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The aff’s call to fix a world gone astray is part of debate’s fixation on the suffering of the Other – this perspective is one of prescriptive colonialism that leads to endless violence

Jayan Nayar 12, law prof at the University of Warwick, The Politics of Hope and the Other-in-the-World: Thinking Exteriority, December 15, http://link.springer.com/article/10.1007/s10978-012-9115-8/fulltext.html

People suffer.17 This is a simple truth that takes little effort to state. Neither does the analysis of structures, of processes, of histories, of suffering require any accountable engagement on our part with suffering bodies (save perhaps in our field-work phase of enquiry as we seek data), nor with any of the vectors of violence whose complex intersections in historical time give material, embodied content to what we, in distance, name ‘suffering’. Put differently, the suffering condition when appropriated for the purposes of theory possesses no experiential meaning. Whilst lip service is paid to ‘voices of suffering’, voices as such are absented of experiential truth or ontological-political significance in any objectification of suffering as condition; voices are retained instead (perhaps, again, through the inclusion of some choice quotes of wretchedness, accumulated as data from the field) as theory’s justificatory launch-pads for intervention. At no point, for most of us theorists, is the suffering voice the voice of theory. Indeed, as Spivak (1988) so trenchantly affirmed, the ‘subaltern cannot speak’!18 The politics of discoursing suffering therefore is a politics **of the theorist**, suffering a problem to be solved by the theorist, where prescription is divorced from experience, theory from the relationality of violence and its local, day-to-day, normal and norm-alised infliction. At best, those that suffer, are invited to await the trickle-down of whatever benign ‘solution’ theory may purport to offer, post its lengthy journeys through intellectual and policy interrogations, as suffering is validated (or otherwise), its structural causation identified (or otherwise), its alleviation interrogated for many a disputed appropriateness of response (or otherwise).19 Having served the purpose of instigating theory, suffering itself becomes secondary to the politics of the ‘theorist/philosopher’—the ‘Self’ thinking for the suffering Other—**of imperial recognition**, response and intervention.20 Thus rationalised solutions are offered to the problem of the suffering condition, as if some ideal may indeed be redeemed and made ‘real’ from the incomplete actual of the present, laying as it were, immanent, latent, awaiting (re)discovery. The theorist becomes the technician, the expert wielder of knowledge and strategic wisdom, to overcome the problem of suffering that is perceived as one of inadequate social cognition, institutional organisation and planning. Thus, for example, suffering, as human rights violation becomes the result of inadequate understanding of rights-scope and obligations (Craven 2007; Alston and Quinn 1987), or of the conceptual essence of rights itself, or of the allocation of resources.21 Or, to refer to another example of theory-talk (where the legacy of Levinas is apparent), suffering as global injustice becomes a problem of reformulating political affinities within the new meta-game of globalisation as methodological cosmopolitanism (Beck 2005),22 towards ‘global citizenship’ to overcome the limits of anachronistic notions of political identities and responsibilities (Dower and Williams 2002), of ‘social connection models’ (Young 2006); or of the ‘ethics of assistance’ (Chatterjee 2004) or of cosmopolitan care, responsibility, and the politics of redistribution and institutional reform (Pogge 2008). In these examples of discoursing suffering, thinking suffering and its alleviation, true to the ‘problem of the passage’ in Levinasian thought (Wolcher 2003),23 becomes rational work, and the technocratic, even bureaucratic, measuring of suffering and its (appropriate) responses becomes the practical implication of theory; the constant fluctuations of betrayals and aspirations, always with some justification close at hand, only serving to entrench further the Levinasian injunction to responsibility—for further endeavours of thinking-hope, to serve further the cause of salvation for the lost souls of ‘strangers’, as Wheeler (2000) so poignantly put it. Suffering, as condition, as commodity to be exploited, as depoliticised category rather than experience, as a technical/bureaucratic/managerial problem to be solved, remains therefore the ever-present alibi for legitimate interventions amidst constant (and inevitable) disappointments. A corrupt, violent, imperial, global order(ing) of social relations becomes also the saviour, constantly revitalised and called unto renewed being, with every call for the alleviation of suffering (Douzinas 2007b).24 For all the repeated urgings for the expansion of its boundaries, to repair the various denials of exteriority, totality, it seems, is little affected.25 How, therefore, do we account for the constant supply of suffering (through the cruelties of the world) that continues to move the demand for suffering-based thinking (despite these cruelties)? How might the apparent inconsequentiality of so much humanisation in the pervasiveness of inhumanity demand our critical self-reflection as we engage in the politics of hope? We make a huge assumption—we, who theorise alleviatory possibilities out of the suffering condition—that our faith systems are true to the promises proclaimed. With this assumption, we attempt to think our way out of (continuing) betrayals to enable the realisation of promises in which we wish to believe. Good promises they seemingly are: the promise to eliminate poverty; to end starvation; to realise education for all; the list goes on. We ask the question: what prevents the realisation of these promises? What might enable the realisation of these promises? How many more resources? What kind of political institutions? Perhaps to assuage our faith in the consequentiality of our thoughts, so many questions are followed by so many ‘should’-assertions that crowd our repeated redesigns for Humanity—that the world community should respond to suffering; should expend the necessary (miniscule) resources that would alleviate chronic deprivation; should redress prevailing inequalities and injustices within the global economic order; should prioritise human rights in world trade and economic relations; should enforce legal regimes to hold transnational corporations responsible; should reform and democratise international institutions. The list, again, goes on, as do, notwithstanding all of these manifold ‘shoulds’, the ways of the world in which betrayals remain the normalities of business-as-usual (Robinson and Tormey 2009). Andrew Linklater’s contemplations on the prospects for ‘cosmopolitan obligations’ for ‘distant suffering’ is characteristic of the intellectual idealism of much theorisings of Humanity’s hopeful futures: the gulf between human societies may not be so difficult to bridge. … The obstacles to substantial progress have been well documented, and they will continue to shape the tracks along which globalization travels. But it is not beyond the ingenuity of the human race to rise above increasingly problematical particularistic moralities, and to create global arrangements that have the primary task of implementing cosmopolitan obligations to reduce distant suffering. (Linklater 2007, p. 33) As if the failures thus far have been simply due to a lack of ingenuity of the ‘human race’! What if, instead, the world order of inflicted suffering (and ‘the gulf between human societies’), the order of global impoverishment and insecurities, persists not merely as the outcome of a failure of (humane) consciousness to be corrected by suffering-based ethical theorisations of human rights and global justice, but as the result of created, planned and effected imperialist design as it continuously seeks to reshape world orders for profit? To what extent do the many ethical urgings for global transformations actually encounter the geo-and bio-politics of global coloniality that is defined by the material desires, motivations and actions of globalising elites, for whom, as Bauman (2003, p. 20) tells us, visions of the good life are defined not by attachments (to the suffering Other) but by a ‘disengaged imagination’ that seeks no utopian mission.26 In the face of such actualities, what do we make of the useful suffering of the ethical Self who purports to think for the Other? Inconsequentiality is the least of the criticisms that may be made. Nandy’s observation is pertinent: ‘domination today is rarely justified through oracles, ritual superiority, or claims to birthrights; domination is now more frequently justified in terms of better acquaintance with universal knowledge and better access to universal modes of acquiring knowledge’ (Nandy 2007, p. 227). Theorisations of hope that gaze upon suffering and that purport to contemplate, manage and solve suffering, therefore, as knowing (and modes of knowing) the Other, help create masks of hegemony for the brutal faces of domination.27

Reject their hopeful politics in favor of a focus on the failure that produced suffering – the aff is a caricature of the obsession with success imageries – only the right to fail can rupture the cycle

O’Gorman and Werry ’12 (Roisin O'Gorman, Ph.d., Theater and Drama Studies @ University of Cork, Margaret Werry, Department of Theater, University of Minnesota, “On Failure (On Pedagogy): Editorial Introduction,” Performance Research: A Journal of the Performing Arts Volume 17, Issue 1, 2012)

What has upped the stakes in this absurd drama is the **cultural dominance of hope and success** in a neoliberal age, now the mandate, measure and mantra **of the corporatizing university**. We live in the depressive ruins of the university, an entity dedicated to the rabid pursuit of illusory success when any substantive mission that might give that success substance has long since been mortgaged to market values (see Readings 1996 and Werry and O'Gorman 2009). The fetishization of excellence and outcomes, the prevalence of ‘audit culture’ (Strathern 2000) and prevailing instrumentalism and vocationalism, all institutionalize, codify and restigmatize failure. Now the encompassing regime of the test **eclipses all other ways of understanding** and valuing schooling: through standardized testing, student evaluations and bureaucratic measures of school ‘performance’, the threat of failure is the defining condition under which we (not just students but also teachers and institutions) operate. In these contexts, accidental failure is perilous, and the strategic, emancipatory or experimental use of failure – however much it is still necessary – is freighted with risk, danger and difficulty. The right to fail (with all its promise of inclusiveness, generosity, freedom) can only be claimed at an **ever-mounting cost**. The pedagogy of public art – as recent literature on relational aesthetics and established Freirian and Boalian work on theatre for social change attests – also carries an ameliorative and developmental charge, yoking artistic ventures to teleological narratives of hope, aspiration and social transformation. And it is likewise entwined with legitimating institutions (such as the academy) wedded to success. In public art projects, failure is often disavowed and internalized, mired in blame and shame, and papered over in the next hopeful grant proposal. Yet clearly, most such projects fail most of the time; fail to democratize, raise visibility, transform understandings or experiences or even gain the understanding and support of those they claim to aid. And no wonder: performance is a weapon of the weak aimed at mighty fortresses. We balance impossibly titanic political hopes – conflict-resolution, community-building, antiracism – on the precarious foundation of an art premised on failure. Such marginal efforts are often lodged in **defensive postures**, continually having to justify their existence with missionary zeal: they become good at talking about goals and strategies, less good at dwelling on their often disappointing outcomes and what they reveal about the process by which people and things change, learn, revert, resist, stall and change again, or about the catastrophes and collapses that attend any attempt at true dialogue across social difference. What would it mean to legitimate the continued practice of public art not in spite of but because of its inevitable failure? Dwelling on and in failure, it follows, offers **not only a tool of critique** or a diagnostic of neo-liberal enterprise, but also a way to remodel the theoretical premises of activist work in our discipline, querying the trajectories and temporalities of change enacted in performance. Performance practice teaches us how to live with and as failures, **finding possibility in predicament** and embracing the vulnerability of moments of failure that may also be moments of profound discovery in which we remain open to what transpires, rather than measure it against our intentions. Failure focuses progressive hopes not on future transcendence but in the interstices of present quotidian struggle and in the alternatives and possibilities for ethical action – for thinking and feeling otherwise – which that struggle makes available to us. It stands against the imperialism of hope, generates a reflexive understanding of the inherently agonistic space of learning and change – a space in which aspirations, resistances, prejudices and passions constantly clash, feelings run high and stumbling and flailing are a productive inevitability.3 Performance attunes us to this. Such a recalibration of the political posture of the discipline demands new tools. To look squarely at failure, we need methods designed not to capture the fixities of representation or identity but to help us navigate the slippery, fugitive terrain of process and affect. We might look, for example, to the immanent materialists – such as Bergson and Whitehead, Deleuze or Connolly – ‘philosophers of becoming’ who challenge us to set our analytic sights on moments of openness and uncertainty (where time is not purposive or linear, events not causal). These moments of ‘fecund duration’, in which emergence of the unthought can occur, are often occasions of failure of the known, stable or systemically enduring, requiring a response to which old habits, ideas or rules are not adequate, and for which we as subjects are not adequately prepared. They are acute experiences of the limits of human mastery, exceeding conscious awareness. Failure, we suggest, inaugurates such moments. It is a kind of freedom for which performance is a kind of practice, in which you ‘dwell creatively in uncertain situations’ (Connolly 2008). Uncertainty, of course, is a painful state to inhabit. Failure hurts. Failure haunts. It comes laced with shame, anger, despair, abjection, guilt, frustration – affects we usually wish away or hide. Thinking with failure means making affect an object of our curiosity rather than knowledge's irrelevant remainder. We need to slow failure's ‘ugly feelings’ down (Ngai 2005), ask them: ‘What are you doing here?’ Performance-sensitive work by theorists such as Berlant (2011, 2008), Tincineto Clough (2007), Ahmed (2004), Sedgwick (2003), Halberstam (2011) or Probyn (2005) has exposed the normative or coercive role that positive affect has often played in socio-political processes and worked to recuperate negative feelings as the site of emergence of alternative communities and alternative political imaginaries. (The role of shame in the solidarity of queer communities is a significant example.) Turning too swiftly away from the abyssal affect of failure risks capitulating **to its isolating, freezing effects**; **dwelling on it**, by contrast, allows us to imagine that **failure's misery can be,** **perversely, what unites us**. It allows us to imagine ourselves as members of response-able communities: individuals in a state of openness to moving and being moved by others. As Judith Halberstam has succinctly phrased it: ‘Failure loves company’ (2007: 89). Failure's timely challenge inspired our contributors to address a range of questions. How and why can performance be understood to have failed? What is the analytic power of failure to reveal the limits of the (currently) possible? How does it map what is thinkable, acceptable, appropriate, normal, desirable? What is the quality of failure as an aesthetic and as an affective experience? To what extent might that experience also be a political one? What are the pedagogical benefits of theorizing and practising failure? Can failure help us to shift the entrenched equation of power, knowledge and authority that structures schooling? What is the relationship between failure and change? How does failure prompt us to rethink the progressive transformation imagined by performance? What are the risks of valorizing failure in the way these questions imply? What does such a project stand to learn from those who are set up to fail, doomed to fail or dismissed as failures? We yoke movements for change, or the desire for a more just society, to heroic narratives of future success, but how sustainable is a politics based in hope, transcendence and self-assertion? How can energy, hope, curiosity and momentum withstand the inevitability of failure, as they confront intractable conflicts, historical or structurally entrenched injustices? How do we keep going? How do we remember that keeping going is worth doing?

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Your decision should answer the resolutional question: Is the enactment of topical action better than the status quo or a competitive option?

1. “Resolved” before a colon reflects a legislative forum

AOS ‘04

(5-12, “# 12, Punctuation – The Colon and Semicolon”, http://usawocc.army.mil/IMI/wg12.htm)

The colon introduces the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g.  A *formal* resolution, after the word "resolved:"

Resolved: (colon) That this council petition the mayor.

2. “USFG should” means the debate is solely about a policy established by governmental means

Ericson ‘03

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

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

They claim to win the debate for reasons other than the desirability of topical action. That undermines preparation and clash. Changing the question now leaves one side unprepared, resulting in shallow, uneducational debate. Requiring debate on a communal topic forces argument development and develops persuasive skills critical to any political outcome.

Simulated national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

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

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

Decision making—

Linking the ballot to a *should* question in combination with USFG simulation teaches the skills to organize pragmatic consequences *and* philosophical values into a course of action

Hanghoj 8

http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf Thorkild Hanghøj, Copenhagen, 2008 Since this PhD project began in 2004, the present author has been affiliated with DREAM (Danish Research Centre on Education and Advanced Media Materials), which is located at the Institute of Literature, Media and Cultural Studies at the University of Southern Denmark. Research visits have taken place at the Centre for Learning, Knowledge, and Interactive Technologies (L-KIT), the Institute of Education at the University of Bristol and the institute formerly known as Learning Lab Denmark at the School of Education, University of Aarhus, where I currently work as an assistant professor.

Joas’ re-interpretation of Dewey’s pragmatism as a “theory of situated creativity” raises a critique of humans as purely rational agents that navigate instrumentally through meansends- schemes (Joas, 1996: 133f). This critique is particularly important when trying to understand how games are enacted and validated within the realm of educational institutions that by definition are inscribed in the great modernistic narrative of “progress” where nation states, teachers and parents expect students to acquire specific skills and competencies (Popkewitz, 1998; cf. chapter 3). However, as Dewey argues, the actual doings of educational gaming cannot be reduced to rational means-ends schemes. Instead, the situated interaction between teachers, students, and learning resources are played out as contingent re-distributions of means, ends and ends in view, which often make classroom contexts seem “messy” from an outsider’s perspective (Barab & Squire, 2004). 4.2.3. Dramatic rehearsal The two preceding sections discussed how Dewey views play as an imaginative activity of educational value, and how his assumptions on creativity and playful actions represent a critique of rational means-end schemes. For now, I will turn to Dewey’s concept of dramatic rehearsal, which assumes that social actors deliberate by projecting and choosing between various scenarios for future action. Dewey uses the concept dramatic rehearsal several times in his work but presents the most extensive elaboration in Human Nature and Conduct: Deliberation is a dramatic rehearsal (in imagination) of various competing possible lines of action… [It] is an experiment in finding out what the various lines of possible action are really like (...) Thought runs ahead and foresees outcomes, and thereby avoids having to await the instruction of actual failure and disaster. An act overtly tried out is irrevocable, its consequences cannot be blotted out. An act tried out in imagination is not final or fatal. It is retrievable (Dewey, 1922: 132-3). This excerpt illustrates how Dewey views the process of decision making (deliberation) through the lens of an imaginative drama metaphor. Thus, decisions are made through the imaginative projection of outcomes, where the “possible competing lines of action” are resolved through a thought experiment. Moreover, Dewey’s compelling use of the drama metaphor also implies that decisions cannot be reduced to utilitarian, rational or mechanical exercises, but that they have emotional, creative and personal qualities as well. Interestingly, there are relatively few discussions within the vast research literature on Dewey of his concept of dramatic rehearsal. A notable exception is the phenomenologist Alfred Schütz, who praises Dewey’s concept as a “fortunate image” for understanding everyday rationality (Schütz, 1943: 140). Other attempts are primarily related to overall discussions on moral or ethical deliberation (Caspary, 1991, 2000, 2006; Fesmire, 1995, 2003; Rönssön, 2003; McVea, 2006). As Fesmire points out, dramatic rehearsal is intended to describe an important phase of deliberation that does not characterise the whole process of making moral decisions, which includes “duties and contractual obligations, short and long-term consequences, traits of character to be affected, and rights” (Fesmire, 2003: 70). Instead, dramatic rehearsal should be seen as the process of “crystallizing possibilities and transforming them into directive hypotheses” (Fesmire, 2003: 70). Thus, deliberation can in no way guarantee that the response of a “thought experiment” will be successful. But what it can do is make the process of choosing more intelligent than would be the case with “blind” trial-and-error (Biesta, 2006: 8). The notion of dramatic rehearsal provides a valuable perspective for understanding educational gaming as a simultaneously real and imagined inquiry into domain-specific scenarios. Dewey defines dramatic rehearsal as the capacity to stage and evaluate “acts”, which implies an “irrevocable” difference between acts that are “tried out in imagination” and acts that are “overtly tried out” with real-life consequences (Dewey, 1922: 132-3). This description shares obvious similarities with games as they require participants to inquire into and resolve scenario-specific problems (cf. chapter 2). On the other hand, there is also a striking difference between **moral deliberation** and educational game activities in terms of the actual consequences that follow particular actions. Thus, when it comes to educational games, acts are both imagined and tried out, but without all the real-life consequences of the practices, knowledge forms and outcomes that are being simulated in the game world. Simply put, there is a difference in realism between the dramatic rehearsals of everyday life and in games, which only “play at” or simulate the stakes and risks that characterise the “serious” nature of moral deliberation, i.e. a real-life politician trying to win a parliamentary election experiences more personal and emotional risk than students trying to win the election scenario of The Power Game. At the same time, the lack of real-life consequences in educational games makes it possible to design a relatively safe learning environment, where teachers can stage particular game scenarios to be enacted and validated for educational purposes. In this sense, educational games are able to provide a safe but meaningful way of letting teachers and students make mistakes (e.g. by giving a poor political presentation) and dramatically rehearse particular “competing possible lines of action” that are relevant to particular educational goals (Dewey, 1922: 132). Seen from this pragmatist perspective, the educational value of games is not so much a question of learning facts or giving the “right” answers, but more a question of exploring the contingent outcomes and domain-specific processes of problem-based scenarios.

Debate over a controversial point of action creates argumentative stasis—that’s key to avoid a devolution of debate into competing truth claims, which destroys the decision-making benefits of the activity

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

Debate is a means of settling differences, so there must be a controversy, a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a feet or value or policy, there is no need or opportunity for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four,” because there is simply no controversy about this state­ment. Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions of issues, there is no debate. Controversy invites decisive choice between competing positions. Debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants live in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this “debate” is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies are best understood when seated clearly such that all parties to the debate share an understanding about the objec­tive of the debate. This enables focus on substantive and objectively identifiable issues facilitating comparison of competing argumentation leading to effective decisions. Vague understanding results in unfocused deliberation and poor deci­sions, general feelings of tension without opportunity for resolution, frustration, and emotional distress, as evidenced by the failure of the U.S. Congress to make substantial progress on the immigration debate. Of course, arguments may be presented without disagreement. For exam­ple, claims are presented and supported within speeches, editorials, and advertise­ments even without opposing or refutational response. Argumentation occurs in a range of settings from informal to formal, and may not call upon an audi­ence or judge to make a forced choice among competing claims. Informal dis­course occurs as conversation or panel discussion without demanding a decision about a dichotomous or yes/no question. However, by definition, debate requires "reasoned judgment on a proposition. The proposition is a statement about which competing advocates will offer alternative (pro or con) argumenta­tion calling upon their audience or adjudicator to decide. The proposition pro­vides focus for the discourse and guides the decision process. Even when a decision will be made through a process of compromise, it is important to iden­tify the beginning positions of competing advocates to begin negotiation and movement toward a center, or consensus position. It is frustrating and usually unproductive to attempt to make a decision when deciders are unclear as to what the decision is about. The proposition may be implicit in some applied debates (“Vote for me!”); however, when a vote or consequential decision is called for (as in the courtroom or in applied parliamentary debate) it is essential that the proposition be explicitly expressed (“the defendant is guilty!”). In aca­demic debate, the proposition provides essential guidance for the preparation of the debaters prior to the debate, the case building and discourse presented during the debate, and the decision to be made by the debate judge after the debate. Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, “Public schools are doing a terri­ble job! They' are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do some­thing about this” or, worse, “It’s too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as “What can be done to improve public education?”—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies, The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities” and “Resolved; That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. This focus contributes to better and more informed decision making with the potential for better results. In aca­demic debate, it provides better depth of argumentation and enhanced opportu­nity for reaping the educational benefits of participation. In the next section, we will consider the challenge of framing the proposition for debate, and its role in the debate. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about a topic, such as ‘"homeless­ness,” or “abortion,” Or “crime,” or “global warming,” we are likely to have an interesting discussion but not to establish a profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet by itself fails to provide much basis for dear argumen­tation. If we take this statement to mean *Iliad* the written word is more effec­tive than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose, perhaps promoting positive social change. (Note that “loose” propositions, such as the example above, may be defined by their advocates in such a way as to facilitate a clear contrast of competing sides; through definitions and debate they “become” clearly understood statements even though they may not begin as such. There are formats for debate that often begin with this sort of proposition. However, in any debate, at some point, effective and meaningful discussion relies on identification of a clearly stated or understood proposition.) Back to the example of the written word versus physical force. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote weII-organized argument. What sort of writing are we concerned with—poems, novels, government documents, web­site development, advertising, cyber-warfare, disinformation, or what? What does it mean to be “mightier" in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, “Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?” The basis for argument could be phrased in a debate proposition such as “Resolved: That the United States should enter into a mutual defense treaty with Laurania.” Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advo­cates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

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

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

In the spring of 2011, facing a legacy of problematic U.S, military involvement in Bosnia, Iraq, and Afghanistan, and criticism for what some saw as slow sup­port of the United States for the people of Egypt and Tunisia as citizens of those nations ousted their formerly American-backed dictators, the administration of President Barack Obama considered its options in providing support for rebels seeking to overthrow the government of Muammar el-Qaddafi in Libya. Public debate was robust as the administration sought to determine its most appropriate action. The president ultimately decided to engage in an international coalition, enforcing United Nations Security Council Resolution 1973 through a number of measures including establishment of a no-fly zone through air and missile strikes to support rebels in Libya, but stopping short of direct U.S. intervention with ground forces or any occupation of Libya. While the action seemed to achieve its immediate objectives, most notably the defeat of Qaddafi and his regime, the American president received both criticism and praise for his mea­sured yet assertive decision. In fact, the past decade has challenged American leaders to make many difficult decisions in response to potentially catastrophic problems. Public debate has raged in chaotic environment of political division and apparent animosity, The process of public decision making may have never been so consequential or difficult. Beginning in the fall of 2008, Presidents Bush and Obama faced a growing eco­nomic crisis and responded in part with '’bailouts'' of certain Wall Street financial entities, additional bailouts of Detroit automakers, and a major economic stimu­lus package. All these actions generated substantial public discourse regarding the necessity, wisdom, and consequences of acting (or not acting). In the summer of 2011, the president and the Congress participated in heated debates (and attempted negotiations) to raise the nation's debt ceiling such that the U.S. Federal Govern­ment could pay its debts and continue government operations. This discussion was linked to a debate about the size of the exponentially growing national debt, gov­ernment spending, and taxation. Further, in the spring of 2012, U.S. leaders sought to prevent Iran from developing nuclear weapon capability while gas prices in the United States rose, The United States considered its ongoing military involvement in Afghanistan in the face of nationwide protests and violence in that country1 sparked by the alleged burning of Korans by American soldiers, and Americans observed the actions of President Bashir Al-Assad and Syrian forces as they killed Syrian citizens in response to a rebel uprising in that nation and considered the role of the United States in that action. Meanwhile, public discourse, in part generated and intensified by the cam­paigns of the GOP candidates for president and consequent media coverage, addressed issues dividing Americans, including health care, women's rights to reproductive health services, the freedom of churches and church-run organiza­tions to remain true to their beliefs in providing (or electing not to provide) health care services which they oppose, the growing gap between the wealthiest 1 percent of Americans and the rest of the American population, and continued high levels of unemployment. More division among the American public would be hard to imagine. Yet through all the tension, conflict was almost entirely ver­bal in nature, aimed at discovering or advocating solutions to growing problems. Individuals also faced daunting decisions. A young couple, underwater with their mortgage and struggling to make their monthly payments, considered walking away from their loan; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job and a teenager decided between an iPhone and an iPad. Each of these situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions. Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consider­ation: others scorn to just happen. Couples, families, groups of friends, and co­workers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make deci­sions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations. We all engage in discourse surrounding our necessary decisions every day. To refinance or sell one’s home, to buy a high-performance SUV or an eco­nomical hybrid car, what major to select, what to have for dinner, what candi­date to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? Should we watch The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue—all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, Time magazine named YOU its "Person of the Year.” Congratulations! Its selection was based on the participation not of “great men” in the creation of his­tory, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs, online networking, YouTube, Facebook, Twitter, Wikipedia, and many other “wikis," and social networking sites, knowledge and truth are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. Through a quick keyword search, we have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? Much of what suffices as information is not reliable, or even ethically motivated. The ability of every decision maker to make good, reasoned, and ethical deci­sions' relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength, And, critical thinking offers tools enabling the user to better understand the' nature and relative quality of the message under consider­ation. Critical thinkers are better users of information as well as better advocates. Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized. The executive order establishing California's requirement states; Instruction in critical thinking is designed to achieve an understanding of the relationship of language to logic, which would lead to the ability to analyze, criticize and advocate ideas, to reason inductively and deductively, and to reach factual or judgmental conclusions based on sound inferences drawn from unambigu­ous statements of knowledge or belief. The minimal competence to be expected at the successful conclusion of instruction in critical thinking should be the ability to distinguish fact from judgment, belief from knowledge, and skills in elementary inductive arid deductive processes, including an under­standing of die formal and informal fallacies of language and thought. Competency in critical thinking is a prerequisite to participating effectively in human affairs, pursuing higher education, and succeeding in the highly com­petitive world of business and the professions. Michael Scriven and Richard Paul for the National Council for Excellence in Critical Thinking Instruction argued that the effective critical thinker: raises vital questions and problems, formulating them clearly and precisely; gathers and assesses relevant information, using abstract ideas to interpret it effectively; comes to well-reasoned conclusions and solutions, testing them against relevant criteria and standards; thinks open-mindedly within alternative systems of thought, recognizing, and assessing, as need be, their assumptions, implications, and practical con­sequences; and communicates effectively with others in figuring our solutions to complex problems. They also observed that critical thinking entails effective communication and problem solving abilities and a commitment to overcome our native egocentrism and sociocentrism,"1 Debate as a classroom exercise and as a mode of thinking and behaving uniquely promotes development of each of these skill sets. Since classical times, debate has been one of the best methods of learning and applying the principles of critical thinking. Contemporary research confirms the value of debate. One study concluded: The impact of public communication training on the critical thinking ability of the participants is demonstrably positive. This summary of existing research reaffirms what many ex-debaters and others in forensics, public speaking, mock trial, or argumentation would support: participation improves die thinking of those involved,2 In particular, debate education improves the ability to think critically. In a com­prehensive review of the relevant research, Kent Colbert concluded, "'The debate-critical thinking literature provides presumptive proof ■favoring a positive debate-critical thinking relationship.11'1 Much of the most significant communication of our lives is conducted in the form of debates, formal or informal, These take place in intrapersonal commu­nications, with which we weigh the pros and cons of an important decision in our own minds, and in interpersonal communications, in which we listen to argu­ments intended to influence our decision or participate in exchanges to influence the decisions of others. Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of’ others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job offer, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few Of the thousands of deci­sions we may have to make. Often, intelligent self-interest or a sense of respon­sibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for our product, or a vote for our favored political candidate. Some people make decision by flipping a coin. Others act on a whim or respond unconsciously to “hidden persuaders.” If the problem is trivial—such as whether to go to a concert or a film—the particular method used is unimportant. For more crucial matters, however, mature adults require a reasoned methods of decision making. Decisions should be justified by good reasons based on accurate evidence and valid reasoning.

Legal engagement is good—

The law is malleable—debating it is the only way to affect change

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the **environments of other systems** by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more **pliant and responsive** to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism. A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project. Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes: I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59 A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge. The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject. [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62 Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity). What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests. Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany. This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7 There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order. Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities. Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition: In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80 Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82 It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them. 4. Conclusion Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law. This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. **But the denial of their** legitimacy or **possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration** that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to **fully do so**.

Rejecting state-based legal solutions creates ineffective activism, undermining progressive forces

Orly Lobel, University of San Diego Assistant Professor of Law, 2007, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

Both the practical failures and the fallacy of rigid boundaries generated by extralegal activism rhetoric permit us to broaden our inquiry to the underlying assumptions of current proposals regarding transformative politics — that is, attempts to produce meaningful changes in the political and socioeconomic landscapes. The suggested alternatives produce a new image of social and political action. This vision rejects a shared theory of social reform, rejects formal programmatic agendas, and embraces a multiplicity of forms and practices. Thus, it is described in such terms as a plan of no plan,211 “a project of projects,”212 “anti-theory theory,”213 politics rather than goals,214 presence rather than power,215 “practice over theory,”216 and chaos and openness over order and formality. As a result, the contemporary message rarely includes a comprehensive vision of common social claims, but rather engages in the description of fragmented efforts. As Professor Joel Handler argues, the commonality of struggle and social vision that existed during the civil rights movement has disappeared.217 There is no unifying discourse or set of values, but rather an aversion to any metanarrative and a resignation from theory. Professor Handler warns that this move away from grand narratives is self-defeating precisely because only certain parts of the political spectrum have accepted this new stance: “[T]he opposition is not playing that game . . . . [E]veryone else is operating as if there were Grand Narratives . . . .”218 Intertwined with the resignation from law and policy, the new bromide of “neither left nor right” has become axiomatic only for some.219 The contemporary critical legal consciousness informs the scholarship of those who are interested in progressive social activism, but less so that of those who are interested, for example, in a more competitive securities market. Indeed, an interesting recent development has been the rise of “conservative public interest lawyer[ing].”220 Although “public interest law” was originally associated exclusively with liberal projects, in the past three decades conservative advocacy groups have rapidly grown both in number and in their vigorous use of traditional legal strategies to promote their causes.221 This growth in conservative advocacy is particularly salient in juxtaposition to the decline of traditional progressive advocacy. Most recently, some thinkers have even suggested that there may be “something inherent in the left’s conception of social change — focused as it is on participation and empowerment — that produces a unique distrust of legal expertise.”222 Once again, **this conclusion reveals flaws** parallel **to the** original **disenchantment with legal reform**. Although the new extralegal frames present themselves as apt alternatives to legal reform models and as capable of producing significant changes to the social map, in practice they generate very limited improvement in existing social arrangements. Most strikingly, the cooptation effect here can be explained in terms of the most profound risk of the typology — that of legitimation. The common pattern of extralegal scholarship is to describe an inherent instability in dominant structures by pointing, for example, to grassroots strategies,223 and then to **assume** that specific instances of counterhegemonic activities translate into a more complete transformation. This celebration of multiple micro-resistances seems to rely on an aggregate approach — an idea that the multiplication of practices will evolve into something substantial. **In fact, the myth of engagement obscures the** actual lack of change being produced**, while the broader pattern of equating extralegal activism with social reform produces a** false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution. Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit.224 Unrelated efforts become related and part of a whole through mere reframing. At the same time, the elephant in the room — the rising level of economic inequality — is left unaddressed and comes to be understood as natural and inevitable.225 This is precisely the problematic process that critical theorists decry as losers’ self-mystification, through which marginalized groups come to see systemic losses as the product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality. The explorations of micro-instances of activism are often fundamentally performative, obscuring the distance between the descriptive and the prescriptive. The manifestations of **extralegal** **activism** — the law and organizing model; the proliferation of informal, soft norms and norm-generating actors; and the celebrated, separate nongovernmental sphere of action — all **produce a fantasy that change can be brought about through small-scale, decentralized transformation**. The emphasis is local, but the locality **is** described as a microcosm of the whole and the audience is national and global. In the context of the humanities, Professor Carol Greenhouse poses a comparable challenge to ethnographic studies from the 1990s, which utilized the genres of narrative and community studies, the latter including works on American cities and neighborhoods in trouble.226 The aspiration of these genres was that each individual story could translate into a “time of the nation” body of knowledge and motivation.227 In contemporary legal thought, a corresponding gap opens between the local scale and the larger, translocal one. In reality, although there has been a recent proliferation of associations and grassroots groups, few new local-statenational federations have emerged in the United States since the 1960s and 1970s, and many of the existing voluntary federations that flourished in the mid-twentieth century are in decline.228 There is, therefore, an absence of links between the local and the national, an absent intermediate public sphere, which has been termed “the missing middle” by Professor Theda Skocpol.229 New social movements have for the most part failed in sustaining coalitions or producing significant institutional change through grassroots activism. Professor Handler concludes that this failure is due in part to the ideas of contingency, pluralism, and localism that are so embedded in current activism.230 Is the focus on small-scale dynamics simply an evasion of the need to engage in broader substantive debate? **It is important for next-generation progressive legal scholars**, while maintaining a critical legal consciousness, to recognize that not all extralegal associational life is transformative. We must differentiate, for example, between inward-looking groups, which tend to be self-regarding and depoliticized, and social movements that participate in political activities, engage the public debate, and aim to challenge and reform existing realities.231 We must differentiate between professional associations and more inclusive forms of institutions that act as trustees for larger segments of the community.232 As described above, extralegal activism tends to operate on a more divided and hence a smaller scale than earlier social movements, which had national reform agendas. Consequently, **within critical discourse there is a need to recognize the limited capacity of small-scale action**. We should question the narrative that imagines consciousness-raising as directly translating into action and action as directly translating into change. Certainly not every cultural description is political. Indeed, it is questionable whether forms of activism that are opposed to programmatic reconstruction of a social agenda should even be understood as social movements. In fact, when groups are situated in opposition to any form of institutionalized power, they may be simply mirroring what they are fighting against and merely producing moot activism that settles for what seems possible within the narrow space that is left in a rising convergence of ideologies. The original vision is consequently coopted, and contemporary discontent is legitimated through a process of self-mystification.

### Case

Focus on decolonization as a framing concept necessarily puts their scholarship in terms of the colonial oppressor—it can’t apply to the lived experience of domination.

Salvatore 2006 (Ricardo D., Departmento de Historia, Universidad Torcuato di Tella, PhD in Economics from UT Austin) “A Post-Occidentalist Manifesto: Review of The Idea of Latin America by Walter D. Mignolo” A Contracorriente, Fall 2006.

Perhaps one of the great merits of this book is to set the path or lay the foundations for an exploration of “coloniality” in the terrain of knowledge and subjectivity, what Mignolo calls “the geo-politics of knowledge.” Yet in doing so, the book presents a limited view of “coloniality,” one that emphasizes the categories, the concepts, the worldviews, and the theory over the more common forms of colonial exploitation and domination. “Coloniality” is “the logical structure of colonial domination” (7), pointing always to the terrain of language, philosophy, and categorical imperatives. However, its relationship with domination, exploitation, and exclusion in the spheres of production and reproduction, and the public space are far from clear. In Mignolo’s view the “coloniality of knowledge” results from the imposition of classifications inflected by race, and from a perspective biased by its locus of enunciation and its universal pretensions (Eurocentrism). Are we not caving into the notion of an “epistemic trap”? Is “coloniality” a meta-category intended to capture all that has been excluded and marginalized by the project of Western modernity? Is this the ultimate form of dependency? (The inability to think and write in our own terms and with our own language?) If the terrain of contestation has moved into matters of language, cosmologies, and epistemologies, I am afraid that the “coloniality of knowledge” appears as too philosophical a matter to be tackled by the majority of readers. More importantly, the idea of “coloniality” as the logical structure of domination reproduces once more the eternal divide between base and superstructure, or at least, fails to articulate well the worlds of every-day experience of colonized or racialized subalterns and the textual worlds where economies, societies, politics, and cultures are scrutinized, debated, and diagnosed by those who write in the dominant language. There are moments in the discussion when knowledge appears as something embedded in localities and cultures. But in other places, more frequently, the arguments move “up” into the philosophical atmosphere of epistemes, languages, and systems of classifications. Here Mignolo’s position becomes dualistic: it is either Western epistemology of modernity or a pluriversality of perspectives bringing only the voices and positions of the damnés. As the reader would probably agree, there is a much richer variation on both sides of the mirror.

The aff’s hegemonic notion of unchanging coloniality means their theory loses validity and historical depth.

Salvatore 2006 (Ricardo D., Departmento de Historia, Universidad Torcuato di Tella, PhD in Economics from UT Austin) “A Post-Occidentalist Manifesto: Review of The Idea of Latin America by Walter D. Mignolo” A Contracorriente, Fall 2006.

A second observation refers to the question of History and to the long duration of “coloniality.” Following Frank and Wallerstein, Mignolo places the beginning of the capitalist world system in the sixteenth century. But he sees here also the beginning of a constellation of power-knowledge that structured the world into two sides of unequal weight: modernity and coloniality. While one of the sides (of this same coin) has shown some variation over time—there have been various waves of “modernity” from the sixteenth to the twentieth century—“coloniality” has remained practically unchanged since the sixteenth century. True, there have been changes in the nature and scope of capitalist exploitation and colonialism, and in the organization of ideas and knowledge. But these changes have not affected the logic of “modernity/coloniality”. The author exemplifies this long-held persistence by comparing the contemporary US War in Iraq with the campaigns for evangelization in the sixteenth-century Spanish colonies. Is this proposition tenable? ¶ This long continuity may raise some doubts among historians and other readers willing to give credit to the idea that different waves of modernization (state-building, nationalism, industrialization, urbanization, etc.) have actually transformed the material conditions in which people live and the relations among nation-states and knowledge-producing centers. It might well be that epistemes and worldviews only move slowly, but they move nonetheless. It is unclear, then, how the “logic” of the system (whether looked from above or from below) could have remained unchanged. The very examples the author provides to deal with the racialization of peoples of native-American or African descent and of their subcontinent show that categories in fact change. Las Casas’ four categories of “barbarians” did not persist into the nineteenth-century. The identification of Africans with slavery did not last much longer than the abolition of slavery in Brazil. And the racialization of Latin American republics as “second-class nations” changed significantly with the emergence of oil-rich or industrializing economies in the region. Historians could claim that the shift from the sixteenth century to the twentieth century regarding “modernity” was such that it erased any common denominators.¶ How could the Enlightenment be compared with sixteenth- century Evangelization? What are the points in common between nineteenth-century liberalism and sixteenth-century notion of Christendom? In other words, what is common about the different temporal manifestations of “modernity”? Only that they all have their darker side (“coloniality”)? And if so, what is persistent about this systemic logic? That the excluded and marginalized—the colonized—have “always” been prevented from writing their own history, educating themselves in their own languages, or using their own categories of thought? Or that these exclusions have always been authorized by some form of racism? My point is: only at the cost of great generalization (and hence the proportional loss of validity and historical depth) can we begin to accept the notion of an unchanging “coloniality.” And when we reach that point or level of generalization we have already abandoned the historian, the political scientist, and the sociologist, and have only philosophers and critical theorists to talk to. We need to restore the historicity of the concept if we want to explain the tensions of modernity and its forms of knowledge.

The aff is just filtering local knowledge through a western understanding—this leads to wrong conclusions with negative policy effects.

Sharapova 2012 (Sevara, International Women’s Fund ‘Sharq Ayoli’, Tashkent, Uzbekistan) “Author–critic forum: decolonial theory and gender research in Central Asia: Gender epistemologies and Eurasian borderlands, by Madina Tlostanova” Central Asian Survey Vol. 31, No. 3, September 2012, p. 358

I find Tlostanova’s idea of challenging the Western monopoly of knowledge production as well as the call to join decolonialism’s movement of epistemic disobedience attractive. As a scholar from the Central Asian region I quite often face a situation described by Tlostanova: local material provided by local researchers and then theoretically comprehended by Western scholars in order to make it accepted by the audience. I often feel that such ‘theoretical’ com- prehension leads to the wrong conclusions – or at least, to conclusions that I had not intended – because it was analysed with an imported logic that is ill-fitting to the particular society being studied. Most worryingly, such analysis sometimes produces conclusions that have negative policy effects. For example, as Lewis (2008) shows, when Western scholars applied such imported logic to the analysis of the Uzbek elite and labelled different representatives of the Uzbek elite as ‘pro-Western’, ‘conservatives’, and so on, this turned out to be a poor reflection of reality.

## 2nc

### at: we meet

Should denotes an expectation the aff will be enacted

American Heritage Dictionary 2K

Used to express probability or expectation

Means the USFG should take action

Steinberg and Freeley ‘8

David Director of Debate at U Miami, Former President of CEDA, officer, American Forensic Association and National Communication Association. Lecturer in Communication studies and rhetoric. Advisor to Miami Urban Debate League, Masters in Communication, and Austin, JD, Suffolk University, attorney who focuses on criminal, personal injury and civil rights law, Argumentation and Debate Critical Thinking for Reasoned Decision Making, TWELFTH EDITION

Most propositions on matters of policy contain the word should (or ought)—for example, “Resolved: That such-and-such should be done.” In a debate on a policy proposition, should means that intelligent self-interest, social welfare, or the national interest prompts this action **and that it is both desirable and workable. When the affirmative claims a policy “should” be adopted, it must show that the policy is practical—but it is under no obligation to show that it would be adopted**. The affirmative must give enough detail to show that if implemented, it would work. It may be impossible, within the time limitations of the debate, for the affirmative to give all the details, but it must at least show the outline of its policy and indicate how the details could be worked out. For example, in a debate on federal funding for education, the affirmative could not reasonably be expected to indicate how much money each state would receive under its plan, but it would be obliged to indicate the method by which the amount of the grants would be determined. It would be pointless for the negative to seek to show that the affirmative’s plan could not be adopted by demonstrating that public opinion is against it or that the supporters of the plan lack sufficient voting strength in Congress.

Red pedagogy demands dialogic engagement with the state

Sany Grande, 2007, Critical Pedagogy: Where are We Now?, p. 330-31

Andre Lorde’s essay, The Masters Tools Not Dismantle the Master's House, is one of the most quoted essays in academic history and, I would also venture to say, one that needs rethinking. While it is self-evident that indigenous knowledge is essential to the process of decolonization, l would also argue that the Masters tools are necessary. Otherwise, to take Audrey Lorde seriously means to create a dichotomy between the tools of the colonizer and those of the colonized. Such a dichotomy leaves the indigenous scholar to grapple with a kind of “Sophie’s Choice" moment where one feels compelled to choose between retaining their integrity (identity) as a Native scholar by employ in only indigenous knowledge or to “sell out” and employ the frames of Western knowledge. What does it mean for indigenous scholars to engage Western knowledge? Does it signify a final submission to the siren’s song, seducing us into the colonialist abyss with promises of empowerment? Or is it the necessary first step in reclaiming and decolonizing an intellectual inquiry room-of our own.’ Such questions provoke beyond the bounds of academic exercise, suggest instead the need for an academic exorcism.

The demon to be purged is the specter of colonialism. As indigenous scholars, we live within, against` and outside of its constant company` witnessing its various manifestations as it shape shifts its way into everything from research and public policy to textbooks and classrooms. Thus. the colonial tax of Native scholars not only requires a recognition of personal identity but also an analysis of how whole nations get trans- or (dis) figured when articulated through Western frames of knowing. As Edward Said observes. “institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracy and colonial styles” all support to the Westem discourse" (Said, 1985, p, 2). ln other words, is it possible to engage the grammar of empire without replicating its effects.’

At the same time indigenous entertain these ruminations, Native communities continue to be impacted and transformed by the forces of colonization, rendering the “choice” of whether to employ Western knowledge in the process“ of defining indigenous pedagogies essentially moot. ln other words, by virtue of living in this world and having to negotiate the forces of colonization, indigenous scholars are given no choice but to know, understand, and acquire the grammar of empire as well as develop the skills to contest it. The relationship between the two is not some liberal dream of multicultural harmony but rather the critical and dialogical tension between competing moral visions.

### AT: no topical version

Lack of political engagement turns the aff—isolates the aff to a privileged and insular position disconnected from native communities

Elvira Pulitano, associate professor in the Ethnic Studies Department at California Polytechnic State University, 2003, Toward a Native American Critical Theory, p. 91-2

From his chapter on Wynema Womack turns to a discussion of two Creek intellectuals, Alexander Posey (1873-1908) and Louis Oliver (1901-91), whose work presents characteristics of "authentic" Creek literature. According to Womack, Posey's immersion in local politics as well as his Creekcentric philosophy make him a perfect model for modern writers. Similarly, the writing of Louis Oliver, with its emphasis on Creek landscape, stories, and spiritualism, provides a significant image of Creek intellectualism. 17 By contrast a literature such as that produced by mixedblood authors in the past few decades - which departs from the body and the culture of the people, from the communities, and from a specific sense of landscape- inevitably fails tribalist concerns and appeals to sovereignty. Like Warrior, Womack is suspicious of a literature such as Vizenor's trickster fiction that embraces the jargon of postmodern theory since, in this specific case, Native authors fail to incorporate tribal realities. He writes: "If we are going to liberate words from fixed meanings and celebrate their amorphous shape-shifting qualities, might we need to recognize not only that tricksters shape-shift but that witches shape-shift also? Is there a balance called for here, an acknowledgment that sometimes fixed meanings are necessary, other times free play, as well as an honest recognition that both can be abused? ... What happens to political struggles when a concept like identity is deconstructed? ... I am waiting for the day when Native people will be addressed on their own terms" (Red on Red 205).

Statements such as these inevitably raise a series of questions. Can Womack's work still maintain, as the product of the University of Minnesota Press, its professed Creekcentrism? Does the fact that Womack holds a professorship at the University of Lethbridge (in Alberta) change the way in which he speaks to his own community? Can a book written, as Red on Red is, in response to the charge that only whites can "do theory" speak to Native communities in their own terms? Can Womack justify grounding his study in a notion of Creekcentrism when that study must, as it does, inevitably engage Western literary theory (even if only to attack it)?

Ultimately, Womack is writing from a privileged position within the academy, his audience largely other academics, not Native communities. Red on Red remains, therefore, a **sophisticated** work of literary **criticism and, as such**, inaccessible to those members of a Native audience who cannot approach it from a similarly privileged position. To a certain extent, and all the more ironically perhaps, Womack's position resembles that of the privileged diasporic Third World so often critiqued by fervent opponents of postcolonialism, people such as Aijaz Ahmad, who argues that **postcolonial theorizing is a matter of** class and institutional privilege **and a** flight from collective socialites **into the abstraction of metropolitan theory**.

### at: censorship

The affirmative’s absolute refusal of censorship becomes a new regulatory norm – their conception of enforced silence ignores the radical possibilities of what we do *and don’t* talk about

Brown, professor of women’s studies and legal studies, 1995

(Wendy, “Constitutions and 'Survivor Stories': In the 'folds of our own discourse' The Pleasures and Freedoms of Silence,” 3 U Chi L Sch Roundtable 185)

Insurrectionary acts and movements require breaking silence--silence about the very existence as well as the activity or injury of the collective insurrectionary subject. Even dreams of emancipation cannot take shape unless the discursively shadowy or altogether invisible character of those subjects, injuries, events, or activities are supplanted with articulation, whether through slave ballads, the flaunting of forbidden love, the labor theory of value, or the quantification of housework. Nor are the silences constitutive of dominance broken forever when they are broken once. They do not shatter the moment their strategic function has been exposed but must be assaulted repeatedly with stories, histories, theories, discourses in alternate registers until this assault finally triumphs such that the silence itself is rendered articulate as an historically injurious force. Thus have the subjugated and marginalized proceeded against the variety of silences tucked into the universal claims of humanist discourse for the last several centuries. But if the silences in discourses of domination are a site for insurrectionary noise, if they are the corridors we must fill with explosive counter-tales, it is also possible to make a fetish of breaking silence. Even more than a fetish, it is possible that this ostensible tool of emancipation carries its own techniques of subjugation--that it converges with non-emancipatory tendencies in contem- porary culture (for example, the ubiquity of confessional discourse and rampant personalization of political life), **that it establishes regulatory norms**, **coincides with the disciplinary power of confession**, in short, **feeds the powers we meant to starve**. While attempting to avoid a simple reversal of feminist valorizations of breaking silence, it is this dimension of silence and its putative opposite with which this Article is concerned. In the course of this work, I want to make the case for silence not simply as an aesthetic but a political value, a means of preserving certain practices and dimensions of existence from regulatory power, from normative violence, as well as from the scorching rays of public exposure. I also want to suggest a link between, on the one hand, a certain contemporary tendency concerning the lives of public figures--the confession or extraction of every detail of private and personal life (sexual, familial, therapeutic, financial) and, on the other, a certain practice in feminist culture: the compulsive putting into public discourse of heretofore hidden or private experiences--from catalogues of sexual pleasures to litanies of sexual abuses, from chronicles of eating disorders to diaries of homebirths, lesbian mothering, and Gloria Steinam's inner revolution. In linking these two phenomena--the privatization of public life via the mechanism of public exposure of private life on the one hand, and the compulsive/compulsory cataloguing of the details of women's lives on the other--I want to highlight a modality of regulation and depoliticization specific to our age that is not simply confessional but empties private life into the public domain, and thereby also usurps public space with the relatively trivial, rendering the political personal in a fashion that leaves injurious social, political and economic powers unremarked and untouched. In short, **while intended as a practice of freedom** (premised on the modernist conceit that the truth shall make us free), **these productions of truth not only bear the capacity to chain us to our injurious histories** as well as the stations of our small lives **but also to instigate** the **further regulation of those lives**, all the while depoliticizing their conditions. My concern with what might be called compulsory feminist discursivity and the presumed evil of silences has yet another source. Notwithstanding American academic feminism's romance with Foucault, there is an oddly non- or pre-Foucauldian quality to much feminist concern with censorship and silencing. In these formulations, expression is cast either as that which makes us free, tells our truth, puts our truth into circulation, n3 or as that which oppresses us by putting "their" truth into circulation in the form of pornography, hate speech, harassment or simply the representation of the world from "the male point of view." n4 If one side in the debate argues for more expression on our part--for example, by making our own pornography or telling our own stories--and the other argues for less on "their" part, both sides nonetheless subscribe to an expressive and repressive notion of speech, its capacity to express the truth of an individual's desire or condition, or to repress that truth. Both equate freedom with voice and visibility. n5 Both assume recognition to be unproblematic when we tell our own story, and assume that such recognition is the material of power and pleasure. Neither, in short, confronts the regulatory potential of speaking ourselves. I think the whole contemporary debate over censorship--whether focused on porn or rap music--is necessarily bound to an expressive-repressive model of power and freedom, which may explain why those who feel passionately about both freedom and dignity have trouble finding their way in this debate. If the choice is cast either as the free circulation of music and pictures venerating rape, racism, and misogyny, or state repression of the same, how does one choose? To inaugurate a different kind of analysis of the relationship between silence, speech, and freedom, I want to turn to two passages in Foucault's work, the first from The History of Sexuality: Discourses are not once and for all subservient to power or raised up against it, any more than silences are . . . Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it. In like manner, silence and secrecy are a shelter for power, anchoring its prohibitions; but they also loosen its hold and provide for relatively obscure areas of tolerance. n6 Foucault here marks the ambiguity of silence in relationship to power, insisting that silence functions not only as a "**shelter for power**" n7 but also as a shelter from it. (Foucault's example is the putative freedom of homosexual practice in a historical age when there is no discourse for or about it). n8 This paradoxical capacity of silence to engage opposites with regard to power is rarely associated with Foucault's thinking due to his emphasis on discourse as power. Yet I do not think he is here reneging on this emphasis nor, in speaking of silence as a shelter from power, suggesting a pre-discursive existence to things. Critical here is the difference between what Foucault calls unitary discourses, which regulate and colonize, and those which do not perform these functions with same social pervasiveness, even as they do not escape the tendency of all dis- course to establish norms by which it regulates and excludes. It is through this distinction that one can make sense of Foucault's otherwise inexplicable reference to sex in the eighteenth century as being "driven out of hiding and constrained to lead a discursive existence," n9 or his troubling example of the village simpleton whose "inconsequential" habit of molesting young girls in exchange for pennies was suddenly subjected to medical, judicial, and popular scrutiny and condemnation. n10 Neither in these cases nor in others where Foucault seems to imply a "freer" because pre-discursive existence to certain practices would he appear to mean that they really occurred "outside" dis- course, but rather that they had not yet been brought into the pervasive regulatory discourses of the age--science, psychiatry, medicine, law, pedagogy, and so forth. n11 Silence, as Foucault affirms it, then, is identical neither with secrecy nor with not speaking. Rather, it signifies a relation to regulatory discourses, as well as a possible niche for the practice of freedom within those discourses. If, as Foucault insists, freedom is a practice (as opposed to an achievement, condition, or institution), then the possibility of practicing freedom inside a regulatory discourse occurs in the empty spaces of that discourse as well as in resistance to the discourse. Moreover, silence can function as speech in both ways at once, as in the following autobiographical example offered by Foucault: Maybe another feature of this appreciation of silence is related to the obligation of speaking. I lived as a child in a petit bourgeois, provincial milieu in France and the obligation of speaking, of making conversation with visitors, was for me something both very strange and very boring. I often wondered why people had to speak. n12

### 2nc at: law bad

‘Abandoning’ the law is impossible, but the attempt to do so produces ineffective social change

Orly Lobel, University of San Diego Assistant Professor of Law, 2007, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

At first glance, the idea of opting out of the legal sphere and moving to an extralegal space using alternative modes of social activism may seem attractive to new social movements. We are used to thinking in binary categories, constantly carving out different aspects of life as belonging to different spatial and temporal spheres. Moreover, we are attracted to declarations about newness — new paradigms, new spheres of action, and new strategies that are seemingly untainted by prior failures.186 However, the critical insights about law’s reach must not be abandoned in the process of critical analysis. Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation, and just as **the “state” is not a single organism but a multiplicity of** legislative, administrative, and judicial **organs**, “nonstate arenas” are dispersed, multiple, and constructed. **The focus on action in a separate sphere broadly defined as civil society can be** self-defeatingprecisely because **it conceals the many ways in which law continues to play a crucial role** in all spheres of life. Today, the lines between private and public functions are increasingly blurred, forming what Professor Gunther Teubner terms “polycorporatist regimes,” a symbiosis between private and public sectors.187 Similarly, new economic partnerships and structures blur the lines between for-profit and nonprofit entities.188 Yet much of the current literature on the limits of legal reform and the crisis of government action is built upon a privatization/regulation binary, particularly with regard to social commitments, paying little attention to how the background conditions of a privatized market can sustain or curtail new conceptions of the public good.189 In the same way, legal scholars often emphasize sharp shifts between regulation and deregulation, overlooking the continuing presence of legal norms that shape and inform these shifts.190 These false dichotomies should resonate well with classic cooptation analysis, which shows how social reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives. Indeed, in the contemporary extralegal climate, and contrary to the conservative portrayal of federal social policies as harmful to the nonprofit sector, voluntary associations have flourished in mutually beneficial relationships with federal regulations.191 A dichotomized notion of a shift between spheres — between law and informalization, and between regulatory and nonregulatory schemes — therefore neglects the ongoing possibilities within the legal system to develop and sustain desired outcomes and to eliminate others. The challenge for social reform groups and for policymakers today is to identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality. Community empowerment requires ongoing government commitment.192 In fact, the most successful communitybased projects have been those which were not only supported by public funds, but in which public administration also continued to play some coordination role.193 At both the global and local levels, with the growing enthusiasm around the proliferation of new norm-generating actors, many envision a nonprofit, nongovernmental organization–led democratization of new informal processes.194 Yet this Article has begun to explore the problems with some of the assumptions underlying the potential of these new actors. Recalling the unbundled taxonomy of the cooptation critique, it becomes easier to identify the ways extralegal activism is prone to problems of fragmentation, institutional limitation, and professionalization. Private associations, even when structured as nonprofit entities, are frequently undemocratic institutions whose legitimacy is often questionable.195 There are problematic structural differences among NGOs, for example between Northern and Southern NGOs in international fora, stemming from asymmetrical resources and funding,1 9 6 and between large foundations and struggling organizations at the national level. Moreover, direct regulation of private associations is becoming particularly important as the roles of nonprofits increase in the new political economy. Scholars have pointed to the fact that nonprofit organizations operate in many of the same areas as for-profit corporations and government bureaucracies.197 This phenomenon raises a wide variety of difficulties, which range from ordinary financial corruption to the misrepresentation of certain partnerships as “nonprofit” or “private.”198 Incidents of corruption within nongovernmental organizations, as well as reports that these organizations serve merely as covers for either for-profit or governmental institutions, have increasingly come to the attention of the government and the public.199 Recently, for example, the IRS revoked the tax-exempt nonprofit status of countless “credit counseling services” because these firms were in fact motivated primarily by profit and not by the notfor-profit cause of helping consumers get out of debt.200 Courts have long recognized that the mere fact that an entity is a nonprofit does not preclude it from being concerned about raising cash revenues and maximizing profits or affecting competition in the market.201 In the application of antitrust laws, for example, almost every court has rejected the “pure motives” argument when it has been put forth in defense of nonprofits.202 Moreover, akin to other sectors and arenas, nongovernmental organizations — even when they do not operate within the formal legal system — frequently report both the need to fit their arguments into the contemporary dominant rhetoric and strong pressures to subjugate themselves in the service of other negotiating interests. This is often the case when they appear before international fora, such as the World Bank and the World Trade Organization, and each of the parties in a given debate attempts to look as though it has formed a well-rounded team by enlisting the support of local voluntary associations.203 One NGO member observes that “when so many different actors are drawn into the process, there is a danger that our demands may be blunted . . . . Consequently, we may end up with a ‘lowest common denominator’ which is no better than the kind of compromises the officials and diplomats engage in.”204 Finally, local NGOs that begin to receive funding for their projects from private investors report the limitations of binding themselves to other interests. Funding is rarely unaccompanied by requirements as to the nature and types of uses to which it is put.205 These concessions to those who have the authority and resources to recognize some social demands but not others are indicative of the sorts of institutional and structural limitations that have been part of the traditional critique of cooptation. In this situation, local NGOs become dependent on players with greater repeat access and are induced to compromise their initial vision in return for limited victories. The concerns about the nature of both civil society and nongovernmental actors illuminate the need to reject the notion of avoiding the legal system

and opting into a nonregulated sphere of alternative social activism. When we understand these different realities and processes as also being formed and sustained by law, we can explore new ways in which legality relates to social reform. Some of these ways include efforts to design mechanisms of accountability that address the concerns of the new political economy. Such efforts include treating private entities as state actors by revising the tests of joint participation and public function that are employed in the state action doctrine; extending public requirements such as nondiscrimination, due process, and transparency to private actors; and developing procedural rules for such activities as standard-setting and certification by private groups.206 They may also include using the nondelegation doctrine to prevent certain processes of privatization and rethinking the tax exemption criteria for nonprofits.207 All of these avenues understand the law as performing significant roles in the quest for reform and accountability while recognizing that new realities require creative rethinking of existing courses of action. **Rather than opting out of the legal arena, it is possible to accept the need to** diversify modes of activism and legal categories while **using legal reform in ways that are responsive to new realities**. Focusing on function and architecture, rather than on labels or distinct sectors, requires legal scholars to consider the desirability of new legal models of governmental and nongovernmental partnerships and of the direct regulation of nonstate actors. In recent years, scholars and policymakers have produced **a body of literature**, rooted primarily in administrative law, describing ways in which the government can harness the potential of private individuals to contribute to the project of governance.208 These new insights develop the idea that administrative agencies must be cognizant of, and actively involve, the private actors that they are charged with regulating. These studies, in fields ranging from occupational risk prevention to environmental policy to financial regulation, draw on the idea that groups and individuals will better comply with state norms once they internalize them.209 For example, in the context of occupational safety, there is a growing body of evidence that focusing on the implementation of a culture of safety, rather than on the promulgation of rules, can enhance compliance and induce effective self-monitoring by private firms.210 Consequently, social activists interested in improving the conditions of safety and health for workers should advocate for the involvement of employees in cooperative compliance regimes that involve both top-down agency regulation and firmand industry-wide risk-management techniques. Importantly, in all of these new models of governance, the government agency and the courts must preserve their authority to discipline those who lack the willingness or the capacity to participate actively and dynamically in collaborative governance. Thus, unlike the contemporary message regarding extralegal activism that privileges private actors and nonlegal techniques to promote social goals, the new governance scholarship is engaged in developing a broad menu of legal reform strategies that involve private industry and **nongovernmental actors** in a variety of ways while maintaining the necessary role of the state to aid weaker groups in order to promote overall welfare and equity. **A responsive legal architecture has the potential to generate new forms of accountability and social responsibility and to link hard law with “softer” practices and normativities**. **Reformers can** potentially **use law to increase the power and access of vulnerable individuals and groups and to develop tools to increase fair practices and knowledge building** within the new market.

# 1nr

The aff is just filtering local knowledge through a western understanding—this leads to wrong conclusions with negative policy effects.

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I find Tlostanova’s idea of challenging the Western monopoly of knowledge production as well as the call to join decolonialism’s movement of epistemic disobedience attractive. As a scholar from the Central Asian region I quite often face a situation described by Tlostanova: local material provided by local researchers and then theoretically comprehended by Western scholars in order to make it accepted by the audience. I often feel that such ‘theoretical’ com- prehension leads to the wrong conclusions – or at least, to conclusions that I had not intended – because it was analysed with an imported logic that is ill-fitting to the particular society being studied. Most worryingly, such analysis sometimes produces conclusions that have negative policy effects. For example, as Lewis (2008) shows, when Western scholars applied such imported logic to the analysis of the Uzbek elite and labelled different representatives of the Uzbek elite as ‘pro-Western’, ‘conservatives’, and so on, this turned out to be a poor reflection of reality.

AND No External Offense—The aff’s hegemonic notion of unchanging coloniality means their theory loses validity and historical depth.

Salvatore 2006 (Ricardo D., Departmento de Historia, Universidad Torcuato di Tella, PhD in Economics from UT Austin) “A Post-Occidentalist Manifesto: Review of The Idea of Latin America by Walter D. Mignolo” A Contracorriente, Fall 2006.

A second observation refers to the question of History and to the long duration of “coloniality.” Following Frank and Wallerstein, Mignolo places the beginning of the capitalist world system in the sixteenth century. But he sees here also the beginning of a constellation of power-knowledge that structured the world into two sides of unequal weight: modernity and coloniality. While one of the sides (of this same coin) has shown some variation over time—there have been various waves of “modernity” from the sixteenth to the twentieth century—“coloniality” has remained practically unchanged since the sixteenth century. True, there have been changes in the nature and scope of capitalist exploitation and colonialism, and in the organization of ideas and knowledge. But these changes have not affected the logic of “modernity/coloniality”. The author exemplifies this long-held persistence by comparing the contemporary US War in Iraq with the campaigns for evangelization in the sixteenth-century Spanish colonies. Is this proposition tenable? ¶ This long continuity may raise some doubts among historians and other readers willing to give credit to the idea that different waves of modernization (state-building, nationalism, industrialization, urbanization, etc.) have actually transformed the material conditions in which people live and the relations among nation-states and knowledge-producing centers. It might well be that epistemes and worldviews only move slowly, but they move nonetheless. It is unclear, then, how the “logic” of the system (whether looked from above or from below) could have remained unchanged. The very examples the author provides to deal with the racialization of peoples of native-American or African descent and of their subcontinent show that categories in fact change. Las Casas’ four categories of “barbarians” did not persist into the nineteenth-century. The identification of Africans with slavery did not last much longer than the abolition of slavery in Brazil. And the racialization of Latin American republics as “second-class nations” changed significantly with the emergence of oil-rich or industrializing economies in the region. Historians could claim that the shift from the sixteenth century to the twentieth century regarding “modernity” was such that it erased any common denominators.¶ How could the Enlightenment be compared with sixteenth- century Evangelization? What are the points in common between nineteenth-century liberalism and sixteenth-century notion of Christendom? In other words, what is common about the different temporal manifestations of “modernity”? Only that they all have their darker side (“coloniality”)? And if so, what is persistent about this systemic logic? That the excluded and marginalized—the colonized—have “always” been prevented from writing their own history, educating themselves in their own languages, or using their own categories of thought? Or that these exclusions have always been authorized by some form of racism? My point is: only at the cost of great generalization (and hence the proportional loss of validity and historical depth) can we begin to accept the notion of an unchanging “coloniality.” And when we reach that point or level of generalization we have already abandoned the historian, the political scientist, and the sociologist, and have only philosophers and critical theorists to talk to. We need to restore the historicity of the concept if we want to explain the tensions of modernity and its forms of knowledge.

Their retreat to native-epistemology is ethnocentric and reproduces violent nationalist politics –voting neg enables progressive change

Brewster Fitz, Oklahoma State University, 2007, American Indian Literary Nationalism, American Indian Culture and Research Journal 31 no3

Implicit in Weaver's analogical argument, in which he likens Indian boarding school students to contemporary Indian students in graduate programs in literature and cultural studies, is the assumption that most members of American Indian communities read criticism and literature. However unlikely this may be, there is another way to interpret and to use this analogical intertwining of religion, language, literature, and theory as a rhetorical tool to persuade one's readers. It can be argued that speakers of common languages, whether indigenous American languages or English, should go to the university in order to study not only the languages of other important cultures (for example, Spanish, Portuguese, French, German, Arabic, Chinese, Japanese) but also the figurative "languages" of other professional and academic disciplines. Whether these are the technical languages of sciences like geology or medicine, the abstract language of mathematics, the traditional language of law, with its expressions in Latin and antiquated syntax, or the ever-evolving languages of semiotics, linguistics, or deconstructive theory, with its untranslatable puns and neologisms in French, these technical idioms are not the equivalent of the language spoken around the kitchen table by the "Native community."

Perhaps the most important professional issue raised in the book is whether non-Native critics "can or should do Native American studies" (10). Weaver points out that non-Native critics, like Robert Dale Parker, in a critical remark on Red on Red, are unable to quote a single passage in which Womack explicitly states that non-Natives are unwelcome in Native American studies. Explaining that Parker is reacting to what he labels Womack's "implication" that non-Natives are not welcome, Weaver brings up the thorny interpretive question of the relation between the writer's or poet's intended meaning and what is understood by the reader and critic (10). This question has long been problematic. It is central to any theory of reading. I cannot say whether or not Weaver has read Wimsatt and Beardsley's "The Intentional Fallacy" (1946), in which these two non-Natives, who once ruled the empire of American New Criticism, set themselves up against traditional literary historians and philologists from all over the world, but he must know that what he, as a prosecuting attorney, can lead the members of the jury to infer is as important as what he can lead the accused to confess. He inveighs against implication at the same time that he uses it. According to Weaver, what Parker calls the implication in Womack's text is not Womack's intended meaning but is "actually Parker's own highly charged inference" (10; italics mine). In using these words, Weaver implies not only that Parker is mistakenly reading into Womack's words something that Womack did not intend but also that he is making an emotional rather than a rational appeal to his readers. Weaver then provides his own reading, namely that Womack is "simply saying that in reading literature one should privilege internal cultural readings" (10). Needless to say, what it means to "privilege internal cultural readings" can be interpreted in many ways.

Weaver declares he is going to be "explicit and I hope (for the last time) coruscatingly clear" in dealing with the issue of the participation of non-Native scholars in Native American Studies (11). Nevertheless, he uses highly suggestive metaphorical language in order to separate the needed and wanted non-Native critics from the unneeded and unwanted non-Native theorists: "We want non-Natives to read, engage, and study Native literature. The survival of Native authors, if not Native people in general, depends on it. But we do not need literary colonizers" (11; second italics mine). By metaphorically designating the unneeded and unwanted literary theorists as "literary colonizers," Weaver opens this allegedly "coruscatingly clear" statement to readers' inferences about what constitutes literary colonialism. Is it possible for a non-Native scholar and critic to put forward ideas and interpretations based on theoretical understandings of oral and written language that differ from those of Weaver, Womack, and Warrior, without opening herself to the charges of being a literary colonizer? Owing to their rhetoric, in which religion, politics, law, literature, and criticism are inseparably interwoven, **it becomes difficult not to liken their own nationalist discourse to the very** ethnocentric colonial discourse they see as misguided. Weaver, who seemingly without irony declares that "Native Americans need the experience of making our own mistakes in literary criticism," who implies that his own critical discourse might be faulty by explicitly stating that "[e]ven a faulty criticism is more interesting than a 'correct' one directed by a literary overseer," and who explicitly states that making mistakes is "what sovereignty and self-determination are all about," appears knowingly to leave himself and his coauthors open to the charge that their understanding not only of high theory but also of their own discourse may be faulty owing to their own willingly admitted ethnocentrism (37).

Craig Womack ends his chapter "The Integrity of American Indian Claims (Or, How I Learned to Stop Worrying and Love My Hybridity)" in which he, among many things, attacks Elvira Pulitano with the explicit mention of this initial ironic nod to Dr. Strangelove and a humorous gloss of the final scene of that film: "One of Kubrick's most enduring images is Slim Pickens straddling the bomb like a bull rider just before the chute is thrown open, then his trip down, falling from the hatch of a B-52 and waving his cowboy hat as he plummets through the clouds. Embracing my hybridity is about as sexy as wrapping my legs around an H-bomb. While you might get a big tingle during the initial descent, it's the impact that will kill you" (174). Whether Womack wraps his legs around Elvira Pulitano's book and rides it to the ground, or picks it up and throws it back into the group of scholars from whom she has metaphorically tossed it, is left to our interpretation. Nevertheless, everyone at a rodeo knows who the best bull riders are, even if they do wear cowboy hats.

Before reading the three central chapters in this book, one should already have read, and still be familiar with, Simon Ortiz's essay, "Towards a National Indian Literature: Cultural Authenticity in Nationalism," which first appeared in 1981 and is included as an appendix. The best place to start reading after Ortiz's essay and his foreword to this book, as well as the introduction, is probably chapter 3, Robert Warrior's "Native Critics in the World: Edward Said and Nationalism." Warrior starts his chapter in the autobiographical narrative mode, telling how, during his graduate studies at Union Theological Seminary, before his return to Pawhuska to work on his doctoral dissertation, he took two seminars in literary theory across the street at Columbia University. There he encountered Edward Said, the only critic and theorist, non-Indian or Indian, whom he appears to consider worthy of being an intellectual and political role model. He ends his chapter with the story of Said's last painful decade as a theoretical scholar, passionate advocate for the nationalist cause of Palestine, and victim of leukemia. In between he sketches how he and other American Indian theorists can practice a theoretical secularism, similar to the one advocated by Said, and at the same time adhere to a tribal nationalism-tradition, which is informed by religious beliefs of various sorts: This is a complex issue, and Warrior probably would be the first to point out that he and his coauthors are far from having had the last word. Whether Said's secularism, in effect, can operate as a belief system without having the same epistemological, ontological, and ethnic grounding of religious belief systems is a tough question.

A feminist reader of this book might see Lisa Brooks to be the token female. Invited to the gathering around the kitchen table after the ceremony, Brooks cooks and serves the literary fry bread. An Ivy League academic who earned her PhD at Cornell and is an assistant professor of history and literature and of folklore and mythology at Harvard,. Brooks has genetic and cultural roots that reach back to Missiquoi, "an Abenaki village on the northeast shore of Bitabagwa, or Lake Champlain, that has been continually occupied by Abenaki families for over twelve thousand years," and to Poland, where her mother survived birth in a Nazi labor camp (246). Seemingly the perfect incarnation of the mixed-blood hybridism against which the book inveighs, Brooks favors instead the concepts of self-contained, total indigenous culture and nationalist literary sovereignty. She rejects poststructuralist thought. Probably alluding to the crimes against humanity committed under German Nazionalsozialismus and to the murderous Anglo-American nationalist expansion under manifest destiny, she "admit[s] that talk of nationalism makes [her] wary" (244). Implicit in her essay, however, and in the other essays in this book, is the argument that not all nationalisms are the same and that not all nationalisms give birth to abominable crimes against humanity. In other words, just because indigenous tribes claim to be close to the land, just because some indigenous writers refer to concepts like blood memory, one cannot automatically infer that the literary nationalism espoused by the coauthors of this book is informed by a troubling ideology like that of Blut und Boden, which is the German expression for the racist, essentialist, and warlike National Socialist (Nazi) ideology that led to so much bloodshed during World War II. Nevertheless, there are disturbing signs that these five nationalist critics have not understood that the linguistic, literary, and cultural theory that informs their writings is quite similar to that which informs the thought of conservative literary and historical scholars who not only reject high theory but also reject cultural studies of all sorts.

Engaging the resolution and dialogue solves better—their separatist politics results in ethnographic discourse that turns the aff

Elvira Pulitano, associate professor in the Ethnic Studies Department at California Polytechnic State University, 2003, Toward a Native American Critical Theory, p. 21-22

Allen's claims, tend to ignore her critical position. 5 From within the category women of color, Allen enters the discourse on Native American critical theory by acknowledging the necessity of generating a form of criticism originating primarily from the Native or indigenous cultural context of the literary texts themselves and producing strategies that suggest how such a discourse can be effectively articulated. **Yet her position remains ambivalent throughout the entire critical process**. As I argued in the introduction, Allen's critical perspective takes a separatist stance grounded, as it were, in a rigidly gynocentric Indian view. By articulating what the literary critic Chela Sandoval calls "a typology of oppositional consciousness" (3), Allen presents a discourse conceived as different from both a patriarchalmasculine and a hegemonic-feminist perspective. 6 While the basics of her epistemological process are rooted in a female-centered universe, I would argue that Allen's mode of "oppositional consciousness" goes beyond feminist problematics. Insisting as she does on a distinctive Indian perspective, Allen ends up- especially in The Sacred Hoop- forging what I call an ethnographic discourse, **construing and constructing Indianness from the seemingly romantic, sentimentalized perspective of Eurocentric thinking, the same thinking that** for more than five hundred years has **defined the Indian as the Other of Euramerican consciousness**. 7 Despite critics' attempt to read Allen's theory from within her own paradigm, I argue that Allen's (separatist) critical stance appears problematic in the context of a Native American theory through which authors are attempting to generate a discourse that significantly challenges the authoritative Eurocentric mode. Instead of participating in the critical dialogue from within, showing how it is possible to create new ways of theorizing while adopting the discursive tools offered by the metropolitan center, Allen steps outside, into the margin, and opts for a separatist solution. Such a separatist solution, however, ironically ends up legitimating the binary categories of Western Eurocentric thinking.

At the heart of Allen's critical theory are the images and symbols of ancient Keres traditions as well as her own self-divided sense of what she calls the "breed" experience. According to Elizabeth Hanson, "the 'breed' experience becomes a mediative, revealing means of adding 'breath' to 'breath' and thereby extending the life of Native American literature in a white American literary context" (10 ). Allen - who refers to herself as a "multicultural event ... raised in a Chicano village in New Mexico by a half-breed mother and a Lebanese-American father" (Rev. 127)- occupies what Keating refers to as a "threshold position" (2), participating in a number of apparently separate worlds yet refusing to be contained within any single group or location.

Drawing from the poststructuralist insight that language does not merely reflect reality but also reshapes it, Allen, along with the other Native American authors discussed in this study, merges this performative power of the written word with Native American oral traditions, in which words have the power to create, alter, and even destroy. As she rewrites and reelaborates Native belief systems, Allen simultaneously, according to Keating, "spiritualizes" and "politicizes" her work (5). Yet, one could argue, the ways in which Allen's reelaboration of the oral tradition takes place must be very carefully considered in order to evaluate the political effectiveness of her critical strategies.

The decolonial tendency to collapse everything into discourse and study of textual meaning destroys any ability to engage capital and allows it to continue unabated

Read 10 (Malcolm K., professor of linguistics and Latin American studies at Stony Brook University, “Reclaiming Reality: Walter Mignolo,” in Latin American Colonial Studies: A Marxist Critique, p 89-91)-jn-gender modified

**Reader’s note**: “Alethic” = grounded in truth.

The specter that haunts everyone is that of regulatory determinism, otherwise the notion that, in principle, events are determined as in a closed system, through the reduction of complex beings to their component parts. Given sufficient information, it would follow, we can know when, and if, I will get out of bed, in which case the prospects for human freedom look bleak indeed. The way out, for the critical realist, is to emphasize ontological depth or emergence: the laws of nature are reconstrued, not as constant conjunctions, but as real mechanisms, operating at a level distinct from those of the empirical and the actual. The ensuing stratification facilitates a notion of human agency (Bhaskar 1993: 50-53 and passim): there is a difference between catching a bus and catching a cold. What blocks any comparable resolution from the standpoint of the constructivist is his empirical realism, based on the notion of a totally rule-governed phenomenal world. To escape the reach of the ensuing determinism, the "free subject" needs to be located in a subjective realm of performance, outside the objective purchase of science. We are determined as material bodies, qua empirical subjects, within the phenomenal real, but are free as discursive subjects, at the transcendental, noumenal level. The latter, as we know from Kant, defies causal explanation, which explains the under-theorization of Mignolo's notion of performance, to which we referred above. The effects of Mignolo's hermeneutic bias do not end there: displaced too are the notions of reference and denotation and, by the same token, of cross-cultural evaluations. For in the absence of a third party, standing somewhere in outer space, who, precisely, is to pass judgement on Amerindian culture, or to draw comparisons with its Spanish equivalent (Mignolo 1995: 327)? Who, that is, other than the various embodiments of imperial power? Truth, in such circumstances, is deprived of any alethic grounding.17 It belongs instead to the more powerful, even, or especially, within the sciences, where knowledge is allegedly nothing more than whatever powerful individuals, groups or nations dictate. The result is a kind of identity thinking in which the intransitive existence of causal structures (and the beliefs and meanings that they produce) is collapsed into the transitive dimension of practice. Perforce, Mignolo is now threatened with entrapment by an epistemological relativism that his bourgeois colleagues can afford to view with equanimity but that is denied to him, as a theorizer of colonial oppression. Hence the need to lay claim to a materialism: "I placed a heavy accent on the materiality of culture and on human beings' (as individuals and communities) own self-descriptions of their life and work" (Mignolo 1995: 320). Everything is about the struggle to avoid death, to reproduce, etc. This is not, to be sure, the world of classical idealism, which, by definition, foregrounded the realm of ideas, but that is because a crucial slippage has taken place, from ideas to the semiotic or linguistic, or rather – because we are in the world of actualism – to "languaging." For performance is to be understood, above all, as a discursive act, in the tradition of Gadamer and his latter-day followers, notably Rorty, for whom being is manifest in language. The transformation is less radical than might seem, at first sight, to be the case, in that the pivotal opposition remains the same: between, on the one hand, a phenomenal or empirical realm subject to strictly deterministic laws and, on the other, an intelligible realm of human being, where agents are free to perform at will. All that has happened is that the Kantian problematic has been displaced onto discourse, which now offers the scope for freedom, creativity and performativity previously reserved for thought. All this, of course, is transferred, in the case of Mignolo, to the realm of coloniality, where "languaging" is not an object or real mechanism but an actual process, not a competence but a performance. A performance that is an act of total transcendence, in which it is possible to conceive of "thinking beyond thoughts and languaging, indeed beyond language" (Mignolo 2000: 254), defined through the recursive capacity of language: "languaging in language allows us to describe ourselves interacting as well as to describe the descriptions of our interactions" (254). Finally, the sign finds its referent, but only in the form of other bits of languaging, a somewhat incestuous encounter, perhaps, between subject and object, but a felicitous one for all that, conceived "as the difference that cannot be told, and not as an 'area' to be studied" (Mignolo 2000: 69) or, in other words, as a form of almost angelic communion bordering on the ineffable. And so what might seem like the outer reaches of a colonial territory turns out to be very familiar terrain: the site of an encounter between two beautiful souls, of eminently petty-bourgeois extraction. The romantic myth of self-creation re-enacted! It is a shame to disrupt the happy union, but there are a number of problems with this scenario. Principally, it is easy to see that the notion of the subject as free to choose between new descriptions can encourage the voluntarist view that we are always free to choose any descriptions, or that our performances escape the restraints of social life, not to mention the limits imposed by ecology. What such a view ignores, among other things, is the existence of objective social structures (from language to economic systems) that totally transcend the level of the self, for whose "performance" they are a necessary condition. Such structures cannot be theorized later, once the performing subject has been installed, by "piggybacking" (to use Mignolo"s phase) on other systems of thought, for the simple reason that, to reiterate, they precede the performance. And any theoretician that thinks otherwise will quickly encounter difficulties. The latter will be compounded by a further basic limitation characteristic of hermeneutics that relates to the very nature of science. It may suffice from the outside to justify a belief or action by reference to what the scientific community believes, but as Bhaskar has insisted, the situation is rather different inside. "This may be partly because what is at stake (what stands in need of justification or criticism) is precisely what the community believes. But it will also be in part because at some point the explanatory query in science will take the form 'why is the world this way?,' whereas the explanatory query about science will take the form 'why does this community believe such-and-such?' The answer to the former question will not consist of intellectual cultural-history or the natural sociology of belief, but of a (scientifically-) ontologically grounded, or justified, scientific explanation" (Bhaskar 1991: 35). Any ongoing attempt to collapse the scientific debate into the hermeneutic one is, we believe, bound to give rise to a whole series of performative contradictions, of which more below.

Decoloniality is stuck in discursive games that only abdicate elites’ responsibility—turns the AFF

Read 10 (Malcolm K., professor of linguistics and Latin American studies at Stony Brook University, “Reclaiming Reality: Walter Mignolo,” in Latin American Colonial Studies: A Marxist Critique, p 85-86)-jn

North American Hispanism in its postmodern form – roughly corresponding to "cultural studies" – is mortgaged to a philosophical irrealism that now encompasses much of what is produced within the North American academy. The unenviable task of colonialists working within Hispanism is how to reconcile that irrealism with their claim to embrace a genuinely transformative, politically progressive program. Their solution has been to promote a discursive materialism that hinges upon the notion of a performance, through which to reduce the domain of the ontological to that of the epistemological. The emphasis upon action is productive of a species of voluntarist rhetoric that, under the guise of "openness" to the "voices of the other," seeks to subordinate scientific rationality, which is seen as inherently exploitative and oppressive, to local or "border" cultures that completely escape critical interrogation. Perforce, these same colonialists have little to offer regarding what must be considered the most urgent task facing indigenous communities, namely how to reconcile the popular demand for enfranchisement, based on the preservation of multiple identities, with the necessary task of modernization. At the same time, they have much to offer a leisured elite, angered by the reality of post-colonial poverty but complicit with an imperialism that allows it (the elite) to live in what Bhaskar, with unwonted brutality, refers to as "conditions of plenty" (Bhaksar 1991b: 135). In order to sustain these and related claims, we turn in the present chapter to Walter Mignolo, whose mature work, notably The Darker Side of the Renaissance and Local Histories/Global Designs (2000), while ambitious in scope and aim – they question the very basis of European thought, with respect to its implication in colonialism – yet remains thoroughly rooted in the cultural semiotics that characterized the colonialist's earlier work.

Their theory has a reductionist approach to Latin American scholarship—turns case by re-inscribing the faulty scholarship they criticize.

Salvatore 2006 (Ricardo D., Departmento de Historia, Universidad Torcuato di Tella, PhD in Economics from UT Austin) “A Post-Occidentalist Manifesto: Review of The Idea of Latin America by Walter D. Mignolo” A Contracorriente, Fall 2006.

Mignolo’s manifesto simplifies and reduces the diverse composition and history of Latin American intellectuals and their institutions of knowledge. For, if the typical intellectual of early twentieth-century Argentina and Brazil shared similar presuppositions about race, social problems, and positivist methods, the same could not be said of Bolivian or Guatemalan intellectuals. Certainly, European institutions, theories and methods exerted much influence on the national intelligentsias of the Latin American republics, but local conditions produced an adaptation of these preconceptions and categories that generate distinct policies and intellectual projects. The same could be said about their universities, libraries, and science laboratories. These institutions translated the project of modernity locally, generating many scaled-down variations of the model principles and institutions. Only by reducing the search to a few exemplary authors, is one able to control the enormous diversity of local/native thought. But this is precisely what one should try to avoid: to place ideas, concepts, and authors into neatly separated compartments labeled “modernity” and “coloniality”.¶ The privilege attributed to certain authors who are representatives of races or peoples oppressed by centuries of colonialism (or the cognate idea that “mestizo” intellectuals working upon the “colonial wound” are truly uncovering the hidden history of “coloniality”) is a pill that is very hard to swallow. Why would the writings of a Bolivian sociologist writing in Kechua be more in tune with the needs of the oppressed than another Bolivian sociologist writing in Spanish, or for that matter, than a European sociologist writing in English or French? The possibilities are only two: either locality (language and community) gives the knower a privileged understanding over (and compassion with) a given subject; or the subject of observation and scrutiny is closed to outsiders (or speakers of another language). I do not find the idea of epistemic privilege entirely convincing. Nor do I find that a given community or locality is able to control and keep for itself its own perspective, knowledge, or categories. Local knowledge, as any other type of property, is subject to appropriation by outsiders.¶ To claim that there are some hidden truths that can only be understood from a certain position (cosmology, locality, ayllu, etc) implies that somehow the Empire has failed to “extract” these truths in the past. In my research I have found this not to be the case. During the late colonial period, New England visitors would disguise themselves as monks (and actually enter into convents) in order to know the practices of Catholics in the River Plate region. Similarly, a German anthropologist would go into the caves of the Peruvian mountains in order to denounce the stock- piling of arms by indigenous communities. Mayan archaeologists would stop at nothing to obtain Mayan texts and decode them. And so forth. My point is: the citadel of local knowledge was invaded many times over the course of history. And that is why Western knowledge became a cabinet of curiosities coming from non-Western places.

Their implication that experience validates their argument, or disproves our engagement is solipsism that reentrenches oppression—engagement is a better political strategy

David Bridges, Centre for Applied Research in Education, University of East Anglia, 2001, The Ethics of Outsider Research, Journal of Philosophy of Education, Vol. 35, No. 3

First, it is argued that only those who have shared in, and have been part of, a particular experience can understand or can properly understand (and perhaps `properly' is particularly heavily loaded here) what it is like. You need to be a woman to understand what it is like to live as a woman; to be disabled to understand what it is like to live as a disabled person etc. Thus Charlton writes of `the innate inability of able-bodied people, regardless of fancy credentials and awards, to understand the disability experience' (Charlton, 1998, p. 128).

Charlton's choice of language here is indicative of the rhetorical character which these arguments tend to assume. This arises perhaps from the strength of feeling from which they issue, but it warns of a need for caution in their treatment and acceptance. Even if able-bodied people have this `inability' it is difficult to see in what sense it is `innate'. Are all credentials `fancy' or might some (e.g. those reflecting a sustained, humble and patient attempt to grapple with the issues) be pertinent to that ability? And does Charlton really wish to maintain that there is a single experience which is the experience of disability, whatever solidarity disabled people might feel for each other?

The understanding that any of us have of our own conditions or experience is unique and special, though recent work on personal narratives also shows that it is itself multi-layered and inconstant, i.e. that we have and can provide many different understandings even of our own lives (see, for example, Tierney, 1993). Nevertheless, our own understanding has a special status: it provides among other things a data source for others' interpretations of our actions; it stands in a unique relationship to our own experiencing; and no one else can have quite the same understanding. It is also plausible that people who share certain kinds of experience in common stand in a special position in terms of understanding those shared aspects of experience. However, once this argument is applied to such broad categories as `women' or `blacks', it has to deal with some very heterogeneous groups; the different social, personal and situational characteristics that constitute their individuality may well outweigh the shared characteristics; and there may indeed be greater barriers to mutual understanding than there are gateways.

These arguments, however, all risk a descent into solipsism: if our individual understanding is so particular, how can we have communication with or any understanding of anyone else? But, granted Wittgenstein's persuasive argument against a private language (Wittgenstein, 1963, perhaps more straightforwardly presented in Rhees, 1970), **we cannot in these circumstances even describe or have any real understanding of our own condition in such an isolated world**. **Rather it is in talking to each other, in participating in a shared language, that we construct the conceptual apparatus that allows us to understand our own situation in relation to others,** and this is a construction which involves understanding differences as well as similarities.

Besides, we have good reason to treat with some scepticism accounts provided by individuals of their own experience and by extension accounts provided by members of a particular category or community of people. We know that such accounts can be riddled with special pleading, selective memory, careless error, self-centredness, myopia, prejudice and a good deal more. A lesbian scholar illustrates some of the pressures that can bear, for example, on an insider researcher in her own community:

As an insider, the lesbian has an important sensitivity to offer, yet she is also more vulnerable than the non-lesbian researcher, both to the pressure from the heterosexual world--that her studies conform to previous works and describe lesbian reality in terms of its relationship with the outside-and to pressure from the inside, from within the lesbian community itself--that her studies mirror not the reality of that community but its self-protective ideology. (Kreiger, 1982, p. 108)

In other words, while individuals from within a community have access to a particular kind of understanding of their experience, this does not automatically attach special authority (though it might attach special interest) to their own representations of that experience. Moreover, while we might acknowledge the limitations of the understanding which someone from outside a community (or someone other than the individual who is the focus of the research) can develop, this does not entail that they cannot develop and present an understanding or that such understanding is worthless. Individuals can indeed find benefit in the understandings that others offer of their experience in, for example, a counselling relationship, or when a researcher adopts a supportive role with teachers engaged in reflection on or research into their own practice. Many have echoed the plea of the Scottish poet, Robert Burns (in `To a louse'):

O wad some Pow'r the giftie gie us To see oursels as others see us!3

--**even if they might have been horrified with what such power revealed to them**. Russell argued that it was the function of philosophy (and why not research too?) `to suggest many possibilities which enlarge our thoughts and free them from the tyranny of custom . . .It keeps alive our sense of wonder by showing familiar things in an unfamiliar aspect' (Russell, 1912, p. 91). `Making the familiar strange', as Stenhouse called it, often requires the assistance of someone unfamiliar with our own world who can look at our taken-for-granted experience through, precisely, the eye of a stranger. Sparkes (1994) writes very much in these terms in describing his own research, as a white, heterosexual middleaged male, into the life history of a lesbian PE teacher. He describes his own struggle with the question `is it possible for heterosexual people to undertake research into homosexual populations?' but he concludes that being a `phenomenological stranger' who asks `dumb questions' may be a useful and illuminating experience for the research subject in that they may have to return to first principles in reviewing their story. This could, of course be an elaborate piece of self-justification, but it is interesting that someone like Max Biddulph, who writes from a gay/bisexual standpoint, can quote this conclusion with apparent approval (Biddulph, 1996).

People from outside a community clearly can have an understanding of the experience of those who are inside that community. It is almost certainly a different understanding from that of the insiders. Whether it is of any value will depend among other things on the extent to which they have immersed themselves in the world of the other and portrayed it in its richness and complexity; on the empathy and imagination that they have brought to their enquiry and writing; on whether their stories are honest, responsible and critical (Barone, 1992). Nevertheless, this value will also depend on qualities derived from the researchers' externality: their capacity to relate one set of experiences to others (perhaps from their own community); their outsider perspective on the structures which surround and help to define the experience of the community; on the reactions and responses to that community of individuals and groups external to it.4

Finally, it must surely follow that if we hold that a researcher, who (to take the favourable case) seeks honestly, sensitively and with humility to understand and to represent the experience of a community to which he or she does not belong, is incapable of such understanding and representation, then how can he or she understand either that same experience as mediated through the research of someone from that community? The argument which excludes the outsider from understanding a community through the effort of their own research, a fortiori excludes the outsider from that understanding through the secondary source in the form of the effort of an insider researcher or indeed any other means. Again, the point can only be maintained by insisting that a particular (and itself ill-defined) understanding is the only kind of understanding which is worth having.

The epistemological argument (that outsiders cannot understand the experience of a community to which they do not belong) becomes an ethical argument when this is taken to entail the further proposition that they ought not therefore attempt to research that community. I hope to have shown that this argument is based on a false premise. Even if the premise were sound, however, it would not necessarily follow that researchers should be prevented or excluded from attempting to understand this experience, unless it could be shown that in so doing they would cause some harm. This is indeed part of the argument emerging from disempowered communities and it is to this that I shall now turn.

III OUTSIDERS IMPORT DAMAGING FRAMEWORKS OF UNDERSTANDING

Frequent in the literature about research into disability, women's experience, race and homosexuality is the claim that people from outside these particular communities will import into their research, for example, homophobic, sexist or racist frameworks of understanding, which damage the interests of those being researched.

In the case of research into disability it has been argued that outsider researchers carry with them assumptions that the problem of disability lies with the disabled rather than with the society which frames and defines disability. `The essential problem of recent anthropological work on culture and disability is that it perpetuates outmoded beliefs and continues to distance research from lived oppression' (Charlton, 1998, p. 27). By contrast: `a growing number of people with disabilities have developed a consciousness that transforms the notion and concept of disability from a medical condition to a political and social condition' (Charlton, 1998, p.17). Charlton goes on to criticise, for example, a publication by Ingstad and Reynolds Whyte (1995), Disability and Culture. He claims that, although it does add to our understanding of how the conceptualisation and symbolisation of disability takes place, `its language is and perspective are still lodged in the past. In the first forty pages alone we find the words suffering, lameness, interest group, incapacitated, handicapped, deformities. Notions of oppression, dominant culture, justice, human rights, political movement, and selfdetermination are conspicuously absent' (Charlton, 1998 p. 27).

Discussing the neo-colonialism of outsider research into Maori experience, Smith extends this type of claim to embrace the wider methodological and metaphysical framing of outsider research: `From an indigenous perspective Western research is more than just research that is located in a positivist tradition. It is research which brings to bear, on any study of indigenous peoples, a cultural orientation, a set of values, a different conceptualization of such things as time, space and subjectivity, different and competing theories of knowledge, highly specialized forms of language, and structures of power' (Smith, 1999, p. 42).5

This position requires, I think, some qualification. First, researchers are clearly not immune from some of the damaging and prejudicial attitudes on matters of race, sexuality, disability and gender which are found among the rest of the population, though I might hope that their training and experience might give them above-average awareness of these issues and above-average alertness to their expression in their own work. Even where such attitudes remain in researchers' consciousness, this intelligent self-awareness and social sensitivity mean on the whole that they are able to deploy sufficient self-censorship not to expose it in a damaging way. Researchers may thus remain morally culpable for their thoughts, but, at least, communities can be spared the harm of their expression. It is also a matter of some significance that researchers are more exposed than most to public criticism, not least from critics from within these disempowered communities, when such prejudices do enter and are revealed in their work. If they employ the rhetoric of, for example, anti-racist or anti-sexist conviction, they are at least in their public pronouncements exposed to the humiliation of being hoisted by their own petard. It is difficult to see the fairness in excluding all outsider researchers on the a priori supposition of universal prejudice. It is better, surely, to expose it where it is revealed and, if absolutely necessary, to debar individuals who ignore such criticism and persist in using the privilege of their research position to peddle what can then only be regarded as damaging and prejudicial propaganda. Secondly, it is plainly not the case that Western research is located exclusively (as is implied) in a positivist tradition, even if this tradition has been a dominant one. Phenomenology, ethnography, life history, even, more recently, the use of narrative fiction and poetry as forms of research representation, are all established ingredients of the educational research worlds in the UK, USA or Australasia. Contemporary research literature abounds with critiques of positivism as well as examples of its continuing expression.

I have placed much weight in these considerations on the importance of any research being exposed to criticism--most importantly, perhaps, but by no means exclusively by the people whose experience it claims to represent. This principle is not simply an ethical principle associated with the obligations that a researcher might accept towards participants in the research, but it is a fundamental feature of the processes of research and its claims to command our attention. **It is precisely exposure to, modification through and survival of** a process of vigorous public **scrutiny that provides research with whatever authority it can claim**. In contemporary ethnographic research, case-study and life-history research, for example, this expectancy of exposure to correction and criticism is one which runs right through the research process. The methodological requirement is for participants to have several opportunities to challenge any prejudices which researchers may bring with them: at the point where the terms of the research are first negotiated and they agree to participate (or not); during any conversations or interviews that take place in the course of the research; in responding to any record which is produced of the data gathering; in response to any draft or final publication. Indeed, engagement with a researcher provides any group with what is potentially a richly educative opportunity: an opportunity to open their eyes and to see things differently. It is, moreover, an opportunity which any researcher worth his or her salt will welcome.

Not all researchers or research processes will be as open as are described here to that educative opportunity, and not all participants (least of all those who are self-defining as `disempowered') will feel the confidence to take them even if they are there. **This may be seen as a reason to set up barriers to the outsider researcher, but they can and should** more often **be seen as problems** for researchers and participants **to address together in the interests of** their **mutual understanding and benefit.**

Notwithstanding these considerations, one of the chief complaints coming out of disempowered communities is that this kind of mutual interest and benefit is precisely what is lacking in their experience of research. It is to this consideration that I shall now turn. IV OUTSIDERS EXPLOIT INSIDER PARTICIPANTS IN THE COMMUNITIES THEY RESEARCH Ellen describes how fieldwork has become `a rite of passage by which the novice is transformed into the rounded anthropologist and initiated into the ranks of the profession'Ða ritual by which `the student of anthropology dies and a professional anthropologist is born' 􏰈Ellen, 1984, p. 23). This is a reminder that research can carry benefits to the researcher which go beyond those associated with the `pure' pursuit of understanding. As participants in research become more aware of this, their attitudes towards research and researchers can, understandably, change. The following observation was made by a woman from a community that had experienced several waves of enthusiastic researchers: The kind of behaviour researchers have towards locals tells us that they just want to exploit them and take from them their ideas and information. It also tells us that they don't really care at all. They want the information to use in front of a group of people at home, so that they can be seen as clever academics. Then in the end they publish books, reviews, articles etc in order to spread their popularities. So what is this, and what is research really about? Not all researchers are exploiters, but most are, and I think it is time up now for this, and that these researchers should also be exploited by local people. 􏰈Florence Shumba, quoted in Wilson, 1992, p. 199) Researchers who are sensitive to this issue typically look for ways to counter the imbalance of benefit. They will sometimes discuss with participants ways in which the research could be designed to benefit all parties, by, for example, ensuring that it addresses issues on which the participants need information as well as the researchers or by providing data that the research participants can use independently and for their own purposes. In the absence of any other perceived benefit, some schools in the UK have responded to researchers' requests for access and time for interviews by proposing to charge by the hour for teachers' time. Of course sometimes participants will be persuaded to participate on the grounds that some other people whose interests they care aboutÐ pupils in schools, for example, or children currently excluded from educationÐwill secure the benefit of the research, but there has to be the link between something which they perceive to be a benefit 􏰈albeit altruistically) and the commitment which they are asked to make. These illustrations of the terms of engagement between researchers and their participants present a picture of a trade in benefit, the negotiation of a utilitarian equation of mutual happiness and, perhaps, pain, though one in which higher satisfactions 􏰈e.g. new insights and the improvements to the future education of children) have a place alongside lower ones 􏰈a bit of self-publicity or cash in the school fund). Questions of exploitation, in Kantian terms of treating people as means rather than ends 􏰈see Kant, 1964)6 come in if, as is sometimes alleged, researchers use their positions of authority or their sophistication to establish relationships in which the benefits are very one-sided in their favour. This distinction between the utilitarian principle and the Kantian one is crucial here. The utilitarian principle might require us to measure in the scales a much wider community of benefit. If, for example, the researcher could show that, even though the Maori community he or she was researching experienced the inconvenience of the research without the benefit, thousands of other people would benefit from it, then the utilitarian equation might provide justification for the research. But this is precisely one of the weaknesses of the utilitarian principle of the greatest happiness of the greatest numberÐat least when it is applied with this sort of simplicity. It requires either a broader take on the utilitarian principle 􏰈which might observe that a programme of action which allocates all the benefits to one group and all the `pain' to another will not be conducive to the greatest aggregation of happiness) or the invoking of something closer to the Kantian principle, which would demand that we do not exploit one group of people to the exclusive benefit of another. Researchers seeking collaboration with participants in disempowered communities have essentially two forms of appealÐto their self-interest or to their generosity. Either they need to see some benefit to themselves which is at least roughly commensurate to the effort that is required of them 􏰈or in some cases the value of what they have to offer); or they need knowingly to contribute out of their own benevolence towards the researcher or others whom they believe the research will benefit. In this second case, the researcher is placed in something of the position of the receiver of a gift and he or she needs to recognise consequently the quite elaborate ethical apparatus that surrounds such receipt. There is a particular `spirit' in which we might be expected to receive a gift: a spirit of gratitude, of humility, of mutuality in the relationship. There may also be a network of social expectations, which flow from such givingÐof being in thrall to the giver, of being in his or her debtÐbut on the whole anyone contributing to an educational research project would be naõÈve to assume that such `debts' might be repaid. Most of the time, researchers are in fact inviting the generosity of their participants, and perhaps there is something more ethically elevated in responding to such generosity with a true spirit of gratitude and a recognition of the mutuality of relationship which binds giver and receiver, than in seeking to establish a trade in dubious benefits. Smith 􏰈1999) provides a wonderful picture of the combination of spirit and benefits that might be involved in establishing this relationship 􏰈as well as a whole new angle on the notion of `empowerment'!) when she outlines the range of issues on which a researcher approaching a Maori community might need to satisfy them: `Is her spirit clear? Does he have a good heart? What other baggage are they carrying? Are they useful to us? Can they fix up our generator? Can they actually do anything?' 􏰈Smith, 1999, p.10). Perhaps all educational researchers should be required to satisfy participants on these questions. I conclude that the possibility that outsider educational research may be conducted in an exploitative manner is not an argument for obstructing it comprehensively, but it is an argument for requiring that it be conducted under an appropriate set of principles and obligations and in a proper spirit. `Qualitative researchers', argued Stake, `are guests in the private spaces of the world. Their manners should be good and their code of ethics strict' 􏰈Stake, 1998, p.103). Any community may legitimately reject a researcher 􏰈insider or outsider) who fails to establish and conduct relationships under these requirements. In this field, ethics is never far removed from politics. This essay has focused on the relationship between educational researchers and communities that are self-defined as `disempowered' but has not really addressed the issue of power. At the heart of the objections to outsider research is a view that such research, far from challenging and removing such disempowerment, operates to reinforce it. It is this argument which I shall now address. V OUTSIDERS' RESEARCH DISEMPOWERS INSIDERS At least one of the arguments against outsider research into self-defined `disempowered' sections of the population is made independently of the measure of sensitivity and care, which the outsider researchers demonstrate in its conduct. `If we have learned one thing from the civil rights movement in the US', wrote Ed Roberts, a leading figure in the Disability Rights Movement 􏰈DRM), `it's that when others speak for you, you lose' 􏰈quoted in Driedger, 1989, p. 28). Roberts' case is in part that for so long as such groups depend on outsiders to represent them on the wider stage, they will be reinforcing both the fact and the perception of their subordination and dependency as well as exposing themselves to potential misrepresentation. They have to break the vicious circle of dependencyÐand that means taking control for themselves of the ways in which their experience is represented more widely: The DRM's demand for control is the essential theme that runs through all its work, regardless of political-economic or cultural di􏰀erences. Control has universal appeal for DRM activists because their needs are everywhere conditioned by a dependency born of powerlessness, poverty, degradation, and institutionalisation. This dependency, saturated with paternalism, begins with the onset of disability and continues until death. 􏰈Charlton, 1998, p. 3) Outsider researchers sometimes persuade themselves that they are acting in an emancipatory way by `giving voice to' neglected or disenfranchised sections of the community. Their research may indeed push the evident voice of the researcher far into the background as he or she `simply presents', perhaps as large chunks of direct transcription and without commentary, what participants have to say. But, as Reinharz has warned, this is by no means as simple as it might appear: To listen to people is to empower them. But if you want to hear it, you have to go hear it, in their space, or in a safe space. Before you can expect to hear anything worth hearing, you have to examine the power dynamics of the space and the social actors . . . Second, you have to be the person someone else can talk to, and you have to be able to create a context where the person can speak and you can listen. That means we have to study who we are and who we are in relation to those we study . . . Third, you have to be willing to hear what someone is saying, even when it violates your expectations or threatens your interests. In other words, if you want someone to tell it like it is, you have to hear it like it is. 􏰈Reinharz, 1988, pp. 15±16) Even with this level of self knowledge, sensitivity and discipline, there is a significant temptation in such situations to what is sometimes called ventriloquy: the using of the voice of the participant to give expression to the things which the researcher wants to say or to have said. This is a process which is present in the selection of participants, in the framing of the questions which they are encouraged to answer, in the verbal and visual cues which they are given of the researcher's pleasure or excitement with their responses, and, later, in the researcher's selection of material for publication. Such ventriloquy, argues Fine, disguises `the usually unacknowledged stances of researchers who navigate and camouflage theory through the richness of ``native voices''' 􏰈Fine, 1994, p.22).

The argument that insiders within `disempowered' communities (or any other communities for that matter) should be researching and, where appropriate, giving public expression to their own experience is surely uncontroversial. In a context in which insider research has been negligible and hugely subordinated to waves of outsider research, there is a good case for taking practical steps to correct that balance and spare a community what can understandably be experienced as an increasingly oppressive relationship with research.

There are, however, at last three reasons in principle for keeping the possibility of outsider research open: (i) that such enquiry might enhance the understanding of the researcher; (ii) that it might enhance the understanding of the community itself; and (iii) that it might enhance the understanding of a wider public. There is no doubt a place for researching our own experience and that of our own communities, but surely we cannot be condemned lifelong to such social solipsism? Notwithstanding some postmodernist misgivings, `There is still a world out there, much to learn, much to discover; and the exploration of ourselves, however laudable in that at least it risks no new imperialistic gesture, is not, in the end, capable of sustaining lasting interest' (Patai, 1994, p. 67). The issue is not, however, merely one of satisfying curiosity. **There is a real danger that if we become persuaded that we cannot understand the experience of others and that `we have no right to speak for anyone but ourselves', then we will all too easily find ourselves** epistemologically and morally isolated**, furnished with a comfortable legitimation for** ignoring the condition of anyone but ourselves. This is not, any more than the paternalism of the powerful, the route to a more just society.

How, then can we reconcile the importance of (1) wider social understanding of the world of `disempowered' communities and of the structures which contribute to that disempowerment, (2) the openness of those communities and structures to the outsider researcher, and (3) the determination that the researcher should not wittingly or unwittingly reinforce that disempowerment? The literature (from which a few selected examples are quoted below) provides some clues as to the character of relations between researcher and researched which `emancipatory', `participatory' or `educative' research might take.

To begin with, **we need to re-examine the application of the notion of `property' to the ownership of knowledge**. In economic terms, knowledge is not a competitive good. It has the distinctive virtue that (at least in terms of its educative function) it can be infinitely distributed without loss to any of those who are sharing in it. Similarly **the researcher can acquire it from people without denying it to them and can return it enriched**. However, it is easy to neglect the processes of reporting back to people and sharing in knowledge and the importance which can be attached to this process by those concerned. For Smith, a Maori woman working with research students from the indigenous people of New Zealand, `Reporting back to the people is never a one-off exercise or a task that can be signed off on completion of the written report'. She describes how one of her students took her work back to the people she interviewed. `The family was waiting for her; they cooked food and made us welcome. We left knowing that her work will be passed around the family to be read and eventually will have a place in the living room along with other valued family books and family photographs' (Smith, 1999, pp. 15±16).

For some, what is required is a moving away from regarding research as a property and towards seeing it as a dialogic enquiry designed to assist the understanding of all concerned:

Educative research attempts to restructure the traditional relationship between researcher and `subject'. Instead of a one-way process where researchers extract data from `subjects', Educational Research encourages a dialogic process where participants negotiate meanings at the level of question posing, data collection and analysis . . . It . . . encourages participants to work together on an equal basis to reach a mutual understanding. Neither participant should stand apart in an aloof or judgmental manner; neither should be silenced in the process. (Gitlin and Russell, 1994, p. 185)