## 1NC

### T – statutory/judicial

#### Interpretation and violation---Statutory restriction means controlled by legislation and Judicial restriction means limited by judicial action

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

### T – war power

#### Presidential War power authority is the ability of the President to make chain of command decisions over the Armed Forces

Bejesky 2013 [Robert Bejesky M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law ¶ (Georgetown). The author has taught international law courses for Cooley Law School and the ¶ Department of Political Science at the University of Michigan, American government and ¶ constitutional law courses for Alma College, and business law courses at Central Michigan University ¶ and the University of Miami. 1/23/2013 “WAR POWERS PURSUANT TO FALSE PERCEPTIONS AND ASYMMETRIC INFORMATION IN THE “ZONE OF TWILIGHT”” St Mary’s Law Journal http://www.stmaryslawjournal.org/pdfs/Bejesky\_Step12.pdf]

Congressional war powers include the prerogatives to “declare War;” ¶ “grant Letters of Marque and Reprisal,” which were operations that fell ¶ short of “war”; “make Rules for the Government and Regulation of the ¶ land and naval Forces;” “to provide for organizing, arming, and ¶ disciplining, the Militia;” “make Rules concerning Captures on Land and ¶ Water;” “raise and support Armies;” and “provide and maintain a ¶ Navy.”¶ 46¶ Alternatively, the President is endowed with one war power, ¶ that of “Commander in Chief of the Army and Navy.”¶ 47¶ Numerical ¶ comparison indicates that the intended dominant branch in war powers ¶ decisions is Congress. The Commander in Chief authority is a core preclusive power that ¶ designates the President as the head of the military command chain once ¶ Congress activates the power.¶ 48¶ Moreover, peripheral Commander in ¶ Chief powers are bridled by both statutory and treaty restrictions.¶ 49¶ The ¶ media lore of using “Commander in Chief” coterminous with “President” ¶ might occasionally be a misnomer outside of war, perhaps abetting ¶ presidential expansionism when combined with commentators employing ¶ terms such as “inherent authority.” Clearly, if Congress has not activated ¶ war powers, the President still possesses inherent authority to react ¶ expeditiously and unilaterally to defend the nation when confronted with ¶ imminent peril.¶ 50¶ However, the Framers drew a precise distinction when ¶ they specifically empowered the President “to repel and not to commence ¶ war.”¶ 51¶ Alexander Hamilton explained that latitude was required “because ¶ it is impossible to foresee or to define the extent and variety of national ¶ exigencies, and the correspondent extent and variety of the means which ¶ may be necessary to satisfy them.”¶ 52

#### That excludes detention of American citizens

Tobias, professor of law at Richmond, September 2007

(Carl, “THE PROCESS DUE INDEFINITELY DETAINED CITIZENS\*,” 85 N.C.L. Rev. 1687, Lexis)

Having determined that constitutional text and relevant Supreme Court opinions did not allow the Executive to detain American citizens, the panel surveyed whether lawmakers had approved the incarceration. The majority consulted the Non-Detention Act's terminology: "no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." n116 The judges read these words as a proscription on all citizen detentions, a "conclusion first reached by the Supreme Court." n117 Further, the panel deemed the legislative history "fully consistent with" its view because the enactment's sponsor and the major opponent "repeatedly confirmed" that the law governed presidential attempts to detain in [\*1708] wartime and evinced Congress' intent that it "must specifically authorize detentions." n118 The appellate court said that the legislation precluded civilian and military detentions, n119 finding: (1) **this idea left executive war powers** "**unabridged**" because the "President, acting alone" lacks inherent authority to detain; n120 and (2) a statute's "placement" should not "trump text, especially" when clear and "fully supported by legislative history." n121 The panel concluded that a "precise, specific" law "is required to override" the enactment's ban on all citizen detentions n122 and, thus, searched for this approval. n123 The appeals court detected none in the AUMF's phrasing n124 and construed the words vis-a-vis the tenets which the Supreme Court articulated in Ex parte Endo: judges must interpret wartime measures "to allow for the greatest possible accommodation between" war exigencies and civil liberties and find that "lawmakers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used." n125 Nothing in the plain terms granted the Executive power to detain American citizens on U.S. "soil, much less the express authorization required by section 4001(a) and the "clear,' "unmistakable' language" which Endo demanded. n126 Because the AUMF was "meant to constitute specific statutory authorization within" the War Powers Resolution, n127 the [\*1709] panel thought it "inconceivable" that Congress would mandate such a resolution to employ force overseas yet "leave unstated and to inference something so significant and unprecedented as authorization to detain American citizens under the Non-Detention Act." n128 Moreover, 10 U.S.C. § 956(5), which "authorizes nothing beyond the expenditure of money," failed to satisfy the Non-Detention Act, the requirements that Endo had propounded as well as Fourth and Fifth Amendment guarantees. n129 [RELEVANT FOOTNOTE—] n121. Id. at 721. The United States said placing § 4001(a) in **a section on prisons did not limit executive war power**, and next to § 4001(b)'s exclusion of military prisons, showed Congress intended to exclude military detentions. Id.

#### Predictable Limits – the affirmative justifies ignoring any word in the resolution, applying any metaphor to debate –predictable affirmative based in the topic is essential to determine if the affirmative is TRUTHFUL to begin with – without a well-prepared opponent one cannot engage in effective questions as to how to proceed in the debate

**Shively‘2K**

(Ruth Lessl, Assistant Prof Political Science – Texas A&M U., Partisan Politics and Political Theory, p. 181-2)

The requirements given thus far are primarily negative. The ambiguists must say "no" to-they must reject and limit-some ideas and actions. In what follows, we will also find that they must say "yes" to some things. In particular, they must say "yes" to the idea of rational persuasion. This means, first, that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake that the ambiguists make here is a common one. The mistake is in thinking that agreement marks the end of contest-that consensus kills debate. But this is true only if the agreement is perfect-if there is nothing at all left to question or contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the *starting* condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no argument except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, we cannot argue about something if we are not communicating: if we cannot agree on the topic and terms of argument or if we have utterly different ideas about what counts as evidence or good argument. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if **one's target audience simply thinks everyone is resting** or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is meaningless if there is a lack of agreement or communication about what is being contested. Resisters, demonstrators,and **debaters** **must** have some **shared ideas** about the subject and/or the terms of their disagreements. The participants and the target of a sit-in must share an understanding of the complaint at hand. And a demonstrator's audience must know what is being resisted. In short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony. But, again, the response to the ambiguist must be that the practice of questioning and undermining rules, like all other social practices, needs a certain order. The subversive needs rules to protect subversion. And when we look more closely at the rules protective of subversion, we find that they are roughly the rules of argument discussed above. In fact, the rules of argument are roughly the rules of democracy or civility: the delineation of boundaries necessary to protect speech and action from violence, manipulation, and other forms of tyranny.

### CP

**We advocate the abolition of domestic indefinite detention. We advocate implementing a stringent standard of anti-rape policies within society at large and especially the prison-industrial complex. We advocate a policy that ends the hiring of all male prison guards. We advocate for keeping indefinite detention for proven enemy combatants and adopt a rehabilitation model to the prison system instead of a punitive model. Indefinite detention remaining for enemy combatants should also adopt stringent anti-racism standards utilizing a multi-tiered test to determine whether they were detained as a result of racial biases. We advocate a Truth and Reconciliation Committee for those released and mandate the presence of a prosecution team, including those who came into contact with the defendant during their detention. And we advocate that the government should invite the defense team, defendant, and the defendant’s peers to participate.**

#### Reforms in detention policy result in catastrophic terrorism---releases them and kills intel gathering

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Nuclear terrorism is feasible---high risk of theft and attacks escalate

Vladimir Z. Dvorkin ‘12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Nuke terror causes extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

#### The aff collapses international laws of armed conflict doctrine but the CP doesn’t ---- creates a dangerous precedent

Bialke, 4

(Lt. Colonel, MA & JD-University of North Dakota, LLM-University of Iowa, “Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict,” 55 A.F. L. Rev. 1, Lexis)

International Obligations & Responsibilities and the International Rule of Law

The United States (U.S.) is currently detaining several hundred al-Qaeda and Taliban unlawful enemy combatants from more than 40 countries at a multi-million dollar maximum-security detention facility at the U.S. Naval Base in Guantanamo Bay, Cuba. These enemy detainees were captured while engaged in hostilities against the U.S. and its allies during the post-September 11, 2001 international armed conflict centered primarily in Afghanistan. The conflict now involves an ongoing concerted international campaign in collective self-defense against a common stateless enemy dispersed throughout the world. Domestic and international human rights organizations and other groups have criticized the U.S., n1 arguing that al-Qaeda and Taliban detainees in Cuba should be granted Geneva Convention III prisoner of war (POW) n2 status. They contend broadly that pursuant to the international laws of armed conflict (LOAC), combatants captured during armed conflict must be treated equally and conferred POW status. However, no such blanket obligation exists in international law. There is no legal or moral equivalence in LOAC between lawful combatants and unlawful combatants, or between lawful belligerency [\*2] and unlawful belligerency (also referred to as lawful combatantry and unlawful combatantry). The U.S. has applied well-established existing international law in holding that the al-Qaeda and Taliban **detainees are presumptively unlawful combatants** not entitled to POW status. n3 Taliban and al-Qaeda enemy combatants captured without military uniforms in armed conflict are not presumptively entitled to, nor automatically granted, POW status. POW status is a privileged status given by a capturing party as an international obligation to a captured enemy combatant, if and when the enemy's previous lawful actions in armed conflict demonstrate that POW status is merited. In the case of captured al-Qaeda and Taliban combatants, their combined unlawful actions in armed conflict, and al-Qaeda's failure to adequately align with a state show POW status is not warranted. The role of the U.S. in the international community is unique. The U.S., although relatively a young state, is the world's oldest continuing democracy and constitutional form of government. The U.S. is a permanent member of the United Nations Security Council, the world's leading economic power, and its only military superpower. The U.S. is the only country in the world capable of commencing and supporting effectively substantial international military operations with an extensive series of military alliances, and the required numbers of mission-ready expeditionary forces consisting of combat airpower, land and naval forces, intelligence, special operations, airlift, sealift, and logistics. Great influence and capabilities, however, exact great responsibility. As a result of its unique role and influence within the international community, the U.S. has been placed at the forefront of respecting LOAC and promoting international respect for LOAC. The U.S. military has the largest, most sophisticated and comprehensive LOAC program in the world. The U.S. demonstrates respect for LOAC by devoting an extraordinary and unequalled level of resources to the development and enforcement of these laws, through an unparalleled LOAC training and education regimen for U.S. and allied [\*3] military members, and a **conscientious and consistent requirement that its forces comply with these laws in all military operations**. Customary LOAC binds every country in the world including the U.S. **International collective security and U.S. national security may be achieved only through a steadfast commitment to the Rule of Law**. For the U.S. to grant POW status to captured members of al-Qaeda or the Taliban **would be an abdication of these international legal responsibilities** and obligations. It would set a **dangerous precedent contrary to the Rule of Law and LOAC,** and to the highest purpose of the laws of warfare, the protection of civilians during armed conflict. This article begins by explaining how LOAC protects civilians through the **enforcement of clear distinctions between lawful combatants, unlawful combatants, and protected noncombatants**. It summarizes the four conditions of lawful belligerency under customary and treaty-based LOAC, and instructs why combatants who do not meet these conditions do not possess combatant's privilege; that is, the immunity provided to members of the armed forces for acts in armed conflict that would otherwise be crimes in time of peace. The article then reviews why LOAC does not require that captured unlawful combatants be afforded POW status, and addresses specifically captured al-Qaeda and Taliban fighters. The practices and behavior of these fighters en masse in combat deny them privileges as lawful belligerents entitled to combatant's privilege. The article argues that al-Qaeda unlawful combatants are most appropriately described as hostes humani generis, "the common enemies of humankind." The article subsequently explains why al-Qaeda members, as hostes humani generis, are classic unlawful combatants, as part of a stateless organization that en masse engaged in combat unlawfully in an international armed conflict without any legitimate state or other authority. The article explicates al-Qaeda's theocratic-political hegemonic objectives and its use of global terrorism to further those objectives. The article expounds as to why international law deems a transnational act of private warfare by al-Qaeda as malum in se, "a wrong in itself." Related to al-Qaeda's status as hostes humani generis, the article describes one of the Taliban's many violations of international law; that is, willfully allowing al-Qaeda hostes humani generis to reside within Afghanistan's sovereign borders from where al-Qaeda could and did attack unlawfully other sovereign states. The article then details a state's inherent rights if and when attacked by such hostes humani generis. Following this, the article continues by asserting that there is no doubt or ambiguity as to the unlawful combatant status of the Taliban and al-Qaeda (shown by the failure of the Taliban en masse to meet the four fundamental criteria of lawful belligerency, al-Qaeda's statelessness en masse, and both their many acts of unlawful belligerency and violations of LOAC). As a result, the article states that **there is no need or requirement for proceedings** under [\*4] Geneva Convention III, art. 5 **to adjudicate their presumptive unlawful combatant status and non-entitlement to POW status pro forma.** The article subsequently illustrates that, even though captured al-Qaeda and Taliban are unlawful combatants and not POWs, the U.S. as a matter of policy has treated and continues to treat all al-Qaeda and Taliban detainees humanely in accordance with customary international law, to the extent appropriate and consistent with military necessity and in a manner consistent with the principles and spirit of the Geneva Conventions. The article discusses that, under LOAC, the detainees are captured unlawful combatants that **can be interned without criminal charges or access to legal counsel until the cessation of hostilities**. However, the article then points out that the U.S. has no desire to, and will not, hold any unlawful combatant indefinitely. The article then notes that al-Qaeda and Taliban detainees, as unlawful combatants, are subject to trial by U.S. military commissions for their acts of unlawful belligerency or other violations of LOAC and international humanitarian law. It expounds that, when an opposing force detains an unlawful combatant in time of armed conflict, the unlawful combatant's right to legal counsel or other representation only arises if criminal charges are brought against the unlawful combatant. The article illustrates the security measures, evidence procedures, and the many executive due process protections afforded to detainees subject to the jurisdiction of U.S. military commissions. The article states that; if tried and convicted in a U.S. military commission, a detainee may be required to serve the adjudged sentence, such as punitive confinement. The article concludes that it is in the immediate and long-term national security interests of the **U.S. to respect and uphold LOAC in all military operations**. Ultimately, the United States has an obligation to the international community and the Rule of Law not to afford POW status to captured unlawful combatants such as the al-Qaeda and Taliban detainees in furtherance of both domestic and international security.

#### Nuclear war

Delahunty, associate prof – U St. Thomas Law, and Yoo, law prof – UC Berkeley, ‘10

(Robert and John, 59 DePaul L. Rev. 803)

Finally, the extension of IHRL to armed conflict may have significant consequences for the success of international law in advancing global welfare. Rules of the LOAC represent the delicate balancing between the imperatives of combat and the humanitarian goals in wartime. The LOAC has been remarkably successful in achieving compliance from warring nations in obeying these rules. This is most likely due to the reciprocal nature of the obligations involved. Nations treat prisoners of war well in order to guarantee that their own captive soldiers will be treated well by the enemy; nations will refrain from usingweapons of mass destruction because they are deterred by their enemy's possession of the same weapons. It has been one of the triumphs of international law to increase the restrictions on the use of unnecessarily destructive and cruel weapons, and to advance the norms of distinction and the humane treatment of combatants and civilians in wartime. IHRL norms, on the other hand, may suffer from much lower rates of compliance. This may be due, in part, to the non-reciprocal nature of the obligations. One nation's refusal to observe freedom of speech, for example, will not cause another country to respond by depriving its own citizens of their rights. If IHRL norms--which were developed without much, if any, consideration of the imperatives of combat--merge into the LOAC, it will be likely that compliance with international law will decline. If nations must balance their security [\*849] needs against ever more restrictive and out-of-place international rules supplied by IHRL, we hazard to guess that the latter will give way. Rather than attempt to superimpose rules for peacetime civilian affairs on the unique circumstances of the "war on terror," a better strategy for encouraging compliance with international law would be to adapt the legal system already specifically designed for armed conflict.

### Impact Calc

#### Decisions should be shaped by their consequences

Isaac 2 (Jeffrey, Professor of PoliSci @ Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD Yale, “Ends, Means, and Politics,” Dissent Magazine Vol 49 Issue 2)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law [it] can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### Case – 1nc

#### The affirmative’s use of the term “Prison Industrial Complex” obscures the racist underpinnings of the Prison System – this term’s exclusive reliance on capital as explanation

**Maoist International Ministry of Prisons 9**

(<http://www.prisoncensorship.info/news/all/US/1415/>, “The Myth of the "Prison Industrial Complex")

Many people are caught up in the line that millions are enslaved in this country, and that the main motivating factor behind the prison boom of recent decades is to put prisoners to work to make money for corporations or the government. MIM(Prisons) has clearly shown that [U.S. prisons are not primarily (or even significantly) used to exploit labor](http://www.prisoncensorship.info/news/all/US/420/), and that they are a great cost financially to the imperialists, not a source of profit.(1) "Indeed, at peak use around 2002, fewer than 5,000 inmates were employed by private firms, amounting to one-quarter of one per cent of the carceral population. As for the roughly 8% of convicts who toil for state and federal industries under lock, they are 'employed' at a loss to correctional authorities in spite of massive subsidies, guaranteed sales to a captive market of public administrations, and exceedingly low wages (averaging well under a dollar an hour)."(2) Instead, we argue that there is a system of population control (including all the elements of the international definition of genocide) that utilizes methods of torture on mostly New Afrikan and Latino men, with a hugely disproportionate representation of First Nation men as well, across this country on a daily basis. As the new prison movement grows and gains attention in the mainstream, it is of utmost importance that we maintain the focus on this truth and not let the white nationalists define what is ultimately a struggle of the oppressed nations. To analyze why the term "prison industrial complex" ("PIC") is inaccurate and misleading, let's look at some common slogans of the social democrats, who dominate the white nationalist left. First let's address the slogan "Welfare not Warfare." This slogan is a false dichotomy, where the sloganeer lacks an understanding of imperialism and [militarism](http://www.prisoncensorship.info/archive/etext/faq/milit.html). It is no coincidence that the biggest "welfare states" in the world today are imperialist countries. Imperialism brings home more profits by going to war to steal resources, discipline labor, and force economic policies and business contracts on other nations. And militarism is the cultural and political product of that fact. The "military industrial complex" was created when private industry teamed up with the U.$. government to meet their mutual interests as imperialists. Industry got the contracts from the government, with guaranteed profits built in, and the government got the weapons they needed to keep money flowing into the United $tates by oppressing other nations. This concentration of wealth produces the high wages and advanced infrastructure that the Amerikan people benefit from, not to mention the tax money that is made available for welfare programs. So it is ignorant for activists to claim that they are being impoverished by the imperialists' wars as is implied by the false dichotomy of welfare vs. warfare. Another slogan of the social democrats which speaks to why they are so eager to condemn the "PIC" is "Schools not Jails." This slogan highlights that there is only so much tax money in a state available to fund either schools, jails, or something else. There is a limited amount of money because extracting more taxes would increase class conflict between the state and the labor aristocracy. This battle is real, and it is a battle between different public service unions of the labor aristocracy. The "Schools not Jails" slogan is the rallying cry of one side of that battle among the labor aristocrats. Unlike militarism, there is not an imperialist profit interest behind favoring jails over schools. This is precisely why the concept of a "PIC" is a fantasy. While the U.$. economy would likely collapse without the spending that goes into weapons-related industries, Loïc Wacquant points out that the soft drink industry in the United $tates is almost twice as big as prison industries, and prison industries are a mere 0.5% of the gross domestic product.(2) Compared to the military industrial complex, which is 10% of U.$. GDP, the prison system is obviously not a "complex" combining state and private interests that cannot be dismantled without dire consequences to imperialism.(3) And of course, even those pushing the "PIC" line must admit that over 95% of prisons in this country are publicly owned and run.(4) Federal agencies using the prison system to control social elements that they see as a threat to imperialism is the motivating factor for the injustice system, not an imperialist drive for profits. Yet the system is largely decentralized and built on the[interests of the majority of Amerikans](http://www.prisoncensorship.info/news/all/US/99/) at the local level, and not just the labor unions and small businesses that benefit directly from spending on prisons. We would likely not have the imprisonment rates that we have today without pressure from the so-called "middle class." Some in the white nationalist left at times appears to dissent from other Amerikans on the need for more prisons and more cops. At the root of both sides' line is the belief that the majority of Amerikans are exploited by the system, while the greedy corporations benefit. With this line, it is easy to accept that prisons are about profit, just like everything else, and the prison boom can be blamed on the corporations' greed. In reality the prison boom is directly related to the demands of the Amerikan people for "tough on crime" politicians. Amerikans have forced the criminal injustice system to become the tool of white hysteria. The imperialists have made great strides in integrating the internal semi-colonies financially, yet the white nation demands that these populations be controlled and excluded from their national heritage. There are many examples of the government trying to shut down prisons and other cost-saving measures that would have shrunk the prison system, where labor unions fought them tooth and nail.(1) It is this continued legacy of national oppression, exposed in great detail in the book [The New Jim Crow](http://www.prisoncensorship.info/news/all/US/1216/), that is covered up by the term "Prison Industrial Complex." The cover-up continues no matter how much these pseudo-Marxists lament the great injustices suffered by Black and Brown people at the hands of the "PIC."

#### The 1ac’s vague call for Abolition accomplishes little – even allies of their struggle admit

Larsen 11 (“Considering Abolition” <http://joanr73.wordpress.com/2011/03/30/considering-abolition/>)

What is to be abolished?¶ There is a recurring discussion in the abolitionist literature regarding the prefix that should accompany ‘abolition’. A recent addition to this ongoing dialogue, published in Contemporary Justice Review, is Piché and Larsen’s (2010) article ‘The Moving Targets of Abolitionism: ICOPA, Past, Present and Future’. To briefly summarize, I would say that ‘abolition’ on its own is a bit too vague – there are many systems and institutions that have been the targets of abolitionist movements, and while there are definitely links between these institutions (slavery, colonialism, torture, and the prison, for example), it seems important to specify an objective. The question that Justin and I ask is “What is to be abolished?”.

#### Their failure to utilize evidence from a single prisoner in the 1ac is a profoundly privileged move that stops more effective struggles

Barrenador 1 (On the Political Offense¶ Publicaton¶ [Social Anarchism](http://www.socialanarchism.org/mod/magazine/listing/) [Issue 22](http://www.socialanarchism.org/mod/magazine/contents/3/index.php)¶ Author¶ [Gusano Barrenador](http://www.socialanarchism.org/mod/magazine/authors/1/index.php)¶ Date Created¶ 13 Mar 2001, <http://www.socialanarchism.org/mod/magazine/display/45/index.php>)

One principle that needs to be established, if we believe that the struggles against both crime and punishment are inseparable, is that guidance must be sought and taken from prisoners themselves. Prisoners have experienced the injustices of the judicial and penal systems and are doing some of the most important political organizing for prison reform, prison abolition, and the nurturing of creative and transformative social formations. Since many are prisoners for having done as much on the outside, dedicated activists and radicals must continue to support these activities through the bars. It is not a matter of prison reform or prison abolitionist groups working on the outside versus prisoners organizing on the inside; these movements for social change must be united. I would maintain that some of the most exciting and productive anti-authoritarian activity is taking place within prisons right now. Political prisoners and prisoners who have become politically aware on the inside have elaborated trenchant critiques of the state and other authoritarian institutions. This should come as no surprise, given he intense violence they encounter every day and how much their movements have lost to state repression.

#### Womanism inherently relies upon DOMESTIC understandings at the expense of the international

Patricia Hill Collins 96 (What's in a name? Womanism, black feminism, and beyond. By: Collins, Patricia Hill, Black Scholar, 00064246, Winter/Spring96, Vol. 26, Issue 1)

AFRICAN AMERICAN WOMEN'S EFFORTS to distinguish between womanism and black feminism illustrates how black women's placement in hierarchical power relations fosters different yet related allegiances to a black women's self-defined standpoint. While the surface differences distinguishing African American women who embrace womanism and black feminism appear to be minimal, black women's varying locations in neighborhoods, schools, and labor markets generate comparably diverse views on the strategies black women feel will ultimately lead to black women's self-determination. In a sense, while womanism's affiliation with black nationalism both taps an historic philosophy and a set of social institutions organized around the centrality of racial solidarity for black survival, this position can work to isolate womanism from global women's issues. At the same time, while black feminism's connections to existing women's struggles both domestically and globally fosters a clearer political agenda regarding gender, its putative affiliation with whiteness fosters its rejection by the very constituency it aims to serve.

#### There is demonstrable progress in racial inequality—this is *not* to say that everything is perfect by any means, but it does prove that pragmatic change is possible within the current system

Feldscher, Harvard School of Public Health, 9/19/’13

(Karen, “Progress, but challenges in reducing racial disparities,” http://www.hsph.harvard.edu/news/features/progress-but-challenges-in-reducing-racial-disparities/)

September 19, 2013 — Disparities between blacks and whites in the U.S. remain pronounced—and health is no exception. A panel of experts at Harvard School of Public Health (HSPH) discussed these disparities—what they are, why they persist, and what to do about them—at a September 12, 2013 event titled “Dialogue on Race, Justice, and Public Health.” The event was held in Kresge G-1 and featured panelists Lisa Coleman, Harvard University’s chief diversity officer; David Williams, Florence Sprague Norman and Laura Smart Norman Professor of Public Health in the HSPH Department of Social and Behavioral Sciences; Chandra Jackson, Yerby Postdoctoral Research Fellow in the HSPH Department of Nutrition; and Zinzi Bailey, a fifth-year doctoral student in the HSPH Department of Social and Behavioral Sciences. Robert Blendon, Richard L. Menschel Professor of Public Health and Professor of Health Policy and Political Analysis at HSPH, moderated the discussion. Gains, but pains Health care disparities are troubling, Coleman said. One study found that doctors recommended coronary revascularization—bypass surgery that replaces blocked blood vessels with new ones—among white patients with heart disease 50% of the time, but just 23% of the time for blacks. Black women are less likely to be given a bone marrow density test than white women, even when it’s known they’ve had prior fractures. And the black infant mortality rate is 2.3 times higher than that of non-Hispanic whites. Each speaker acknowledged that racial minorities have made significant gains over the past half-century, but said there is much more work still to do. They cited statistics providing stark evidence of continuing disparities in health, wealth, education, income, arrest and incarceration rates, foreclosure rates, and poverty. Coleman called the data “disconcerting; in some cases, alarming.” Schools are desegregated, she said, but not integrated; median income is $50,000 per year for whites but $31,000 a year for blacks and $37,000 a year for Hispanics; since the 1960s, the unemployment rate among blacks has been two to two-and-a-half times higher than for whites; and one in three black men can expect to spend time in prison during their lifetimes. Blendon shared results from surveys that accentuate sharp differences of opinion about how well blacks are faring in the U.S. For instance, in a survey that asked participants if they thought that the lives of black Americans had changed dramatically over the past 50 years, 54% of whites said yes but only 29% of blacks did. Another survey asked whether or not people approved of the verdict in the George Zimmerman trial; 51% of whites approved but only 9% of blacks did. Reducing disparities through research, education Jackson talked about growing up in a segregated neighborhood in Atlanta and attending a school with 99% black students and inadequate resources. She became the first in her family to attend college. Now, through her research, she hopes to expose and reduce racial health disparities. In a recent study in the American Journal of Epidemiology, Jackson and colleagues reported that blacks—particularly black professionals—get less sleep than whites, which can have potentially negative impacts on health. Bailey discussed what’s known as the “school-to-prison pipeline”—a trajectory in which black teens do poorly in school, get held back a grade, drop out, commit a crime, then end up in jail. On the flip side, she said, there are “diversity pipelines” to recruit minority students into higher education. “Often these programs target students who have already avoided the school-to-prison pipeline,” Bailey said, noting that she would like to see higher education institutions connect with black students at earlier ages to steer them toward positive choices.

#### Abolition causes decarceration – flips the case – only specific reforms solve

Harcourt 11 [Bernard E. Harcourt (Chair of PoliSci Dept and Kreeger Prof of Law @ UChicago); “SYMPOSIUM: MASS INCARCERATION: CAUSES, CONSEQUENCES, AND EXIT STRATEGIES: Reducing Mass Incarceration: Lessons from the Deinstitutionalization of Mental Hospitals in the 1960s”; The Ohio State Journal of Criminal Law; Fall, 2011]

A. Racialization of the Institutionalized Population

**Deinstitutionalization** in the 1960s and 1970s drew heavily on predictions of future dangerousness. The difficulty here is that the use of risk assessment tools [\*86] typically has the effect of **sorting based on race and** increasing **the racial disproportion** within our "dangerous" populations. This was certainly the case with regard to mental hospitals. **It is also likely to happen with prisons** if we rely too heavily on risk assessment.

**The turn to dangerousness had a distinctly disproportionate effect on African- American populations**: the proportion of minorities in mental hospitals increased significantly **during the** process **of deinstitutionalization.** From 1968 to 1978, for instance, there was a significant demographic shift among mental hospital admittees. In a 1984 study, Henry Steadman, John Monahan, and their colleagues tested the degree of reciprocity between the mental health and prison systems in the wake of state mental hospital deinstitutionalization using a randomly selected sample of 3897 male prisoners and 2376 adult male admittees to state mental hospitals from six different states. n171 Their research revealed that the proportion of non-whites admitted to mental facilities **increased** from 18.3% in 1968 to 31.7%in 1978: "Across the six states studied . . . [t]he percentage of whites among admitted patients also decreased, from 81.7% in 1968 to 68.3% in 1978." n172 This is demonstrated in the following graph, which charts the shift documented by Steadman, Monahan, and their colleagues:

Figure 5: Admissions to mental facilities by Race

[figure]

The track record is damning**: mental hospitals were deinstitutionalized by focusing on dangerousness and the result was a sharp increase in the black representation in asylums and mental institutions.** I have written at greater length [\*87] about this in an essay, Risk as a Proxy for Race, and Michelle Alexander has forcefully drawn the devastating consequences for African-American communities and American politics in her book The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010) and in her contribution to this symposium. **It is absolutely crucial that, in** any effort to reduce mass **incarceration, this** pitfall **be avoided.**

B. Transinstitutionalization

**The other danger to avoid is transinstitutionalization**. This unquestionably happened with the mentally ill, as they were not only **transferred to nursing homes**, but eventually became a **much larger segment of the prison population.** William Gronfein has documented the transinstitutionalization of older mental patients from hospitals to nursing homes in the 1970s. Gronfein emphasized that the overall institutionalized population **did not decrease** over the 1960s, but in fact rose slightly from 1035 per 100,000 general population in 1960 to 1046 per 100,000 in 1970. Yet, during this period, the proportion of the institutionalized population in nursing and old age homes increased from 19% in 1950 to 25% in 1960, and reached 44% by 1970. n173 As Gronfein explained, "The total number of nursing care and related homes rose from 16,701 in 1963 to 22,558 in 1971, an increase of 35.1%, while the number of beds available in such homes rose from 568,560 to 1,235,405, an increase of 117.3%." n174 In Gronfein's view, this was the product of Medicare and Medicaid, which encouraged the substitution of one institution (nursing care) for another (mental hospitals).

In addition, we have all witnessed the transinstitutionalization of mental health patients into prisons and jails. In his paper, The Deinstitutionalization of the Mentally Ill and Growth in the U.S. Prison Populations: 1971 to 1996, n175 Steven Raphael explores the relationship between mental hospitalization and prison populations using state-level data for the period 1971 to 1996, and finds that **deinstitutionalization** from 1971 to 1996 probably **resulted in** between 48,000 and 148,000 **additional** state **prisoners** in 1996, which, according to Raphael, "accounts for 4.5 to 14% of the total prison population for this year and for roughly 28 to 86% of prison inmates suffering from mental illness." n176 What we also know is that, at the close of the twentieth century, there was a high level of mentally ill offenders in prisons and jails in the United States-283,800 in 1998-representing 16% of jail and state prison inmates. n177

[\*88]

**There is a** significant risk **that any decarceration will simply produce new populations for other institutions, whether homeless shelters, inpatient treatment facilities, or other locked-down facilities. This is certainly what happened last time**. The question is, can it be avoided this time?

#### False hope – the affirmative utilizes womanism to both describe PARTICULAR experiences and a FUTURE VISION – this conflation of the two only creates a false hope on the potential for womanism

Patricia Hill Collins 96 (What's in a name? Womanism, black feminism, and beyond. By: Collins, Patricia Hill, Black Scholar, 00064246, Winter/Spring96, Vol. 26, Issue 1)

Another significant feature of black women's multiple uses of womanism concerns the potential for a slippage between the real and the ideal. To me, there is a distinction between describing black women's historical responses to racial and gender oppression as being womanist, and using womanism as a visionary term delineating an ethical or ideal vision of humanity for all people. Identifying the liberatory potential within black women's communities that emerges from concrete, historical experiences remains quite different from claiming that black women have already arrived at this ideal, "womanist" endpoint. Refusing to distinguish carefully between these two meanings of womanism thus collapses the historically real and the future ideal into one privileged position for African American women in the present. Taking this position is reminiscent of the response of some black women to the admittedly narrow feminist agenda forwarded by white women in the early 1970s. Those black women proclaimed that they were already "liberated" while in actuality, this was far from the truth.

#### Lesbian exclusion – the 1ac’s silence on this question leaves in place homophobia – it’s not about what else they could add – it is about what they did

Patricia Hill Collins 96 (What's in a name? Womanism, black feminism, and beyond. By: Collins, Patricia Hill, Black Scholar, 00064246, Winter/Spring96, Vol. 26, Issue 1)

ONE PARTICULARLY SIGNIFICANT FEATURE of black women's use of womanism concerns the part of Walker's definition that remains neglected. A more troublesome line for those self-defining as womanist precedes the often cited passage, "committed to survival and wholeness of entire people, male and female" (xi). Just before Walker offers the admonition that womanists, by definition, are committed to wholeness, she states that a womanist is also "a woman who loves other women, sexually and/or nonsexually" (xi). The relative silence of womanists on this dimension of womanism speaks to black women's continued ambivalence in dealing with the links between race, gender and sexuality, in this case, the "taboo" sexuality of lesbianism. In her essay "The Truth That Never Hurts: Black Lesbians in Fiction in the 1980s," black feminist critic Barbara Smith (1990) points out that African American women have yet to come to terms with homophobia in African American communities. Smith applauds the growth of black women's fiction in the 1980s, but also observes that within black feminist intellectual production, black lesbians continue to be ignored. Despite the fact that some of the most prominent and powerful black women thinkers claimed by both womanists and black feminists were and are lesbians, this precept often remains unacknowledged in the work of African American writers. In the same way that many people read the Bible, carefully selecting the parts that agree with their worldview and rejecting the rest, selective readings of Walker's womanism produce comparable results.

# Block

### T

#### Topical version of the aff avoids cooption

Harris, professor of law – UC Berkeley, ‘94

(Angela P., 82 Calif. L. Rev. 741)

This awareness of the role of universities and professional academics in keeping a particular set of political and economic relations in place is one effect of postmodernist disenchantment, and it brings us back to the critique of normativity. As Gerald Wetlaufer has noted, the pressure of legal normativity - the demand that legal academics propose solutions that can be implemented within the existing legal system - impels legal scholars to take the law as their client. n189 A disenchanted jurisprudence of reconstruction would not conclude that providing legal answers to legal questions is therefore futile or "counterrevolutionary"; but as Spivak suggests, it would put on the agenda the need to keep in mind the larger political and economic context of law professing as race-crits continue their theory-building. One consequence might be a reconsideration of the "race for theory" itself. If the price for admission to the academy (say, the admission by Richard Posner that CRT really does have an idea or two to offer, after all) n190 is a hyperabstract theorizing that makes a public debate about race and racism impossible, race-crits may want to hold assimilation into the [\*780] bureaucracy of the university at arm's length. Here CRT's engagement in the politics of difference may help keep it suspended in creative balance. A jurisprudence of reconstruction cannot afford to become enchanted with either "theory" or "practice"; its work instead is to refuse that dichotomy.

**TOPIC EDUCATION – the source of the authority is important**

**GAZIANO 01** senior fellow in Legal Studies and Director of the Center for Legal Judicial Studies at the Heritage Foundation [Todd Gaziano, 5 Texas Review of Law & Politics 267, Spring, lexis]

Although President Washington's Thanksgiving Proclamation was hortatory, other proclamations or orders that communicate presidential decisions may be legally binding. n31 Ultimately the authority for all presidential orders or directives must come from either the Constitution or from statutory delegations. n32 **The source of authority** (**constitutional versus statutory**) **carries important implications** **for the extent to which that authority may be legitimately exercised or circumscribed**. Regardless of the source of substantive power, however, the authority to use written directives in the exercise of that power need not be set forth in express terms in the Constitution or federal statutes. As is explained further below, the authority to issue directives may be express, implied, or inherent in the substantive power granted to the President. n33 The Constitution expressly mentions certain functions that are to be performed by the President. Congress has augmented the President's power by delegating additional authority within these areas of responsibility. The following are among the more important grants of authority under which the President may issue at least some directives in the exercise of his constitutional and statutorily delegated powers: Commander in Chief, Head of State, Chief Law Enforcement Officer, and Head of the Executive Branch.

**This is not Framework ---- Evaluate it like a topicality violation – restrictions have no meaning if you ignore the context**

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

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

### AT: Law making bad

#### It is best to discuss legal solutions while still taking a disenchanted view of the law - we recognize the futulity of the legal system – we can acknowledge the history of genocide by the United States Federal government; but we also know our words alone cannot solve structural problems – there are day to day struggles and suffering that require legal change

Angela P Harris, self described race and feminist scholar who teaches law at UC Davis in 1994 (**Angela P. Harris** (born c. 1959) is a [legal scholar](http://en.wikipedia.org/wiki/Law_professor) at [UC Davis School of Law](http://en.wikipedia.org/wiki/UC_Davis_School_of_Law), in the fields of [critical race theory](http://en.wikipedia.org/wiki/Critical_race_theory), [feminist legal scholarship](http://en.wikipedia.org/wiki/Feminist_legal_theory), and [criminal law](http://en.wikipedia.org/wiki/Criminal_law). She held the position of Professor of Law at [UC Berkeley School of Law](http://en.wikipedia.org/wiki/UC_Berkeley_School_of_Law), joining the faculty in 1988. In 2009, Professor Harris joined the faculty of the [State University of New York at Buffalo](http://en.wikipedia.org/wiki/University_at_Buffalo,_The_State_University_of_New_York) Law School as a Visiting Professor. In 2010, she also assumed the role of Acting Vice Dean for Research & Faculty Development.[[1]](http://en.wikipedia.org/wiki/Angela_P._Harris#cite_note-1) In 2011, she accepted an offer to join the faculty at the [UC Davis School of Law](http://en.wikipedia.org/wiki/UC_Davis_School_of_Law), and began teaching as a Professor of Law in the 2011-2012 academic year.[[2]](http://en.wikipedia.org/wiki/Angela_P._Harris#cite_note-2)California Law Review¶ July, 1994¶ 82 Calif. L. Rev. 741¶ LENGTH: 21949 words Foreword: The Jurisprudence of Reconstruction NAME: Angela P. Harris BIO: Professor of Law, University of California, Berkeley, Boalt Hall School of Law. My thanks to Sheila Foster, Ed Rubin, Marjorie Shultz, and Jan Vetter for their helpful comments on previous versions of this essay. Thanks also to the editors at the California Law Review for their patience and persistence. Last, but not least, thanks to Jorge Sanchez for exemplary research assistance and thoughtful, searching commentary. All mistakes, misunderstandings, and misjudgments, of course, are mine. A picture of her can be found here <http://law.scu.edu/socialjustice/women-law-stories-book-chapter-one/>)

Reacting to the nihilist threat, some writers have argued that postmodernism is antithetical to feminism and should be rejected by feminist theorists. n93 Race-crits could take a similar position, rejecting postmodernist philosophizing in favor of the certainties of universal truth and justice. In my view, however, this response would be a mistake for two reasons. First, postmodernism does not represent an independent alternative to modernism that can be accepted or rejected; it is the voice of modernism's discontents, and as such is not easily stilled. Second, part of the reason why race-crits have tried to distance themselves from traditional civil rights scholarship is precisely that the old verities, the old optimistic faith in reason, truth, blind justice, and neutrality, have not brought us to racial justice, but have rather left us "stirring the ashes." n94 History has shown that racism can coexist happily with formal commitments to objectivity, neutrality, and colorblindness. Perhaps what CRT needs is simply a redoubled effort to reach true objectivity and neutrality. But, then again, perhaps those concepts themselves need reexamination. [\*760] If race-crits can neither reject postmodernism nor accept it wholeheartedly without undermining the CRT project itself, what (to ask the legal scholar's perennial normative question) should we do? To talk as if one has the choice to "accept" or "reject" these world views is certainly misleading. We live in a political and legal world shaped by modernism; we cannot step out of it. Nor can we, as good modernist intellectuals, ignore modernism's discontents. As Anthony Cook and others have written, the task should not be to try to somehow resolve the philosophical tension between modernism and postmodernism, but rather consciously to inhabit that very tension. n95 This work requires both a commitment to modernism and a willingness to acknowledge its limits. At its best, it inspires a jurisprudence of reconstruction - the attempt to reconstruct political modernism itself in light of the difference "race" makes. Race-crits, along with other outsider scholars, have a distinctive contribution to make to this endeavor. The source of this contribution, I argue in this Section, is an engagement with "the politics of difference." Through their commitment both to anti-racism and to affirming the cultural "differences" that the concept of "race" has produced, race-crits bring a distinctive perspective to the jurisprudential "problem of the subject." n96 More broadly, this dual commitment to eliminating oppression and celebrating difference impels race-crits to live in the tension between modernism and postmodernism, transforming political modernism in the process. In this latter project, race-crits are part of a global movement by intellectuals in previously colonized nations, not to abandon the Enlightenment ideals of freedom and liberal democracy, but to make good on their promises. A. CRT and the Problem of the Subject Unlike crits, whose primary intellectual-political commitment is to criticism itself, race-crits hold a dual commitment to anti-racist critique and to maintaining the distinctive cultures formed in part by concepts of "race." This dual commitment engages CRT in what I call the "politics of difference." One notable characteristic about contemporary American left political movements is their obsession with issues of identity. n97 The second wave of [\*761] the women's movement and the Civil Rights Movement, for example, built their strength on reconceiving their constituents' collective identities; subsequent movements such as Gay Liberation and its contemporary descendants have similarly engaged in "identity politics." n98 In these movements, the construction of one's identity has been both a personal and a political act, linking the individual with a distinct social and political community. n99 Rather than supporting assimilation to the dominant culture, the new social movements have demanded a recognition of their members' "difference." This claim to equality based not on sameness but rather on difference is at the heart of the politics of difference. Intellectuals' engagement in the politics of difference has resulted in a rejection of the binary distinction between "same" and "different" itself. Instead, these scholars see "identity" as a complex and changing interaction between internal and external forces, between individual agency and structures of power. n100 For example, by complicating the notion of "female identity," feminist theorists have tried to move beyond the proposition that gender equality requires either "the same" treatment or "different" (usually meaning "special," and hence disfavored) treatment. n101 Instead, feminist theorists have explored how both "sameness" and "difference" are based on a non-neutral, male [\*762] standard. n102 Equality in this formulation demands transformation of the existing structure, not just tolerance of or remediation for those who are "different." Second-wave crits have argued that the reconstruction of political modernism in light of postmodernist critique requires addressing the problem of the subject. n103 Just whom is being spoken of when law review authors recommend that "we" do this or that? What issues are being avoided when legal writers seek to understand the legal system without asking how understanding changes the self? n104 Race-crits, like other intellectuals engaged in the politics of difference, are well situated to speak to "the problem of the subject." The language of race creates, maintains, and destroys subjects, both inside and outside the law. The study of race is in part the study of how individual personalities are melted down into collective subjects. It is also the study of how racialized subjects can be subjected to, yet not represented in, the law. In coming to terms with the long exclusion of people of color from full legal "belonging," race-crits seek not just to expand the subject "we the people," but to turn a critical eye on the legal subject itself. Just as feminist demands for equality require a transformation of traditional understandings of families and markets, n105 race-crit demands for equality under law require a transformation of traditional understandings of the legal subject. This task forces intellectuals to live in the conflict between modernism and postmodernism. The new social movements based on "difference" have renounced assimilation as the path toward equality and are suspicious of the old faith in integration. n106 At the same time, most of these movements are committed to seeking equality, justice, and pluralism within the nation rather than as separate political sovereigns. n107 This political task of [\*763] giving a new meaning to the phrase "e pluribus unum" thus demands both a commitment to political modernism and a deep skepticism of it. B. CRT and Resistance Culture For people of color, the politics of difference within the United States can be understood within the broader context of global post-colonialism. Edward Said has made a study of how the West justified colonialism, how colonized peoples resisted it, and how the cultural dialogue between colonizer and colonized is evident in the art and literature of each. n108 Since the end of formal colonialism, n109 Said argues, a distinctive "resistance culture" has emerged from formerly colonized peoples. Resistance culture, as Said describes it, consists of three projects. First is the reconstitution of the formerly colonized nation through consolidating a national language and national culture (a project that is always the product of invention rather than simple "recovery"). n110 Second is what Said calls "the voyage in": the "conscious effort to enter into the discourse of Europe and the West, to mix with it, transform it, to make it acknowledge marginalized or suppressed or forgotten histories." n111 Third, according to Said, resistance culture involves "a noticeable pull away from separatist nationalism toward a more integrative view of human community and human liberation." n112 Reading the history of "racial minorities" in the United States as part of the larger history of western colonialism, n113 race-crits are involved in the [\*764] project of "resistance culture" as well. Situated within the United States, where separatist nationalism has never been a viable alternative, n114 the domestic politics of difference has focused on Said's first and second projects: the constitution or reconstitution of the subordinated community and the transformation of the dominant community. Storytelling has contributed to much of the first project. Storytelling serves to create and confirm identity, both individual and collective. n115 As William Eskridge has argued, storytelling helps build new communities: stories of what it means to be gay and lesbian, for example, help individual gay and lesbian people locate themselves within a community and give the gay and lesbian community a collective sense of itself as an agent. n116 At the personal level, this community-building function is similar to what 1970s feminists termed "consciousness raising." n117 Storytelling in this sense is myth-making: the creation of a new collective subject with a history from which individuals can draw to shape their own identities. Literary and cultural critics have participated in the second aspect of resistance culture, the project of "writing back." For example, in the context of American literary studies, Toni Morrison argues that "Africanism" - the reference in literary works to an imaginary "Africa" has become, in the Eurocentric tradition that American education favors, both a way of talking about and a way of policing matters of class, sexual license, and repression, formations and exercises of power, and meditations on ethics and accountability. Through the simple expedient of demonizing and reifying the range of color on a palette, American Africanism makes it possible to say and not say, to inscribe and erase, to escape and engage, to act out and act on, to historicize and render timeless. It provides a way of contemplating [\*765] chaos and civilization, desire and fear, and a mechanism for testing the problems and blessings of freedom. n11 Morrison's project is to transform the reader's understanding of the American literary canon by calling her attention to how complexities within American social and political culture have been made into questions of "race." n119 Her effort, however, is not to throw certain works out of the canon and replace them with others, but rather to deepen the reader's understanding both of the works within and without the canon and of how and why canon formation itself takes place. Robert Williams is engaged in a similar task in his article in this Symposium. Williams points out that the history of the Encounter era in North America is not only one of conflict but also one of mutual accommodation. n120 In telling the story of the English-Iroquois Covenant Chain alliance, Williams does the historical work of adding back to the American legal and political tradition a story of Iroquois creativity and power that has been forgotten or suppressed. Williams engages in the transformational work of "exploring the commensurability of this North American indigenous vision of law and peace between different peoples with contemporary understandings of the problem of achieving human solidarity and accommodation in a multicultural world." n121 By recovering this and other neglected dialogues, race-crits can begin to reconstruct modern political theory. C. CRT as Reconstruction Jurisprudence Within legal studies, the attempt to use the dissonance between modernism and postmodernism creatively on behalf of people of color is what I call "reconstruction jurisprudence." Mari Matsuda, who coined this term, describes it as having a double meaning. n122 First, reconstruction jurisprudence is meant to distinguish CRT from CLS's project of deconstruction. Race-crits have rejected the project of "total critique" and are committed to transforming modernist paradigms as well as criticizing them. Second, the word "reconstruction" refers to the legacy of slavery in the New World and the unfinished revolutions of the First and Second Reconstructions. My third connotation for "reconstruction jurisprudence" is the project of "writing back" to white-dominated legal rules, reasoning, and institutions. The first step is the self-conscious formation of identity groups that [\*766] have been subject to racial oppression and now demand equality - a formation accomplished by collective myth-making. The second step involves the recovery and reworking of what has been lost or suppressed concerning "race" in legal doctrine and policy. The third step is the work of transforming existing jurisprudence and political theory.

## Other t

### A2 wilderson

#### Wilderson is incorrect----- Anti-blackness is not an ontological antagonism---conflict is inevitable in politics, but does not have to be demarcated around whiteness and blackness---the alt’s ontological fatalism recreates colonial violence

Peter Hudson 13, Political Studies Department, University of the Witwatersrand, Johannesburg , South Africa, has been on the editorial board of the Africa Perspective: The South African Journal of Sociology and Theoria: A Journal of Political and Social Theory and Transformation, and is a member of the Johannesburg Workshop in Theory and Criticism, The state and the colonial unconscious, Social Dynamics: A journal of African studies, 2013

Thus the self-same/other distinction is necessary for the possibility of identity itself. There always has to exist an outside, which is also inside, to the extent it is designated as the impossibility from which the possibility of the existence of the subject derives its rule (Badiou 2009, 220). But although the excluded place which isn’t excluded insofar as it is necessary for the very possibility of inclusion and identity may be universal (may be considered “ontological”), its content (what fills it) – as well as the mode of this filling and its reproduction – are contingent. In other words, the meaning of the signifier of exclusion is not determined once and for all: the place of the place of exclusion, of death is itself over-determined, i.e. the very framework for deciding the othe , , , , , , ,,,,r and the same, exclusion and inclusion, is nowhere engraved in ontological stone but is political and never terminally settled. Put differently, the “curvature of intersubjective space” (Critchley 2007, 61) and thus, the specific modes of the “othering” of “otherness” are nowhere decided in advance (as a certain ontological fatalism might have it) (see Wilderson 2008). The social does not have to be divided into white and black, and the meaning of these signifiers is never necessary – because they are signifiers. To be sure, colonialism institutes an ontological division, in that whites exist in a way barred to blacks – who are not. But this ontological relation is really on the side of the ontic – that is, of all contingently constructed identities, rather than the ontology of the social which refers to the ultimate unfixity, the indeterminacy or lack of the social. In this sense, then, the white man doesn’t exist, the black man doesn’t exist (Fanon 1968, 165); and neither does the colonial symbolic itself, including its most intimate structuring relations – division is constitutive of the social, not the colonial division. “Whiteness” may well be very deeply sediment in modernity itself, but respect for the “ontological difference” (see Heidegger 1962, 26; Watts 2011, 279) shows up its ontological status as ontic. It may be so deeply sedimented that it becomes difficult even to identify the very possibility of the separation of whiteness from the very possibility of order, but from this it does not follow that the “void” of “black being” functions as the ultimate substance, the transcendental signified on which all possible forms of sociality are said to rest. What gets lost here, then, is the specificity of colonialism, of its constitutive axis, its “ontological” differential. A crucial feature of the colonial symbolic is that the real is not screened off by the imaginary in the way it is under capitalism. At the place of the colonised, the symbolic and the imaginary give way because non-identity (the real of the social) is immediately inscribed in the “lived experience” (vécu) of the colonised subject. The colonised is “traversing the fantasy” (Zizek 2006a, 40–60) all the time; the void of the verb “to be” is the very content of his interpellation. The colonised is, in other words, the subject of anxiety for whom the symbolic and the imaginary never work, who is left stranded by his very interpellation.4 “Fixed” into “non-fixity,” he is eternally suspended between “element” and “moment”5 – he is where the colonial symbolic falters in the production of meaning and is thus the point of entry of the real into the texture itself of colonialism. Be this as it may, whiteness and blackness are (sustained by) determinate and contingent practices of signification; the “structuring relation” of colonialism thus itself comprises a knot of significations which, no matter how tight, can always be undone. Anti-colonial – i.e., anti-“white” – modes of struggle are not (just) “psychic” 6 but involve the “reactivation” (or “de-sedimentation”)7 of colonial objectivity itself. No matter how sedimented (or global), colonial objectivity is not ontologically immune to antagonism. Differentiality, as Zizek insists (see Zizek 2012, chapter 11, 771 n48), immanently entails antagonism in that differentiality both makes possible the existence of any identity whatsoever and at the same time – because it is the presence of one object in another – undermines any identity ever being (fully) itself. Each element in a differential relation is the condition of possibility and the condition of impossibility of each other. It is this dimension of antagonism that the Master Signifier covers over transforming its outside (Other) into an element of itself, reducing it to a condition of its possibility.8 All symbolisation produces an ineradicable excess over itself, something it can’t totalise or make sense of, where its production of meaning falters. This is its internal limit point, its real:9 an errant “object” that has no place of its own, isn’t recognised in the categories of the system but is produced by it – its “part of no part” or “object small a.”10 Correlative to this object “a” is the subject “stricto sensu” – i.e., as the empty subject of the signifier without an identity that pins it down.11 That is the subject of antagonism in confrontation with the real of the social, as distinct from “subject” position based on a determinate identity.

## Case shit

### Prison Industry

### Shit’s Improving

#### Policy reforms are making progress on prison inequalities

Baltimore Sun, 3/4/’13

(“Shifting prison populations”)

But revisions in federal and state sentencing laws in recent years have narrowed the sentencing gap between crack and powder cocaine. At the same time, the violence associated with crack has become less of an issue as use of the drug has declined. That, combined with the fact that many inmates given long sentences for drug offenses are now emerging from prison, has produced a disproportionate exodus of black inmates that is reflected in lower rates of incarceration for African-Americans as a whole. The Sentencing Project report suggests that many states, including Maryland, have made significant progress toward reducing racial disparities in their prison populations but that the proportion of blacks who are incarcerated clearly **remains far too high**. In Maryland, blacks make up 30 percent of the state's population but still represent nearly three-quarters of the inmate population. The revision of federal and state drug laws represented the beginning of reform, but much work remains to be done to eliminate the continuing racial disparities in the state's prisons.

#### T turns progress on prisons

Norris, Ph.D. Sociology – University of Wisconsin-Madison, ‘12

(Jesse J., 47 Gonz. L. Rev. 493)

Minority communities are in many cases extremely impoverished, but they have been virtually abandoned by policymakers. If high-quality public schools, mental-health services, substance-abuse programs, and job-training and placement services were widely available to minorities - as they are to a much greater extent for whites n14 - minority crime rates would certainly decrease, and thus help reduce [\*498] racial disparities. n15 Likewise, if the government were to finally commit itself to eliminating racial discrimination in the labor market n16 and take decisive steps towards increasing high school graduation rates - such as giving families payments for children who remain in school, a practice used with much success in numerous countries n17 - these actions would also decrease crime in poor neighborhoods. n18 [\*499] Given the well-documented connection between unemployment and crime, and the finding that nearly sixty percent of black men who had not completed high school had spent time in prison by their early thirties, it is urgent that policymakers adopt such policies. n19 Since the federal government has excluded blacks from major welfare and wealth-redistribution programs in the past, n20 likely contributing to current poverty levels, it seems appropriate to target spending in minority communities to reduce poverty and prevent crime, rather than focusing solely on punishing offenders. The one positive trend in this regard is that spending on diversion programs offering alternatives to incarceration or arrest n21 and programs helping offenders reintegrate within society has increased across the country as part of a wave of criminal justice reform over the last decade. n22 Yet such programs still [\*500] need to be greatly expanded to reduce rates of incarceration and recidivism, which remain unacceptably high. n23

### Abolition Fails

#### Extends the carceral state – turns the case

Rumpf 8/27/13 [Chez Rumpf, PhD Candidate in Sociology, Loyola University Chicago; “The Future of Mass Incarceration: Punishment in the Proposed Era of Decarceration”; August 27, 2013; http://www.usprisonculture.com/blog/2013/08/27/guest-post-the-future-of-mass-incarceration-punishment-in-the-proposed-era-of-decarceration/#more-15681]

In the worst-case scenario, **alternatives to incarceration may actually strengthen the carceral state by further extending its reach into communities.** And let’s be clear that certain communities **will feel the state’s extended reach**. Sociologist Reuben Miller’s research shows that Chicago’s re-entry programs are heavily concentrated in the same south and west side communities to where the majority of incarcerated people in Illinois return upon release. **The move from mass incarceration through prisons to mass incarceration through** community corrections likely **will** deepen the roots of the carceral state **in these same racially segregated communities that experience high rates of poverty and surveillance.**

Focus on destruction of prisons and lack of specific policy strategies doom the aff --- their 1ac author!

Davis 2k---their 1AC author [Angela Davis, prof in the History of Consciousness program @ UC, prison-related activist since 1970; interviewed by Dylan Rodriguez, Assistant Prof @ UC; “The Challenge of Prison Abolition: A Conversation”; Social Justice, 27:3=81 (2000:Fall) p.212]

Angela: The seemingly unbreakable link between prison reform and prison development -- referred to by Foucault in his analysis of prison history -- has created a situation in which progress in prison reform has tended to render the prison more impermeable to change and has resulted in bigger, and what are considered "better," prisons. The most difficult question for advocates of prison abolition is how to establish a balance between **reforms that are** clearly necessary **to safeguard the lives of prisoners** and those strategies designed to promote the eventual abolition of prisons as thedominant mode of punishment. In other words, **I do not think that there is a strict dividing line between reform and abolition.** For example, **it would be** utterly absurd **for a radical prison activist to refuse to support the demand** for better healthcare inside Valley State, California's largest women's prison, **under the pretext that such reforms would make the prison a more viable institution**. Demands for improved health care, including **protection** from sexual abuse and challenges to the myriad ways in which prisons violate prisoners' human rights, can be integrated into an abolitionist context that **elaborates** specific decarceration strategies and helps to develop a popular discourse on the need to shift resources **from punishment to education, housing, health care, and other public resources and services**.

Dylan: Speaking of developing a popular discourse, the Critical Resistance gathering in September 1998 seemed to pull together an **incredibly wide array of prison activists** -- cultural workers, prisoner support and legal advocates, former prisoners, radical teachers, all kinds of researchers, progressive policy scholars and criminologists, and many others. Although you were quite clear in the conference's opening plenary session that the purpose of Critical Resistance was to encourage people to **imagine radical strategies for** a **sustained prison** **abolition** campaign, it was clear to me that only a few people took this dimension of the conference seriously. That is, it seemed convenient for people to rejoice at the unprecedented level of participation in this presumably "radical" prison activist gathering, but **the level of** analysis and political discussion generally **failed to** embrace the creative challenge of formulating

new ways to **link existing activism to a** larger abolitionist agenda.People were generally **more interested in developing an analysis of the prison-industrial complex** that incorporated the local work that they were involved in, which I think is an important practical connection to make. At the same time, I think **there is an inherent danger in** conflating **militant reform and human rights strategies with the underlying logic of anti-prison radicalism**, which conceives of the ultimate eradication of the prison as a site of state violence and social repression. What is required, at least in part, is a new vernacular that enables this kind of political dream. How does prison abolition necessitate new political language, teachings, and organizing strategies? How could these strategies help to educate and organize people inside and outside the prison for abolition?