist turned broadcaster Jean Dominique and the priest turned politician Jean Bertrand Aristide. In both instances, heroic popular resistance masks the much more complex reality of the spread of modern technology, of cassettes and transistor radios in rural Haiti, and the doctrine of liberation theology spread by the grassroots church or ti legliz. The idealising of strategic marronnage and stateless egalitarianism in Haiti is aimed ultimately at ‘all who believe that the coming shift from unlimited consumerism to an ethics of global responsibility will require fundamental changes to the sociopolitical system that has brought us to the brink of disaster’ (171). It might have been more useful to think of the New World context and not the new World order. Oddly enough there is no reference, except for a fleeting allusion to Brazilian music at the end, to other instances of the radicalisation of the idea of the rights of man in the hemisphere. What of Guadeloupe, for instance, which had a parallel history at the turn of the century? Do other peasant societies in the Caribbean share Haiti’s bossale culture? Trouillot claims to have learned more about the Haitian peasantry after ‘fifteen months doing fieldwork on the peasantry of Dominica’ than he did ‘during eighteen years in Port-au-Prince.’ 6 What Nick Nesbitt does very persuasively is present the Haitian revolution as the most radical revolution of its time. He is less convincing in enlisting the Haitian moun andeyo in his campaign against global capitalism.

#### The slave was always-already a participant in modernity. They theorize the slave as a total object—we recognize the slave as both object and subject of modernity.

Trouillot 3—Michael-Rolph Trouillot, Anthropology @ Chicago [*Global Transformations* p. 41-43]

Differently Modern: The Caribbean as Alter-Native I have argued so far that modernity is structurally plural inasmuch as it requires a heterology, an Other outside of itself. I would like to argue now that the modern is also historically plural because it always requires an Other from within, an otherwise modern created between the jaws of modernity and modernization. That plurality is best perceived if we keep modernity and modernization as distinct yet related groups of phenomena with the understanding that the power unleashed through modernization is a condition of possibility of modernity itself. I will draw on the sociohistorical experience of the Caribbean region to make that point. Eric Wolf once wrote in passing, but with his usual depth, that the Caribbean is "eminently a world area in which modernity first deployed its powers and simultaneously revealed the contradictions that give it birth." Wolf's words echo the work of Sidney W. Mintz (1966, 1971b, 1978, 1983, 1996, 1998) who has long insisted that the Caribbean has been modern since its early incorporation into various North Atlantic empires. Teasing out Wolf's comments and drawing from Mintz's work, I want to sketch some of the contradictions from the Caribbean record to flesh out a composite picture of what I mean by the Otherwise Modern. Behold the sugar islands from the peak of Barbados's career to Cuba's lead in the relay race-after Jamaica and Saint-Domingue, from roughly the 1690s to the 1860s. At first glance, Caribbean labor relations under slavery offer an image of homogenizing power. Slaves were interchangeable, especially in the sugar fields that consumed most of the labor force, victims of the most "depersonalizing" side of modernization (Mintz 1966). Yet as we look closer, a few figures emerge that suggest the limits of that homogeneity. Chief among them is the slave striker, who helped decide when the boiling of the cane juices had reached the exact point when the liquid could be transferred from one vessel to the next.2 Some planters tried to identify that moment by using complex thermometers. But since the right moment depended on temperature, the intensity of the fire, the viscosity of the juice, the quality of the original cane, and its state at the time of cutting, other planters thought that a good striker was much more valuable than the most complex technology. The slave who acquired such skills would be labeled or sold as "a striker." Away from the sugar cane, especially on the smaller estates that produced coffee, work was often distributed by task, allowing individual slaves at times to exceed their quota and gain additional remuneration. The point is not that plantation slavery allowed individual slaves much room to maneuver in the labor process: it did not. Nor is the point to conjure images of sublime resistance. Rather, Caribbean history gives us various glimpses at the production of a modern self-a self producing itself through a particular relation to material production, even under the harshest possible conditions. For better and for worse, a sugar striker was a modern identity, just as was being a slave violinist, a slave baker or a slave midwife (Abrahams 1992:126-30; Debien 1974; Higman 1984). That modern self takes firmer contours when we consider the provision grounds of slavery. Mintz (1978) has long insisted on the sociocultural relevance of these provision grounds, small plots on the margins of the plantations, land unfit for major export crops in which slaves were allowed to grow their own crops and raise animals. Given the high price of imported food, the availability of unused lands, and the fact that slaves worked on these plots in their own free time, these provision grounds were in fact an indirect subsidy to the masters, lessening their participation in the reproduction of the labor force. Yet Mintz and others-including myself-have noted that what started as an economic bonus for planters turned out to be a field of opportunities for individual slaves. I will not repeat all those arguments here (Trouillot 1988, 1996, 1998). Through provision grounds, slaves learned the management of capital and the planning of family production for individual purposes. How much to plant of a particular food crop and where, how much of the surplus to sell in the local market, and what to do with the profit involved decisions that required an assessment of each individual's placement within the household. The provision grounds can be read not only as material fields used to enhance slaves' physical and legal conditions-including at the time the purchase of one's freedom-they can also be read as symbolic fields for the production of individual selves by way of the production of material goods. Such individual purposes often found their realization in colonial slave markets, where slaves-especially female slaves-traded their goods for the cash that would turn them into consumers. One can only guess at the number of decisions that went into these practices, how they fed into a slave's habitus, or how they impacted on gender roles then and now in the Caribbean. Individual purposes also realized themselves through patterns of consumption, from the elaborate dresses of mulatto women, to the unique foulard (headscarf) meant to distinguish one slave woman from another. The number of ordinances regulating the clothing of nonwhites, both free and enslaved, throughout the Caribbean in the days of slavery is simply amazing. Their degree of details-e.g., "with no silk, gilding, ornamentation or lace unless these latter be of very low value" (Fouchard 1981 [1972] :43) is equally stunning. Yet stunning also was the tenacity of slaves who circumvented these regulations and used clothing as an individual signature. Moreau de St-Mery, the most acute observer of Saint-Domingue's daily life, writes: It is hard to believe the height to which a slave woman's expenses might rise .. . In a number of work gangs the same slave who wielded tools or swung the hoe duringthe whole week dresses up to attend church on Sunday or to go to market; only with difficulty would they be recognized under their fancy garb. The metamorphosis is even more dramatic in the slave woman who has donned a muslin skirt and Paliacate or Madras kerchief. .. (in Fouchard 1981 [1972]:47). Moreau's remarks echo numerous observations by visitors and residents of the Americas throughout slavery's long career. If modernity is also the production of individual selves through patterns of production and consumption, Caribbean slaves were modern, having internalized ideals of individual betterment through work, ownership, and personal identification with particular commodities. It was a strained and harsh modernity, to be sure. Otherwise modern they were; yet still undoubtedly modern by that definition.

#### The Haitian revolution demonstrates the danger of the break with modernity. The binary ontology of “*for or against*” results in genocidal barbarism. They link to their own offense against modernity and civil society because the idea of a *complete break* and *total autonomy* is the most modern form of politics.

Miller 10—Paul Miller, French & Italian @ Vanderbilt [*Elusive Origins: The Enlightenment in the Modern Caribbean Imagination* p. 76-79]

The necessity of rupture with authority, the Enlightenment’s categorical imperative, is not merely a question of a psychological condition, an extended childhood or immaturity (as Kant would have it), but rather involves concrete material conditions resulting in privation once the break is complete. State otherwise, Kant places the onus of the rupture between master and slave squarely on the shoulders of the latter, when in fact it is clear that the master will go to great lengths to maintain the slave in a state of bondage. Toussaint knew that Saint Domingue society needed French technical know-how and capital to rebuild the island’s agricultural infrastructure, which had been devastated by a war waged with scorched-earth tactics, and went to lengths to conciliate the French. The very contradictions of Enlightenment are here condensed into a single historical moment that James captures with great timing and clarity. And yet almost immediately after outlining this situation, James elaborates his notion of the tragic, which characterizes Toussaint the individual rather than the historical choice he was forced to make. The contextualization of this “tragic individual” seems incongruous: “But in a deeper sense the life and death are not truly tragic. Prometheus, Hamlet, Lear, Phedre, Ahab, assert what may be the permanent impulses of the human condition against the claims of organized society” (291). James begins by outlining Toussaint’s historical dilemma, which illustrates precisely what the Enlightenment meant for the Caribbean. And yet this particular framework is almost immediately abandoned in favor of Toussaint the individual, who is compared and contrasted with the tragic figures of the Western literature—certainly a disconcerting analogy. James is no doubt correct in warning the reader that is would be an error to merely view Toussaint as an isolated figure in a remote West Indian island-and yet his remedy to this error, placing Toussaint squarely within the tradition of Western tragic figures is also suspect. James’s gesture does not at a stroke merely do away with the center/periphery dynamic, but rather his integrative comparison tends to put forth the center *as* the whole, thereby strengthening its pretension to universality. Edward W. Said praises James, and specifically within the context of *The Black Jacobins*, for his capacity to critique Western imperialism while at the same time disassociating this critique from the appreciation of the West’s “cultural achievements.” But Said overlooks that this disassociation between culture and politics is not only one of the principal dynamics lurking beneath the text of *The Black Jacobins*; in a sense, it describes the very structure of the “flaw” responsible for Toussaint’s downfall. Toussaint is described as full of admiration for the aristocratic manners and gestures of a white Frenchmen: “Struck by the carriage and bearing of a French officer, he said to those around him, ‘My sons will be like that’” (246). Should we characterize this deferential attitude toward the French “carriage and bearing” as a reaction to imperialism or to cultural achievements? James, in his use often cryptic or paradoxical language, makes explicit Toussaint’s double-bind: that to be enlightened entails a renunciation of the Enlightenment, requires in a fact a kind of barbarism. And yet James does not seem to embrace fully this dialectic, opting instead for a more literary and traditional sense of tragedy as his signifying model. Toussaint’s final allegiance was to revolutionary France and thus to the Enlightenment, and this, in James’s eyes, is his saving grace, his “condemnation and his atonement.” James’s reading of Dessalines, the Haitian leader who succeeded Toussaint, places into perspective Toussaint’s dilemma and clarifies the author’s affinities: “If Dessalines could see so clearly and simply, it was because the ties that bound this uneducated soldier to French civilization were of the slenderest. He saw what was under his nose so well because he saw no further. Toussaint’s failure was the failure of enlightenment, not of darkness” (288). Dessalines, then, serves as Toussaint’s foil or antithesis and does not, as Said describes James, value Western cultural achievements. Whereas James repeatedly emphasizes Toussaint’s literacy and even canonizes him among the great writers of the Enlightenment, Dessalines is described as bearing the marks of the whip on his body, the scars amounting to a kind of epithet in lieu of literacy. Dessalines had no allegiance to the tenets of the French Reovlution, was illiterate, and therefore, since his ties to “civilization were the slenderest,” was able to muster the resolve necessary to declare independence while Toussaint vacillated: “[T]his old slave, with the marks of the whip below his general’s uniform, was fast coming to the conclusion at which Toussaint still boggled. He would declare the island independent and finish with France” (301). Though in celebrated Caribbean book George Lamming compares Toussaint to Caliban—“C.L.R. James shows us Caliban as Prospero had never known him: a slave who was a great soldier in battle, an incomparable administrator in public affairs, full of paradox but never without compassion, a humane leader of men” –in my view there is no question that in James’s depiction, Dessalines is Caliban to Toussaint’s Ariel. And yet, paradoxically, his resolve to declare Haiti independent qualifies him to a certain extent as more enlightened than Toussaint, more eager to throw off the yoke of arbitrary and tyrannical authority**.**  Dessalines merely embodies the same paradox as Toussaint, though now inverted: emancipation achieved though barbarous autonomy rather than civilized tutelage. Dessalines also performs one of the most revolutionary symbolic and enlightened gestures in the history of the struggle for independence in the Americas. Eager to differentiate the revolutionary army from the French enemy, Dessalines designs a new flag by removing the white from the French tricouleur. And yet this gesture also has its chilling historical counterpart. One of his first orders of business as emperor of the new nation is to exterminate the remaining whites in Haiti, a massacre that James goes to great lengths to explain, though not to justify. In fact, James places the cause of Haiti’s suffering over the next two centuries squarely on this massacre: As it was Haiti suffered terribly from the resulting isolation. Whites were banished from Haiti for generations, and the unfortunate country, ruined economically, its population lacking in social culture, had its inevitable difficulties doubled by this massacre. That the new nation survived at all is forever to its credit for if the Haitians thought that imperialism was finished with them they were mistaken. “Its population lacking in social culture” sounds like a phrase that could have been uttered by Toussaint himself. If James asserts that Toussaint’s failure was one of enlightenment, not of darkness then we might surmise that the inverse formula is applicable to Dessalines, that is to say, that his success was one of darkness and not of enlightenment. Toussaint (Ariel), as a result of being too enlightened, is doomed to unelightenment, which by definition is barbarism itself. Dessalines (Caliban), overly barbaric (in James’s view), is able to make a clean break with authority, and therefore achieves enlightenment. James, however, as I have pointed out, does not embrace this Caliban/Ariel dialectic. Rather, he reasserts in the 1963 appendix, “From Toussaint L’Ouverture to Fidel Castro”: “Toussaint could see no road for the Haitian economy but the sugar plantation. Dessalines was a barbarian” (393).

#### B) Humanity

#### We should not abandon the category of universal humanity. Anti-slavery abolition and its intersections with critiques of gendered citizenship drew on universal humanity as a source of solidarity.

Gilroy 9—Paul Gilroy, Anthony Giddens Prf. of Social Theory @ London School of Economics [*Race and the Right to be Human* p. 6-11]

At times, the movement against slavery was extended into a comprehensive assault on racial hierarchy which invoked an idea of universal humanity (by no means always religious in origin) as well as an idea of inalienable rights1. That alternative provides my point of departure this evening. It was articulated in distinctive accents which were neither bourgeois nor liberal. It requires us to follow a detour through colonial history which has come under revisionist pressure as a result of recent attempts to revive imperial relations. That dubious development has made it imperative to place the west’s avowal of modern, liberal, humanistic and humanitarian ideas in the context of the formative encounter with native peoples whose moral personality and humanity had long been placed in doubt. The approach I favour requires seeing not just how all-conquering liberal sensibilities evolved unevenly into considerations of human rights but how a range of disputes over and around the idea of universal humanity—its origins, its hierarchies and varying moral and juridical dispositions—were connected to struggles over race, slavery, colonial and imperial rule, and how they in turn produced positions which would later be narrated and claimed as liberal. This agonistic enterprise necessitates a different genealogy for human rights than is conventional. It begins with the history of conquest and European expansion and must be able to encompass the evolving debates over how colonies and slave plantation systems were to be administered4. At its most basic, it must incorporate the contending voices of Las Casas and Sepulveda. It should be able to analyze the contrapuntality of a text like Thomas Hobbes’ Leviathan with the introduction of England’s Navigation Acts and illuminate the relationship between John Locke’s insightful advocacy on behalf of an emergent bourgeoisie and his commitment to the colonial improvers’ doctrine of the vacuum domicilium. This counter-narrative would certainly include the Treaty of Utrecht and the Assiento. It could terminate uneasily in the contemporary debates about torture and rendition or in discussion about the institutionalisation of rightslessness which floods into my mind each time I navigate the halls of the Schiphol complex. Focusing on that combination of progress and catastrophe through a postcolonial lens yields a view of what would become the liberal tradition moving on from its seventeenth century origins in a style of thought that was partly formed by and readily adapted to colonial conditions5. This helps to explain how an obstinate attachment to raciology recurs. Struggles against racial hierarchy have contributed directly and consistently to challenging conceptions of the human. They valorised forms of humanity that were not amenable to colour-coded hierarchy and, in complicating approaches to human sameness, they refused the full, obvious force of natural differences even when they were articulated together with sex and gender. These struggles shaped philosophical perspectives on the fragile universals that had come into focus initially on the insurgent edges of colonial contact zones where the violence of racialized statecraft was repudiated and cosmopolitan varieties of care took shape unexpectedly across the boundaries of culture, civilization, language and technology6. One early critique of the humanitarian language and tacit racialization of the enlightenment ideal had been delivered by the militant abolitionist David Walker in his 1830 commentary on the US constitution: Appeal to the Coloured Citizens of the World, but in particular, and very expressly, to those of the United States of America. His famous text supplies a useful symbolic, starting point for generating the new genealogy we require. Erecting secular demands over the foundation of a revolutionary, Pauline Christianity, Walker made the problem of black humanity and related issues of rights—political and human—intrinsic to his insubordinate conception of world citizenship. His plea that blacks be recognized as belonging to “the human family” was combined with a view of their natural rights as being wrongfully confiscated in the condition of slavery which could, as a result of their exclusion, be justifiably overthrown7. His address was primarily offered to the coloured citizens of the world but the tactical reduction of that universalist argument to the parochial problem of joining the US as full citizens soon followed. The consequences of that change of scale can be readily seen in the humanistic abolitionism that followed. Frederick Douglass—particularly in his extraordinary 1852 speech on the meaning of the 4th of July to the slave8, spoke directly to the US in the name of its polluted national citizenship. His indictment of slavery was a cosmopolitan one in which the eloquent facts of plantation life were judged, just as Walker had suggested they should be, through global comparisons. They were compared with all the abuse to be found in “the monarchies and despotisms of the Old World (and in) South America”. Douglass concluded that “for revolting barbarity and shameless hypocrisy, America reigns without a rival”. He continued, again echoing Walker: “Must I undertake to prove that the slave is a man? That point is conceded already. Nobody doubts it. The slave-holders themselves acknowledge it in the enactment of laws for their government. They acknowledge it when they punish disobedience on the part of the slave. . . . . . How should I look to-day, in the presence of Americans, dividing, and subdividing a discourse, to show that men have a natural right to freedom? speaking of it relatively and positively, negatively and affirmatively. To do so, would be to make myself ridiculous, and to offer an insult to your understanding.”9 In demanding equality based on natural rights and exploring the relationship of debased citizenship and tainted law to racialized life, Douglass was drawing upon the thinking of an earlier cohort of abolitionist writers. Many of them had, like Walker and other anti-slavery radicals, practiced a chiliastic Christianity that built upon St. Paul with incendiary consequences which could not be limited by the heading of anti-slavery. Consider the way in which Angelina Grimké had articulated the concept of human rights in her 1836 Appeal To The Christian Women of The South: . . . man is never vested with . . . dominion over his fellow man; he was never told that any of the human species were put under his feet; it was only all things, and man, who was created in the image of his Maker, never can properly be termed a thing, though the laws of Slave States do call him ‘a chattel personal;’ Man then, I assert never was put under the feet of man, by that first charter of human rights which was given by God, to the Fathers of the Antediluvian and Postdiluvian worlds, therefore this doctrine of equality is based on the Bible10. Grimké elaborated upon this inspired refusal of the reduction of people to things in a memorable (1838) letter to her friend Catherine Beecher (the older sister of Harriet Beecher Stowe). There, she connected the notion of divinely instituted human rights to a growing sense of what it would mean for women to acquire political rights. Her insight was framed by a deep engagement with the problem of a gendered alienation from the humanity of “species being”: “The investigation of the rights of the slave has led me to better understanding of our own. I have found the Anti-slavery cause to be the high school of morals in our land—the school in which human rights are more fully investigated and better understood and taught, than in any other. Here a great fundamental principle is uplifted and illuminated, and from this central light rays innumerable stream all around. Human beings have rights, because they are moral beings: the rights of all men grown out of their moral nature, they have essentially the same rights. ”11 It is not easy to assimilate this variety of critical reflection to the political traditions inherited by modern liberalism from revolutionary France. The foregrounding of race is, for example, a fundamental and distinguishing feature as is the suggestion that reflecting upon the thwarted rights of slaves promotes a richer understanding of the rightslessness known by women. Here, slavery was not only a political metaphor. A different kind of connection was being proposed: whoever we are, we can learn about our own situation from studying the suffering of others which instructively resembles it. This approach makes the disinterest in abolitionism shown by today’s liberal chroniclers of human rights struggles all the more perplexing. The long battle to appropriate the language and political morality of human rights re-worked the assumptions which had led to articulating the unthinkable prospects of black citizenship and black humanity **in** the form of the ancient rhetorical questions immortalized in Wedgewood’s porcelain: “Am I not a Man and a brother?” “Am I not a Woman and a sister?”. The liberatory recognition solicited by those inquiries was pitched against the corrosive power of racial categories and mediated by the cosmopolitan power of human shame. It asked that the social divisions signified by phenotypical difference be set aside in favour of a more substantive human commonality. It promised an alternative conception of kinship that could deliver a world purged of injustice in general and racial hierarchy in particular.

#### The slave represents the infra-human—not the non-human. Included as only *partly human* the status of the slave has historically been contested by appeals to universal human community. As with *Uncle Tom’s Cabin*—the fact that this type of political activity simultaneously contained negative effects for our understanding of the slave doesn’t mean it should be rejected.

Gilroy 9—Paul Gilroy, Anthony Giddens Prf. of Social Theory @ London School of Economics [*Race and the Right to be Human* p. 13-15]

The structure of sentimental feeling articulated by Harriet Beecher Stowe was instrumental in the formation of a trans-national moral collectivity and in winning recognition of the suffering humanity of the slave whom it was no longer possible to dismiss as a brute. Through her voice and chosen genre, distinctive patterns of “heteropathic” identification appear to have leaked not only into Europe but further afield as well. Uncle Tom’s Cabin helped to compose a cosmopolitan chapter in the moral history of our world. Is all of that potential for political action and pedagogy to be damned now because campus anti-humanism doesn’t approve of the dubious aesthetic and moral registers in which an un-exotic otherness was initially made intelligible? The scale of the historical and interpretative problems posed by the case of Uncle Tom’s Cabin can only be glimpsed here. George Bullen, keeper of books at the British Museum compiled a bibliographic note included in the repackaged 1879 edition. He revealed that almost three decades after publication, Stowe’s novel had been translated into numerous languages including Dutch, Bengali, Farsi, Japanese, Magyar and Mandarin. Fourteen editions had been sold in the German language during the first year of publication and a year later, seventeen editions in French and a further six in Portuguese had also appeared. In Russia, the book had been recommended as a primer in the struggle against serfdom and was duly banned. The first book to sell more than a million copies in the US, the publication of Stowe’s novel was a world historic event. Though it cemented deeply problematic conceptions of slave passivity, redemptive suffering and indeed of racial type, it was also instrumental in spreading notions of black dignity and ontological depth as well as the anti-racist variety of universal humanism that interests me. This combination merits recognition as a potent factor in the circulation of a version of human rights that racial hierarchy could not qualify or interrupt. The example of Stowe draws attention to issues which would reappear through the nineteenth century as part of struggles to defend indigenous peoples, to improve the moral and juridical standards of colonial government and to reform the immorality and brutality of Europe’s imperial order. This activity was not always altruistically motivated. How those themes developed in the period after slavery is evident from the para-academic work of campaigners like Harriet Colenso, Ida B. Wells, Roger Casement and E.D. Morel. The constellation of writings produced by these critical commentators on racism, justice and humanity needs to be reconstructed in far greater detail than is possible here. They can nonetheless be seen to comprise a tradition of reflection on and opposition to racial hierarchy that, even now, has the power, not only to disturb and amend the official genealogy provided for Human Rights but also to re-work it entirely around the tropes of racial difference. Allied with parallel insights drawn from struggles against colonial power, these interventions contribute to a counterhistory of the contemporary conundrum of rights and their tactical deployment. This neglected work remains significant because debate in this field is increasingly reduced to an unproductive quarrel between jurists who are confident that the world can be transformed by a better set of rules and sceptics who can identify the limits of rights talk, but are almost always disinterested in racism and its metaphysical capacities. Thinkers like Wells and Morel were alive to what we now call a deconstructive approach. They identified problems with rights-talk and saw the way that racial difference mediated the relationship of that lofty rhetoric to brutal reality. They grasped the limits of rights-oriented institutional life empirically and saw how rights-claims entered into the battle to extend citizenship. But, their vivid sense of the power of racism meant that the luxury of any casual anti-humanism could not be entertained. They wished to sustain the human in human rights and to differentiate their own universalistic aspirations from the race-coded and exclusionary humanisms which spoke grandly about all humanity but made whiteness into the prerequisite for recognition. Their alternative required keeping the critique of race and racism dynamic and demanding nothing less than the opening of both national- and world-citizenship to formerly infrahuman beings like the negro. Grimké, Wells and the rest appealed against racism and injustice in humanity’s name. Their commentaries might even represent the quickening of the new humanism of which Frantz Fanon would speak years later. The movement these commentators created and mobilized persisted further into the twentieth century when new causes and opportunities were found that could repeat and amplify its critique of racialized political cultures and terroristic governmental administration.

### 1NC—Case

#### Restricting detention creates a perverse incentive for drone use—that’s worse and flips any legitimacy advantage

Gartenstein-Ross 12—Daveed Gartenstein-Ross, J.D. from NYU School of Law, is the Director of the Center for the Study of Terrorist Radicalization at the Foundation for Defense of Democracies, a Washington-based think tank. He frequently consults on counter-terrorism for various government agencies as well as the private sector [Dec 4 2012, “Gitmo's Troubling Afterlife: The Global Consequences of U.S. Detention Policy,” http://www.theatlantic.com/international/archive/2012/12/gitmos-troubling-afterlife-the-global-consequences-of-us-detention-policy/265862/]

One option, of course, is ending preventive detention entirely, which is favored by many of Obama's critics on the left. But that carries second-order consequences of its own, since al Qaeda has not ended its fight against the United States, nor is the broader problem of violent non-state actors going to disappear. If the U.S. doesn't employ preventive detention, doesn't this create a perverse incentive for killing rather than capturing the opponent? As Wittes writes, "The increasing prevalence of kill operations rather than captures is probably not altogether unrelated to the fundamental change in the incentive structure facing our fighters and covert operatives."

Moreover, if the U.S. tries to wash its hands of preventive detention, detainees will almost certainly end up in worse conditions as a result. The idea has seemingly taken hold that because detention of violent non-state actors by Western governments is unjustifiable and immoral, "local" detention is preferable. So, for example, the United States supported recent military efforts by African Union, Somali, and Ke

nyan forces to push back the al Qaeda-aligned Shabaab militant group in southern Somalia. The U.S. did not take the lead in detaining enemy fighters, and instead its Somali allies did so. But when one compares, say, detention conditions in Somalia to those in Gitmo, the latter is far more humane. If the U.S. and other Western countries eschew detention when fighting violent non-state actors, somebody is going to have to do it, and that alternative is almost certainly going to be worse for the detainees themselves.

What these second-order consequences point to is the fact that reform of U.S. detention policy is more vital than moving detainees to other facilities. William Lietzau, the deputy assistant secretary of defense for rule of law and detainee policy, has told me that the detention of violent non-state actors is an unsettled area of law. To Lietzau, defined and developed rules govern the prosecution of criminals, while the Geneva Conventions govern detention of privileged belligerents under the law of war. But for unprivileged belligerents, such as violent non-state actors, the applicable law is largely undefined. Lietzau has even designed a chart, which has become famous among his colleagues, illustrating the law's lack of development.

This is not to say that moving detainees from Guantánamo to the continental United States is necessarily a bad idea. One could argue that removing that symbol is important. Further, in the long run, moving the detainees may actually save money, since everything at Gitmo, from food to construction materials, must be imported at high cost. But the location of the detention does not address any substantive concerns.

Though it will not be easy, working with partners like the International Committee of the Red Cross to forge a better set of principles and procedures governing the detention of unprivileged belligerents is far more important than moving the Gitmo detainees elsewhere. Put simply, violent non-state actors will continue to challenge the nation-state, so nation-states need a way to deal with detention in this context. Our current policy of pretending that we have moved past noncriminal detention all but ensures we will be caught flat-footed the next time such detention is necessary in a large scale, and thus that the problems inherent to detaining unprivileged belligerents will have gone unaddressed.

#### Turn—starting with trans-atlantic slave trade decontextualizes slavery and supports the Eurocentric slave-trader perspective. This undermines an effective criticism of imperial relations that support white supremacy.

Johnson 4—Walter Johnson, History @ NYU [“Time and Revolution in African America: temporality and the history of Atlantic Slavery” in *A New Imperial History* ed. Kathleen Wilson p. 198-204]

Let me begin with a famous misunderstanding. As he later recounted it, when Olaudah Equiano first saw the white slave traders who eventually carried him to the West Indies, he thought they were "bad spirits" who were going to eat him. Awaiting shipment across an ocean he had never heard of, Equiano, like many of the slaves carried away by the traders, made sense of an absurd situation with a narrative of supernatural power.' When he sat down to write his narrative, of course, Equiano knew better than to believe that the white men on the coast were "spirits." By that time he called himself Gustavas Vassa, and, having spent ten years as a slave in the Americas and another twenty-three as a free man traveling throughout the world, Vassa could see what Equiano could not: that he was a descendant of the Lost Tribes of Israel, that his deliverance from heathenism marked him as a "particular favorite of heaven," and that the events in his life were effects not of the evil intentions of African spirits but of the Christian God's "Providence."' Vassa resolved the collision of contending versions of cause and consequence in his own mind through a narrative of progressive enlightenment: he had learned that it was God's Providence to steal him away from Africa and carry him to London where he could spread the gospel of anti-slavery. Vassa's time travel reminds us that global historical processes are understood through locally and historically specific narratives of time and history. And yet by invoking God's Providence, Vassa did not so much resolve the contention of these temporal narratives as superimpose one upon the other. Equiano's initial understanding of the situation of the coast was incorporated into the story of Vassa's eventual enlightenment. His African history was reframed according to the conventions of his European one. Recent work in the humanities and social sciences has emphasized the darker side of the temporal conventions that have framed many western histories of the rest of the world: their role in underwriting global and racial hierarchy. Concepts like primitiveness, backwardness, and underdevelopment rank areas and people of the world on a seemingly naturalized timeline — their "present" is our "past" — and reframe the grubby real-time politics of colonial domination and exploitation as part of an orderly natural process of evolution toward modernity. More than a fixed standard of measure by which the progress of other processes can be measured, time figures in these works as, in the words of Johannes Fabian, a culturally constructed "dimension of power."3 Seen in this light, Equiano's anachronistic account of the situation on the coast raises a host of questions about the history of Atlantic slavery. What were the historical and temporal narratives through which Africans and Europeans understood what was happening on the coast, in the slave ships, and in the slave markets of the Americas? How did these various understandings shape the historical process in which they were joined? In what cultural institutions were these ideas of time rooted and through what practices were they sustained? What was the fate of African time in the Americas? What were the practical processes of temporal domination and resistance? Taking time seriously suggests, at the very least, that the slave trade was not the same thing for Olaudah Equiano that it was for his captors. Most simply, this difference might be thought of spatially: "the slave trade" did not begin or end in the same place for European traders, American buyers, and African slaves. The African slave trade, after all, had an eastern branch stretching to Asia as well as a western one which stretched to the Americas. Thus a historical account of the African experience of "the slave trade" necessarily has a different shape from an account of the European experience; indeed, properly speaking, "the slave trade" has not yet ended in some parts of Africa.4 But even if we confine ourselves to the history of the Atlantic slave trade, the problem of boundaries persists. The journeys of the slaves who were shipped across the Atlantic Ocean often began in the interior of Africa, hundreds of miles from the coast where they eventually met the European slave traders, hundreds of miles away from where any European had ever been. Indeed, the First Passage was integral to the experience of those who eventually made the Middle Passage — to their understanding of what it was that was happening, their emotional condition going into the journey, and their ability to survive it.' And yet the First Passage is often elided from historians' accounts of "the slave trade," many of which focus solely on the Middle Passage, treating the trade as if it were something which began on the west coast of Africa with a sale to a European trader and ended in a port in the Americas with a sale to a colonial slaveholder. In so doing they have unwittingly embedded the historical perspective of a European slave trader — for it was only for the traders, not for the slaves or the buyers, that "the slave trade" happened only in the space between the coasts — in the way they have bounded their topics.6 The historical disjuncture marked by Equiano's version of the situation on the coast, however, was much deeper than a difference about beginnings and endings. It signals a fundamental difference between the versions of slavery which met in the Atlantic trade. To oversimplify: in Euro-America, slavery was, above all, a system of economic exploitation; in much of West Africa slavery was, above all, a system of political domination. In the Americas slaves were purchased in markets, held as legally alienable property, and put to work as laborers producing staple crops and some other goods which were generally shipped to Europe in exchange for money and more goods.7 In much of precolonial West Africa, slavery began with capture: a warrior who would otherwise have been killed was allowed to live on as a socially dead slave. Though most slaves in West Africa were agricultural laborers, many were employed as soldiers, state ministers, and diplomats, and even as governing placeholders for princes and kings. Some slaves owned slaves.8 As such, West African slavery has often been described as a system of "institutionalized marginality," one among a set of intertwined social relations — kinship, fealty, clientage, etc. — by which one group of people held "wealth in people" in another. Some slaves, over time and generation, through mar¬riage and connection, were able to move out of slavery and into another status.9 Equiano's confusion on the coast reminds us that two versions of slavery — "aristocratic slavery" and "merchant slavery" in Claude Meillassoux's formulation — met in the African trade. Those who entered the slave trade had been extracted from histories of enslavement and slavery which sometimes had very little to do with the Atlantic slave trade in the first instance. Rather their story as they understood it was embedded in personal histories of iso¬lation from protective kinship and patronage networks, in local histories of slave-producing ethnic conflicts, in political struggles, and wars which occurred hundreds of miles from the coast.'" This is not, however, to say that all African slavery was aristocratic slavery. The jagged boundary between aristocratic and merchant slavery, after all, often lay hundreds of miles into the interior of the African continent — hundreds of miles beyond where any European had ever been. Many of the slaves who were eventually shipped across the Atlantic had been captured, transported to the coast, and sold by people who were themselves Africans. The frontier between the two types of slavery was patrolled by an African supervisory elite who presumably knew the difference between them and made their living by transmuting the one into the other. And just as the protocols of merchant slavery stretched well into the interior ofAfrica, those of aristocratic slavery could stretch well into the journey across the Atlantic. To describe the people they transported to the Americas, the ship captains and clerks of the French West India Company used the word " captif' rather than the more familiar "esclave," a designation which apparently referred to the aristocratic slavery origins of those in the trade rather than their merchant slavery destinations." Corresponding to the different versions of slavery which met in the Atlantic trade were different ways of measuring the extent of slavery and marking its progress through time. The (aristocratic) slaveholding kings of precolonial Dahomey, for instance, represented their history as a story of continuous growth through military expansion and enslavement. Their history was measured in a yearly census — taken, historian Robin Law argues, as a means of "political propaganda . . . advertising the kingdom's successful growth" — and in mythical bags of pebbles kept in the castle which tracked the kingdom's expansion — one pebble per person — over time.' Other sys¬tems of aristocratic slavery had other measures. In precolonial equatorial Africa, Jane Guyer and Samuel M. Eno Belinga have argued, political power and historical progress were measured as wealth-in-knowledge rather than wealth-in-people. Rather than accumulating numbers of people, the leaders of kingdoms like that of the Kongo enhanced their power by acquiring, through capture or purchase, people with different types of knowledge.'3 The African and European merchant slave traders with whom these kingdoms sometimes did business had still other ways of measuring the trade and imagining the history they were making: sacred time measured against an injunction to enslave non-Islamic outsiders or propelled by the "providence" of a Christian God; political history imagined as the conquest of monopoly rights along the African coast and market position in the Americas; market time imagined in macroeconomic cycles of depression and speculation; the microeconomic time of the slave trader, progress tracked across the pages of the ship's log, days defined by the weather and ship's speed, nights marked by the number of slaves who died in the hold — time reckoned in dead bodies and lost profits.14 For many of the slaves who were packed into the holds of the Atlantic slave ships we can imagine still another set of temporal frames: those derived from local political histories of war and slave raiding; a cultural cycle of social death and rebirth, the ethnic and political disorientation of capture and separation eventually giving way to new identifications with "shipmates" and "fictive kin"; a biographical culmination of lifetime fears of capture, kidnapping, or simply of falling through the cracks in the protections of patronage and kinship; the metaphysical horror of a "middle" passage that some must have thought would never end and others might only have recognized as a trip across the "kalunga," the body of water which separated the world of the living from that of the dead — a flight from time measured in the gradual physical deterioration of the worldly body.“ And so on: as many journeys on a single ship as there were ways to imagine the journey

## \*\*\* 2NC

### 2NC—Links

#### Enlightenment understandings of humanity were always fractured—anti-Imperial strands in universal humanity should be recognized. There was a robust strand of anti-Imperial universalism that criticized dispossession and slavery.

Muthu 3—Sankar Muthu, Poli Sci @ Chicago [*Enlightenment Against Empire* p. 266-271]

Universal Dignity, Cultural Agency, and Moral Incommensurability Do commitments to the idea of a shared humanity, to human dignity, to cross-cultural universal moral principles, and to cross-cultural standards of justice rest upon assumptions and values that unavoidably denigrate, or that disturbingly undermine respect for, cultural pluralism, that is, the wide array of human institutions and practices in the world?16 Are they imperialistic either explicitly, to justify Europe's political, military, and commercial subjugation of the non-European world, or implicitly, by indicating a rank ordering of superior and inferior peoples, which could then be used to justify a more indirect, quasi-imperial 'civilizing' process? The aforementioned commitments are sometimes collectively gathered under the term 'Enlightenment universalism' and, as we have seen, they are sometimes considered to constitute the core of 'the Enlightenment project'. I have suggested already that such assertions mask and distort a complex reality**.** In this case, they obscure the multiplicity of universalisms across eighteenth-century European political thought, each with distinct foundational claims, varying relationships to conceptualizations of human diversity and to humanity (which themselves differ from thinker to thinker, and even from text to text), and different political orientations toward the nature and limits of state power in theory and in practice. These philosophical sensibilities and approaches can yield remarkably dif-ferent political arguments toward foreign peoples, international justice, and imperialism. Thus, rather than ask whether 'the Enlightenment project' and 'Enlightenment universalism' are compatible with an appreciation of cultural pluralism or whether they are at bottom imperializing ideologies, it is more constructive to pose more precise and historically accurate versions of such questions with regard to particular texts and thinkers. In this book, I have studied a distinctive variant of Enlightenment writings against empire, one which includes the philosophical and political arguments of Diderot, Kant, and Herder. While there is no such thing as 'Enlightenment universalism' as such, let alone a larger 'Enlightenment project', there is nonetheless an identifiable set of philosophical and political arguments, assumptions, and tendencies about the relationship between universal and pluralistic concepts that animates the strand of Enlightenment political thought under study here. With this in mind, one can more meaningfully ask what the relationship is between universalism, pluralism, and incommensurability in such political philosophies, and how precisely they yield anti-imperialist political commitments. Answers to these more circumscribed questions can be given by better understanding the core elements of Diderot's, Kant's, and Herder's political philosophies, and how they differ from earlier (and, indeed, from many later) understandings and judgements of empire. Immanuel Kant remarks pointedly in Toward Perpetual Peace that the Europeans who landed and eventually settled in the New World often denied indigenous peoples any moral status. When America, the Negro countries, the Spice Islands, the Cape, and so forth were discovered, they were, to them [to Europeans], countries belonging to no one [die keinem angehorten], since they counted the inhabitants as nothing. (8:358, emphasis added) What philosophical concepts and arguments were necessary for New World peoples to be counted finally as something and especially to be considered as equals, as they were eventually in some crucial respects, by anti-imperialist political thinkers in the Enlightenment era? In this section, I focus on what I have taken in this book to be the philosophically most robust strand of Enlightenment anti-imperialist political thought. 17 Despite the many differences in the ethnographic sources that Diderot, Kant, and Herder consulted, the philosophical languages that these thinkers employed, and the particular concepts they drew upon to attack European empires, their anti-imperialist arguments intriguingly overlap in important respects. Thus, in this section, I identify and elucidate the family resemblances that exist among their philosophical arguments and rhetorical strategies, and discuss the underlying assumptions, ideas, and intellectual dispositions that make their version of anti-imperialist political thinking conceptually possible. In contrast to what is effectively the premiss of the kinds of familiar questions asked at the opening of this section, the commitments of Diderot, Kant, and Herder to moral universalism, cultural diversity, partial incommensurability, and the delegitimization of empire are not fundamentally in tension but rather reinforce one another. Overall, there are three principal philosophical sources of Enlightenment anti-imperialism. The first and most basic idea is that human beings deserve some modicum of moral and political respect simply because of the fact that they are human. This humanistic moral principle alone, however, was far from sufficient for engendering an anti-imperialist politics. The whole modern tradition\_Qf natural right and social contract theory held this view in some form. Moreover, Amerindians inparticurar: were explicitly described by such thinkers as the pure, natural humans of the state of nature. Yet much of this tradition of modern political thought, from Grotius onward, was either agnostic about imperialism or lent philosophical support to European empires. Not every understanding of what it means fundamentally to be a human fosters the philosophical materials necessary to build a more inclusive and pluralistic political theory that could serve as the basis of anti-imperialist arguments. Indeed, as I will argue, some understandings of humanity that are manifestly egalitarian can nevertheless impede such a development. Second, therefore, these anti-imperialist arguments rested upon the view that human beings are fundamentally cultural beings. Diderot, Kant, and Herder all contend that the category of the human is necessarily marked by cultural difference; in this view, humanity is cultural agency. This thicker, particularized view of the human subject, paradoxically, helped to engender a more inclusive and meaningful moral universalism. Third, a fairly robust account of moral incommensurability and relativity was also necessary for the rise of anti-imperialist political thought. The anti-imperialist arguments offered by Diderot, Kant, and Herder all partly rest upon the view that peoples as a whole are incommensurable. From this perspective, entire peoples cannot be judged as superior or inferior along a universal scale of value. Moreover, in distinct but closely related ways, these thinkers argue that our cultural freedom produces a wide variety of individual and collective practices and beliefs that are incommensurable, given their view that many practices and beliefs lie outside the bounds of a categorical judgement or universal standard. When these three conceptual developments were brought together, the strand of Enlightenment anti-imperialist political theory that I have identified became philosophically possible. I want to reiterate here that this framework is not meant to elucidate all of the anti-imperialist arguments that one can find in the philosophical writings of the Enlightenment era. Moreover, the distinc-tive intellectual dispositions, personal idiosyncrasies, and domestic political commitments of Enlightenment-era thinkers significantly shaped their particular arguments on the issue of empire. Still, as I will show, these three philosophical ideas play a crucial role in enabling the development of a rich strand of anti-imperialist political theory in the late eighteenth century. In discussing the development of a more inclusive and anti-imperialist political theory, my focus in this section (as it has been generally in this book) is on Europeans' political attitudes toward non-Europeans. Many thinkers in non-European societies clearly operated with similarly self-centred conceptions, but my emphasis throughout is on Europeans' intellectual responses to the fact of cultural difference and imperial politics, not with non-European peoples' understandings of each other or of their ac-counfs of European peoples. Nor do I examine here the variety of intra-European distinctions between allegedly superior and inferior groups, those, for instance, involving linguistic, geographical, class, religious, and gender differences, which of course historically also legitimated differential treatment within European societies. Thus, I do not intend to argue that Enlightenment anti-imperialist political philosophies are inclusive as such, for their underlying principles do not necessarily (and, in the eighteenth century, they manifestly did not) support egalitarian arguments against every form of exclusion. As I have noted, the first idea that enables Enlightenment anti-imperialism- first both historically and analytically-is that foreigners are human beings and, consequently, that they deserve moral respect, however understood. The development, in other words, of some variant of a humanistic moral universalism ensured that the shared humanity of both Europeans and non-Europeans would be acknowledged and given some due. The philosophical and political legacy with which Enlightenment anti-imperialist thinkers struggled, as they themselves understood, was one of exclusion. As they often noted, ethical principles of respect and reciprocity had been limited almost always to (some) members of one's own tribe, polis, nation, religion, or civilization. Accordingly, the distinction between one's own society, however defined, and the barbaroi (others, foreigners), whether justified outright or tacitly assumed, influenced not only the anthropological conceptions of, and popular understandings about, foreign peoples, but also legitimated the often brutally differential treatment of various groups. It is along these lines that Kant expresses dismay, in a lecture on moral philosophy, at what he calls the "error that the [ancient] Greeks displayed, in that they evinced no goodwill towards extranei [outsiders, or foreigners], but included them all, rather, sub voce hastes = barbari [under the name of enemies, or barbarians]". (27:674) In the long history of imperial exploits, actions that in at least some contexts might have provoked outrage in one's own land not only gainedlegitimacy on foreign soil but were deemed praiseworthy, noble, and even morally obligatory abroad. While European imperialists in the New World, writes Diderot, "faithfully observe their own laws, they will violate the rights of other nations in order to increase their power. That is what the Romans did."lB Enlightenment anti-imperialists recognized that such Janus-faced practices constituted the very core of imperial activity from the empires of the ancient world to the imperial conquests and commercial voyages of their day. The fact of difference itself lay at the heart of such inconsistent behaviour from Europeans' initial encounters with Amerindians onward, as Diderot notes: "[t]he Spaniard, the first to be thrown up by the waves onto the shores of the New World, thought he had no duty to people who did not share his colour, customs, or religi6n~" 19 Not wanting to single out tlie Spanish, Diderot suggests further that the Portuguese, Dutch, English, French, and Danes all followed in precisely the same spirit of exclusion and injustice. From an anthropological viewpoint, such discoveries of non-European peoples no doubt played a role in Europeans' changing conceptions of humanity. From Herodotus onward, of course, travel narratives played a central role in contemplating what it might mean to be, in some fundamental sense, a human being. Given that theorizations of human nature relate, in complicated ways, to changing understandings of the range and characteristics of human societies, institutions, and practices, the European discovery of 'new' lands and peoples accordingly generated further, and at times more complex, theorizations of humanity.2o Moreover, from the sixteenth century onward, thinkers were particularly keen to consult and appropriate the latest ethnographic reports. In part, the heightened interest no doubt complemented, and may in part have resulted from, what is often described as the intellectual revolution in 'natural philosophy' and the resulting emphasis on experimentation, empirical study, and inductive reasoning in fields such as astronomy, but also (especially from the mid-seventeenth century onward) in the study of human anatomy, physiology, and psychology. Although many of Hume's contemporaries did not share his hope of introducing "the experimental method" to moral philosophy, there was nonetheless a widespread presumption that an understanding of the human condition needed to take account, in some manner, of the growing anthropological literature that detailed the vast range of human experiences, customs, and practices throughout the globe.21 This turn toward what Georges Gusdorf has called 'human science', however, requires a stable referent for what counts as 'human' while also upsetting the stability of the term by focusing attention increasingly on human difference.22 In this sense, the attempt at identifying the most salient features of humanity was often an erratic and inherentlyconflicted task, as John Locke argued it would have to be, given the very nature of our self-knowledge.

### 2NC—Impacts

#### We have a moral obligation to construct strategies of resistance that don’t sanction genocide. Critical intellectuals should de-romanticize subaltern revenge and pessimism.

Jones 9—Adam Jones, Poli Sci @ British Columbia (Okanagan) [*Genocides by the Oppressed: Subaltern Genocide in Theory and Pratice* eds. Robins and Jones p. 201-202]

Attention to the subaltern strand of genocide tends to evoke a less idealized and romanticized image of subaltern actors. A pressing task is to construct framings of subaltern genocide that acknowledge the morally plausible element of campaigns for freedom and liberation, against oppression and injustice—while also recognizing that atrocious and even genocidal tendencies may result from such initiatives. One is therefore called on to identify such tendencies as early as possible in a genocidal process**—**and for scholars to approach past genocides of this type with equal seriousness and dispatch, for the lessons they may hold.56 Moreover, close attention should be paid to institutional environments and social “niches” where subaltern actors may exercise local and/or temporary hegemony (point (3) on the continuum of subaltern genocide sketched in Table 9.1). If it is true, as Kofi Annan has suggested, that genocide occurs when even a single person is targeted “not for what [s]he has done, but because of who [s]he is,”57 then genocidal actions short of full-scale exterminatory campaigns may well qualify—and subaltern actors may sometimes hold the upper hand in these encounters.

#### The political significance of humanity is both terrible and terribly important. Though the concept of humanity makes us guilty, it also is a pre-requisite for a politics that can fight atrocity.

Hannah Arendt 3 [*The Portable Hannah Arendt* p. 155]

For many years now we have met Germans who declare that they are ashamed of being Germans. I have often felt tempted to answer that I am ashamed of being human. This elemental shame, which many people of the most various nationalities share with one another today, is what finally is left of our sense of international solidarity; and it has not yet found an adequate political expression. Our fathers’ enchantment with humanity was of a sort which not only light-mindedly ignored the national question; what is far worse, it did not even conceive of the terror of the idea of humanity and of the Judeo-Christian faith in the unitary origin of the human race. It was not very pleasant even when we had to bury our false illusions about “the noble savage,” having discovered that men were capable of being cannibals. Since then people have learned to know one another better and have learned more and more about the evil potentialities in men. The result is that they have recoiled more and more from the idea of humanity and they become more susceptible to the doctrine of race, which denies the very possibility of a common humanity. They instinctively felt that the idea of humanity, whether it appears in a religious or humanistic form, implies the obligation of a general responsibility which they do not wish to assume. For the idea of humanity, when purged of all sentimentality, has the very serious consequence that in one form or another mean must assume responsibility for all crimes committed by men and that all nations share the onus of evil by all others. Shame at being a human being is the purely individual and still non-political expression of this thought. In political terms, the idea of humanity, excluding no people and assigning a monopoly of guilt to no one, is the only guarantee that one “superior race” after another may not feel obligated to follow the “natural law of the right of the powerful, and exterminate “inferior races unworthy of survival”’ so that at the end of an “imperialistic age” we should find ourselves in a stage which would make the Nazis look like crude precursors of future political methods. To follow a non-imperialistic policy and maintain a non-racist faith becomes daily more difficult because it becomes daily clearer how great a burden mankind is for man. Perhaps those Jews, to whose forefathers we owe the first conception of the idea of humanity, knew something about the burden when each year they used to say “Our Father and King, we have sinned before you,” taking not only the sins of their own community but all human offenses upon themselves. Those who today are ready to follow this road in a modern version do not content themselves with the hypocritical confession “God be thanked, I am not like that,” in horror at the undreamed-of-potentialities of the German national character. Rather, in fear and trembling, have they finally realized of what man is capable—and this is indeed the precondition of any modern political thinking. Such persons will not serve very well as functionaries of vengeance. This, however, is certain: Upon them and only upon them, who are filled with a genuine fear of the inescapable guilt of the human race, can there be any reliance when it comes to fighting fearlessly, uncompromisingly, everywhere against the incalculable evil that men are capable of bringing about.

### 2NC—Alternative

#### Radical humanism takes up the burden and the ambiguity of humanity. Identification with common humanity across lines of oppression opens up possibilities for everyday political virtue.

Gilroy 9—Paul Gilroy, Anthony Giddens Prf. of Social Theory @ London School of Economics [*Race and the Right to be Human* p. 20-23]

Arendt and Agamben are linked by their apparent distaste for analyzing racism and by their complex and critical relations to the idea of the human. This combination of positions can facilitate hostility to the project of human rights which is then dismissed for its inability to face the political and strategic processes from which all rights derive and a related refusal to address the analytical shortcomings that arise from the dependence of human rights on an expansion of the rule of law—which can incidentally be shown to be fully compatible with colonial crimes23. Histories of colonial power and genealogies of racial statecraft can help to explain both of these problems and to break the impasse into which the analysis of human rights has fallen. This is another reason why anti-racism remains important. It does not argue naively for a world without hierarchy but practically for a world free of that particular hierarchy which has accomplished untold wrongs. The possibility that abstract nakedness was not so much a cipher of insubstantial humanity but a sign of racial hierarchy in operation arises from the work of concentration camp survivors. Jean Améry recognized his own experience through a reading of Fanon. Primo Levi, his fellow Auschwitz inmate and interlocutor, who interpreted the lager’s brutal exercises in racial formation as conducted for the benefit of their perpetrators, suggested that racism’s capacity to reconcile rationality and irrationality was expressed in the dominance of outrage over economic profit. Both men saw infrahuman victims made to perform the subordination that race theory required and anticipated but which their bodies did not spontaneously disclose. Inspired by Levi, by the philosophical writings of Jean Améry, and various other observers of and commentators on the pathologies of European civilisation, we should aim to answer the corrosive allure of absolute sameness and purity just as they did, with a historical and moral commitment to the political, ethical and educational potential of human shame. Though being ashamed may sometimes appear to overlap with sentimentality or even to be its result, they are different. Excessive sentimentality blocks shame’s productivity, its slow, humble path towards ordinary virtue**.** Shame arises where identification is complicated by a sense of responsibility. Sentimentalism offers the pleasures of identification in the absence of a feeling of responsible attachment. Améry was an eloquent proponent of what he called a radical humanism. Through discovering his Jewishness under the impact of somebody’s fist but more especially as a result of having been tortured by the Nazis, he acquired a great interest in a politics of dignity which could answer the governmental actions that brought racial hierarchy to dismal life. Perhaps for that very reason, he found through his post-war reading of Fanon, that “the lived experience of the black man . . . corresponded in many respects to my own formative and indelible experience as a Jewish inmate of a concentration camp. . .”. He continued: “I too suffered repressive violence without buffering or mitigating mediation. The world of the concentration camp too was a Manichaean one: virtue was housed in the SS blocks, profligacy, stupidity, malignance and laziness in the inmates’ barracks. Our gaze onto the SS-city was one of ‘envy’ and ‘lust’ as well. As with the colonized Fanon, each of us fantasized at least once a day of taking the place of the oppressor. In the concentration camp too, just as in the native city, envy ahistorically transformed itself into aggression against fellow inmates with whom fought over a bowl of soup while the whip of the oppressor lashed at us with no need to conceal its force and power.”24 With Levi and Fanon, Améry shared a commitment to extracting humanistic perspectives from the extremity he had survived in the lager. In a famous [1964] essay exploring his experiences at the hands of the Gestapo, he insisted that torture was “the essence”25 of the Third Reich and in making that case, shows how these issues should become important again in comprehending and criticising the brutal, permissive conduct of “the war on terror”.

## \*\*\* 1NR

### 1nr – ext johnson

#### Monocausal and comprehensive narrative of slavery in the United States undermines political and historical effectiveness.

Walter JOHNSON History @ NYU 97 [“Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery” *Law and Social Inquiry* 22 (2) p. 406-409]

Watching these fault lines surface in the records of South2ern courts, scholars who agree on little else have agreed that they are evidence of “contradictions,” tensions too serious to be sustained indefinitely, tensions of the type that might cause a civil war. Or, put another way: tensions apparent in the daily life of slavery have acquired the status of contradictions when posed in light of the Civil War. For A. E. Kier Nash (1979, 93-184), for example, legal decisions made at a time when there was virtually no Southern discussion of abolishing slavery can nevertheless be described as “pro” or “anti” slavery on the basis of the presiding judge’s subsequent support for secession or union. For Mark Tushnet ( 1981, 232), “latent” contradictions between capitalist and slave property regimes, incompletely resolved by efforts to codify a separate law of slavery, were made manifest in Southern slaveholders’ eventual effort to “break free” from the bourgeois state onto which their social order was grafted (see also Fox-Genovese and Genovese 1983). For James Oakes (1990, 155-94), the Civil War came at the end of a history of day-to-day resistance to slavery that forced the Southern legal system into fitful recognition of slaves’ legal personality. This “implicit threat” became a revolutionary reality as self-emancipating fugitives forced questions of comity and emancipation into Northern politics during the sectional crisis and Civil War.’ Never more so than in history books, stories are written around their endings, and by changing the ending, Thomas Morris has changed the argument. The issues taken up in Southern Slavery and the Law are the same as those treated by other scholars, but rather than casting the Civil War as the further expression of the underlying contradictions of slavery, Morris has posed it as a “constitutional crisis” (p. 432), an artificial end point to a set of ongoing changes occurring in the slave South. The progress of racism, liberal capitalism, Enlightenment humanitarianism, evangelical Christianity, and the self-protecting policy of the existing social order, Morris argues, were transforming the law of slavery-fitfully, inconsistently, and ultimately incompletely-but never in a way that indicated any underlying or unresolvable contradiction. race and status, Southern lawmakers were moving from open recognition of hybridity and the existence of a significant free black population to legislated biracialism and the legally managed equivalence of “blackness” and slavery. In matters of commerce, the evolution was from equitable paternalism (looking behind a contract for the intentions of the parties) to capitalist formalism (strict adherence to the letter of the contract). In criminal law, from absolute subordination and slaveholder sovereignty in matters of slave discipline to humanitarian amelioration and (occasional) state intervention in the relations between masters and slaves, and fitful recognition of slaves’ agency, legal personality, and attendant rights. And in manumission law, from notions of slaveholders’ property rights comprehensive enough to include the right to manumit slaves to notions of public interest expansive enough to curtail that right. Events that previous scholars have taken to be evidence of underlying contradictions-instances of state intervention in the affairs of supposedly sovereign slaveholders, for example, or courtroom recognitions of the humanity of people who were legally property, or the extension of rights to theoretically rightless slaves facing prosecution-stand here as evidence of interrupted transformations, frozen into jagged profile by the Civil War. At every turn Morris maps the rough edges that protruded from the smooth surface of change: inconstant doctrine between legal jurisdictions and ideological inconsistency between judges’ decisions. For Morris, however, the law of slavery was the site not of violent collision but of grinding evolution- not contradiction but inconsistency. Indeed, Morris suggests in the conclusion to Southern Slavery and the Law, in the absence of the Civil War, slavery might have gradually (and presumably peacefully) evolved into “some other form of dependent labor” (p. 442). Inconsistency never made the law incoherent, Morris argues, because philosophical contradiction was often doing the work of practical transformation. Inconsistency as an answer might seem like an anticlimax coming as it does on the heels of human cannibalism (A. Higginbotham 1978), judicial irresolution (Nash 1979), structural contradiction (Tushnet 1981; see also Fox-Genovese and Genovese 1983), fatal comity (Finkelman 1981 ), philosophical ambivalence (Oakes 1990), and outright hypocrisy (Fede 1992). But the achievement here is monumental. Morris has, far more than previous historians, told the story of the law of slavery in the terms of common law, treating “the law of slavery” as if both poles of the proposition mattered. For Morris the law was not simply a shadowy reflection of the logic of slavery but was itself an institution whose peculiar rules, categories, and precedents shaped the meaning and practice of slavery. By developing his analysis of slavery through the categories of common law-property, trusts and estates, contract law, criminal law-Morris has mapped the density of the interchange between historiographical regions that are usually cast as mutually exclusive opposites: slavery and capitalism, slave law and common law, legal reasoning based on “humanity” and legal reasoning based on “interest.”\* Rather than focusing on how the law of slavery did not work, Morris has focused on how, in spite of (or perhaps because of) its broad inconsistencies and manifest absurdities, it did. Morris’s argument depends upon searching out how Southern judges made the categories of common law do the work of slavery, on case-by-case expositions and close consideration of various pieces of legal reasoning. Because of this technical detail, Southern Slavery and the Law is sometimes hard to follow; Morris’s own argument occasionally disappears into a welter of technical terms, hard-won archival detail, and judicious consideration of existing scholarship. Whatever the difficulty of the reading, Southern Slavery and the Law is well worth the effort. The breadth of Morris’s research, the detail of his state-by-state and judge-by-judge considerations of various legal problems, the acuity of his insistence on dismantling the philosophical “contradictions” that plagued Southern taw in favor of the practical complexity of Southern lawmaking, combine to make this book the culmination of a generation of important scholarship on slavery, region, race, capitalism, law, and ideology in the courts. While Morris has led the historiography of the law of slavery to a new destination, he has done so according to what is, basically, the same map used by his predecessors. As in accounts that emphasize “contradiction,” the real action here occurs beneath the surface of the earth: racism, capitalism, humanitarianism, evangelicalism, and proslavery policy make their inevitable progress and are reflected in the law. The historical actors in this formulation are the judges upon whom Morris focuses, the men who (inconsistently) translated underlying transformation into positive law. In the final sections of this review-following sections on race law, commercial law, criminal law, and manumission law, which follow Morris’s own division of the law of slavery and summarize his detailed findings-I offer an alternative viewpoint from which the law of slavery might be considered. The problem with Southern Slavery and the Law is not so much its emphasis on the working out of practical transformations through evident philosophical contradictions or its focus on judge-made law, both of which are significant historiographical advances. The problem is, rather, a matter of perspective: Morris assumes that Southern judges were steadfastly and selfconsciously making their way toward the culmination of the broad transformations that frame the argument of Southern Slavery and the Law. A map like that might be a useful tool for someone interested in forecasting earthquakes, but for someone interested in analyzing human behavior it might not be enough. A historian might do better to keep one eye on the road (see Bordieu 1977; de Certeau 1984; Kelley 1993; Holt 1995). Viewing the law of slavery from the perspective of the immediate, contingent, and human manifestations of underlying economic and ideological structures, I argue, suggests that the “transformations” Morris maps continued to be experienced and contested locally long after they were “resolved” by the courts; that the law of slavery was as much the product of conjunctural pragmatism as it was of considered philosophy or concerted transformation; that the master languages of slavery were continually used by lawyers and litigants to contest its practice; that the social relations between and among slaveholders and nonslaveholders were embodied in and undermined by slaves; that slaves actively shaped the courtroom contests-contests that gave slavery its legal shape-which resulted from their agency and resistance; that slaves were able through everyday resistance to turn race against class-whiteness against slavery-in Southern courtrooms; and that rather than inconsistency or contradiction, the most prominent feature of the law of slavery was complete confusion.

#### Reducing slavery to the enactment of white supremacy denies the agency of slaves, turns the case.

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But race could not simply be enacted, it had also to be acted out (Fields 1990, 95-181; Johnson 1996).37 When Southern whites came into court to talk about race, they talked about biology but also about behavior; about runaways with bad character but also about those who had run away from bad treatment; about lineage and local history but also about who acted like a lady and who was treated as a free man; they talked about hair follicles and foot shapes but also about who was invited around to visit and who was allowed to dance at the ball; they justified their opinions with references to race science and biblical truth but also with the impervious confidence that they knew Negroes when they saw them and they could sense “black blood” the way an alligator could sense a storm (Hodes, forthcoming; Johnson 1996; Gross 1995).38 Most importantly, they argued openly about what it was they were talking about. Racial identity, their testimony reveals, was as much a contested practice as a codified presumption. And if race was as much practice as it was presumption, the racial edifice remained vulnerable to occasional subversion///

by those upon whom it depended to act it out. Recently, historians like Victoria Bynum (1992) and Martha Hodes (forthcoming) have searched out areas of the antebellum South where the social relations script stopped making sense, where interracial social life and sexual practice provided a continual counterpoint to official ideology. Many of the cases cited by Morris suggest a similar set of subversions of the race-slavery nexus: cases in which black slaves came into conflict with poor white people. What is interesting about these cases is not (only) that black slaves regularly gave the lie to race-slavery ideology by refusing to play the part they had been assigned but that slaveholding and nonslaveholding white people continually found themselves unable to agree on what that part was. Murder, rape, arson, and assault: it has always puzzled historians that slaves accused of these crimes came to trial at all. Looking back through the decades of vigilante lynching and state-sponsored terror, historians have asked how it was that “justice” for black slaves sometimes included the trials and procedures so apparently absent from postbellum racial regulation. Southern lawmakers gave one answer: they defined slaveholders’ unwillingness to see their slaves punished by the state as a matter of financial interest, and they tried to buy the slaveholders off by giving them a fair price for their convicted property. Historians (again including Morris) have followed the courts, defining these cases as conflicts between the slaveholders’ property interest in their slaves and the general interests of their class and communities (see also Genovese 1974a; Tushnet 1981). But the question as I have posed it-the difference between “justice” in the antebellum South, a society based on slavery, and “justice” in the postbellum South, a society based on race-suggests that “private property versus public safety” may be an inadequate accounting of what was at stake in these cases-unless we rethink what we mean by “property.” Cheryl Harris (1993) has recently noted the way in which “whiteness” is a form of property, a jealously guarded entitlement that allows its possessors to expect that events will break in their favor (see also Roediger 1991). It was surely this kind of property right-the legal privilege of acting out their whiteness- that nonslaveholding white people were asserting when they stopped slaves along the sides of Southern roads and asked them questions, and it was this type of property that made them believe they deserved honest and respectful answers, and made them angry if they received otherwise, and it was this type of property that made them believe that assaults on their persons or possessions were attacks on the social order, and that (white) slaveholders would join with them in punishing those responsible. When they sought compensation for the damage to their whiteness, however, these nonslaveholders often found themselves facing the same enemy they had faced on the road: s l a v e r ~Asked to choose between their own slaves and their nonslaveholding neighbors, slaveholders could be counted on to side with the slaves: they valued their own property rights, those defined by slavery, more than they did the property claims their nonslaveholding neighbors rooted in whiteness. Slaveholders’ stake in these conflicts was, arguably, more complicated than simple economic interest. After all, Kenneth Greenberg (1996, 16) has recently added his name to the long list of historians who think that slaveholders were less likely to calculate their interests in dollars and cents than in honor and reputation. And I have argued that slaveholders’ own social identities as masters, men, and so on were embodied in the very slaves upon whom nonslaveholding whites attempted to exert their own peculiar brand of property right (Johnson 1995, 81-136; 1996). But even if we figure the slaveholders’ interest in contesting these cases in narrow economic terms, the larger point remains the same: the Southern courts were full of cases in which nonslaveholders contended with slaveholders over who had what rights to slaves. These, then, were class conflicts between whites which were themselves expressed and experienced in terms of race, over which rights followed from whiteness and which from slavery, over exactly how far nonslaveholding white people could hold property in their own race if that meant interfering with other people’s slaves. As Barbara Fields has put it: “Race became the ideological medium through which people posed and apprehended basic questions of power and dominance, sovereignty and citizenship, justice and right. Not only questions involving the status and condition of black people, but also those involving relations between whites who owned slaves and whites who did not were drawn into these terms of reference, as a ray of light is deflected when it passes through a gravitational field” (1982, 162; see also E. Higginbotham 1992).

### AT: wrong location

#### Appeals to personal experience replace analysis of group oppression with personal testimony. As a result, politics becomes a policing operation—those not in an identity group are denied intellectual access and those within the group who don’t conform to the aff’s terms are excluded. Over time, this strategy LIMITS politics to ONLY the personal. This devastates structural change, and turns the case—it demands that political performance assimilate to very limited norms of experience

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The logic of individualism has structured the approach to multiculturalism in many ways. The call for tolerance of difference is framed in terms of respect for individual characteristics and attitudes; group differences are conceived categorically and not relationally, as distinct entities rather than interconnected structures or systems created through repeated processes of the enunciation of difference. Administrators have hired psychological consulting firms to hold diversity workshops which teach that conflict resolution is a negotation between dissatisfied individuals. Disciplinary codes that punish "hate-speech" justify prohibitions in terms of the protection of individuals from abuse by other individuals, not in terms of the protection of members of historically mistreated groups from discrimination, nor in terms of the ways language is used to construct and reproduce asymmetries of power. The language of protection, moreover, is conceptualized in terms of victimization; the way to make a claim or to justify one's protest against perceived mistreatment these days is to take on the mantle of the victim. (The so-called Men's Movement is the latest comer to this scene.) Everyone-whether an insulted minority or the perpetrator of the insult who feels he is being unjustly accused-now claims to be an equal victim before the law. Here we have not only an extreme form of individualizing, but a conception of individuals without agency. There is nothing wrong, on the face of it, with teaching individuals about how to behave decently in relation to others and about how to empathize with each other's pain. The problem is that difficult analyses of how history and social standing, privilege, and subordination are involved in personal behavior entirely drop out. Chandra Mohanty puts it this way: There has been an erosion of the politics of collectivity through the reformulation of race and difference in individualistic terms. The 1960s and '70s slogan "the personal is political" has been recrafted in the 1980s as "the political is personal." In other words, all politics is collapsed into the personal, and questions of individual behaviors, attitudes, and life-styles stand in for political analysis of the social. Individual political struggles are seen as the only relevant and legitimate form of political struggle.5 Paradoxically, individuals then generalize their perceptions and claim to speak for a whole group, but the groups are also conceived as unitary and autonomous. This individualizing, personalizing conception has also been be- hind some of the recent identity politics of minorities; indeed it gave rise to the intolerant, doctrinaire behavior that was dubbed, initially by its internal critics, "political correctness." It is particularly in the notion of "experience" that one sees this operating. In much current usage of "experience," references to structure and history are implied but not made explicit; instead, personal testimony of oppression re- places analysis, and this testimony comes to stand for the experience of the whole group. The fact of belonging to an identity group is taken as authority enough for one's speech; the direct experience of a group or culture-that is, membership in it-becomes the only test of true knowledge. The exclusionary implications of this are twofold: all those not of the group are denied even intellectual access to it, and those within the group whose experiences or interpretations do not conform to the established terms of identity must either suppress their views or drop out. An appeal to "experience" of this kind forecloses discussion and criticism and turns politics into a policing operation: the borders of identity are patrolled for signs of nonconformity; the test of membership in a group becomes less one's willingness to endorse certain principles and engage in specific political actions, less one's positioning in specific relationships of power, than one's ability to use the prescribed languages that are taken as signs that one is inherently “of” the group. That all of this isn't recognized as a highly political process that produces identities is troubling indeed, especially because it so closely mimics the politics of the powerful, naturalizing and deeming as discernably objective facts the prerequisites for inclusion in any group. Indeed, I would argue more generally that separatism, with its strong insistence on an exclusive relationship between group identity and access to specialized knowledge (the argument that only women can teach women's literature or only African-Americans can teach African-American history, for example), is a simultaneous refusal and imitation of the powerful in the present ideological context. At least in universities, the relationship between identity- group membership and access to specialized knowledge has been framed as an objection to the control by the disciplines of the terms that establish what counts as (important, mainstream, useful, collective) knowledge and what does not. This has had an enormously important critical impact, exposing the exclusions that have structured claims to universal or comprehensive knowledge. When one asks not only where the women or African-Americans are in the history curriculum (for example), but why they have been left out and what are the effects of their exclusion, one exposes the process by which difference is enunciated. But one of the complicated and contradictory effects of the implementation of programs in women's studies, African-American studies, Chicano studies, and now gay and lesbian studies is to totalize the identity that is the object of study, reiterating its binary opposition as minority (or subaltern) in relation to whatever is taken as majority or dominant.

### Visibility

#### Making the oppressed subject visible provokes surveillance, voyeurism and attempts at imperial possession and incorporation.

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The current contradiction between “identity politics” with its accent on visibility, and the psychoanalytic/ldeconstructionist mistrust (if visibility as she source of unity or wholeness needs to he refigured, if not resolved. As the left dedicates ever more energy to visibility politics, I am increasingly troubled by the forgetting of the problems of visibility so successfully articulated by feminist film theorists in I he 1970s and 1980s. I am not suggesting that continued invisibility is the “proper” political agenda for the disenfranchised, but. rather that. the binary between the power of visibility and the impotency of invisibility is falsifying. There is real power in remaining unmarked; and there are serious limitations to visual representation as a political goal. Visibility is a trap (“In this matter oft he visible, everything is a trap”: (Lacan *Four Fundamental Concepts*: 93); it summons surveillance and the law; it provokes voyeurism, fetishism, the colonialist/imperial appetite for possession. Yet it retains a certain political appeal. Visibility politics have practical consequences: a line can be drawn between a practice (getting someone seen or read) and a theory (if you are seen it. is harder for “them” to ignore you, to construct a punitive canon); the two can be reproductive. While there is a deeply ethical appeal in the desire for a more inclusive representational landscape and certainly under-represented communities can be empowered by an enhanced visibility, the terms of this visibility often enervate the putative power of these identities. A much more nuanced relationship to the power of visibility needs to be pursued than the Left currently engages.” Arguing that communities of the hitherto under-represented will be made stronger if representational economies reflect and see them, progressive cultural activists have staked a huge amount on increasing and expanding the visibility of racial, ethnic, and sexual “others.” It is assumed that disenfranchised communities who see their members within the representational field will feel great or pride in being Part, of such a community and those who are not in such a community will increase their understanding of the diversity and strength of such communities. Implicit within this argument. are several presumptions which bear further scrutiny: 1) Identities are visibly marked so the resemblance between the African-American on the television and the African-American on the street helps the observer see they are members of the same community. Reading physical resemblance is a way of' identifying community.

2 The relationship between representation and idenity is linear and smoothly mimetic, What one sees is who one is.

3 If one's mimetic likeness is not represented. one is not addressed. 4. Increased visibility equals increased power. Each presumption reflects the ideology of the visible, an ideology which erases the power of the unmarked, unspoken, and unseen.