### T

#### Interpretation—the purpose of the ballot is to answer the resolutional question: is the outcome of the enactment of a topical plan by the United States federal government better than the status quo or a competitive policy option?

#### 1. “Resolved” before a colon reflects a legislative form.

Army Officer School 2004 (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. “United States federal government should” means the resolutional question concerns the imagination of outcome of the establishment of a policy by the government.

Jon M. Ericson 2003 (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.

#### Statutory restriction are congress

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### Judicial means the court

WEST’S LAW 08 [West's Encyclopedia of American Law, edition 2. http://legal-dictionary.thefreedictionary.com/judicial]

Relating to the courts or belonging to the office of a judge; a term pertaining to the administration of justice, the courts, or a judge, as in judicial power.

A judicial act involves an exercise of discretion or an unbiased decision by a court or judge, as opposed to a ministerial, clerical, or routine procedure. A judicial act affects the rights of the parties or property brought before the court. It is the interpretation and application of the law to a particular set of facts contested by litigants in a court of law, resulting from discretion and based upon an evaluation of the evidence presented at a hearing.

Judicial connotes the power to punish, sentence, and resolve conflicts.

#### Restricting Offensive Cyber Operations includes both “cyber-attacks” and “cyberexploitation” they don’t do any

Lin 2010 (Henry S., Chief Scientist, Computer Science and Telecommunications Board, NationalResearch Council (NRC) of the National Academies. Prior to his NRC service, he was a staff member and scientist for the House Armed Services Committee(1986-1990), where his portfolio included defense policy and arms control issues, Offensive Cyber Operations and the Use of Force, Journal of National Security Law and Policy, Vol 4:63, http://jnslp.com/wp-content/uploads/2010/08/06\_Lin.pdf, p. 63-64.)

Hostile actions against a computer system or network can take two forms.1 One form – a cyber attack – is destructive in nature. An example of such a hostile action is erasure by a computer virus resident on the hard disk of any infected computer. In this article, “cyber attack” refers to the use of deliberate actions and operations – perhaps over an extended period of time – to alter, disrupt, deceive, degrade, or destroy adversary computer systems or networks or the information and (or) programs resident in or transiting these systems or networks.2 Such effects on adversary systems and networks may also have indirect effects on entities coupled to or reliant on them. A cyber attack seeks to cause the adversary’s computer systems and networks to be unavailable or untrustworthy and therefore less useful to the adversary. The second form – cyberexploitation – is nondestructive. An example is a computer virus that searches the hard disk of any infected computer and emails to the hostile party all files containing a credit card number. “Cyberexploitation” refers to the use of actions and operations – perhaps over an extended period of time – to obtain information that would otherwise be kept confidential and is resident on or transiting through an adversary’s computer systems or networks. Cyberexploitations are usually clandestine and conducted with the smallest possible intervention that still allows extraction of the information sought.3 They do not seek to disturb the normal functioning of a computer system or network from the user’s point of view, and the best cyberexploitation is one that a user never notices. For purposes of this article, the term “offensive cyber operations” will include military operations and activities in cyberspace for cyber attack against and (or) cyberexploitation of adversary information systems and networks. When greater specificity is needed, the terms “cyber attack” and “cyberexploitation” will be used.4 Although the objectives and the legal and policy constructs relevant to cyber attack and cyberexploitation are quite different (see the table in the Appendix to this article), the technological underpinnings and associated operational considerations of both are quite similar.

**Substantially isn’t imaginary**

**Words and Phrases** 19**64** (40 W&P 759) (this edition of W&P is out of print; the page number no longer matches up to the current edition and I was unable to find the card in the new edition. However, this card is also available on google books, Judicial and statutory definitions of words and phrases, Volume 8, p. 7329)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; **real at present time**, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 Ill. App. 308, 318.

#### Reasons to prefer—

#### 1. Fairness:

#### A. Predictable limits—there are limitless investigations of democracy assistance and debate practice, but the grammar of the resolution is based on enacting a policy. We can’t predict the infinite number of critical positions the aff allows because they are disconnected from the resolutional question of demands for government action.

Extra –T at best. Advantages aren’t even tangentially related to the rez

#### B. Ground—their framework makes stable ground impossible because they can always claim ‘critical’ outweigh disads to the plan or shift their advocacy to avoid impact turns—must hold them to a central question for productive argumentation and idea testing to occur.

#### 2. Education:

#### A. Switch-side testing—changing the ballot from a yes/no question about desirability of the plan undermines effective argumentation because there is no point of stasis to continually re-interrogate, removing the ability to test their ideas and others.

### CP

#### We have presented a redacted version of the plan text – sensitive, classified information has been removed, but this does not deprive it of meaning – the experience of reading the redacted text inadvertently undermines the logic of government transparency and highlights the epistemic violence committed by the state

Nath 2014 “Beyond the Public Eye On FOIA Documents and the Visual Politics of Redaction” Anjali Nath is a Chancellor’s Postdoctoral Fellow in American Studies at the University of California, Davis. She received her PhD from the University of Southern California from the Department of American Studies & Ethnicity with a specialization in visual culture. Cultural Studies <=> Critical Methodologies February 2014 vol. 14 no. 1 21-28

Thus, even an organization such as the ACLU, specifically working within a legal logic and for whom these documents signal legal possibility, must grapple with the visual and sensorial experience of redacted looks. The way we see redacted documents compels theorizing beyond words. This is not to suggest that written words are unimportant, but that we must think about the written alongside the hidden, unrecorded, and the blacked-out. In truth, reading does not end when we encounter a blocked-off area of text. We continue on. We search for the words that precede it and the ones that follow. We look for logical continuities and wonder what lies beneath the redacted space. We examine the avisual, knowing that words are there, concealed behind spaces (Lippit, 2005). However, even as we may desire a full reveal, the experience of reading itself inadvertently undermine the logic of government transparency. The dispassionate rationalization of governmental forms of violence that work within legal definitions of what interrogation practices are legally permissible sit next to that which is manifestly hidden. I am not suggesting that the only kind of work done by reading government documents should be through absence, yet redacted views, despite concealing necropolitical rationalities, paradoxically create readings filled with contrapuntal possibility. Conclusion War and captivity are unimaginable for those of us outside these violences. Redacted documents function as images that circulate as visual signifiers of the government’s excesses within an economy of different kinds of representations of war. As opposed to photography, where decades of oversaturation of violent pictures often contribute to the spectator’s tragedy fatigue (Sontag, 2004, pp. 103-108; Zelizer, 2000), redacted images have only just begun to be more widely circulated during the War on Terror, appearing in documentary films, art installations, and digital torture archives. This experience of reading the redacted document is not unlike what Barthes (1982) once called punctum: The unintended ways images can bruise us, puncture us, and disrupt our ways of experiencing and perceiving. Although the apparent aim of FOIA requests is to create and open, accountable government, for documentation of necropolitical violence, the redaction visually offers a bruising of the spectator not unlike the punctum. I have challenged the arguments that equate visibility with liberal transparency and transparency with justice through accountability. Simultaneously, however, I have suggested that in transparency’s failures, different kinds of possibilities emerge through visual spectatorship. We know that these highly sought after documents detailing detention, extraordinary rendition, and the legality of torture exist, and in that existence dwells a particular type of visibility that was always a way of making the actual subjects invisible within dark geographies. As we see from FOIA documents and the archives that host them, redacted documents, while not providing transparency for the government’s actions, unintentionally suggest the ungraspable dimensions of detention. These gaps highlight a fundamentally problematic epistemic violence created through the writing of detainees into these governmental forms of knowledge. It is only through this gesture toward the ungraspable that we approach the detainee and—correspondingly— redacted subjectivities.

#### The Net Benefit is necropolitics – the transparency of the affirmative is paradoxical, since the archive of the 1AC is an archive of carcereal violence that is rendered distant – redaction renders this visible, undisclosed, and structurally absent, evoking that which is hidden from view

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However, as the bits of information we can read from the torture memos affirm, detainees are not treated as liberal citizens but instead were categorized as “unlawful enemy combatants.” As a consequence, they were incarcerated and brutalized, and subjected to a violent form of bodily regulation: what Achille Mbembe called necropower (Mbembe, 2003). Mbembe argued that alongside modern biopolitical forms of power that Foucault (1978/1991) ascribed to the modern state, a new mode of power was established, one in which geographic isolations, war machines, and technologies of death have decimated populations and created socially dead subjects. Detainees in Guantanamo, U.S. military prisons, and black sites were often detained without charge, stripped of their rights, rendered to other countries, and incarcerated without political or legal recourse These detainees were rendered into files, figures, and statistics, which create a rational order in military prisons; their bodies are thereby made visible to the state through bureaucratic categorization. Such authorizing documents— memos, detainee files, and other official communications— created forms of governmental knowledge to routinize detention and brutal interrogation methods under the rubric of inoculating the proper, biopolitical population from terrorist violence (Esposito, 2008). While the empowered citizen’s impulse to make these documents available to the public is inspired by the logic of liberal governmentality, the memos themselves highlight a form of governmentality that is necropolitical.4 Within this archive of carceral violence, detainees exist as their necropolitical body, their subjectivities absent, suppressed, and submerged. They do not write themselves into this archive. Their status then is not unlike the figure of the subaltern, whose archival traces have been theorized extensively by postcolonial scholars. For these scholars, the subaltern are the colonized who were made visible and knowable to the west through government bureaucracy (the census, colonial documentation, etc.) or animated in the imagination through the landscape of literature and art.5 These colonial archives are intrinsically archives of epistemic violence that manifested in regulatory and physical brutality; governmental records existed to facilitate domination and manage the possibilities of insurgency. Postcolonial methodologies offer reading strategies that can point to the traces of the detained, analyzing the very “prose of counter-insurgency” (Guha, 1988, p. 59). The “transparency” of these archives is limited and compels readings against the grain; the detainee is not a whole person within these documents; for the abuser, they are a subject on whom the maximum admissible amount of torture should be wrought. For the American liberal imagination, they are the body on which American ideals are eroded. Within colonial archives, scholars have shown how a discursive analysis of colonial language as well as structured absences within documents could be productively read for a subaltern history (Guha, 1988; Prakash, 1994; Stoler, 2010) and contrary to their intended purposes. Edward Said (1993) called this a contrapuntal reading, that is, a reading against the grain. The bureaucratic archive does not simply provide verifiable information: It is an object of inquiry and a site of deep, textured discovery. These documents can be turned around on the colonial gaze—providing just as much (if not more) information about the colonizer as the colonized. Although it may seem that redacted documents disallow close examinations of texts, paradoxically, they can provoke contrapuntal readings with respect to documentation of the necropolitical. I explore some of these cases through close readings of redacted documents in my next section, showing how reading with redaction interrupts the seamlessness of a text, compelling the reader to ponder unspeakable, unrecordable traumas of detention that escape governmental record. Reading the Redacted Torture Memo What is visible, undisclosed, and structurally absent characterize different forms of knowing. The torture memos neither adequately describe the totality of particular detainee’s experiences, nor do they describe the complete system in which torture and detention occur. They provide small, contingent vignettes, disjointed looks that should be understood in the context of racialized and cultural discourses in a post 9/11 climate. Just as prisoners have been hidden within the War on Terror’s dark geographies, reading redacted documents visually evokes that which is hidden from view. To date, two different versions of the August 1st, 2002, memo to John Rizzo, drafted by the Justice Department’s Office of Legal Council (OLC), have been released. This memorandum specifically discusses the suspected Al Qaeda member and detainee Abu Zubayadah’s treatment in U.S. military prisons. This is one of two documents that were drafted this date by the OLC in response to Central Intelligence Agency (CIA) queries about whether treatments of prisoners (specifically Zubayadah and fellow detainee Khalid Sheikh Muhammad) would be considered torture under the Convention Against Torture and the United States Criminal and Penal Code. These memos were written for Attorney General Alberto Gonzales and CIA General Counsel John Rizzo. Much of the news coverage of these memos has focused on the former document. Written for Alberto Gonzales, it broadly discussed legal implications of using varying torture techniques during prisoner interrogations. This memo was also the one leaked to the press in 2004 and thus has been more widely discussed. Prior to the April 2009 mass document disclosure, a heavily redacted version— nearly “unreadable”—had been made available to the ACLU under their FOIA request asking for data on detainee abuse (Cole, 2009). As part of the Obama administration’s efforts to create more government accountability, the most recent release is only partially redacted. It does, however, conceal some description of Zubaydah’s interrogations. A close study of two different versions of the second August 1, 2002, memos shows how redacted views shape our readings (Figure 2).

#### The impact is endless violence and war – unmasking necropolitics challenges the very notion that it is necessary to kill in order to live

Mbembe ’03 (Achille Mbembe, “Necropolitics.” Public Culture 15(1): Winter 2003)

In Foucault’s formulation of it, biopower appears to function through dividing people into those who must live and those who must die. Operating on the basis¶ of a split between the living and the dead, such a power defines itself in relation¶ to a biological field—which it takes control of and vests itself in. This control¶ presupposes the distribution of human species into groups, the subdivision of the¶ population into subgroups, and the establishment of a biological caesura between¶ the ones and the others. This is what Foucault labels with the (at first sight familiar)¶ term racism.1  
That race (or for that matter racism) figures so prominently in the calculus of¶ biopower is entirely justifiable. After all, more so than class-thinking (the ideology¶ that defines history as an economic struggle of classes), race has been the¶ ever present shadow in Western political thought and practice, especially when it¶ comes to imagining the inhumanity of, or rule over, foreign peoples. Referring to¶ both this ever-presence and the phantomlike world of race in general, Arendt¶ locates their roots in the shattering experience of otherness and suggests that the¶ politics of race is ultimately linked to the politics of death.18 Indeed, in Foucault’s¶ terms, racism is above all a technology aimed at permitting the exercise of¶ biopower, “that old sovereign right of death.”19 In the economy of biopower, the¶ function of racism is to regulate the distribution of death and to make possible the¶ murderous functions of the state. It is, he says, “the condition for the acceptability¶ of putting to death.”20  
Foucault states clearly that the sovereign right to kill (droit de glaive) and the¶ mechanisms of biopower are inscribed in the way all modern states function;21¶ indeed, they can be seen as constitutive elements of state power in modernity.¶ According to Foucault, the Nazi state was the most complete example of a state¶ exercising the right to kill. This state, he claims, made the management, protection,¶ and cultivation of life coextensive with the sovereign right to kill. By biological¶ extrapolation on the theme of the political enemy, in organizing the war¶ against its adversaries and, at the same time, exposing its own citizens to war, the¶ Nazi state is seen as having opened the way for a formidable consolidation of the¶ right to kill, which culminated in the project of the “final solution.” In doing so, it¶ became the archetype of a power formation that combined the characteristics of¶ the racist state, the murderous state, and the suicidal state.  
It has been argued that the complete conflation of war and politics (and racism,¶ homicide, and suicide), until they are indistinguishable from one another, is unique¶ to the Nazi state. The perception of the existence of the Other as an attempt on¶ my life, as a mortal threat or absolute danger whose biophysical elimination would¶ strengthen my potential to life and security—this, I suggest, is one of the many¶ imaginaries of sovereignty characteristic of both early and late modernity itself.¶ Recognition of this perception to a large extent underpins most traditional critiques¶ of modernity, whether they are dealing with nihilism and its proclamation¶ of the will for power as the essence of the being; with reification understood as¶ the becoming-object of the human being; or the subordination of everything to¶ impersonal logic and to the reign of calculability and instrumental rationality.22¶ Indeed, from an anthropological perspective, what these critiques implicitly contest¶ is a definition of politics as the warlike relation par excellence. They also¶ challenge the idea that, of necessity, the calculus of life passes through the death¶ of the Other; or that sovereignty consists of the will and the capacity to kill in¶ order to live.

### K

#### The aff is strategically silent on the issue of Native American exploitation, perpetuating the eradication of the Native American culture and population.

Churchill 96 (Ward Churchill, Professor of Ethnic Studies at University of Colorado Boulder, Masters in Communication at Sangamon State, From a Native Son, pp. 520-30, 1996)

I’ll debunk some of this nonsense in a moment, but first I want to take up the posture of self-proclaimed leftist radicals in the same connection. And I’ll do so on the basis of principle, because justice is supposed to matter more to progressives than to rightwing hacks. Let me say that the pervasive and near-total silence of the Left in this connection has been quite illuminating. Non-Indian activists, with only a handful of exceptions, persistently plead that they can’t really take a coherent position on the matter of Indian land rights because “unfortunately,” they’re “not really conversant with the issues” (as if these were tremendously complex). Meanwhile, they do virtually nothing, generation after generation, to inform themselves on the topic of who actually owns the ground they’re standing on. The record can be played only so many times before it wears out and becomes just another variation of “hear no evil, see no evil.” At this point, it doesn’t take Albert Einstein to figure out that the Left doesn’t know much about such things because it’s never wanted to know, or that this is so because it’s always had its own plans for utilizing land it has no more right to than does the status quo it claims to oppose. The usual technique for explaining this away has always been a sort of pro forma acknowledgement that Indian land rights are of course “really important stuff” (yawn), but that one” really doesn’t have a lot of time to get into it (I’ll buy your book, though, and keep it on my shelf, even if I never read it). Reason? Well, one is just “overwhelmingly preoccupied” with working on “other important issues” (meaning, what they consider to be more important issues). Typically enumerated are sexism, racism, homophobia, class inequities, militarism, the environment, or some combination of these. It’s a pretty good evasion, all in all. Certainly, there’s no denying any of these issues their due; they are all important, obviously so. But more important than the question of land rights? There are some serious problems of primacy and priority imbedded in the orthodox script. To frame things clearly in this regard, lets hypothesize for a moment that all of the various non-Indian movements concentrating on each of these issues were suddenly successful in accomplishing their objectives . Lets imagine that the United States as a whole were somehow transformed into an entity defined by the parity of its race, class, and gender relations, its embrace of unrestricted sexual preference, its rejection of militarism in all forms, and its abiding concern with environmental protection (I know, I know, this is a sheer impossibility, but that’s my point). When all is said and done, the society resulting from this scenario is still, first and foremost, a colonialist society, an imperialist society in the most fundamental sense possible with all that this implies. This is true because the scenario does nothing at all to address the fact that whatever is happening happens on someone else’s land, not only without their consent, but through an adamant disregard for their rights to the land. Hence, all it means is that the immigrant or invading population has rearranged its affairs in such a way as to make itself more comfortable at the continuing expense of indigenous people. The colonial equation remains intact and may even be reinforced by a greater degree of participation , and vested interest in maintenance of the colonial order among the settler population at large. The dynamic here is not very different from that evident in the American Revolution of the late 18th century, is it? And we all know very well where that led, don’t we? Should we therefore begin to refer to socialist imperialism, feminist imperialism, gay and lesbian imperialism, environmental imperialism, African American, and la Raza imperialism? I would hope not. I would hope this is all just a matter of confusion, of muddled priorities among people who really do mean well and who’d like to do better. If so, then all that is necessary to correct the situation is a basic rethinking of what must be done, and in what order. Here, I’d advance the straightforward premise that the land rights of “First Americans” should serve as a first priority for everyone seriously committed to accomplishing positive change in North America.

#### The origin of indefinite detention is seen as a process of detaining the enemy, the affirmative glosses over the spectacle of indefinite detention as a archeological and biopolitical issue, our criticism believes that for the archeological approach to work it must go beyond its referent objects and explore the native captivity of indigenous people as a geological origin of criticism.

Newcomb 11 Steve Newcomb “Andrew Jackson and the USA Global War Bill” 6/2/11, http://indiancountrytodaymedianetwork.com/2011/06/02/andrew-jackson-and-usa-global-war-bill

In March 2011, the U.S. government filed a response brief to two appeals by two Guantanamo Bay detainees. They had been convicted of "providing material support for terrorism" and their defense contended that the charge was not a war crime subject to military tribunal jurisdiction. The defense argued that the U.S. government was obliged to cite historical evidence demonstrating that "providing support to an enemy" had been previously treated by the United States as a war crime. In its March 2011 response, the United States created an explicit connection between the Seminole Indians and al Qaeda under the label of "terrorism," and cited a single historical example to support its theory. (See "History and Tradition in American Military Justice" by Samuel T. Morrison.) That precedent was the prosecution and hanging of two British subjects under Major General Andrew Jackson’s command during his unauthorized invasion of Florida. In an effort to make their precedent fit, the U.S. military commission prosecutors offered two examples of what they claimed to be "terrorism,"—the Seminole Indians resisting Jackson’s invasion in 1818 and al Qaeda in 2001. In 1818, without authorization, U.S. Major General (later President) Andrew Jackson led an invasion of Spanish-claimed territory in Florida, thereby igniting the First Seminole War. Jackson did so to capture "fugitive slaves" and to invade and attack the Seminole and Miccosukee nations. During the invasion, Jackson captured two British subjects (Alexander Arbuthnot and Robert Ambrister) who had been living among the Seminoles. Letters found aboard Arbuthnot’s schooner, in which he had advocated for Seminole land and treaty rights, were used as evidence against him. Because the Seminoles were deemed by Jackson to be "enemies" of the United States, and because the two British subjects had supported those "enemy" Indians who were resisting Jackson’s invasion of Florida, a military panel decided that the two men deserved to be executed. Ambrister was initially sentenced to death, but this was reversed and he was then sentenced to 50 lashes and one year hard labor. However, Jackson unilaterally overturned that sentence and had Ambrister hanged anyway. Given that neither Arbuthnot nor Ambrister were U.S. citizens, and owed no duty of allegiance to the United States—and that they were arrested in an illegal US invasion of Spanish claimed territory—their conduct was not a "war crime" under international law. Despite this, they were executed by Jackson. The U.S. government's attempt this past March to analogize al Queda with the Seminole people was a terrible distortion. Worse still is the parallel between Andrew Jackson charging and hanging Arbuthnot and Ambrister for "aiding the enemy" and current U.S. congressional legislation now moving quickly toward passage. Not only have US government attorneys wrongly converted Seminoles into al Qaeda, but the Congress is now about to pass legislation that would treat all humans on the planet as potential detainees for aiding those deemed by the United States to be "enemies." The proposed legislation would make The Authorization for the Use of Military Force of September 2001 a permanent feature of U.S. law. It would make due process protections under the U.S. Constitution unavailable to anyone detained. The scope of the legislation appears to be anybody, anytime, anywhere. A bill authorizing a regime of global war was added to the National Defense Authorization Act of 2011 (H.R. 1540) by House Armed Services Committee Chairman Howard "Buck" McKeon (R-CA). The Act passed the House last week and now moves to the U.S. Senate. Another such bill was recently put forward by U.S. Senator John McCain (R-AZ). The new war authorization will allow the United States to wage war "wherever there are terrorism suspects in any country around the world without an expiration date, geographical boundaries or connection to the 9/11 attacks or any other specific harm or threat to the United States," the ACLU said recently. According to a May 9 article by Laura Pitter in "The Hill" newspaper ("Proposed McKeon and McCain legislation won’t make us safer"), the bills put forward by congressman McKeon and Senator McCain "would expand who the U.S. says it is at war with and mandate military detention for broadly defined terrorist suspects based on scant evidence." Hearsay evidence will also be admissible. By means of a permanent war authorization, indigenous peoples, and their allies, who advocate for self-determination and for the protection of Indigenous resources (lands, water, minerals, etc.) against colonial and corporate exploitation could be accused by the United States of "supporting terrorism," and thereby come under attack or be seized by the U.S. military and end up being held as detainees. The legislation would further ratify and intensify the U.S. policy of treating Indigenous peoples’ issues as a matter of national security. On May 25, Congressman Ron Paul (R-TX) said of the overall situation of the United States at this time, "The last nail is being driven into the coffin of the American Republic."

#### We should honor the survivors of sexual colonialism by prioritizing anti-colonialism. Native rape survivors understand sexual violence as a weapon of war that has been used against Native communities for the last five hundred years.

Deer 5 (Sarah Deer, Staff Attorney @ Tribal Law and Policy Institute, Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law, MARCH 11, <http://www.law.suffolk.edu/highlights/stuorgs/lawreview/docs/Deer.pdf#search='sovereignty%20of%20the%20soul>, P. 457-459, 2005 )

In order to analyze the legal response to sexual violence in Indian country,it is important to examine the 500 year history of rape of Native American women by Europeans. One of the historical angles from which to begin this analysis is the arrival of Christopher Columbus. Columbus is one of the major symbols of colonization in the Western hemisphere. Columbus’́ arrival not only represents the destruction of indigenous cultures, but also the beginning of rape of Native American women by European men. A passage from the diary of one of Columbus aristocratic friends who accompanied him on the second voyage describes one such encounter: When I was in the boat, I captured a very beautiful Carib woman . . . having brought her into my cabin, and she being naked as is their custom, I conceived desire to take my pleasure. I wanted to put my desire to execution, but she was unwilling for me to do so, and treated me with her nails in such wise that I would have preferred never to have begun. But seeing this . . . I took a rope-end and thrashed her well, following which she produced such screaming and wailing as would cause you not to believe your ears. Finally we reached an agreement such that, I can tell you, she seemed to have been raised in a veritable school of harlots . . . . 13 So right away, upon contact, we are seeing immediate rape. We continue to see rape used as a tool of colonization and a tool of war against Native peoples for the next several hundred years, until the present day. Historian Susan Armitage writes, It is well documented that Spanish-Mexican soldiers in Spanish California and New Mexico used rape as a weapon of conquest.î14 The legal community recognizes that rape is used as a weapon in war and international tribunals have address the issue.15 This legal analysis, however, is rarely applied to historical events. There are instances throughout history of using rape and sexual violence as a means of destroying a people, of rendering them unable to protect their lives and their resources, especially as a means to remove them from land that was desired. Another historian, Albert L. Hurtado, notes of the California gold rush, part of the invading population was imbued with a conquest mentality, fear and hatred of Indians that in their minds justified the rape of Indian women.î16 Much change has been attempted in the Anglo-American approach to sexual assault in the last thirty years,17 but things have not really changed for Native American woman in about 500 years. Those in the anti-rape movement often talk about rape as an “equal opportunity” crime.18 Such sentiment, however, is a little short-sighted in that those in the anti-rape movement need to look at the specific impact of sexual violence on marginalized populations and indigenous populations. We also need to acknowledge that the United States was founded, in part, through the use of sexual violence as a tool, that were it not for the widespread rape of Native American women, many of our towns, counties, and states might not exist. This kind of analysis informs not only indigenous scholars, but also anti-rape scholars. Thus, critical to contemporary anti-rape dialogues is the inclusion of a historical analysis of colonization. Language of the early European explorers and invaders makes numerous references to the land of this continent as virgin land or a woman available for seizure and invasion. 19 The terminology used to describe so-called explorations and settlements sometimes has violent sexual connotations. 20 In fact, the language used in illustrating colonization often parallels the language of sexual violence. For example, words like seize, conquer, and possess are used to describe both rape and colonization. In fact, when speaking with Native American women who have survived rape, it is often difficult for them to separate the more immediate experience of their assault from the larger experience that their people have experienced through forced removal, displacement, and destruction. Both experiences are attacks on the human soul; both the destruction of indigenous culture and the rape of a woman connote a kind of spiritual death that is difficult to describe to those who have not experienced it.

#### Only having a willingness to exterminate the settler can ensure the destruction of U.S. colonialism.

Meister, 11 (Robert Meister, prof of Social and Political Thought @ UC Santa Cruz, After Evil: A Politics of Human Rights, p. google books, note: ev is gender-modified)

<The Roots of Genocide The secular logic of genocide arises from the moral psychology of place and race within the colonial project. To understand this, we can rely, once again, on Melanie Klein’s concept of projective identification, discussed in earlier chapters. The essential idea (restated in Klein’s terminology) is that the settler re-experiences his [their] own aggression toward the native in the form of fear of the native’s hostility toward him [the settler]. In fearing the native’s “primitive” racism (which is already a response to colonization), the settler defends against guilt for displacing the native. By identifying himself as the object of his own feelings toward the native, the settler re-experiences them as feelings of racial antipathy on the part of the natives. In the dialectic of race and place, the role of the colonist is to think, “These people hate us because of our […].” “Race” is the term of art that fills in the political blank: it acquires whatever biological, religious, linguistic, or cultural content is necessary to describe a difference between the settler and the native placeholder that precedes the settler’s occupation of the native’s place.65 The settler perfectly understands the depth of these ascribed feelings of racialized hatred, for they are merely his own original feelings projected onto others. It should be noted that two imaginaries of genocide are embedded in such an account of projective identification.66 The first is the genocide of the native against the settler – the racially motivated “massacres” of innocents by savages that are the foundation of settler colonialist lore. The second is the massacre of natives by settlers. The unconscious moral logic of the colonial experience bases the settlers’ genocide against the native on the settlers’ repressed fear or fantasy of being subjected to genocidal actions by the native. In his now classic *Wretched of the Earth*, Franz Fanon theorized that in order to liberate himself from colonialism the (black) native must embrace this projected willingness to exterminate the (white) settler.67 Fanon urges the “good native” to embrace the “bad” identity that embodies the settler’s terror. Jean-Paul Sartre famously read this claim as the next stage in revolutionary consciousness and saw the native’s will to fight the colonist to the death as a higher form of the totalizing dialectic of master and slave described by Hegel and Marx.68 Read in the broader context, however, Fanon’s argument is that the settler/native dialectic is distinct from, and even potentially broader than, that of master and slave. In Black Faces, White Masks he sets forth the paradigm of anticolonial struggle as lacking the mutuality of recognition present in the Hegelian-Marxist view of class struggle. Here the master laughs at the consciousness of the slave. What he wants from the slave is not recognition but work. In the same way, the slave here is in no way identifiable with the slave who loses himself in the object and finds in his work the source of his liberation. The Negro wants to be like the master. Therefore he is less independent than the Hegelian slave. In Hegel the slave turns away from the master and turns toward the object. Here the slave turns towards the master and abandons the object.69 In colonialism the relationship is not initially one of *subjugation* mediated by something they have in common, an object which is simultaneously the product of the slave’s labor and the object of the master’s need; rather, it is based on originary *displacement* – of one occupying the place of another, both physically and psychically. Fanon demonstrates that the conceptual root of genocide lies in the prior lack-of-relation between native and settler as mutually exterior occupants of the same ground. Fanon’s theory of colonialism is thus less an extrapolation of Sartre’s (and Hegel’s) account of the struggle for recognition from master/slave to white/black than an anticipation of Levinas’s ethical argument (discussed in chapter 5) against the politics of recognition and particularly against Hegel’s view that inclusion based on mutual respect is the ethical goal of the struggle for recognition.70 According to Levinas, the philosophy that regards recognition as the end of struggle is itself a formula for murder because it does not ask about the struggle’s beginning. It does not ask, in particular, whether one has already taken the place of the other whom one will eventually recognize as another self.71 Fanon’s argument anticipates the later position of Levinas by taking the “totalizing discourse” of white/black and, most generally, self/other outside the special context of relations of production (master/slave, capitalist/worker) and placing them in the arguably more general context of occupying a space in which the other, as such, does not (or need not) exist at all except as a projection of the self, an alter ego. In this context, which is typical of the colony, the willingness of the native to exterminate or expel the settler is simply a return-to-sender of the genocidal message of the colonialism itself.>

#### Only decolonization can solve other forms of oppression within settler culture.

Churchill, 3 (Ward Churchill, I am Indigenist: Notes on the Ideology of the Fourth World, Acts of Rebellion: The Ward Churchill Reader, p. \_\_\_\_\_)

<Not only is it perfectly reasonable to assert that a restoration of native control over unceded lands within the U. S. would do nothing to perpetuate such problems as sexism and classism, but the reconstitution of indigenous societies this would entail stands to free the affected portions of North America from such maladies altogether. Moreover, it can be said that the process should have a tangible impact in terms of diminishing such things elsewhere. The principle is this: sexism, racism, and all the rest arose here as concomitants to the emergence and consolidation of the eurocentric state form of sociopolitical and economic organization. Everything the state does, everything it can do, is entirely contingent upon its maintaining its internal cohesion, a cohesion signified above all by its pretended territorial integrity, its ongoing domination of Indian Country. Given this, it seems obvious that the literal **dismemberment of the state inherent to** Indian land recovery correspondingly reduces the ability of the state to sustain the imposition of objectionable relations within itself. It follows that realization of indigenous land rights serves to undermine or destroy the ability of the status quo to continue imposing a racist, sexist, classist, homophobic, militaristic order upon nonindians. A brief aside: anyone with doubts as to whether it’s possible to bring about the dismemberment from within of a superpower state in this day and age ought to sit down and have a long talk with a guy named Mikhail Gorbachev. It would be better yet if you could chew the fat with Leonid Brezhnev, a man who we can be sure would have replied in all sincerity—only three decades ago—that this was the most outlandish idea he’d ever heard. Well, look on a map today, and see if you can find the Union of Soviet Socialist Republics. It ain’t there, my friends. Instead, you’re seeing, and you’re seeing it more and more, the reemergence of the very nations Léon Trotsky and his colleagues consigned to the “dustbin of history” clear back at the beginning of the century. These megastates are not immutable. They can be taken apart. They can be destroyed. But first we have to decide that we can do it, and that we will do it. So, all things considered, when indigenist movements like AIM advance slogans like “U. S. Out of North America, ” **nonindian radicals shouldn’t react defensively**. They should cheer. They should see what they might do to help. When they respond defensively to sentiments like those expressed by AIM, what they are ultimately defending is the very government, the very order they claim to oppose so resolutely. And if they manifest this contradiction often enough, consistently enough, pathologically enough, then we have no alternative but to take them at their word, that they really are at some deep level or other aligned—all protestations to the contrary notwithstanding—with the mentality which endorses our permanent dispossession and disenfranchisement, our continuing oppression, our ultimate genocidal obliteration as self-defining and self-determining peoples. In other words, they make themselves part of the problem rather than becoming part of the solution.>

### Case

#### THER CRITICISM IS OPPRESSIVE TO THOSE WHO ARE SUBJECT TO VIOLENCE – IT CREATES A RELATIONSHIP OF DOMINATION THAT SHOULDN’T BE ADOPTED

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Ultimately, Schutte argues persuasively that the political implications of **Nietzsche's** metaphysical critique are incoherent: on the one hand the **critique of transcendentalism works against authoritarianism** of all kinds, **but on the other hand his naturalist account of hierarchies among human beings, his "endorsement of an order of rank," works to replicate the metaphysical orientation and ethical values that he rejects**: He has not yet overcome the dualism of good and evil; his analysis of decadence as an impurity that ought to be eliminated from society is much too reminiscent of the Manichcan struggle between good and evil. Furthermore, his identification of Christians, democrats, socialists, feminists, and others with decadent forces is a drastic oversimplification. Nietzsche's counterproposals to democracy do not take him any farther along the road to a nonalienated, nonfragmented conception of human reality than the dualistic and reductionist structures of value that he himself opposed. (1984, 172) Schutte also shows how Nietzsche's inability to imagine a democratization of the creation of values adversely affects the attempt to develop a wider application of his work. She argues that **the central ethical concept of eternal recurrence**, for example, **is not** in fact **universalizable; persons who have experienced severe forms of suffering cannot be both life affirming and will an eternal recurrence of their suffering**. Contra Nietzsche, **all forms of suffering are not ennobling**.

#### THIS CAUSES FAR-RIGHT HEGEMONY AND AUTHORITARIANISM

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Some dramatically characterize the trends just described as legal nihilism or the negation of the exercise of legitimate power without the assertion of substantive theory in its place. As Michael Polanyi so cogently has noted, **nihilism**, whether real or imagined, **leads inexorably to authoritarian responses and to the rise of ideology.** The second phenomenon which gave rise to our particular predicament thus emerged from the conversion of subjective moral judgment into ideology. Whether derived from the twentieth century revolutions based on socialism or Marxism, on the human rights movement, or on a resurgence of neo-conservatism, the intellectual roots of such movements are well described in European and Latin American literatures. Symbolic of that literature, and resulting in the negation of law and value, are Nietzsche’s moral and ethical superiority, Dostoyevski's novels and short stories and the works of the phenomenologist, existentialists and structuralists. All ask similar questions. Post-Marxist thinkers -- Habermas, Foucault and Berger and other non-legal critical scholars -- have gained influence in legal scholarship which finds them to be useful analytic tools. **If there is no common basis for** law or **morality other than through a subjective or ideological construct, then the question is not what values underpin a particular legal system, but how one's subjective preferences may be infused with power**, strategy and tactics throughout the general community **or imposed by coercion**. The lawyer-advocate has long used various techniques based on pragmatic ideas of progress, the frontier and change. These have been associated with the romanticism of the defender of the poor and downtrodden, the fighter for civil rights, the human-rights warrior and the social reformer, who use courts and law as instruments of social change. In this construct, law as a secular system has no normative content that is not ultimately subjective. **If God is dead, all things are morally possible**. The main claim to legitimacy or validity rests in process; namely that the advocates who represent a particular morality or a particular social philosophy fight and prevail as warriors and advocates in an existing decisionmaking process, akin to chivalry, aimed at changing official behavior or custom by fighting injustice, admittedly a subjective construct. Once, however, the subjective advocacy model of changing the social structure is an accepted way of life, the natural reaction is that sauce for the goose is sauce for the gander. If the objective validity of the normative system tacitly is rejected by those who seek to change it, then radicals holding an opposite belief might just as well produce a similar claim by an activism with subjective preferences even more firmly rooted within the vices of common life. **The dialectic of thesis, antithesis and synthesis that seemed to move outward from the subjective to an objective world-view could work for the radical right just as well as for the** Marxist **left!**

#### THEIR ETHIC CELEBRATES INJUSTICE AND GLORIFIES EXPLOITATION AS LIFE-AFFIRMING

**ROSS**, PHD, **08** (KELLEY L.,FRIEDRICH NIETZSCHE (1844-1900), <HTTP://WWW.FRIESIAN.COM/NIETZSCH.HTM>)

The lack of rights for the dark underclasses brings us to the principal theme of The Genealogy of Morals: The morality of "good and evil" has been invented out of hatred and resentment by the defeated and subjugated races, especially the Jews. **People who love Nietzsche for his celebration of creativity and his dismissal of** the **moralism** of traditional religion, mainly meaning Christianity, usually seem to **think of going "beyond good and evil" as** merely **legitimizing** homosexuality, drugs, abortion, prostitution, pornography, and the other desiderata of **progressive thinking**. **They don't** seem to **understand that Nietzsche was**n't particularly interested in things like that, but, more to the point, **legitimizing rape, murder, torture, pillage, domination, and political oppression by the strong**. The only honest Nietzschean graduate student I ever met frankly stated, **"To be creative, you must be evil*."*** We get something similar in the recent Sandra Bullock movie, Murder by Numbers [2002], where the young Nietzschean student simply says, "Freedom is crime." The story of the movie is more or less that of Leopold and Loeb, the Chicago teenagers who in 1924 murdered a young boy (Bobby Franks) to prove that they were "beyond good and evil." Leopold and Loeb understood their Nietzsche far better than most of his academic apologists.  And we are the first to admit that anyone who knew these "good" ones [nobility] only as enemies would find them evil enemies indeed. For these same men who, amongst themselves, are so strictly constrained by custom, worship, ritual, gratitude, and by mutual surveillance and jealousy, who are so resourceful in consideration, tenderness, loyality, pride and friendship, when once they step outside their circle become little better than uncaged beasts of prey. Once abroad in the wilderness, they revel in the freedom from social constraint and compensate for their long confinement in the quietude of their own community. They revert to the innocence of wild animals: we can imagine them returning from an orgy of murder, arson, rape, and torture, jubilant and at peace with themselves as though they had committed a fraternity prank -- convinced, moreover, that the poets for a long time to come will have something to sing about and to praise. Deep within all the noble races there lurks the [blond] beast of prey, bent on spoil and conquest. This hidden urge has to be satisfied from time to time, the beast let loose in the wilderness. This goes as well for the Roman, Arabian, German, Japanese nobility as for the Homeric heroes and the Scandinavian vikings. The noble races have everywhere left in their wake the catchword "barbarian." .....their utter indifference to safety and comfort, their terrible pleasure in destruction, their taste for cruelty -- all these traits are embodied by their victims in the image of the "barbarian," and "evil enemy," the Goth or the Vandal. The profound and icy suspicion which the German arouses as soon as he assumes power (we see it happening again today [i.e. 1887]) harks back to the persistent horror with which Europe for many centuries witnessed the raging of the blond Teutonic [germanischen] beast (although all racial connection between the old Teutonic tribes [Germanen] and ourselves has been lost). [pp.174-175, boldface added, note the terms, "blond" and "German," deleted or altered in the Golffing translation] The "noble races" are thus ennobled by no restraint or consideration shown for the persons or possessions, let alone feelings, of those helpless strangers who come within their power. "Spoil and conquest," rape and torture, are fun. Kaiser Wilhelm got in the spirit of things by telling German troups to act like the "Huns of Attila" on their mission to Peking in 1900. No Nietzschean has any business, for example, damning Christopher Columbus for enslaving the Caribs. While Nietzsche actually seems to think that the "blond Teutonic beast" was gone from Germany, and Hitler, as noted, hardly fills the bill, there is actually no lack of blonds in the "Nordic" nations, and Nietzsche himself here seems to have a relatively expansive notion of racial superiority. While he apparently thought of the Roman nobility as themselves of Aryan extraction, he can hardly have thought the same of the Arabians or Japanese. This acknowledgment would have been of material advantage in World War II, when many Arabs preferred the Germans to the British (or to the Zionist Jews of Palestine) -- while the Japanese, even today, often think of themselves as a pure and superior race. As actual German Allies in World War II, the Japanese were in close competition with Germany for atrocities against civilians and prisoners-of-war (though the Germans were relatively considerate of American and British prisoners, while brutal to Russians and others, as the Japanese were to all).  But, one might think, violence and oppression are unjust! How could any progressive person not see that expoitation and abuse are wrong! We have Nietzsche's answer:  No act of violence, rape, exploitation, destruction, is intrinsically "unjust," since life itself is violent, rapacious, exploitative, and destructive and cannot be conceived otherwise. Even more disturbingly, we have to admit that from the biological [i.e. Darwinian] point of view legal conditions are necessarily exceptional conditions, since they limit the radical life-will bent on power and must finally subserve, as means, life's collective purpose, which is to create greater power constellations. To accept any legal system as sovereign and universal -- to accept it, not merely as an instrument in the struggle of power complexes, but as a weapon against struggle (in the sense of Dühring's communist cliché that every will must regard every other will as its equal) -- is an anti-vital principle which can only bring about man's utter demoralization and, indirectly, a reign of nothingness. [p.208, boldface added] Nietzsche is certainly life affirming, but then **violence, rape, exploitation, and destruction are intrinsic to his view of life**. **Attempts to protect the weak, see that justice is done, and mitigate suffering are "anti-vital" projects** that, being **adverse to life itself**, actually tend towards "a reign of nothingness." Thus, if we actually care about others and are not just interested in asserting power over them and using them for our own pleasure, then we can look forward to extinction.  The delicacy -- even more, the tartufferie -- of domestic animals like ourselves shrinks from imagining clearly to what extent cruelty constituted the collective delight of older mankind, how much it was an ingredient of all their joys, or how naïvely they manifested their cruelty, how they considered disinterested malevolence (Spinoza's sympathia malevolens) a normal trait, something to which one's conscience could assent heartily.... To behold suffering gives pleasure, but to cause another to suffer affords an even greater pleasure. [pp.197-198, boldface added] **A great part of the pleasure that we get, according to Nietzsche, from injustice to others is** simply **the pleasure of inflicting suffering**. In this **it is worth recollecting** the feminist shibboleth **that rape is not about sex, it is about power**. **Nietzsche would heartily concur**. So much the better! And what is more, the value of rape is not just power, it is the chance to cruelly inflict suffering. **The rapist who** beats and **mutilates**, perhaps even kills, his victim, **has done no evil, he is instead one of the heroes of true historic nobility**. And people think that the droit de seigneur represents some "abuse" of power! No! It is the truly noble man as heroic rapist! Nietzsche would turn around Susan Brownmiller, who said that all men are rapists. No, it is just the problem that they are not. Nietzsche would regard most men as virtual castrati (domestic oxen, geldings) for not being rapists.

#### THEY LEGITIMIZE ATROCITIES

MAY, COLLEGE RESEARCH FELLOW IN PHILOSOPHY @ BIRKBECK COLLEGE, 99 (SIMON, NIETZSCHE’S ETHIC VERSUS ‘MORALITY’: THE NEW IDEAL, NIETZSCHE’S ETHICS AND HIS WAR ON ‘MORALITY,’P. 132-133)

<An apologist for Nietzsche might suggest that his ethic is not alone in effectively legitimizing inhumanity. He might argue, for example, that some forms of utilitarianism could not prevent millions being sacrificed if greater numbers could thereby be saved; or that heinous maxims could be consistently universalized by Kant's Categorical Imperative—maxims against which Kant's injunction to treat all human beings as ends in themselves would afford no reliable protection, both because its conception of 'humanity' is vague and because it would be overridden by our duty, as rational agents, to respect just such universalized maxims. To this apologist one would reply that **with Nietzsche there is not even an attempt to produce a systematic safety net against cruelty**, **especially if one judges oneself to be a 'higher' type of person with life-enhancing pursuits**—and, to this extent, **his philosophy licenses the atrocities of a Hitler** even though, by his personal table of values, he excoriates anti-Semitism and virulent nationalism. Indeed, to that extent it is irrelevant whether or not Nietzsche himself advocates violence and bloodshed or whether he is the gentle person described by his contemporaries. The reality is that **the supreme value he places on individual life-enhancement and self-legislation leaves room for, and in some cases explicitly justifies, unfettered brutality**. In sum: the point here is not to rebut Nietzsche's claim that 'everything evil, terrible, tyrannical in man' serves his enhancement 'as much as its opposite does' (BGE, 44—my emphasis)—for such a rebuttal would be a major ethical undertaking in its own right. It is rather to suggest that the necessary balance between danger and safety which Nietzsche himself regards as a condition for flourishing (for example, in this quote from BGE, 44) is not vouchsafed by his extreme individualism. Indeed, such individualism seems not only self-defeating, but also quite unnecessary: for safeguards against those who have pretensions to sovereignty but lack nobility could be accepted on Nietzsche's theory of value as just another 'condition for the preservation' of 'higher' types. Since the overriding aim of his attack on morality is to liberate people from the repressiveness of the 'herd' instinct, this unrelieved potential danger to the 'higher' individual must count decisively against the success—and the possibility of success—of his project.>