## Notes/Explanation

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## Discrimination Advantage

### 1NC — Frontline

#### 1. The status quo solves — Justice Department cases prove.

**Childress 15** — Sarah Childress, Senior Reporter for Frontline, B.A. in English and Journalism at the University of Notre Dame, 2015 (“Justice Department Probes Another ‘School-to-Prison Pipeline,’” *PBS Frontline*, April 1st, Available Online at <http://www.pbs.org/wgbh/frontline/article/justice-department-probes-another-school-to-prison-pipeline/>, Accessed 07/09/2017, Lenny)

The Justice Department is investigating how a Texas county punishes kids for missing school, targeting what civil-rights advocates call the school-to-prison pipeline: policies that disproportionately rout certain children — primarily blacks and Latinos — out of class and into the juvenile justice system.

In Texas, failure to attend school, or truancy, is a criminal offense punishable by fines up to $500, plus court costs. Judges also have wide discretion in levying additional penalties. They can order children to attend counseling or perform community service, or even wear an ankle monitor or drop out of school entirely.

That policy, and the way it is applied, disproportionately harms low-income children, blacks and Latinos and those with disabilities, according to a report released in 2013 by Texas Appleseed, a nonprofit advocacy group that has sought federal intervention in the state. Kids who miss too much school aren’t always just playing hooky, though. They may have other reasons for not being in class, such as homelessness or having to care for other family members.

Research suggests that incarcerating young people is often ineffective, and can actually make them more likely to commit another crime. Those findings, and a desire to cut high incarceration costs, have led several states to rethink the way they handle juvenile offenders.

The Justice Department investigation of Dallas County, announced this week, will focus on whether the truancy court and the juvenile district courts there provide due process for all children in the system. The county prosecuted approximately 20,000 cases of truancy last year, according to the Justice Department.

“Ensuring that children’s rights under the Constitution and federal law are protected during the court process is a key step to dismantling the school-to-prison pipeline,” said Vanita Gupta, acting assistant attorney general of the DOJ’s Civil Rights Division. “We hope to work cooperatively with the county in determining whether it has taken steps to ensure that its juvenile and criminal courts fully respect the rights of the children who come before them.”

The county is already working to implement some reforms, and will cooperate with the investigation, Clay Jenkins, the Dallas County judge, told the Dallas Morning News in a statement.

“We remain committed to giving every student their best chance at staying in school and graduating,” he said. “My office is working collaboratively with reformers to improve the state laws that control the system, provide new protections for disabled students, make expunction of truancy records automatic, and lower fines and penalties.”

The DOJ has concluded two other investigations into how young people are treated in other jurisdictions. In April 2012, the department found that the juvenile court of Memphis and Shelby County, Tenn., and Shelby County’s detention center failed to provide due process for children swept up in its system, and that it regularly discriminates against black children.

Four months later, federal officials uncovered a system in Meridian, Miss. in Lauderdale County, that regularly violates the constitutional rights of children, almost all of them African-American. The investigation found that the Meridian Police Department regularly arrests youths without probable cause who have been referred by the school — even for minor offenses like using profanity or disrespecting a teacher. The Lauderdale County Youth Court and the state Division of Youth Services then, eschewing due process, rout them to juvenile detention facilities. In this system, children are expelled and suspended at disproportionately high rates.

In December 2012, federal officials reached a settlement agreement with the Tennessee court to implement reforms, including establishing a public defender unit for juveniles, and policies that prohibit the use of restraints for children, and adopted a plan to prevent suicide and encourage juvenile development while in detention. The court also agreed to study why minorities are disproportionately represented at key stages in the juvenile justice system.

#### 2. DeVos circumvents the plan — OCR rollbacks, Sessions, and Jackson nomination reinstate the pipeline.

**LeTourneau 17** — Nancy LeTourneau, Writer for the Washington Monthly, B.A. in Secondary Education and a M.A. in Theology, 2017 (“DeVos Is Set to Reinvigorate the School-to-Prison Pipeline,” *Washington Monthly*, April 19th, Available Online at <http://washingtonmonthly.com/2017/04/19/devos-is-set-to-reinvigorate-the-school-to-prison-pipeline/>, Accessed 07/09/2017, Lenny)

Perhaps you remember the stories. But in case you’ve forgotten, Carimah Townes offers a reminder.

An eighth grader was locked up for throwing skittles on a schoolbus. A 6-year-old girl was handcuffed for taking candy from a teacher’s desk. An officer slammed and dragged a high school girl, because she wouldn’t put her phone down. A Texas cop choked a 14-year-old boy over a shoving match in school. A middle school student was suspended and charged for allegedly stealing a carton of milk from a cafeteria — even though he didn’t do it.

There was a time when we were hearing these stories on a regular basis. The problem wasn’t that students were being disciplined for bad behavior — it was that teachers and other school personnel were increasingly turning that job over to law enforcement rather than handling it themselves. The problem was particularly acute for students of color — especially black boys who are criminalized from a very early age. That is what led to the creation of the school-to-prison pipeline.

Demonstrating how oblivious she is to what some have called the civil rights issue of our time, Secretary of Education Betsy DeVos said that she couldn’t think of any civil rights issues in education that would necessitate federal intervention. Then DeVos hired Candice Jackson to be the acting head of the U.S. Department of Education’s Office for Civil Rights — someone who once claimed that she had experienced discrimination because she is white.

The pivotal role played by the person in that position was demonstrated by the change that occurred from the George W. Bush administration to the Obama years. The Office for Civil Rights quit the long-standing practice of requiring school districts to report data on achievement and disciplinary measures by race under Bush. Obama reinstated the requirement.

As a result of that reversal, the Departments of Education and Justice set out to do something about the overwhelming disparities in the data on school discipline and suspension, even for students in pre-school. For example, DOE’s Civil Rights Division began investigating school districts with significant disparities in their school discipline practices. And DOJ filed suit against the school district in Meridian, MS for some of the most egregious practices in the country, leading to a consent decree. That was followed by guidelines released to school districts from the Departments of Education and Justice on ending the school-to-prison pipeline. The result of highlighting the issue was that even the Senate held a hearing on the topic.

During her confirmation hearing, DeVos refused to commit to collecting data on civil rights matters and it is clear that AG Sessions will have no problem with police officers criminalizing the behavior of students in school. As we’ve seen in the past, this will disproportionately impact students of color, and will be another way that the Trump administration criminalizes black and brown bodies, starting at a very early age.

#### 3. The plan doesn’t resolve school discrimination — teacher access & preschools.

**Resmovits 14** — Joy Resmovits, Senior Education Reporter, The Huffington Post, B.A. in Political Science & English, 2014 (“American Schools Are STILL Racist, Government Report Finds,” *Huffington Post*, March 21st, Available Online at <http://www.huffingtonpost.com/2014/03/21/schools-discrimination_n_5002954.html>, Accessed 07/10/2017, Lenny)

Public school students of color get more punishment and less access to veteran teachers than their white peers, according to surveys released Friday by the U.S. Education Department that include data from every U.S. school district.

Black students are suspended or expelled at triple the rate of their white peers, according to the U.S. Education Department’s 2011-2012 Civil Rights Data Collection, a survey conducted every two years. Five percent of white students were suspended annually, compared with 16 percent of black students, according to the report. Black girls were suspended at a rate of 12 percent — far greater than girls of other ethnicities and most categories of boys.

At the same time, minority students have less access to experienced teachers. Most minority students and English language learners are stuck in schools with the most new teachers. Seven percent of black students attend schools where as many as 20 percent of teachers fail to meet license and certification requirements. And one in four school districts pay teachers in less-diverse high schools $5,000 more than teachers in schools with higher black and Latino student enrollment.

Such discrimination lowers academic performance for minority students and puts them at greater risk of dropping out of school, according to previous research. The new research also shows the shortcomings of decades of legal and political moves to ensure equal rights to education. The Supreme Court’s landmark 1954 Brown v. Board of Education ruling banned school segregation and affirmed the right to quality education for all children. The 1964 Civil Rights Act guaranteed equal access to education.

“This data collection shines a clear, unbiased light on places that are delivering on the promise of an equal education for every child and places where the largest gaps remain,” U.S. Secretary of Education Arne Duncan said in a statement. “In all, it is clear that the United States has a great distance to go to meet our goal of providing opportunities for every student to succeed.”

Duncan and Attorney General Eric Holder plan to announce the survey results on Friday. The information, part of an ongoing survey by the Education Department’s Office of Civil Rights, highlights longstanding inequities in how schools leave minority students and students with disabilities at a disadvantage. For the first time since 2000, the new version of the survey includes results from all 16,500 American school districts, representing 49 million students.

“Unfortunately, too many children don’t have equitable access to experienced and fully licensed teachers, as has again been proven by the data in this report,” said Dennis Van Roekel, president of the National Education Association, the nation’s largest teachers union. “This is a problem that can and must be addressed.”

Daria Hall, K-12 policy director at the Education Trust, an advocacy group, also called for action. “The report shines a new light on something that research and experience have long told us — that students of color get less than their fair share of access to the in-school factors that matter for achievement,” she said. “Students of color get less access to high level courses. Black students in particular get less instructional time because they’re far more likely to receive out of school suspensions or expulsions. And students of color get less access to teachers who’ve had at least a year on the job and who have at least basic certification. Of course, it’s not enough to just shine a light on the problem. We have to fix it.”

Though 16 percent of America’s public school students are black, they represent 27 percent of students referred by schools to law enforcement, and 31 percent of students arrested for an offense committed in school, according to the survey.

Students with disabilities make up one-fourth of students referred to law enforcement or arrested, although they represent 13 percent of the student population. Students with disabilities are twice as likely to be suspended out of school than peers, with 13 percent of such students being sent home for misbehaving. One of four boy students of color who have disabilities and one in five girl students of color who have disabilities were suspended. Students of color include all non-white ethnic groups except Latino and Asian-American.

These numbers will likely add pressure to dismantle the so-called school-to-prison pipeline, which feeds troubled students into the justice system. The push to ease discipline sometimes causes tension with schools’ efforts to beef up security after school mass shootings, like the one in Newtown, Conn. Last week, a set of reports 26 academics pointed to a few local studies that found that disparate discipline outcomes did not happen as a result of certain ethnic groups acting out more than others.

According to the new data, disparities begin as early as preschool. Black students make up 18 percent of preschool enrollment, but they comprise 48 percent of preschool students receiving more than one suspension out of school. White students, representing 43 percent of preschool students, only receive 26 percent of out-of-school suspensions more than once.

Randi Weingarten, who heads the American Federation of Teachers union, noted that despite a recent Education Department Equity and Excellence Commission report calling for measures to remedy discrimination, little has been done. “It is shameful that not a single recommendation has been implemented,” Weingarten said. “We don’t need more data to tell us we need action.”

#### 4. Utilitarianism outweighs — calls for probability are *infinitely regressive* and consequences come first.

**Messerly 16** — John G. Messerly, PhD, St. Louis University, Member of the Philosophy Department at the University of Texas at Austin, 2016 (“Summary of Utilitarianism,” *Reason and Meaning*, Available Online at <http://reasonandmeaning.com/utilitarianism-in-detail/,> Accessed 07/10/2017, Lenny)

Utility and Happiness

Jeremy Bentham (1748 – 1832), who lived in London during the Industrial Revolution, was a philosopher and social reformer who wished to alleviate the period’s dreadful living conditions. Poverty, disease, overcrowding, child labor, lack of sanitation, and miserable prison and factory conditions inspired Bentham to be an agent of social reform. He graduated from Oxford at the age of fifteen and used his prodigious gifts as social critic and legal and constitutional reformer. He became the leader of a group of individuals, including James Mill (1773 – 1836) and John Stuart Mill (1806 – 1873), who espoused the principles of a moral philosophy called utilitarianism. Utilitarianism was an influential force in eighteenth and nineteenthcentury England, and Bentham personally influenced the British legislature to adopt virtually all of his proposals.

The guiding principle of Bentham’s thought was the principle of utility: human actions and social institutions should be judged right or wrong depending upon their tendency to promote the pleasure or happiness of the greatest number of people. A popular formulation of the principle is “promote the greatest happiness for the greatest number.” Bentham himself defined the principle of utility as “that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question.” Bentham was not clear as to whether the principle referred to the utility of individual actions or classes of actions, but he was clear “the party whose interest is in question” refers to “anything that can suffer.” Thus, utilitarianism was the first moral philosophy to give a significant place to nonhuman animals.

Utility measures the happiness or unhappiness that results from a particular action. Thenet utility measures the balance of the happiness over the unhappiness or, in other words, the balance of an action’s good and bad results. To compute the net utility, we subtract the unhappiness caused by an action from the happiness it causes. If an action produces more happiness than unhappiness, a positive net utility results. If it produces more unhappiness than happiness, a negative net utility results.

When deciding upon a course of action utilitarians take the following steps. First, they determine the available courses of action. Second, they add up all the happiness and unhappiness caused by each action. Third, they subtract the unhappiness from the happiness of each action resulting in the net utility. Finally, they perform that action from the available alternatives which has most net utility. (Technically, this is “act” utilitarianism, to be distinguish from another type shortly.)

If all of the available actions produce a positive net utility, or if some produce positive and some produce negative net utility, utilitarians perform the action that produces the most positive utility. If all the available actions produce a negative net utility, then they perform the one with the least negative utility. In summary, utilitarians perform that action which produces the greatest balance of happiness over unhappiness from the available alternatives. Thus, the first key concept of utilitarianism is that of maximizing utility or happiness.

It is important to note that computations of the net utility count everyone’s happiness equally. Unlike egoists, who claim that persons should maximize their own utility, utilitarians do not place their own happiness above that of others. For example, egoism recommends that we insult others if that makes us happy, but utilitarianism does not. For utilitarians, the happiness we experience by insulting them is more than balanced by the injury they endure. Analogously, robbing banks, killing people, and not paying our taxes may make us happy, but these actions decrease the net utility. Therefore, utilitarianism does not recommend any of them.

Utilitarianism is a doctrine which grips the imagination of most twentieth century people. Nearly all newspaper columnists, politicians, social reformers, and ordinary citizens believe that we should “make the world a better place,” “increase social justice,” “promote the general welfare,” “establish equality,” or “create the greatest happiness for the most people.” Utilitarian thinking underlies most of these phrases, and many individuals believe they are morally obligated to increase the happiness and decrease the unhappiness in the world.

The Consequences

The second key concept of utilitarianism is that we judge moral actions by the consequences they produce. The only thing that counts in morality is the happiness and unhappiness produced by an action. In other words, according to utilitarianism, the ends justify the means. It does not matter how you do itwhat means you takeas long as you increase the net utility. In most cases, as we have already mentioned, the action that utilitarians recommend mimics the recommendations of other moral theories. For instance, given the choice of telling Sue that she looks beautiful or terrible, we would usually maximize utility by telling her the former. Similarly, given the choice of granting or denying her request for a loan, we would usually maximize utility by granting her request. However, if she will probably use the money to buy drugs, become intoxicated and then beat her children, we should deny her request. On the other hand, if Bob will use our money to feed his children, we should probably loan it to him. We should always perform that action that will, most likely, increase the happiness and decrease the misery of all involved.

Since the right action depends upon our assessment of the consequences, we must know what the consequences of our actions will be. Some object that the theory fails precisely because this is not possible. And it is true that we never know absolutely what will happen as a consequence of our action. We may think the consequence of loaning Bob some money will be to cheer him up, but he might buy a gun and commit suicide! We may think the consequence of shooting Sue will be to hurt or kill her. But her subsequent paralysis might serve as the motivation for a successful writing career! In fact, any of our minuscule choices might alter human history, but we are only responsible for consequences we can reasonably anticipate. We anticipate the consequences as best we can and proceed to act accordingly. Thus, the fact that we can never be absolutely certain of the consequences of an act does not undermine utilitarianism.

We can now summarize our discussion thus far. Moral actions are those that produce the best consequences. The best consequences are those that have the most net utility, in other words, those that increase happiness and decrease unhappiness. When calculating the net utility everyone’s interests count equally. The two key concepts of utilitarianism are happiness and consequences.

#### 5. No solvency — state & local governments circumvent the plan and racial biases outweigh policies.

Porter 15 — Tracie R. Porter, Associate Professor of Law and Director of the Business Law Center, Western State College of Law; B.A., 1990, Cornell College; J.D., 1994, Drake University School of Law, 2015 (“The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools,” <http://media.law.uark.edu/arklawreview/2015/05/15/the-school-to-prison-pipeline-the-business-side-of-incarcerating-not-educating-students-in-public-schools/>, Accessed 6/27/2017, Lenny)

Recent efforts to address the school-to-prison pipeline are not the first time that the federal government passed a law or implemented a policy resisted by school administrators. Well after the Brown II decision, school districts and administrators across the country refused to desegregate, and state and local [[79]]government leaders blatantly disregarded the law.[130] Particularly in the South, but also more subtly in the North, state legislators publicly committed to maintain segregated schools.[131] Even after the federal government offered funding incentives to desegregate schools in 1965,[132] some school districts refused to comply with the Brown mandates.[133] Entrenched in this historical segregationist attitude may be an implicit bias involving African American inferiority, which leads some to believe that African Americans deserve whatever harsher punishment results for violations of the law. Even when administrators apply purportedly race-neutral zero-tolerance policies, their uneven application reflects the historically poor local leadership within America’s public schools.

### Extend: “Status Quo Solves — DOJ”

#### Status quo solves — DOJ settlements.

**SPLC 15** — Civil Rights Law Center, 2015 (“SPLC: DOJ Settlement in School-to-Prison Pipeline Case Will Protect Mississippi Children,” *Southern Poverty Law Center*, June 19th, Available Online at <https://www.splcenter.org/news/2015/06/19/splc-doj-settlement-school-prison-pipeline-case-will-protect-mississippi-children>, Accessed on 07/12/2017, Lenny)

Settlement agreements reached in a U.S. Department of Justice (DOJ) lawsuit sparked by an SPLC investigation are an important step toward preventing east Mississippi children from being needlessly pushed out of school and into the justice system, the SPLC said today.

“Today marks a significant milestone toward ensuring that children in Mississippi, especially children of color, are protected from unnecessary encounters with law enforcement,” said Jody Owens, managing attorney for the SPLC’s Mississippi office. “We commend the Department of Justice and state and local officials in Mississippi for establishing a plan that will help all children have an equal opportunity to pursue their education.”

The settlement agreements were reached in United States v. City of Meridian, et al. The DOJ has reached two agreements – one that resolves the DOJ’s claims against Meridian and another that resolves its claims against the state. Claims against Lauderdale County and Lauderdale County Youth Court judges are still being litigated.

The SPLC first learned about the school-to-prison pipeline in Lauderdale County after litigating a class action lawsuit that ultimately closed the county juvenile detention center. Through the investigation, the SPLC found that a number of the children housed there were detained for minor school infractions, such as dress code violations. The SPLC gathered the stories of these children and shared them with the U.S. Justice Department, which subsequently resulted in them filing their federal lawsuit against the state in 2012.

The settlement agreement with the city bars the police department from arresting minors for behavior that is a school discipline issue. There also must be documented probable cause for youths arrested for criminal offenses. Officers are barred from interviewing youths unless a guardian or lawyer is present.

The agreement with the state addresses unconstitutional youth probation practices by the Mississippi Division of Youth Services. Probation officers will be required to take measures to protect a youth’s right against self-incrimination. Probation officers are also barred from unnecessarily recommending incarceration of youths for probation violations that are typically not offenses that result in a youth being detained, such as a minor infraction of school rules.

### Extend: “DeVos Circumvention”

#### DeVos slow-walks the aff — Obama rollbacks & white-flight.

**Chen 17** — Michelle Chen, Contributing Writer at The Nation, 2017 (“﻿What Betsy DeVos’s Emphasis on ‘Choice’ Means for School Segregation,” *The Nation*, April 19th, Available Online at https://www.thenation.com/article/what-betsy-devoss-emphasis-on-choice-means-for-school-segregation/, Accessed 07/13/2017, Lenny)

Yet that seems to be DeVos’s vision of “diversity.” Her abrupt decision to cancel an Obama administration program designed to help communities desegregate schools, known as Opening Doors, Expanding Opportunity, has outraged education advocates, who fear Trump will aggravate social barriers in K–12 education. The program was relatively small-scale—just $12 million in seed grants issued to school districts across the country seeking to develop “locally driven strategies to increase socioeconomic diversity in schools.” The grants would barely dent the system-wide civil-rights crisis of school segregation, but DeVos claimed even this fledgling program was unworthy of taxpayer dollars because it was focused on planning and not “implementation,” The Washington Post reports.

Advocates say the cuts mark a setback for creative school-diversity programs that are trying to uphold the constitutional precepts established in Brown v. Board of Education, the precedent that commits the government to correcting institutionalized racial barriers in education by proactively desegregating schools.

DeVos argues the private sector should be trusted to help schools redistribute opportunity, by expanding corporate charter schools and giving families vouchers to finance private schooling, as a supposedly higher-quality alternative to neighborhood schools. But often, these programs end up slowing or reversing desegregation for the families who most need it.

Given the option to transfer to more affluent schools, parents typically make the “rational choice” to perpetuate “white flight” from poorer, blacker urban centers. The flip side of choice is the de facto exclusion of children of color, who get left behind with underfunded, understaffed “inner city” schools.

According to the Century Foundation’s analysis of the long-term impact of school vouchers on segregation:

﻿Two-thirds of school transfers in one program and 90 percent of transfers in the other program increased segregation in private schools, public schools, or both sectors…. There is a strong risk that voucher programs will be used by white families to leave more diverse public schools for predominantly white private schools and by religious families to move to parochial private schools, increasing the separation of students by race/ethnicity and religious background.

As with Jim Crow, classrooms don’t integrate when individuals make nice choices—but when lawmakers act for the collective good.

#### DeVos causes school choice and rolls back civil-rights enforcement.

**Wall 17** — Spencer Education Reporting Fellow at Columbia University's Graduate School of Journalism, M.A. in Journalism at the City University of New York Graduate Center, 2017 (“How Betsy DeVos Could End the School-Integration Comeback,” *The Atlantic*, March 20th, Available Online at <https://www.theatlantic.com/education/archive/2017/03/how-betsy-devos-could-end-the-school-integration-comeback/520113/>, Accessed 07/13/2017, Lenny)

Under President Trump, the federal role in education is set to be drastically curtailed. Last Thursday, Trump proposed slashing federal spending on schools by $9 billion. His education secretary, Betsy DeVos, has vowed to shrink her agency and return power to local officials, which could mean scaling back civil-rights enforcement. All of these signals may also foreshadow a retreat on school integration.

Integration made a brief return to the national stage last year when President Barack Obama, who had mostly avoided the issue before then, proposed a $120 million grant program in his final budget that would fund local socioeconomic school-integration plans. After that proposal died in Congress, Obama’s education secretary, John King, launched a much smaller version last December. He also used his brief tenure to trumpet the benefits of diversity. “He talked about school diversity in a way that federal officials had not in years and years and years,” said Richard Kahlenberg, a senior fellow at The Century Foundation, a think tank that promotes socioeconomic school integration.

Now, even that smidgen of progress has stalled. Trump and DeVos appear to be single-mindedly focused on expanding access to school choice—particularly private-school tuition vouchers and charter schools, which are often highly segregated. Meanwhile, advocates fear that DeVos might abolish the few incentives created by the Obama administration to spur local integration efforts. Either way, any new attempts to curb segregation in the Trump era likely will come from the ground up, with local officials who choose to pursue integration having to make do without much federal support.

#### DeVos will push for segregated school policies.

**Wall 17** — Spencer Education Reporting Fellow at Columbia University's Graduate School of Journalism, M.A. in Journalism at the City University of New York Graduate Center, 2017 (“How Betsy DeVos Could End the School-Integration Comeback,” *The Atlantic*, March 20th, Available Online at <https://www.theatlantic.com/education/archive/2017/03/how-betsy-devos-could-end-the-school-integration-comeback/520113/>, Accessed 07/14/2017, Lenny)

Trump’s budget plan represents a clear statement of his priorities. It calls for a new $250 million private-school-choice program and a $168 million increase in charter-school funding. It doesn’t include a request for more magnet-school funding—the type of school choice most commonly used for integration—even though those schools actually enroll more students than charters. In a statement last Thursday, the membership group Magnet Schools of America noted that magnets were “[n]oticeably and regrettably absent” from Trump’s school-choice spending plan.

Some critics say that pouring more money into vouchers and charters will lead to more segregation. While charter schools and traditional public schools are both often highly segregated, white and black students tend to be even more racially isolated when they attend charters. The research on vouchers and segregation is mixed: Though students often use them to leave segregated public schools, many end up at private schools where their classmates are disproportionately the same race as them—as was the case with Louisiana’s voucher program.

#### School Choice overwhelms aff solvency.

**Chen 17** — Michelle Chen, Contributing Writer at The Nation, 2017 (“﻿What Betsy DeVos’s Emphasis on ‘Choice’ Means for School Segregation,” *The Nation*, April 19th, Available Online at https://www.thenation.com/article/what-betsy-devoss-emphasis-on-choice-means-for-school-segregation/, Accessed 07/13/2017, Lenny)

But can’t voucher funds help poor families escape poor school districts? According to the Network for Public Education, “The amount of money contributed by the voucher is hardly ever enough to pay for full private school tuition,” so poor parents likely still couldn’t afford a much better private alternative to their regular neighborhood schools. Private and parochial schools, moreover, can more freely discriminate in their admissions on the basis of race, sexual orientation, gender, or religion, and are subject to less oversight on standards and curricula. So private institutions might have greater leeway to flout state standards by teaching, say, “intelligent design” instead of evolution, or downplaying the history of the slave trade.

Yet the districts selected for Opening Doors aren’t against choice; they simply want to balance choice with fairness. They’re also victims of the pro-privatization agenda that DeVos champions.

In New Orleans, a charter-school industry boom that followed Hurricane Katrina has resulted in decreased instructional spending, while raising administrative costs by two-thirds. Opening Doors seed money could have helped policymakers equalize opportunity across schools, but as one of the country’s leading advocates for charter schools, DeVos seems more interested in expanding the New Orleans model nationwide rather than addressing the deep racial segregation that has persisted since the Jim Crow era.

Another would-be grantee, Detroit, was a laboratory site for DeVos’s previous campaign to promote charters across Michigan. The only problem: The growth of the charter sector and school-choice policies have been linked to systemic patterns of housing and school segregation.

University of Southern California sociologist Ann Owens explains the cyclical relationship between neighborhood and school segregation:

Many school choice options, including vouchers, were established in part to offer alternatives to the local school and counter this link between neighborhoods and schools. However, some people are better able to exercise “choice” than others—taking advantage of school choice options depends on knowing and understanding the options, having an option located close by or having transportation available, and having enough seats available.

### Extend: “Alternative Causes”

#### Ending Zero Tolerance Policies can’t change pre-school discrimination.

**Brown 16** — Emma Brown, previous Reporter for the Center for Investigative Reporting, The Boston Globe, & Alaska Budget Report, holds an M.J. in Journalism from the University of California, Berkeley, 2016 (“Yale study suggests racial bias among preschool teachers,” *The Washington Post*, September 27th, Available Online at <https://www.washingtonpost.com/news/education/wp/2016/09/27/yale-study-suggests-racial-bias-among-preschool-teachers/?utm_term=.9c110704df81>, Accessed 07/21/2017, Lenny)

Why are black preschoolers in America more than three times as likely to be suspended than their white classmates?

Perhaps because teachers are more likely to expect young black children — especially young black boys — to misbehave, according to a new Yale study.

The study, conducted by researchers at the Yale University Child Study Center, asked more than 130 preschool teachers to watch video clips of children in classrooms. The teachers were told to look for signs of “challenging behavior.”

The children in the videos were actors, and the clips did not actually show any challenging behaviors. But the teachers didn’t know that. They were anticipating trouble. And as they scanned the video clips, looking for signs of that trouble, they spent more time looking at black children than white children, according to equipment that tracked their gaze.

The teachers spent even longer looking at black boys.

That’s a sign that teachers expect problems from black children, and especially black boys, said lead researcher and Yale child psychology professor Walter S. Gilliam. It’s a finding that shows how deeply rooted racial biases are, he said, and how badly teachers need training to confront and unravel the knee-jerk perceptions of their students — perceptions they often don’t even realize they have.

“Implicit biases do not begin with black men and police. They begin with black preschoolers and their teachers, if not earlier,” he said, referring to the multiple fatal shootings of black men by police that have given rise to the Black Lives Matter movement and a national debate about law enforcement’s treatment of people of color. “Implicit bias is like the wind: You can’t see it, but you can sure see its effects.”

Black children accounted for 19 percent of all preschool students in 2013-2014, but they made up 47 percent of those who received suspensions, according to federal civil rights data.

### Extend: “Utilitarianism”

#### Weigh Consequences — deontology is irresponsible in the policy sphere.

Goodin 95 — Robert E. Goodin, Distinguished Professor of Philosophy and Social & Political Theory in the Research School of Social Sciences at the Australian National University, holds a D.Phil. in Politics from Oxford University, 1995 (“Utilitarianism as a public philosophy,” *Utilitarianism as a Public Philosophy*, Published by Cambridge University Press, ISBN 0521462630, p. 8-10)

The strength of utilitarianism, the problem to which it is a truly compelling solution, is as a guide to public rather than private conduct. There, virtually all its vices - all the things that make us wince in recommending it as a code of personal morality - loom instead as considerable virtues.

Consider first the raft of criticisms couched in terms of the impersonality of utilitarianism. Like all universalist philosophies, utilitarianism asks us to take "the view from nowhere.”19 There is no obvious place within utilitarian theories for people's idiosyncratic perspectives, histories, attachments, loyalties or personal commitments.

That rings untrue to certain essential qualities of personal life. The essence of the communitarian challenge is that everyone comes from somewhere. There are no free-floating individuals, of the sort with which liberals generally, and utilitarians paradigmatically, populate their moral theories."20 People have, and upon reflection we think they should have, principled commitments and personal attachments of various sorts.21[end page 8]

As an account of the peculiar role responsibilities of public officials (and, by extension, of ordinary individuals in their public capacities as citizens) that vice becomes a virtue, though. Those agents, too, have to come from somewhere, bringing with them a whole raft of baggage of personal attachments, commitments, principles and prejudices. In their public capacities, however, we think it only right and proper that they should stow that baggage as best they can.

Complete neutrality might be an impossible ideal. That is another matter.22 But it seems indisputable that that is an ideal which people in their public capacities should strive to realize as best they are able. That is part (indeed, a central part) of what it is to be a public official at all. It is the essence of public service as such that public servants should serve the public at large. Public servants must not play favorites.

Or consider, again, criticisms revolving around the theme that utilitarianism is a coldly calculating doctrine.23 In personal affairs that is an unattractive feature. There, we would like to suppose that certain sorts of actions proceed immediately from the heart, without much reflection much less any real calculation of consequences. Among intimates it would be extremely hurtful to think of every kind gesture as being contrived to produce some particular effect.

The case of public officials is, once again, precisely the opposite. There, it is the height of irresponsibility to proceed careless of the consequences. Public officials are, above all else, obliged to take care: not to go off half cocked, not to let their hearts rule their heads. In Hare's telling example, the very worst thing that might be said of the Suez misadventure was not that the British and French did some perfectly awful things (which is true, too) but that they did so utterly unthinkingly.

Related to the critique of utilitarianism as a calculating doctrine is the critique of utilitarianism as a consequentialist doctrine. According to utilitarianism, the effects of an action are everything. There are no actions which are, in and of themselves, morally right or wrong, good or bad. The only things that are good or bad are the effects that actions produce.25

That proposition runs counter to certain ethical intuitions which, at [end page 9] least in certain quarters, are rooted deeply. Those who harbor a Ten Commandments view of the nature of morality see a moral code as being essentially a list of "thou shalts" and "thou shalt nots" - a list of things that are right or wrong in and of themselves, quite regardless of any consequences that might come from doing them.26

That may or may not be a good way to run one's private affairs. 27 Even those who think it is, however, tend to concede that it is no way to run public affairs. It is in the nature of public officials' role responsibilities that they are morally obliged to "dirty their hands" — make hard choices, do things that are wrong (or would ordinarily be wrong, or would be wrong for ordinary private individuals) in the service of some greater public good.28 It would be simply irresponsible of public officials (in any broadly secular society, at least) to adhere mindlessly to moral precepts read off some sacred list, literally "whatever the consequences."29 Doing right though the heavens may fall is not (nowadays, anyway) a particularly attractive posture for public officials to adopt.

#### Rights Not Absolute — avoiding catastrophe is a lesser evil.

Nielsen 96 — Kai Nielsen, Professor of Philosophy at the University of Calgary, 1996 (“There Is No Dilemma Of Dirty Hands,” *South African Journal of Philosophy*, Volume 15, Issue 1, February, Available Online to Subscribing Institutions via Academic Search Elite)

It might be thought that I am begging questions and sweeping things under the rug with my conception of the lesser evil. I am just implicitly assuming, it might be argued, that the lesser evil is what results in the least harm (the fewer deaths, the lesser misery, pain, undermining of self-respect, autonomy, security and the like). But, the objection will continue, the 'lesser evil' may not be that, but the not doing of certain things, for example, not violating someone's rights, not administering unjust laws, not taking (let alone shooting) hostages, not refusing to take prisoners, not lying and the like. The, in short, not doing of these plain moral evils. Where any of the rights violations that go with the doing of these forbidden things occur, we have a greater evil than if they do not. Suffering and misery are bad, but rights violations are even worse.

It seems to me that this is an implausible response. Sometimes violating someone's rights may avert a catastrophe. And then, it seems to me, their rights should be violated. But there are other sorts of examples that drive home my point as well. Even when under the Nazis it became apparent that he would be required to administer abhorrent (and thoroughly abhorrent to him as well) Nazi racial laws, a German judge, appointed during the Weimar republic, might rightly not resign. He does not resign because he realizes that he might very well in the discriminatory way he applied these vile laws be able to save lives that would not have been saved if he had been replaced by a Nazi hack. And, to move to a still different example, shooting some hostage, and threatening to shoot some others, might prevent the sacking and putting to the sword of a whole village or at least give the villagers time to flee. (Remember here, Berthold Brecht, as well as Karl Marx, on the Paris Commune.) It seems to me that there is no serious question where the lesser evil lies in such situations, for example, violating someone's rights to prevent a massacre. The violating of a person's rights is there plainly a lesser evil. It is blind rights worship or rule worship not to see that.

### Extend: “No Solvency — Racial Biases”

#### Racial Biases cause segregation and in-school discrimination.

**Quinlan 16** — Casey Quinlan, Policy Reporter at Think Progress, B.A. in Journalism from CUNY, 2016 (“How Racial Bias Affects The Quality Of Black Students’ Education,” *Think Progress*, July 18th, Available Online at <https://thinkprogress.org/how-racial-bias-affects-the-quality-of-black-students-education-642f4721fc84>, Accessed 07/15/2017, Lenny)

The Department of Education recently released some startling numbers about how much our country spends on prisons versus schools that added fuel to the fire of national conversation about criminal justice reform.

One way to think about our national priorities is to look at where we spend our money. For example, according to the department’s report, every single state spends less all on pre-k-12 education than they do on corrections. And over the past 20 years, state and local spending on public colleges and universities has remained stagnant while spending on the prison system rose by almost 90 percent.

Amid the conversation about systemic racism sparked by the Black Lives Matter movement, especially in the wake of the police killings of Philando Castile and Alton Sterling and the subsequent protests across the country, it is important to look at how racism manifests itself in our education system.

In addition to inadequate levels of education funding, there are other factors that affect quality of education, such as racial bias that reveals itself through school discipline and our curricula choices. Decades of racial bias against black Americans and the legacy of slavery are evident in our classrooms.

Ongoing school segregation that reduces opportunities for black students

Although it has been more than 60 years since the U.S. Supreme Court’s Brown v. Board of Education decision establishing that separate schools for white students and black students are not equal, schools in the U.S. remain very economically and racially segregated.

School segregation is often assumed to be a problem specific to the South. But northern cities and midwestern cities — like Chicago, New York City, Detroit, and Boston, where people arguably fought hardest against court-ordered busing — also have many racially isolated schools. On the west coast, California had 31 open desegregation cases as of 2014.

Students’ quality of education suffers in this segregated school environment. In schools with a disproportionately high concentration of students of color, students are instructed by less experienced teachers, have less access to things like Advanced Placement courses, and receive more expulsions and suspensions. Studies have shown that students who attend segregated schools make slower progress in reading.

The facilities themselves tend to be very poor as well. In Detroit Public Schools, where there is a budget crisis, teachers have protested poor school conditions such as dead rodents, spoiled food, cracked floors, and moldy ceilings. In Baltimore schools, students have had to wear coats and scarves to class because they didn’t have enough heat in their classrooms.

#### Newest studies go negative — implicit biases tube aff solvency.

**McGirt 16** — Ellen McGirt, Writer at Fortune Magazine, 2016 (“How Racial Bias Is Showing Up in Schools,” *Fortune Magazine*,September 28th, Available Online at <http://fortune.com/2016/09/28/how-racial-bias-is-showing-up-in-schools/>, Accessed 07/15/2017, Lenny)

New research from the Yale Child Study Center confirms our own worst expectations: Preschool teachers are more likely to expect and identify disruptive behavior from black kids, specifically boys, than white ones.

The research has two parts. Part one had teachers watch videos of kids in a classroom setting, and asked them to identify potential challenging behaviors before they happened. "What we found was exactly what we expected based on the rates at which children are expelled from preschool programs," lead researcher Walter Gilliam told NPR. "Teachers looked more at the black children than the white children, and they looked specifically more at the African-American boy."

The second part of the study had teachers reading a short passage about a student who was being disruptive in class – like scratching others or throwing toys - then asked them to rate the severity of the behavior. Again, bias came into play but in surprising ways. White teachers, with lower expectations of black children, rated the severity of the behavior lower. Black teachers, who held black students to a higher standard, consistently rated their behavior as more severe.

Finally, some teachers were given information about a disruptive child’s home life, to see if it would make them more empathetic. Here comes another surprise – the teachers were more empathetic only if they were the same race as the student. If not, severity reports skyrocketed, confirming earlier research that we tend to be more empathetic to people who look like us.

This is the first research that confirms implicit bias in teachers at the pre-school level. Black children are 3.6 times more likely to receive a suspension in preschool than their white classmates, according to 2013-2014 data from the Department of Education. Put another way, black children accounted for 18 percent of preschool enrollment but almost half (48 percent) of the kids suspended more than once.

Because they lose so much valuable school time at such a tender age – not to mention the lasting pain of being branded as a problem child –early suspensions feed the school-to-prison pipeline. These kids become disengaged and are more likely to drop out and drift toward the criminal justice system according to clear research from the Center for American Progress.

The final surprise: The teachers who participated didn’t know the true purpose of the research until it was completed. They’ve dedicated their lives to helping children, so I imagine the outcome must have come as a shock. But they did us all a solid by letting their results stand. (Only one withdrew.) In they end, they taught us the most valuable lesson of all: That we all have implicit biases that need to be managed, if only we take the time to see them. And that’s a song we can all learn to sing.

#### Statistical Analysis’ prove racial biases outweigh — our studies price in their warrants.

**Anderson 16** — Melinda D. Anderson, Writer for the Atlantic, 2016 (“How Discrimination Shapes Parent-Teacher Communication,” *The Atlantic*, November 15th, Available Online at <https://www.theatlantic.com/education/archive/2016/11/which-parents-are-teachers-most-likely-to-contact/507755/>, Accessed 07/15/2017, Lenny)

Now a sociologist and an assistant professor of education at New York University’s Steinhardt school, Cherng’s latest study parallels his childhood experience by exploring an under-researched topic in parent-involvement literature: the role that students’ race and country of birth play in a teacher’s likelihood of contacting their parents or guardians. Relying on a sample of about 10,000 predominantly public high-school sophomores, their parents, and teachers from the Education Longitudinal Study of 2002—a nationwide sampling conducted by the U.S. Department of Education—Cherng’s statistical analysis found sharp contrasts in how math and English teachers communicate with parents from different racial, ethnic, and immigrant backgrounds, reflecting many existing stereotypes of black, Latino, and Asian American students.

“One would think if a kid is struggling [or] a kid isn’t doing their homework that the teacher would reach out to parents [whether they’re] white kids, foreign-born Asian American kids, or third-generation Latino kids, [yet] this wasn’t the case,” Cherng said, noting that the racial and ethnic dynamics between teachers, students, and parents revealed in the 2002 data collection haven’t changed dramatically in the past decade and “may have gotten slightly worse.” (While the students were followed over the course of the decade, the Education Department only conducted the teacher survey in 2002.)

When teachers were questioned about their parent communications in three key areas—homework completion, disruptive behavior in class, and student accomplishments—a youngster’s race, ethnicity, and immigrant status appeared to be the deciding factors. After controlling for students’ classroom conduct and academic work, perceptions of parents’ English proficiency, family socioeconomic status, and other variables, distinct racial and immigration patterns emerged.

#### Implicit biases from law enforcement and teachers outweigh.

**Redfield & Nance 16** — Sarah E. Redfield, Professor of Law Emerita, UNH (COREJ appointee), Jason P. Nance, Associate Professor of Law, Associate Director of Education Law and Policy, University of Florida Levin College of Law, 2016 (“School-to-Prison Pipeline,” *American Bar*, Winter, Available Online at <https://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf>, Accessed 07/15/2017, Lenny)

A particularly alarming aspect of the school-to-prison pipeline is that certain groups of students, especially minority students, are disproportionately affected. At each juncture of the pipeline—from failing to receive a quality education, failing to graduate, being suspended or expelled, or being referred to law enforcement for violating a school rule and then on into the juvenile justice system—there are differences along group lines that are not readily explicable. The differences and disproportionalities discussed in this report are so well documented, so large, and so well known that one must question why the pattern has not yielded to change.

When one considers the statistical overview from a high level, it may sometimes be difficult to remember that these appalling numbers represent decision after decision point in the lives of individual students. Many—if not most—of the critical decisions impacting young people along the educational pipeline are discretionary individual decisions.359 For the most part, these decisions will have been made by people acting in good faith—a teacher who recommends a student to take advanced courses in mathematics or science (or not); the school official who decided to suspend a student for disruptive behavior (or not); the special education team that classifies a child as emotionally disturbed (or not); the police officer who decides to arrest (or not); the prosecutor who decides to prosecute (or not); the judge who decides divert or detain; and so on. In these instances, it is hardly likely that the teacher explicitly thought, “Oh, J won’t make it in school, he’s Black;” or “Oh, let’s call the police about K, he’s ADHD and his family are Hispanic so we might as well get some help getting him out of here.” It is unlikely that the police officer thought similarly and explicitly decided on these bases to arrest rather than call J or K’s parents; it is even less likely that the judge was so motivated. It is hardly likely that any of these decision makers would consciously agree with these sentiments, in fact, the opposite.

If these explicit biases are not the reasons underlying the seemingly intractable data on disparity, then what are the reasons?360 While there are several factors that may contribute to these disparities, if we accept as given that most educators and juvenile justice decision makers are acting in good faith when they explicitly exercise their discretion, then a possible explanation lies with implicit associations that influence their discretionary decisions. That is, as many researchers now agree, a primary cause of differential treatment is the implicit bias of decision makers.361 This part of the report discusses the issues from this perspective.

## Prisons Advantage

### 1NC — Frontline

#### 1. Alternative causes outweigh: war on drugs, and violent criminal penalties.

**Economist 15** — Newspaper and Journal, 2015 (“The moral failures of America's prison-industrial complex,” *Democracy In America*, July 20th, Available Online at <https://www.economist.com/blogs/democracyinamerica/2015/07/criminal-justice-and-mass-incarceration>, Accessed 07/09/2017, Lenny)

To weigh the merits and morality of America’s incarceration rate, it helps to remember why it started booming. It began in the 1980s, when high crime led [district attorneys](http://www.slate.com/articles/news_and_politics/crime/2015/02/mass_incarceration_a_provocative_new_theory_for_why_so_many_americans_are.2.html) to send more people to prison, and for longer sentences. The country’s "war on drugs" introduced strict sentencing guidelines, which reduced the discretion of judges and parole boards. In their 2013 study "[Why are so many Americans in prison?](https://books.google.com/books/p/russell_sage_foundation?id=K0y2NQHPY6UC&amp;printsec=frontcover#v=onepage&amp;q&amp;f=false)", Steven Raphael and Michael Stoll, professors of public policy at Berkeley and UCLA, found that changes in sentences for drug offences were important, accounting for about 20% of the increase in the incarceration rate. However, harsher sentences for violent criminals accounted for nearly half the rise. Between 1984 and 2009, the time typically served in state prisons increased by roughly five years for murder, three years for sexual assault, eighteen months for robbery and six months for burglary. A significant reduction in the incarceration rate will require rolling back prison terms for these crimes, too.

#### 2. The status quo solves — laundry list of Obama reforms solve.

**Martin 16** — Glenn E. Martin, President and Founder of JustLeadershipUSA (JLUSA), 2016 (“Six Ways President Obama Reformed America’s Criminal Justice System,” *News One*, December, Available Online at <https://newsone.com/3590472/president-obama-criminal-justice-reform/>, Accessed 07/09/2017, Lenny)

President Obama didn’t just listen. He heard us. During his eight years in office, President Obama did what no other sitting president has ever done: He chipped away at the stigma that those of us who have been through the criminal justice system—70 million of us and counting—carry on our shoulders like dead weight. True, there is much left to be done to bring the era of mass incarceration to an end. But in the field of criminal justice reform Obama took on the difficult “task of government,” that is, “to make incremental improvements or try to steer the ocean liner two degrees North or South so that 10 years from now, we’re in a very different place than we were.”

Although stymied by congressional gridlock and unable to make headway in passing reform legislation, the president used his executive power to turn the ocean liner a few degrees in the direction of progress. Here’s a partial list of some of the groundbreaking things that happened on his watch:

• He very publicly visited a federal prison and met with people serving time—the first sitting president ever to do so.

• He commuted the sentences of more people than the previous 10 presidents combined—673 men and women as of this writing.

• He established the Second Chance Pell Pilot Program allowing incarcerated people to once again receive Pell Grants to pursue college degrees.

• He issued an Executive Order “banning the box” on applications for federal jobs so that formerly incarcerated people would have a better shot at gainful employment.

• He released new HUD guidelines informing landlords that because people of color were over-represented among those with criminal records, denying housing on the basis of a criminal record would be considered a violation of the Fair Housing Act.

• He banned solitary confinement of juveniles in federal prisons.

Did President Obama do everything I would have liked? Of course not. He continued to rhetorically throw most people in the system under the bus by dividing us into the misleading binary categories of “violent” versus “nonviolent” when people convicted of crimes defined as “violent” have as much capacity for rehabilitation and redemption as anyone else. He also could have bridged some of the country’s racial divide by explaining how our overly punitive criminal justice system is also destroying the lives of poor white Americans whose incarceration rate is actually increasing. Yet his contributions clearly outweigh his deficits.

Most of all, President Obama gave formerly incarcerated leaders a seat at the policy table. President Obama has empowered us to begin a process of healing, not only for ourselves, but for our families, our communities and the country as a whole. Our input has led to the creation and support of important new constituencies in the movement to end mass incarceration.

Close to 70 colleges will be accepting incarcerated students this year because of the Second Chance Pell program, creating linkages between people in prison and the academic world. Because of federal funding there are now hundreds of re-entry programs throughout the country, connecting the men and women coming out of prison with service providers and to job, education, housing and other opportunities. These are two-way relationships that will have the exponential effect of involving more and more people and gradually diminishing the stigma of a criminal conviction.

Today we are in a different place because President Obama listened. That might not seem like much, but if you, like me, are a member of a group that has been marginalized and rendered silenced, it’s huge. I was fortunate to have experienced the president’s capacity to listen on a very personal level.

Nobody knows what the next administration will do about criminal justice reform. But one thing I do know is that the foundation built by Barack Obama, our first African-American president, will not easily be expunged. The movement to defend those gains and to keep on moving grows stronger every day. Join us!

#### 3. Turn: The plan causes business shifts to reclaim people into the Prison-Industrial Complex.

**Chen 15** — Michelle Chen, Contributing Writer at The Nation, 2015 (“How Prison Reform Could Turn the Prison-Industrial Complex Into the Treatment-Industrial Complex,” *The Nation*, November 20th, Available Online at <https://www.thenation.com/article/how-prison-reform-could-turn-the-prison-industrial-complex-into-the-treatment-industrial-complex/>, Accessed 07/10/2017, Lenny)

With one in 45 adults on probation or parole and one in 100 behind bars, America looks like a nation of captives. From a business perspective, though, it’s a captive market.

Yet prison reform is gaining political currency. Both Republican and Democratic federal and state lawmakers have sought to soften sentencing policies and reduce the overall use of incarceration in criminal policy, and to facilitate “second chances” for the formerly incarcerated as they transition into work and family life. Yet, while politicians ostensibly seek more humane alternatives to incarceration, those being released will never quite leave prison behind. Not just because individuals will bear criminal records, but because the entire prison industry has already captured their communities on the outside.

Reform initiatives like rehabilitation and employment programs focus on making “corrections” less punitive. But they maintain the political framework of “redeeming” bad people, rather than dismantling antisocial systems. According to investigative research by American Friends Service Committee (AFSC), the private prison industry is exploiting prison reform efforts by shifting from brick-and-mortar carceral facilities to outsourced social services.

In other words, many of the dollars expected to be “saved” from shuttering prisons may simply be funneled into privatized “alternatives to incarceration” like parole programs and halfway houses. These operations are often run by the household names of the prison business—they’re simply moving from behind bars to the so-called “treatment-industrial complex.”

According to AFSC’s research, the corporatization of prison reform is an outgrowth of a long-standing trend of prison privatization—corrections authorities contracting to outsource services such as food or long-distance calls home. Efforts to “decarcerate” may ostensibly reduce some business for private prison-industry companies. But carceral institutions and technology are being rebranded for the outside world, and profits from these emerging “security” sectors appear to be on the upswing: There is growth potential in halfway houses and treatment centers—perhaps minimally regulated and financed on a per diem basis. In the pre-trial stage, there’s demand for private probation (used in poor communities to coerce people owing fees and fines for petty infractions) and ankle-bracelet monitors (shackled to thousands of detained migrants who have been released on bond).

#### 4. Status quo mental support solves.

Gorman 15 — Nicole Gorman, Education World Contributor, Co-Founder & CEO of DreamWakers, Cited in The New York Times, The Washington Post, Bloomberg, Forbes, and People, B.A. and M.P.P. in education policy from the University of Virginia, 2015 (“Fixing the School-to-Prison Pipeline With Mental Health Support in Schools” *Education World*, August 15th, <http://www.educationworld.com/a_news/fixing-school-prison-pipeline-mental-health-support-schools-543983303>, Accessed 07/14/2017, Lenny)

Mental health services in schools and communities have proven to help reduce crime. The Huffington Post points to a 2004 study conducted in Illinois, where measures to add out-reach programs and support services resulted in sweeping success.

In the four sites where the lowered detention was tested, crime became 44% lower just three years later; for every $1 spent on "Aggression Replacement Training, Functional Family Therapy, and substance abuse treatment" programs, $3.50 of incarceration expenses was saved.

In New Orleans, where the charter school reform has yet to provided tangible measures of success in increased student achievement, something else is producing tangible results that signal a good thing.

In one New Orleans charter schools, Shonda Gray has founded "The Ultimate Purpose Program" which provides students with "group and personalized therapy sessions, as well as college and career coaching" within the school's walls.

### Extend: “Alternative Causes”

#### Laundry list of alternative causes — law enforcement, prison-like environment, and testing.

**Garcia 16** — Lily Eskelsen García, President of the National Education Association, M.A. in Instructional Technology, 2016 (“NEA Policy Statement on Discipline and the School to Prison Pipeline,” *National Education Association*, May 9th, Available Online at <http://ra.nea.org/wp-content/uploads/2016/07/NEA_Policy_Statement_on_Discipline_and_the_School_to_Prison_Pipeline_2016.pdf>, Accessed 07/15/2017, Lenny)

A. What Policies and Practices Feed the School-to-Prison Pipeline?

The policies and practices that feed the school-to-prison pipeline by directly and indirectly pushing students of color out of school and on a pathway to prison, including, but not limited to:

•Harsh school discipline policies that overuse suspension and expulsion;

• Subjective and/or biased discipline policies;

• Increased policing and surveillance, and the use of physical elements of prisons, such as windows with bars, that create prison-like environments in schools;

• Overreliance on referrals to law enforcement and juvenile justice system; and

• An alienating and punitive high-stakes testing-driven academic environment.

These policies and practices are deeply rooted in many of our schools and date back decades. In its current form, the school-to-prison pipeline dates to the national drug war of the 1980’s, which subjected minor offenses to harsh criminal penalties on the theory that allowing even one “broken window” to go unpunished would lead to increases in crime.8 The punitive focus of the resulting policies, typified by “three strikes” laws sending individuals to prison for decades for relatively minor offenses, was accompanied by a broad scale recasting of young men of color as “super predators” to be locked up for as long as possible. These policies and practices are further perpetuated by the for-profit privatization of the prison system. One of the most chilling examples of this phenomena was the national wall to wall news coverage of the New York City Central Park Jogger case, which resulted in the wrongful conviction of five teenage boys (four black and one Latino) for the rape and brutalization of a young white woman in Central Park.

#### The School-to-Prison pipeline begins in pre-k – that is the root cause of the gap because it’s during formative years and socialization.

Smith 14 – Mychal Smith, Blogger for the Nation, Alfred Knobler Fellow at the Nation Institute, Author of ‘Invisible Man, Got the Whole World Watching’, Citing a DoE OCR Report, “The School-to-Prison Pipeline Starts in Preschool,” The Nation, 03/28/2014, https://www.thenation.com/article/school-prison-pipeline-starts-preschool/

The school-to-prison pipeline, to my mind, is the most insidious arm of this country’s prison-industrial complex. Under the guise of protecting our children, we push many of them out of school and into prisons, limit their opportunities, fail to and/or undereducate them, all while feeding our addiction to [mass incarceration](http://billmoyers.com/episode/full-show-incarceration-nation/) and retribution that is not justice at all. That the students who find themselves funneled into the [school-to-prison pipeline](http://billmoyers.com/content/henry-giroux-on-the-school-to-prison-pipeline/) are predominantly black is further proof that the United States system of racist oppression chugs along through the rhetoric of colorblindness.¶ Now that we have the niceties out of the way, let’s talk about what really makes the school-to-prison pipeline the worst.¶ A [study](http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf) conducted by US Department of Education Office for Civil Rights shows that [black preschoolers (yes, four and five year olds) make up almost half of all out-of-school suspensions for preschoolers](http://billmoyers.com/2014/03/24/14-disturbing-stats-about-racial-inequality-in-american-public-schools/). What any preschool student [has to do in order to be suspended](http://billmoyers.com/2014/01/09/doj-to-schools-stop-sending-kids-to-jail-for-breaking-the-rules/) is beyond me. That said, black students are receiving the message — at younger and younger ages — that their behavior will be regarded differently, as inherently more disruptive and therefore more deserving of punishment. They are being denied the right to their formative years of education and socialization. And then we wonder why there is an “education gap.”¶ Across all grade levels, black students represent about 16 percent of the overall student population, but are 32 to 42 percent of students who face out-of-school suspension, 27 percent of students referred to law enforcement and 31 percent of students who experience a school-related arrest. Black students are suspended or expelled at a rate three times higher than white students. Twenty percent of black boys and 12 percent of black girls face out-of-school suspensions.¶ It’s tempting to focus on the disproportionate percentage of black boys who are suspended — and when we talk about racism and racial injustice, [we often focus on what’s happening to boys and men](http://www.thenation.com/blog/178581/obama-himself-my-brothers-keeper-admirable-flawed). However, it’s important to note, [as Crystal Lewis does](http://womensenews.org/story/incarceration/140322/pushed-out-school-black-girls-lose-huge-ground#.UzWjSK1dXfj), that girls — especially black girls — often find themselves caught in the juvenile justice system for infractions much less serious those of boys. “In 2010,” Lewis writes, “67 percent of the 500,000 young women in the juvenile justice system were arrested for larceny-theft, loitering or violating curfew, disorderly conduct and other low-level offenses. In comparison, 52 percent of males were arrested because of offenses they committed in these categories.” Girls are more likely to be arrested on [status offenses](http://www.rollingstone.com/politics/news/five-offenses-that-can-land-kids-but-not-adults-in-jail-20140324) (like truancy, running away and incorrigibility — being a disobedient youth), things that would not be crimes were they adults.¶ It’s those lighter offenses that often result in black girls being suspended from school, as well. Monique Morris, co-founder of the National Black Women’s Justice Institute, told Women’s eNews, “The majority of black girls who have been suspended got kicked out for being loud, even if they weren’t being disrespectful.” It’s consistent with the way school discpline is meted out: black students’ behavior [is interpreted](http://www.thenation.com/article/178669/president-obama-extends-hand-young-men-and-boys-color-what-about-girls) as more threatening than that of their white counterparts. Combined with “zero tolerance” policies that heavily rely on the use of police to deal with school-level disciplinary problems, this means more interaction with the law enforcement/criminal justice system for more and more black students.¶ It’s appalling. Worse, it’s completely unnecessary. But it’s the logical result of a system dedicated to ensuring [inequality](http://www.thenation.com/section/inequality?lc=int_mb_1001) persists along racial and gender lines. That alternatives exist apparently doesn’t matter. We’ll just keep criminalizing, suspending, arresting and locking away black children until there simply aren’t any left.

#### The school-to-prison pipeline starts in pre-k and that is key – failing to address pre-k makes the impact inevitable by turned children away from embracing the schooling system and a young age.

Diuguid 14 – Lewis Diuguid, Received the Louis M. Lyons Award for Conscience and Integrity in Journalism at Harvard University, 40+ Year Career as Report, Editor, Columnist and Editorial Board Member at the Kansas City Star, Founding Member and President of the Kansas City Association of Black Journalists, “New Report Shows Racial Disparity in Suspension Starts at Preschool,” The Kansas City Star, 03/24/2014, http://www.kansascity.com/opinion/opn-columns-blogs/lewis-diuguid/article343173/New-report-shows-racial-disparity-in-suspension-starts-at-preschool.html

Everyone should be alarmed by the U.S. Department of Education report showing that black students as early as preschool face disproportionately high suspension rates.¶ The report released Friday showed that suspension and other racial disparities from having high quality teachers to access to high level classes start even in preschool for African American children. It’s a tragedy that unfolds every day and helps feed black children’s brooding discontent with school.¶ The report said African American children are about 18 percent of the kids in preschool programs but are about half of the preschoolers suspended more than once, The Associated Press notes. The problem helps feed the prison system with the people who were turned off by school at an early age.¶ The study showed that black students of all ages were suspended and expelled at a rate that’s three times higher than that of white children. Black girls also are suspended at a rate higher than girls of any other race or than most boys.¶ The report said nearly 5,000 preschoolers were suspended once and 2,500 more than once. Latino children constitute nearly a third of all preschoolers but comprised 25 percent of the preschoolers suspended once and 20 percent of preschoolers suspended more than once.¶ The racial connection the report uncovered is a problem President Barack Obama must correct before he has any hope of instituting a universal preschool program nationwide. If the problem starts in the early grades and continues to push children of color away from embracing school throughout their years of education, then it certainly can be corrected early.¶ That could help ensure that black and Latino children become lifelong learners, enjoying education and finally closing the achievement gap for good.

### Extend: “Status Quo Solves — Obama”

#### Status quo solves — Local school districts are taking steps to abolish zero tolerance policies.

Nelson and Lind 15 — Libby Nelson, education reporter for Vox and an expert on higher education policy. She has covered the subject for higher education’s two publications of record—Inside Higher Ed and The Chronicle of Higher Education, wrote about higher education for POLITICO Pro Education, founding reporter of Morning Education, a daily briefing newsletter, Dara Lind, Covering immigration and criminal justice for Vox.com, B.A. In Anthropology from Yale University, 2015, (“The school to prison pipeline, explained,” Justice Policy Institute, February 24th, Available Online at <http://www.justicepolicy.org/news/8775>, Accessed 07-30-2017)

Even before the Obama administration issued that guidance, though, some school districts were acting on their own. Some of the nation's largest districts are working to punish students in ways that don't involve suspension, trying to reform discipline so that students aren't referred to police, or both.

In Clayton County, Georgia, for example, where referrals from schools were overwhelming juvenile prosecutors, the juvenile courts made an agreement with the police force and the school district, restricting the cases in which police were allowed to arrest students in school or refer them to court. The agreement had a huge impact in schools: the high-school graduation rate increased by 24 percent from 2004 to 2010, beating the national average.

Meanwhile, some large school districts are moving away from zero tolerance policies. Broward County, Florida, one of the largest school districts in the country, decided in 2013 that schools, not police, would deal with students' nonviolent misdemeanors. The Chicago Public Schools are trying to reduce the number of suspensions, softening a policy under which students could be suspended for using a cell phone in school and ending suspensions for children younger than second grade, among other changes. In Los Angeles, children under 13 won't be referred to police for minor offenses, after police issued 552 tickets to preteens during the 2013-14 school year.

New York City schools are taking a more targeted approach. The city recently unveiled proposals to overhaul its school discipline code. If the changes go into effect, school principals will have to get the city Department of Education's permission to suspend any student for "insubordination," or for any suspension of a student in third grade or younger. And it would no longer be possible to give "superintendent's suspensions" (a more serious level of suspension) to students involved in "minor physical altercations."

Other schools are exploring restorative justice programs, which focus on forming relationships between teachers, students, and administrators and giving students an opportunity to resolve problems by talking about them. The Oakland School District has been testing this approach for 10 years and recently decided to expand it districtwide after schools using restorative justice reported that their suspension rates were cut in half.

#### Current DOJ settlements resolve the aff — the EOS enforces Title IV.

DOJ 17 — Department of Justice, 2017 (“Educational Opportunities Section,” Available Online at <https://www.justice.gov/crt/educational-opportunities-section,> Accessed 07-30-2017, Lenny)

Sixty years ago, in its landmark decision in Brown v. Board of Education, the Supreme Court held that the intentional segregation of students on the basis of race in public schools violates the Fourteenth Amendment to the U. S. Constitution. Subsequent federal legislation and court decisions also mandate that school officials not discriminate against students on the basis of sex, national origin, language barrier, religion, or disabilities. The Educational Opportunities Section of the Civil Rights Division of DOJ enforces these statutes and court decisions in a diverse array of cases involving elementary and secondary schools and institutions of higher education.

Specifically, the Educational Opportunities Section is responsible for enforcing Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in public schools and institutions of higher learning; the Equal Educational Opportunities Act of 1974 which, among other things, requires states and school districts to provide English Language Learner (ELL) students with appropriate services to overcome language barriers; and the Americans with Disabilities Act. The Section also plays a significant role in enforcing Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin by recipients of federal funds), Title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex by recipients of federal funds), and Section 504 of the Rehabilitation Act (prohibiting discrimination on the basis of disability by recipients of federal funds). The Section may intervene in private suits alleging violations of education-related anti-discrimination statutes and the Fourteenth Amendment to the Constitution. The Section also represents the Department of Education in lawsuits.

## Dropouts Add-On

### They Say: “Dropouts Add-On”

#### Laundry list of alternative causes to drop out rates.

**Schargel 13** — Franklin Schargel, Former Classroom Teacher, School Counselor and School Administrator, 2013 (“The Real Reasons Children Drop Out of School,” *Huffington Post* — The Blog, October 14th, Available Online at <http://www.huffingtonpost.com/franklin-schargel/the-real-reasons-children-drop-out-of-school_b_4093876.html>, Accessed 07-30-2017)

The Huffington Post recently ran an article entitled, “America’s School Dropout Epidemic By The Numbers“ about America’s dropout problem. I would like to add my opinions about why children drop out of school. I am a professional educator who served as a classroom teacher, school counselor and school administrator in the New York City school system for over 33 years. I believe that there are five major reasons why children leave school:

1. The students themselves

They make wrong decisions. They get involved with gangs, drugs/alcohol, get pregnant and commit crimes. Many have a poor school attitude and are frequently bored by school. They are disconnected to their families, school and life. They do not see the reasons they need to go to school. They are not involved in school activities and lack self-esteem. Some have been promoted lacking skills needed for promotion. Some have undergone major illnesses and have missed too many days of school and have been informed that they will be held back. Because of many of the conditions listed above, they have been suspended and have fallen behind in their work and see little purpose of returning to school.

2. The family they come from

There is often a clash between the family values and those of the school. Frequently, their parents have dropped out of school themselves. The students come from families from low socio-economic backgrounds, where there are many other children. Older children often have to go to work in order to supply the family with much-needed funds for basic family needs or need to stay home to take care of younger siblings so that their parents can work. Many children come from non-English speaking homes with high mobility. Single parent homes have become the norm in the United States. Many children are products of divorce, separation or, sometimes, family violence. hey are not being raised by parents, but rather by aunts, uncles and grandparents. Families are not meeting some children’s basic needs of food, clothing and shelter.

3. The community they come from

Many children live on the wrong side of the tracks in places where education is not valued, where drugs, gangs and violence abound. And where schools are low-performing, they often lack community and health support.

4. The schools they attend

The schools are toxic to student learning, students, parents and staff. Students are suspended for minor infractions (such as “talking back to the teacher”), or placed in “remedial classes.” The schools have a culture of low expectations. They lack adequate guidance counseling. The curriculum is not relevant to the needs of the students being taught. Passive instructional strategies are being used without regard to individual student learning styles.Teachers are not trained in the latest teaching/learning/technology techniques. Funding is based on property values so that low-income neighborhoods receive less funding than wealthy neighborhoods. Because some states pass budgets in a less than timely matter, teachers are not hired in time producing over-sized classrooms.

5. The teachers they have

The least-experienced, least classroom-trained teachers are often assigned to the most difficult schools. They enter the field with the expectation that they have been adequately prepared by the schools of education with the skills they need and they haven’t received. (See Arthur Levine, “Educating School Teachers“) They are leaving the field faster than colleges can prepare them. The teacher “dropout rate” is higher than the student dropout rate. Forty-six percent of teachers leave the field within five years. When asked why they leave, a majority state that they haven’t been properly prepared, have had increased demands placed on them because of high stakes testing and are not getting adequate support from their supervisors in dealing with classroom discipline.

#### Alternative causes thump.

**Goode 15** — Robin White Goode, Education Editor at Black Enterprise, 2015 (“7 Reasons Why Kids Drop Out of School,” *Black Enterprise*, September 18th, Available Online at <http://www.blackenterprise.com/education/7-reasons-why-kids-drop-out-of-school/>, Accessed 07/30/2017)

It’s the middle of September, and by now the nation’s 14.9 million public high school students have returned to school. Unfortunately, according to America’s Promise Alliance, nearly 500,000 of them will drop out of high school this year without earning their diploma.

A new report, Don’t Quit on Me: What Young People Who Left School Say About the Power of Relationships, from the Center for Promise, the research institute of America’s Promise Alliance, examines how relationships and extended community can play a critical role in helping a student decide to stay in school.

For many, it isn’t just the family that is fragmented, there is also little support from other caring adults, causing what the report calls “relationship poverty.” Supportive family members, peers, and caring adults inside and outside of school are critical to helping students persist toward a high school diploma, the report concludes.

In addition, it identifies seven adverse life experiences that are predictive of dropping out:

1. Becoming a parent

2. Being suspended or expelled even once

3. Having several friends drop out

4. Feeling academically unprepared for school

5. Experiencing a significant mental health problem

6. Homelessness, and moving to a new home.

7. Young people who dropped out endured twice as many of these adverse life experiences as students who stayed in school and graduated on time.

Relationships, though critical to a student’s ability to persist toward a diploma, differ in their importance by type, source, and intensity, the report states. “We found that relationships are powerful vehicles for growth, particularly for young people living in challenging conditions,” said John Gomperts, president and CEO of America’s Promise Alliance, in a statement. “And yet, too many young people don’t have enough access to relationships with stable, caring adults who can help them get what they need to stay on track toward graduation. Relationship poverty is not a lack of love or family, but a lack of access to additional sources of support that can lead to a more promising future.”

The type of support provided matters. The report identifies four types of social support: emotional, informational, appraisal, and instrumental. Emotional support, as you would expect, means the provision of love and care; but instrumental support (providing transportation or babysitting) is also key. Ideally, students have all four types working in tandem in their quest to complete high school, but emotional and instrumental support are especially needed.

Although support buffers the effects of adversity on graduation, the report states, students who face five or more adverse life experiences need more than support to stay on the path toward graduation. Devastating circumstances like trauma or food or housing insecurity require more intensive resolution efforts to keep such young people focused on graduation.

#### [Insert Impact-Defense]

## Abolition Critique

### 1NC — Abolitionism K

#### Prisons are not merely institutions but rather models of power relations that have permeated everyday life and are inseparably connected to the flawed pedagogy, privilege creation, and carceral functions of the schooling regime – focus on reforming the symptoms of the system only facilitates its expansion.

Rodríguez 10 – Dylan Rodríguez Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2010 (“The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *The Radical Teacher*, Volume 88, Summer, Available Online via JSTOR, p. 7-19, MR)

Schooling Regime

The structural symbiosis between schools and the racist policing/prison state is evident in the administrative, public policy, and pedagogical innovations of the War on Drugs, “Zero Tolerance,” “No Child Left Behind,” and the school-based militarizations of the “school to prison (and military) pipeline.”10 Angela Y. Davis has suggested that “when children attend schools that place a greater value on discipline and security than on knowledge and intellectual development, they are attending prep schools for prison.”11 These punitive iterations of an increasingly carceral schooling industrial complex, however, represent a symptomatic reflection of how the racist state—and white supremacist social formation generally—are producing new categories of social identities (and redefining older ones) that can only be “taught” within a direct relationship to the regulatory mechanisms and imminent (state) violence of the prison industrial complex and the U.S. prison regime. (Even while some are relatively privileged by the institutional logics of relative de-criminalization, their bodily mobility and academic progression are contingent on the state’s capacity to separate and “protect” them from the criminalized.)

There are, at first, categories of social subjects that are apprehended and naturalized by the school-as-state—gifted and talented, undocumented, gang affiliated, exceptional, at-risk, average—who are then, by ontological necessity, hierarchically separated through the protocols of pseudo-standardized intelligence quotient, socioeconomic class, race, gender, citizenship, sexuality, neighborhood geography, etc. This seemingly compulsory, school-sited reproduction of the deadly circuits of privilege and alienation is anything but new, and has always been central to the routines of the U.S. schooling regime, particularly in its colonialist and post-emancipationist articulations.12 The idea of the U.S. prison apparatus as a regime, in this context, brings attention to how prisons are not places outside and apart from our everyday lives, but instead shape and deform our identities, communities, and modes of social interaction.

I have written elsewhere that the prison regime is an apparatus of power/violence that cannot be reduced to a minor “institution” of the state, but has in fact become an apparatus that possesses and constitutes the state, often as if autonomous of its authority.13 Here, I am interested in how this regime overlaps with and mutually nourishes the multiple “schooling regimes” that make up the U.S. educational system. The U.S. prison, in other words, has become a model and prototype for power relations more generally, in which 1) institutional authority is intertwined with the policing and surveillance capacities (legitimated violence) of the state, 2) the broadly cultural and peculiarly juridical racial/gender criminalization of particular social subjects becomes a primary framework for organizing institutional access, and 3) the practice of systemic bodily immobilization (incarceration) permeates the normal routines of the “free world.” To trace the movements of the prison’s modeling of power relations to the site of the school is to understand that policing/surveillance, criminalization, and immobilization are as much schooling practices as they are imprisonment practices. The teacher is generally being asked to train the foot soldiers, middle managers, administrators, workers, intellectuals, and potential captives of the school/prison confluence, whether the classroom is populated by criminalized Black and Brown youth or white Ph.D. candidates. Two thoughts are worth considering: the teaching act is constituted by the technologies of the prison regime, and the school is inseparable from the prison industrial complex.

The “prison industrial complex,” in contrast to the prison regime, names the emergence over the last three decades of multiple symbiotic institutional relationships that dynamically link private business (such as architectural firms, construction companies, and uniform manufacturers) and government/state apparatuses (including police, corrections, and elected officials) in projects of multiply-scaled human immobilization and imprisonment. The national abolitionist organization Critical Resistance elaborates that the prison industrial complex is a “system situated at the intersection of governmental and private interests that uses prisons as a solution to social, political, and economic problems.”14 In fact, as many abolitionist scholars have noted, the rise of the prison industrial complex is in part a direct outcome of the liberal-progressive “prison reform” successes of the 1970s. The political convergence between liberals, progressives, and “law and order” conservatives/reactionaries, located within the accelerating political and geographical displacements of globalization,15 generated a host of material transformations and institutional shifts that facilitated— in fact, necessitated—the large-scale reorganization of the prison into a host of new and/or qualitatively intensified structural relationships with numerous political and economic apparatuses, including public policy and legislative bodies, electoral and lobbying apparatuses, the medical and architectural/construction industries, and various other hegemonic institutional forms.

Concretely, the reform of the prison required its own expansion and bureaucratic multiplication: for example, the reform of prison overcrowding came to involve an astronomical growth in new prison construction (rather than decarceration and release), the reformist outrage against preventable deaths and severe physiological suffering from (communicable, congenital, and mental) illnesses yielded the piecemeal incorporation of medical facilities and staff into prison protocols (as opposed to addressing the fact that massive incarceration inherently creates and circulates sickness), and reformist recognition of carceral state violence against emotionally disordered, mentally ill, and disabled captives led to the creation of new prisons and pharmaceutical regimens for the “criminally insane,” and so on. Following the historical trajectory of Angela Y. Davis’ concise and accurate assessment that “during the (American) revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens,”16 it is crucial to recognize that the prison industrial complex is one of the most significant “reformist” achievements in U.S. history and is not simply the perverse social project of self-identified reactionaries and conservatives. Its roots and sustenance are fundamentally located in the American liberal-progressive impulse toward reforming institutionalized state violence rather than abolishing it.

The absolute banality of the prison regime’s presence in the administrative protocols, curricula, and educational routines of the school is almost omnipresent: aside from the most obvious appearances of the racist policing state on campuses everywhere, it is generally the fundamental epistemological (hence pedagogical) assumption of the school that 1) social order (peace) requires a normalized, culturally legitimated proliferation of state violence (policing, juridical punishment, war); 2) the survival of civil society (schools, citizenship, and individual “freedom”) depends on the capacity of the state to isolate or extinguish the criminal/dangerous; and 3) the U.S. nation-building project is endemically decent or (at least) democratic in spirit, and its apparent corruptions, contradictions, and systemic brutalities (including and especially the racial, gender, and class-based violence of the prison industrial complex) are ultimately reformable, redeemable, or (if all else fails) forgivable.

It is virtually indisputable—though always worth restating—that most pedagogical practices (including many “critical/radical” ones) invest in producing or edifying “free” and self-governing citizen/subjects. The assumptive framework of this pedagogical framework tends to conflate civil society with “ freedom,” as if one’s physical presence in civil society is separable from the actual and imminent state violence of criminalization and policing. (Is a criminalized and policed person really “free”?). This pedagogical approach also leaves unasked the question of whether the central premise of the teaching practice itself—that a given pedagogy is actually capable of producing free citizen/subjects under such historical conditions—might implode if its conditions of possibility were adequately confronted. To clarify: as teachers, our generic pedagogical assumption is that we are either teaching to “free” student-citizens who must be empowered and encouraged to live up to the responsibilities of their nominal freedom (a task that may be interpreted differently and contradictorily depending on the teacher), or that our pedagogy intends to participate in the creation of free student-citizens who are capable of being trained to participate robustly in civil society, outside and apart from the social dominance and institutional violence of the prison regime. In both instances, the underlying task of the teacher is to train the student to avert direct confrontation with the policing and imprisonment apparatus, and to remain un-incarcerated and relatively un-criminalized by the state.

Whether or not the teacher can claim to succeed in this task, a basic historical truth is obscured and avoided: the structural symbiosis between the schooling and prison regimes has already rendered the prevailing cultural and institutional rubrics “freedom” an utter sham, no less than the Declaration of Independence was a pronouncement of displacement, liquidation, and enslavement for the majority of the continent’s inhabitants. Within the schooling regime/prison regime nexus, many are taught into freedom in order to administer, enforce, and passively reproduce the un-freedom of others, while some are trained into a tentative and always-temporary avoidance of un-freedom, meagerly rewarded with the accoutrements of civic inclusion (a job, a vote, a home address). Numerous others are trained to inhabit a space across or in between these fraudulent modalities of freedom. If the radical teacher’s primary challenge does not initially revolve around the creation of pedagogical strategies that can produce “free,” self-governing, critical student/ subjects, but instead centers on the structurally violent conditions of possibility for “pedagogy” itself, in what form can critical, radical, liberationist teaching actually occur? To revise a previous question: how might the conceptual premises and practical premises of classroom pedagogy be transformed, rethought, and strategically disrupted in order that an abolitionist reorientation of teaching becomes feasible and effective?

#### The alternative is to endorse abolitionism as a pedagogical strategy – radically new pedagogy is crucial to combat racist state violence and prevent the genocidal management and violent death of millions. Reject any demands for pragmatism as an attempt to discipline liberationist dreams.

Rodríguez 10 – Dylan Rodríguez Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2010 (“The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *The Radical Teacher*, Volume 88, Summer, Available Online via JSTOR, p. 7-19, MR)

Abolitionist Position and Praxis

Given the historical context I have briefly outlined, and the practical-theoretical need for situating an abolitionist praxis within a longer tradition of freedom struggle, I contend that there can be no liberatory teaching act, nor can there be an adequately critical pedagogical practice, that does not also attempt to become an abolitionist one. Provisionally, I am conceptualizing abolition as a praxis of liberation that is creative and experimental rather than formulaic and rigidly programmatic. Abolition is a “radical” political position, as well as a perpetually creative and experimental pedagogy, because formulaic approaches cannot adequately apprehend the biopolitics, dynamic statecraft, and internalized violence of genocidal and proto-genocidal systems of human domination.

As a productive and creative praxis, this conception of abolition posits the material possibility and historical necessity of a social capacity for human freedom based on a cultural-economic infrastructure that supports the transformation of oppressive relations that are the legacy of genocidal conquest, settler colonialism, racial slavery/capitalism,19 compulsory hetero-patriarchies, and global white supremacy. In this sense, abolitionist praxis does not singularly concern itself with the “abolition of the prison industrial complex,” although it fundamentally and strategically prioritizes the prison as a central site for catalyzing broader, radical social transformations. In significant part, this suggests envisioning and ultimately constructing “a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscape of our society.”20 In locating abolitionist praxis within a longer political genealogy that anticipates the task of remaking the world under transformed material circumstances, this position refracts the most radical and revolutionary dimensions of a historical Black freedom struggle that positioned the abolition of “slavery” as the condition of possibility for Black—hence “human”—freedom.

To situate contemporary abolitionism as such is also to recall the U.S. racist state’s (and its liberal allies’) displacement and effective political criminalization of Black radical abolitionism through the 13th Amendment’s 1865 recodification of the slave relation through the juridical reinvention of a racial-carceral relation:

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.21 [emphasis added]

Given the institutional elaborations of racial criminalization, policing, and massive imprisonment that have prevailed on the 13th Amendment’s essential authorization to replace a regime of racist chattel slavery with racist carceral state violence, it is incumbent on the radical teacher to assess the density of her/his entanglement in this historically layered condition of violence, immobilization, and capture. Prior to the work of formulating an effective curriculum and teaching strategy for critically engaging the prison industrial complex, in other words, is the even more difficult work of examining the assumptive limitations of any “radical pedagogy” that does not attempt to displace an epistemological and cultural common sense in which the relative order and peace of the classroom is perpetually reproduced by the systemic disorder and deep violence of the prison regime.

In relation to the radical challenging of common sense discussed above, another critical analytical tool for building an abolitionist pedagogy entails the rigorous, scholarly dismantling of the “presentist” and deeply ahistorical understanding of policing and prisons. Students (and many teachers) frequently enter such dialogues with an utterly mystified conception of the policing and prison apparatus, and do not generally understand that 1) these apparatuses in their current form, are very recent creations and have not been around “forever”; and 2) the rise of these institutional forms of criminalization, domestic war, and mass-scale imprisonment forms one link in a historical chain of genocidal and proto-genocidal mobilizations of the racist state that regularly take place as part of the deadly global process of U.S. nation-building. In other words, not only is the prison regime a very recent invention of the state (and therefore is neither a “permanent” nor indestructible institutional assemblage), but it is institutionally and historically inseparable from the precedent and contemporaneous structures of large-scale racist state violence. Asserting the above as part of the core analytical framework of the pedagogical structure can greatly enable a discussion of abolitionist possibility that thinks of the critical dialogue as a necessary continuation of long historical struggles against land conquest, slavery, racial colonialism, and imperialist war. This also means that our discussions take place within a longer temporal community with those liberation struggles, such that we are neither “crazy” nor “isolated.” I have seen students and teachers speak radical truth to power under difficult and vulnerable circumstances based on this understanding that they are part of a historical record.

I have had little trouble “convincing” most students—across distinctions of race, class, gender, age, sexuality, and geography—of the gravity and emergency of our historical moment. It is the analytical, political, and practical move toward an abolitionist positionality that is (perhaps predictably) far more challenging. This is in part due to the fraudulent and stubborn default position of centrist-to-progressive liberalism/reformism (including assertions of “civil” and “human” rights) as the only feasible or legible response to reactionary, violent, racist forms of state power. Perhaps more troublesome, however, is that this resistance to engaging with abolitionist praxis seems to also derive from a deep and broad epistemological and cultural disciplining of the political imagination that makes liberationist dreams unspeakable. This disciplining is most overtly produced through hegemonic state and cultural apparatuses and their representatives (including elected officials, popular political pundits and public intellectuals, schools, family units, religious institutions, etc.), but is also compounded through the pragmatic imperatives of many liberal and progressive nonprofit organizations and social movements that reproduce the political limitations of the nonprofit industrial complex.22 In this context, the liberationist historical identifications hailed by an abolitionist social imagination also require that such repression of political-intellectual imagination be fought, demystified, and displaced.

Perhaps, then, there is no viable or defensible pedagogical position other than an abolitionist one. To live and work, learn and teach, and survive and thrive in a time defined by the capacity and political willingness to eliminate and neutralize populations through a culturally valorized, state sanctioned nexus of institutional violence, is to better understand why abolitionist praxis in this historical moment is primarily pedagogical, within and against the “system” in which it occurs. While it is conceivable that in future moments, abolitionist praxis can focus more centrally on matters of (creating and not simply opposing) public policy, infrastructure building, and economic reorganization, the present moment clearly demands a convening of radical pedagogical energies that can build the collective human power, epistemic and knowledge apparatuses, and material sites of learning that are the precondition of authentic and liberatory social transformations.

The prison regime is the institutionalization and systemic expansion of massive human misery. It is the production of bodily and psychic disarticulation on multiple scales, across different physiological capacities. The prison industrial complex is, in its logic of organization and its production of common sense, at least proto-genocidal. Finally, the prison regime is inseparable from—that is, present in—the schooling regime in which teachers are entangled. Prison is not simply a place to which one is displaced and where one’s physiological being is disarticulated, at the rule and whim of the state and its designated representatives (police, parole officers, school teachers). The prison regime is the assumptive premise of classroom teaching generally. While many of us must live in labored denial of this fact in order to teach as we must about “American democracy,” “freedom,” and “(civil) rights,” there are opportune moments in which it is useful to come clean: the vast majority of what occurs in U.S. classrooms—from preschool to graduate school—cannot accommodate the bare truth of the proto-genocidal prison regime as a violent ordering of the world, a primary component of civil society/school, and a material presence in our everyday teaching acts.

As teachers, we are institutionally hailed to the service of genocide management, in which our pedagogical labor is variously engaged in mitigating, valorizing, critiquing, redeeming, justifying, lamenting, and otherwise reproducing or tolerating the profound and systemic violence of the global-historical U.S. nation building project. As “radical” teachers, we are politically hailed to betray genocide management in order to embrace the urgent challenge of genocide abolition. The short-term survival of those populations rendered most immediately vulnerable to the mundane and spectacular violence of this system, and the long-term survival of most of the planet’s human population (particularly those descended from survivors of enslavement, colonization, conquest, and economic exploitation), is significantly dependent on our willingness to embrace this form of pedagogical audacity.

### Overview/Impact Explanation

#### The Prison Regime has become synonymous with state violence and has infiltrated the social landscape of society – prison is a model of power relations that legitimates surveillance and criminalization in everyday life while creating a system of genocidal human domination that risks the survival of most of humanity.

#### The affirmative’s attempt to manage the externalities of this system by disrupting the school-to-prison pipeline will ultimately fail and reinforce the system – schooling is inseparably linked to prison logic and promotes pedagogy that criminalizes certain social identities, normalizes state violence, and cements the ideology of reformism – that takes out and turns the case.

### Framework/Role of the Ballot

#### The role of the ballot is to assess the pedagogical value of the 1AC.

#### That’s predictable and fair – they read an education policy so they should be prepared to defend its implications.

#### Modern Schools promote flawed pedagogy that legitimates state violence and sustains the prison regime by teaching the logic of reform – If win our links the affirmative can’t be separated from the flawed pedagogy of the school and reform.

#### Accepting incremental reform is unethical and makes them complicit in the violence of the prison regime – reject the affirmative regardless of consequences.

#### Interrogating their in-round discourse of reform is crucial to disrupt the common sense of the prison – this discourse isn’t neutral but rather produces and sustains the reality of the prison.

Rodríguez 10 – Dylan Rodríguez Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2010 (“The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *The Radical Teacher*, Volume 88, Summer, Available Online via JSTOR, p. 7-19, MR)

The (Pedagogical) Necessity of the

Impossible A compulsory deferral of abolitionist pedagogical possibilities composes the largely unaddressed precedent of teaching in the current historical period. It is this deferral—generally unacknowledged and largely presumed—that both undermines the emergence of an abolitionist pedagogical praxis and illuminates abolitionism’s necessity as a dynamic practice of social transformation, over and against liberal and progressive appropriations of “critical/ radical pedagogy.”

Contrary to the thinly disguised ideological Alinskyism that contemporary liberal, progressive, critical, and “radical” teaching generally and tacitly assumes in relation to the prison regime, what is usually required, and what usually works as a strategy for teaching against the carceral common sense, is a pedagogical approach that asks the unaskable, posits the necessity of the impossible, and embraces the creative danger inherent in liberationist futures. About a decade of teaching a variety of courses at the undergraduate and graduate levels at one of the most demographically diverse research universities in the United States (the University of California, Riverside) has allowed me the opportunity to experiment with the curricular content, assignment form, pedagogical mode, and conceptual organization of coursework that directly or tangentially addresses the formation of the U.S. prison regime and prison industrial complex. Students are consistently (and often unanimously) eager to locate their studies within an abolitionist genealogy—often understanding their work as potentially connected to a living history of radical social movements and epistemological-political revolt—and tend to embrace the high academic demands and rigor of these courses with far less resistance and ambivalence than in many of my other Ethnic Studies courses.

There are some immediate analytical and scholarly tools that form a basic pedagogical apparatus for productively exploding the generalized common sense that creates and surrounds the U.S. prison regime. In fact, it is crucial for teachers and students to collectively understand that it is precisely the circulation and concrete enactment of this common sense that makes it central to the prison regime, not simply an ideological “supplement” of it. Put differently, many students and teachers have a tendency to presume that the cultural symbols and popular discourses that signify and give common sense meaning to prisons and policing are external to the prison regime, as if these symbols and discourses (produced through mass media, state spokespersons and elected officials, right-wing think tanks, video games, television crime dramas, etc.) simply amount to “bad” or “deceptive” propaganda that conspiratorially hide some essential “truth” about prisons that can be uncovered. This is a seductive and self-explanatory, but far too simplistic, way of understanding how the prison regime thrives. What we require, instead, is a sustained analytical discussion that considers how multiple layers of knowledge—including common sense and its different cultural forms—are constantly producing a “lived truth” of policing and prisons that has nothing at all to do with an essential, objective truth. Rather, this fabricated, lived truth forms the template of everyday life through which we come to believe that we more or less understand and “know” the prison and policing apparatus, and which dynamically produces our consent and/or surrender to its epochal oppressive violence.

As a pedagogical tool, this framework compels students and teachers to examine how deeply engaged they are in the violent common sense of the prison and the racist state. Who is left for dead in the common discourse of crime, “innocence,” and “guilt”? How has the mundane institutionalized violence of the racist state become so normalized as to be generally beyond comment? What has made the prison and policing apparatus in its current form appear to be so permanent, necessary, and immovable within the common sense of social change and historical transformation? In this sense, teachers and students can attempt to concretely understand how they are a dynamic part of the prison regime’s production and reproduction— and thus how they might also be part of its abolition through the work of building and teaching a radical and liberatory common sense (this is political work that anyone can do, ideally as part of a community of social movement).

Additionally, the abolitionist teacher can prioritize a rigorous—and vigorous— critique of the endemic complicities of liberal/progressive reformism to the transformation, expansion, and ultimate reproduction of racist state violence and (proto)genocide; this entails a radical critique of everything from the sociopolitical legacies of “civil rights” and the oppressive capacities of “human rights” to the racist state’s direct assimilation of 1970s-era “prison reform” agendas into the blueprints for massive prison expansion discussed above.17

The abolitionist teacher must be willing to occupy the difficult and often uncomfortable position of political leadership in the classroom. To some, this reads as a direct violation of Freirian conceptions of critical pedagogy, but I would argue that it is really an elaboration and amplification of the revolutionary spirit at the heart of Freire’s entire lifework. That is, how can a teacher expect her/ his students to undertake the courageous and difficult work of inhabiting an abolitionist positionality—even if only as an “academic” exercise—unless the teacher herself/himself embodies, performs, and oozes that very same political desire? In fact, it often seems that doing the latter is enough to compel many students (at least momentarily) to become intimate and familiar with the allegedly impossible.

#### The critique is an impact turn to their strategy of reform – vote negative even if we lose framework.

#### Debates about pedagogy are vital to stopping anti-democratic norms — addresses argumentative agency and leads to real change.

Giroux 12 — Henry Giroux, Global TV Network Chair in English and Cultural Studies at McMaster University, Distinguished Visiting Professor at Ryerson University, 2012 (“Beyond the Politics of the Big Lie: The Education Deficit and the New Authoritarianism,” *Truth-out,* June 19th, accessible online at <http://truth-out.org/opinion/item/9865-beyond-the-politics-of-the-big-lie-the-education-deficit-and-the-new-authoritarianism>, accessed on 10-12-14)

Extreme power is now showcased through the mechanisms of ever-proliferating cultural/educational apparatuses and the anti-public intellectuals who support them and are in turn rewarded by the elites who finance such apparatuses. The war at home is made visible in the show of force aimed at civilian populations, including students, workers, and others considered disposable or a threat to the new authoritarianism. Its most powerful allies appear to be the intellectuals, institutions, cultural apparatuses and new media technologies that constitute the sites of public pedagogy, which produce the formative culture necessary for authoritarianism to thrive.

While a change in consciousness does not guarantee a change in either one's politics or society, it is a crucial precondition for connecting what it means to think otherwise to conditions that make it possible to act otherwise. The education deficit must be seen as intertwined with a political deficit, serving to make many oppressed individuals complicit with oppressive ideologies. As the late Cornelius Castoriadis made clear, democracy requires "critical thinkers capable of putting existing institutions into question.... while simultaneously creating the conditions for individual and social autonomy."(41) Nothing will change politically or economically until new and emerging social movements take seriously the need to develop a language of radical reform and create new public spheres that support the knowledge, skills and critical thought that are necessary features of a democratic formative culture.

Getting beyond the big lie as a precondition for critical thought, civic engagement and a more realized democracy will mean more than correcting distortions, misrepresentations and falsehoods produced by politicians, media talking heads and anti-public intellectuals. It will also require addressing how new sites of pedagogy have become central to any viable notion of agency, politics and democracy itself. This is not a matter of elevating cultural politics over material relations of power as much as it is a rethinking of how power deploys culture and how culture as a mode of education positions power.

James Baldwin, the legendary African-American writer and civil rights activist, argued that the big lie points to a crisis of American identity and politics and is symptomatic of "a backward society" that has descended into madness, "especially when one is forced to lie about one's aspect of anybody's history, [because you then] must lie about it all."(42) He goes on to argue "that one of the paradoxes of education [is] that precisely at the point when you begin to develop a conscience, you must find yourself at war with your society. It is your responsibility to change society if you think of yourself as an educated person."(43) What Baldwin recognizes is that learning has the possibility to trigger a critical engagement with oneself, others and the larger society - education becomes in this instance more than a method or tool for domination but a politics, a fulcrum for democratic social change. Tragically, in our current climate "learning" merely contributes to a vast reserve of manipulation and self-inflicted ignorance. Our education deficit is neither reducible to the failure of particular types of teaching nor the decent into madness by the spokespersons for the new authoritarianism. Rather, it is about how matters of knowledge, values and ideology can be struggled over as issues of power and politics. Surviving the current education deficit will depend on progressives using history, memory and knowledge not only to reconnect intellectuals to the everyday needs of ordinary people, but also to jumpstart social movements by making education central to organized politics and the quest for a radical democracy.

### Alternative Solvency/Explanation

#### The alternative is to endorse abolitionism as a pedagogical strategy – this radical educational position aims to break down current understandings of the prison and false assumptions of the classroom to create an abolitionist praxis and societal transformation to remove the prison from the physical and mental landscape of society in order to create new institutions.

#### That solves the root cause of their harms – current prison-shaped pedagogy creates the mindset of criminalization and social hierarchies which make the discrimination and imprisonment of certain identities inevitable.

#### The alternative is to embrace abolition – reorienting critical thought towards radical transformation is the only ethical framework.

McLeod 15 – Allegra M. McLeod, Professor of Law at Georgetown University, Former Professor of Political Theory at Stanford University, Ph.D. from Stanford University, J.D. from Yale University, 2015 (“Prison Abolition and Grounded Justice,” UCLA Law Review, 62 UCLA L. REV. 1156, Available Online at: <https://www.uclalawreview.org/wp-content/uploads/2015/06/McLeod_6.2015.pdf>, Accessed 7-21-17, MR)

CONCLUSION

[T]here has never been a major social transformation in the history of mankind that has not been looked upon as unrealistic, idiotic, or utopian by the large majority of experts even a few years before the unthinkable became reality.368

In significant part, this Article’s aim has been to situate prison abolition—a critical project and nascent social movement effort often construed as off the wall—alongside and in conversation with core scholarly accounts in criminal law scholarship, criminology, and criminal law reformist discourse.369 Abolition, as explored in this Article, ought to occupy a more central place in criminal law scholarship, policy discourse, criminological analysis, and political philosophy than it has to date. Prevention and grounded justice, re-conceptualized as social and structural non-coercive undertakings, may offer means of articulating abolitionist aspirations in tandem with a commitment to crime prevention and repair of harm. In the face of the suffering wrought by over-incarceration, over-criminalization, and the racialized violence that haunts punitive policing and imprisonment, a radical shift in our social and legal regulatory landscape is both necessary and possible. This Article has argued that the regulation of interpersonal harm could begin to be fundamentally reimagined without undue negative repercussions by attending to a neglected conception of prevention and to grounded justice. Ultimately, grounded justice’s promise is a world with less violence, both within and without the criminal law; more just, limited, and increasingly diminishing use of the criminal process; and enlistment of an array of other institutions and social projects in working to promote collective peace.

Abolition as an ethical and institutional framework—as an aspirational horizon for reform—is not unduly or merely utopian, but orients critical thought and reformist efforts toward meaningful and just legal, ethical, and institutional transformation to which we might commit ourselves.370 Nor is abolition through gradual de-carceration and the incremental investment in other substitutive social projects apart from criminal law enforcement utterly implausible. Faced with fiscal crises, many jurisdictions are actively rethinking their dependence on incarceration as a means of responding to criminalized conduct, including through de facto and de jure decriminalization.371 Although the elimination of the penal state in its current forms is difficult to imagine, as the German abolitionist criminologist Sebastian Scheerer suggested decades ago, so too were many other transformative events, right up until the time they came to pass. Among those once unfathomable historical transformations, one might recall the abolition of slavery, the end of the British Empire, the end of the Cold War, and the embrace of gay marriage around the world. Rather than setting criminal law reformist ambitions exclusively on noncustodial criminal monitoring or punitive preventive measures with procedural constraints, and funding a “reentry industry” overseen by probation and parole departments (a currently ascendant punitive preventive regime), further elaboration of an abolitionist preventive framework may make available an array of less violent, less racialized, less coercive, and more just modes of reducing risks of interpersonal harm and promoting human flourishing.

### Alternative Solvency — Radical Imagination

#### Engaging in a politics of the future that looks past the oppressive structures of the status quo facilitates the conceptualization and active pursuit of a non-carceral future.

Ben-Moshe 13 — Liat Ben-Moshe, Assistant Professor of Disability Studies at the University of Toledo, Ph.D. in Sociology from Syracuse University, B.A. Honors Sociology and Anthropology from Tel-Aviv University, 2013 (“The Tension Between Abolition and Reform,” *Academic Journal*, Available Online at <https://www.academia.edu/3483590/The_tension_between_abolition_and_reform>, p. 88, Accessed 07/15/2017, MR)

Abolition can be conceptualized as a strategy beyond mere resistance. It not only acknowledges the structure as is, but envisions and creates a new world view in which oppressive structures do not exist. It goes beyond protesting against the current circumstances to envisioning a more just and equitable world. Abolition can take the form of tearing down the walls of the prison, psychiatric hospital and institution. It is also about building alternatives to incarceration: supporting community living for all, developing affordable and accessible housing, and countering capitalism, ableism, racism, transphobia, and ageism in order to achieve a world in which carceral spaces are meaning-less and unnecessary. Abolition enables us to engage in politics of the future—of what could be, of what was dreamed up by deinstitutionalization and antipsychiatry activists in the past and what is imagined by prison abolitionists at present. It is not just the conceptualization but also the active pursuit of a non-carceral future.

### Alternative Solvency — New Institutions

#### Abolitionism is not just a practice of destruction but also of building and creating a new future – we envision and aim for a society filled with equality-ensuring democratic institutions.

Ben-Moshe 13 — Liat Ben-Moshe, Assistant Professor of Disability Studies at the University of Toledo, Ph.D. in Sociology from Syracuse University, B.A. Honors Sociology and Anthropology from Tel-Aviv University, 2013 (“The Tension Between Abolition and Reform,” *Academic Journal*, Available Online at <https://www.academia.edu/3483590/The_tension_between_abolition_and_reform>, p. 88, Accessed 07/15/2017, Lenny)

Does Institutional Closure Equate with Abolition?

Closure of repressive institutions, such as mental hospitals and prisons, can be conceptualized as a necessary but not sufficient action on the road to abolition. The most important element in institutional closure is to ensure that people do not end up re-incarcerated in other formats such as group homes or other institutional placements (Blatt et al., 1977). In this sense the effectiveness of deinstitutionalization as a movement is in ensuring community living, with all needed supports, not merely in the closure of the institution, which is only a first step. This ideological stance may create a dilemma. Should proponents of deinstitutionalization wait until there are sufficient community placements before advocating for institutional closure? Or, should they go ahead regardless, on the principle that no one should live in an institution at any time? This is the very dilemma posed by Mathiesen in regards to abolition in general. Taylor (1995/6) suggests that in such cases one should ask which path would lead to the least harm done to the fewest people. Such questioning, he believes, would lead one to realize that institutional living is unjustifiable under any circumstances, even if community settings are imperfect at the present time.

The mere closure of prisons and large state psychiatric institutions does not necessarily entail a radical change in policy, attitudes, or the lived experiences of those incarcerated. Penal abolitionist Ruth Morris reflects on her experiences within the prison abolition movement in Canada and the United States:

My objection to prisons is to something much more oppressive than closed buildings, or even locks and keys. It’s important to think this out, because otherwise we delude ourselves about building alternatives when actually we are creating their very spirit in the community, destroying people just as effectively as any building with locks can possibly do. (1989, p. 141)

In this light, closure in itself is still embedded within the same circuits of power that created such institutions, unless there is an epistemic shift in the way community, punishment, dis/ability and segregation are conceptualized. Therefore, closure of prisons and institutions is only one step on the way to achieve a shift in perspective. Closure of large institutions has not led to freedom for all disabled people, nor has it resulted in the radical acceptance of the fact of difference amongst us.

Institutional life, whether in a prison, hospital, mental institution, nursing home, group home, or segregated “school,” has been the norm, not the exception, for disabled people throughout North American history. Harriet McBryde Johnson (“The Disability Gulag,” New York Times, 23 November 2003) describes her experiences and fear of the “disability gulag”—the warehouse for disabled people that is often called “the institution.” As she describes in her narrative, many people with significant disabilities fear that one day they will be sent there and lose their independence, if they are already institutionalized. Prison abolitionists also emphasize that activism entails much more than closing prisons. It is about creating a society free of systems of inequity that produce hatred, violence, desperation and suffering. In such a society the idea of caging people for wrong doings will be seen as absurd (Lee, 2008).

When a system is abolished there is a danger that other systems with the same goals would arise to fill the void left by the abolished system. Famed sociologist W.E.B. Du Bois, in his book Black Reconstruction (1999 [1935]), discusses abolition not as a mere negative process, one of tearing down. It is ultimately about creating new institutions. Du Bois was very insistent that in order to abolish slavery in modern times, new democratic institutions have to be established and maintained. Because that did not occur, slavery found a new home in Jim Crow, convict lease systems, second class education and mass incarceration. Thus, the abolition of slavery was only successful on the negative aspect, but no new institutions were created to successfully incorporate black people into the existing social order. Prisons today have thrived precisely because of the lack of such resources that Du Bois was arguing for. Prisons today can’t be abolished until such equality-ensuring mechanisms are in place (Davis, 2005). Being free of chains is only the beginning.

Dismantling the walls of the prison, therefore, is not a goal that will eliminate the use of coercion and punishment as mechanism of state control, according to some abolitionists (Davis, 2000; Sudbury, 2004). Hence we notice a shift of many prison abolitionist activists and writers, beginning in the 1990s, from promoting prison abolition to conceptualizing penal abolition more broadly (Morris, 1995).

### They Say: “Pragmatism”

#### This is a link – their attempt to force pragmatism upon us represents the disciplining of the political imagination produced by dominant discourses and knowledges that aims to eliminate liberationist dreams and establish reformism as the only option – that’s Rodríguez

#### Limiting resistance to the practical constrains the limitless possibilities of collective imagination – embrace our imagination of the possible as an affirmation of a better future.

Rodríguez 10 – Dylan Rodríguez Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2010 (“The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *The Radical Teacher*, Volume 88, Summer, Available Online via JSTOR, p. 7-19, MR)

Finally, the horizon of the possible is only constrained by one’s pedagogical willingness to locate a particular political struggle (here, prison abolition) within the long and living history of liberation movements. In this context, “prison abolition” can be understood as one important strain within a continuously unfurling fabric of liberationist political horizons, in which the imagination of the possible and the practical is shaped but not limited by the specific material and institutional conditions within which one lives. It is useful to continually ask: on whose shoulders does one sit, when undertaking the audacious identifications and political practices endemic to an abolitionist pedagogy? There is something profoundly indelible and emboldening in realizing that one’s “own” political struggle is deeply connected to a vibrant, robust, creative, and beautiful legacy of collective imagination and creative social labor (and of course, there are crucial ways of comprehending historical liberation struggles in all their forms, from guerilla warfare to dance).

While I do not expect to arrive at a wholly satisfactory pedagogical endpoint anytime soon, and am therefore hesitant to offer prescriptive examples of “how to teach” within an abolitionist framework, I also believe that rigorous experimentation and creative pedagogical radicalism is the very soul of this praxis. There is, in the end, no teaching formula or pedagogical system that finally fulfills the abolitionist social vision, there is only a political desire that understands the immediacy of struggling for human liberation from precisely those forms of systemic violence and institutionalized dehumanization that are most culturally and politically sanctioned, valorized, and taken for granted within one’s own pedagogical moment. To refuse or resist this desire is to be unaccountable to the historical truth of our moment, in which the structural logic and physiological technologies of social liquidation (removal from or effective neutralization within civil society) have merged with history’s greatest experiment in punitive human captivity, a linkage that increasingly lays bare racism’s logical outcome in genocide.18

### They Say: “Abolitionism Bad — Crime”

#### Incarceration doesn’t decrease crime – deterrent theory is false and incarceration is unethical.

McLeod 15 – Allegra M. McLeod, Professor of Law at Georgetown University, Former Professor of Political Theory at Stanford University, Ph.D. from Stanford University, J.D. from Yale University, 2015 (“Prison Abolition and Grounded Justice,” UCLA Law Review, 62 UCLA L. REV. 1156, Available Online at: <https://www.uclalawreview.org/wp-content/uploads/2015/06/McLeod_6.2015.pdf>, Accessed 7-21-17, MR)

Those who support incarceration for its supposed deterrent effect generally ground their account on Gary Becker’s writings on the economics of crime.228 In brief, in Becker’s model, raising the costs of criminal activity by imposing a penalty of incarceration will cause a certain number of potential criminals to decide not to pursue criminal activity because they will rationally weigh the costs and benefits of their possible future criminal conduct.229 This model, however, rests on a set of assumptions that apply poorly to many people who are inclined to criminally offend even if the model succeeds in capturing the deterrence of others who avoid criminal activity following cost-benefit calculations. The model assumes (a) that those who break the criminal law rationally calculate the costs and benefits of their intended course of conduct; (b) that they possess information and beliefs that allow them to assume a high likelihood of apprehension and sentencing; and (c) that criminal punishment will render those subject to it no more likely to commit future crimes than they would be otherwise. In fact, each of these assumptions is subject to substantial doubt, especially when considering the class of people prison sentences purport to deter most immediately rather than those who are likely to be law-abiding because of reputational interests, secure employment, family obligations or otherwise.230 Many people who break the criminal laws do so in a condition of severe mental illness, alcohol or drug addiction, or in a state of rage. In these cases, Becker’s assumptions of rational risk calculation are questionable, and hence the deterrent qualities of incarceration will have uncertain, if any, effect on them.231 Other people who break the criminal law surely believe (and often rightly so) that they are unlikely to be apprehended and sentenced. Most cases of child sexual abuse, for instance, go unreported, as do many cases of rape of adults; similarly, people in positions of power who engage in deceptive economic transactions and even many who physically harm others routinely evade any adverse consequence.232 What is more, criminal punishment may make those who are imprisoned more, rather than less, likely to reoffend. As discussed above, incarceration produces a set of destructive consequences for both the incarcerated and their communities, consequences that may tend to increase rather than decrease crime.233 This is not to say that incarceration has no deterrent impact,234 but that the assumptions of deterrence theory fail to apply to the large class of persons at whom criminal sanctions are directed, even if deterrence is effective in other cases. And any deterrent potential of punitive policing and imprisonment should be assessed bearing in mind the dehumanizing, racially degrading, violent, and otherwise destructive dimensions of these practices.235

### They Say: “Permute: Do Both”

#### It either links or severs their discourse and reformist goals – reject severance and intrinsic permutations because they allow the affirmative to dodge links to DAs and competition.

#### Begs the question of framework – if we win their pedagogy is bad they don’t get a permutation.

#### The links are all DAs to the permutation:

#### [Insert more Links/Link Analysis]

#### Focus on “winnable reforms” is unethical and directly contributes to the expansion of racism, white supremacy and domestic warfare.

Rodríguez 8 – Dylan Rodríguez, Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2008 ("Warfare and the Terms of Engagement," *Abolition Now!: Ten Years of Strategy and Struggle Against the Prison Industrial Complex*, Published by AK Press, ISBN 978-1 -904859-96-3, p. 91-103, MR)

Several social movement scholars have argued that the "channeling mechanisms" of the non-profit industrial complex "may now far outweigh the effect of direct social control by states in explaining the ... orthodox tactics, and moderate goals of much collective action in modern America." The non-profit apparatus and its symbiotic relationship to the state amount to a sophisticated technology of political repression and social control, accompanying and facilitating the ideological and institutional mobilizations of a domestic war waging state. Avowedly progressive, radical, leftist, and even some misnamed "revolutionary" groups find it opportune to assimilate into this state-sanctioned organizational paradigm, as it simultaneously allows them to establish a relatively stable financial and operational infrastructure while avoiding the transience, messiness, and possible legal complication of working under decentralized, informal, or even "underground" auspices. Thus, the aforementioned authors suggest that the emergence of the state-proctored non-profit industry "suggests a historical movement away from direct, cruder forms [of state repression], toward more subtle forms of state social control of social movements."

The regularity with which progressive organizations immediately forfeit the crucial political and conceptual possibilities of abolishing domestic warfare is a direct reflection of the extent to which domestic war has been fashioned into the everyday, "normal" reality of the state. By extension, the non-profit industrial complex, which is fundamentally guided by the logic of being state-sanctioned (and often state-funded), also reflects this common reality: the operative assumptions of domestic warfare are taken for granted because they form and inform the popular consensus.

Effectively contradicting, decentering, and transforming the popular consensus (for example, destabiliZing assertive assumptions common to progressive movements and organizations such as "we have to control/get rid of gangs," "we need prisons," or "we want better police") is, in this context, dangerously difficult work. Although, the truth of the matter is that the establishment US left, in ways both spoken and presumed, may actually agree with the political, moral, and ideological premises of domestic warfare. Leaders as well as rank-and-file members in avowedly progressive organizations can and must reflect on how they might actually be supporting and reproducing existing forms of racism, white supremacy, state violence, and domestic warfare in the process of throwing their resources behind what they perceive as "winnable victories," in the lexicon of venerable community organizer Saul Alinsky.

Our historical moment suggests the need for a principled political rupturing of existing techniques and strategies that fetishize and fixate on the negotiation, massaging, and management of the worst outcomes of domestic warfare. One political move long overdue is toward grassroots pedagogies of radical dis-identification with the state, in the trajectory of an anti-nationalism or anti-patriotism, that reorients a progressive identification with the creative possibilities of insurgency (this is to consider "insurgency" as a politics that pushes beyond the defensive maneuvering of "resistance"). Reading a few a few lines down from our first invoking of Fanon's call to collective, liberatory action is clarifying here: "For us who are determined to break the back of colonialism, our historic mission is to authorize every revolt, every desperate act, and every attack aborted or drowned in blood."

#### Focus on pragmatic “winnable” reforms cements the dehumanization of incarceration and trades off with our radical politics.

Rodríguez 8 – Dylan Rodríguez, Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2008 ("Warfare and the Terms of Engagement," *Abolition Now!: Ten Years of Strategy and Struggle Against the Prison Industrial Complex*, Published by AK Press, ISBN 978-1 -904859-96-3, p. 91-103, MR)

We are collectively witnessing, surviving, and working in a time of unprecedented state-organized human capture and state-produced physical/social/ psychic alienation, from the 2.5 million imprisoned by the domestic and global US prison industrial complex to the profound forms of informal apartheid and protoapartheid that are being instantiated in cities, suburbs, and rural areas all over the country. This condition presents a profound crisis-and political possibility-for people struggling against the white supremacist state, which continues to institutionalize the social liquidation and physical evisceration of Black, brown, and aboriginal peoples nearby and far away. If we are to approach racism, neoliberalism, militarism/militarization, and US state hegemony and domination in a legitimately "global" way, it is nothing short of unconscionable to expend significant political energy protesting American wars elsewhere (e.g. Iraq, Afghanistan, etc.) when there are overlapping, and no less profoundly oppressive, declarations of and mobilizations for war in our very own, most intimate and nearby geographies of "home."

This time of crisis and emergency necessitates a critical examination of the political and institutional logics that structure so much of the US progressive left, and particularly the "establishment" left that is tethered (for better and worse) to the non-profit industrial complex (NPIC). I have defined the NPIC elsewhere as the set of symbiotic relationships that link political and financial technologies of state and owning class social control with surveillance over public political discourse, including and especially emergent progressive and leftist social movements. This definition is most focused on the industrialized incorporation, accelerated since the 1970s, of pro-state liberal and progressive campaigns and movements into a spectrum of government-proctored non-profit organizations.

It is in the context of the formation of the NPIC as a political power structure that I wish to address, with a less-than-subtle sense of alarm, a peculiar and disturbing politics of assumption that often structures, disciplines, and actively shapes the work of even the most progressive movements and organizations within the US establishment left (of which I too am a part, for better and worse): that is, the left's willingness to fundamentally tolerate-and accompanying unwillingness to abolish-the institutionalized dehumanization of the contemporary policing and imprisonment apparatus in its most localized, unremarkable, and hence "normal" manifestations within the domestic "homeland" of the Homeland Security state.

Behind the din of progressive and liberal reformist struggles over public policy, civil liberties, and law, and beneath the infrequent mobilizations of activity to defend against the next onslaught of racist, classist, ageist, and misogynist criminalization, there is an unspoken politics of assumption that takes for granted the mystified permanence of domestic warfare as a constant production of targeted and massive suffering, guided by the logic of Black, brown, and indigenous subjection to the expediencies and essential violence of the American (global) nation-building project. To put it differently: despite the unprecedented forms of imprisonment, social and political repression, and violent policing that compose the mosaic of our historical time, the establishment left (within and perhaps beyond the US) does not care to envision, much less politically prioritize, the abolition of us domestic warfare and its structuring white supremacist social logic as its most urgent task of the present and future. Our non-profit left, in particular, seems content to enbdgt ill Jesperate (and usually well-intentioned) attempts to manage the casualties of domestic warfare, foregoing the urgency of an abolitionist praxis that openly, critically, and radically addresses the moral, cultural, and political premises of these wars.

Not long from now, generations will emerge from the organic accumulation of rage, suffering, social alienation, and (we hope) politically principled rebellion against this living apocalypse and pose to us some rudimentary questions of radical accountability: How were we able to accommodate, and even culturally and politically normalize the strategic, explicit, and openly racist technologies of state violence that effectively socially neutralized and frequently liquidated entire nearby populations of our people, given that ours are the very same populations that have historically struggled to survive and overthrow such "classical" structures of dominance as colonialism, frontier conquest, racial slavery, and other genocides? In a somewhat more intimate sense, how could we live with ourselves in this domestic state of emergency, and why did we seem to generally forfeit the creative possibilities of radically challenging, dislodging, and transforming the ideological and institutional premises of this condition of domestic warfare in favor of short-term, "winnable" policy reforms? (For example, why did we choose to formulate and tolerate a "progressive" political language that reinforced dominant racist notions of "criminality" in the process of trying to discredit the legal basis of "Three Strikes" laws?) What were the fundamental concerns of our progressive organizations and movements during this time, and were they willing to comprehend and galvanize an effective, or even viable opposition to the white supremacist state's terms of engagement (that is, warfare)? This radical accountability reflects a variation on anticolonial liberation theorist Frantz Fanon's memorable statement to his own peers, comrades, and nemeses:

Each generation must discover its mission, fulfill it or betray it, in relative opacity. In the underdeveloped countries preceding generations have simultaneously resisted the insidious agenda of colonialism and paved the way for the emergence of the current struggles. Now that we are in the heat of combat, we must shed the habit of decrying the efforts of our forefathers or feigning incomprehension at their silence or passiveness.

Lest we fall victim to a certain political nostalgia that is often induced by such illuminating Fanonist exhortations, we ought to clarify the premises of the social "mission" that our generation of US based progressive organizing has undertaken. In the vicinity of the constantly retrenching social welfare apparatuses of the US state, much of the most urgent and immediate work of community-based organizing has revolved around service provision. Importantly, this pragmatic focus also builds a certain progressive ethic of voluntarism that constructs the model activist as a variation on older liberal notions of the "good citizen." Following Fanon, the question is whether and how this mission ought to be fulfilled or betrayed. I believe that to respond to this political problem requires an analysis and conceptualization of "the state" that is far more complex and laborious than we usually allow in our ordinary rush of obligations to build campaigns, organize communities, and write grant proposals. In fact, I think one pragmatic step toward an abolitionist politics involves the development of grassroots pedagogies (such as reading groups, in-home workshops, inter-organization and inter-movement critical dialogues) that will compel us to teach ourselves about the different ways that the state works in the context of domestic warfare, so that we no longer treat it simplistically. We require, in other words, a scholarly activist framework to understand that the state can and must be radically confronted on multiple fronts by an abolitionist politics.

### Link — Separation of School and Prison

Note: You should read this in the 1NC if you have time

#### Attempting to separate the school and its discipline from the prison justifies the violence of the prison and replicates flawed pedagogy – takes out and turns the case.

Rodríguez 10 – Dylan Rodríguez Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2010 (“The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *The Radical Teacher*, Volume 88, Summer, Available Online via JSTOR, p. 7-19, MR)

Given this conception of the prison regime as a far-reaching and invasive arrangement of social power, state violence, and human domination, we might better be able to understand the significance of everyday routines of school-based discipline that imply the possibility of imprisonment as the punitive bureaucratic outcome of misbehavior, truancy, and academic failure. What, then, is the condition of “teaching” in the context of a prison regime that is so relentless in its innovation and intrusiveness?

We might depart from another critical premise: that the prison4 (jail, detention center, etc.) cannot be conceptualized as a place that is wholly separate or alienated from the normalized intercourses of civil society or “the free world.” Speaking more precisely to the concerns raised by this issue of Radical Teacher, the massive carceral-cultural form of the prison has naturalized a systemic disorientation of the teaching act, so that teaching is no longer separable from the work of policing, juridical discipline, and state-crafted punishment.

Thus, I do not think the crucial question in our historical moment is whether or not our teaching ultimately supports or adequately challenges the material arrangements and cultural significations of the prison regime—just as I believe the central question under the rule of apartheid is not whether a curriculum condones or opposes the spatial arrangements of white supremacy and intensified racist state violence. Rather, the primary question is whether and how the act of teaching can effectively and radically displace the normalized misery, everyday suffering, and mundane state violence that are reproduced and/or passively condoned by both hegemonic and critical/counterhegemonic pedagogies.

I am arguing that our historical conditions urgently dictate that a strategic distinction must be drawn between liberal, social justice, critical, and even “radical” pedagogies that are capable of even remotely justifying, defending, or tolerating a proto-genocidal prison regime that is without precedent or peer, on the one hand, and those attempts at abolitionist pedagogy that—in an urgent embracing of the historical necessity of innovation, improvisation, and radical rearticulation— are attempting to generate new epistemic and intellectual approaches to meaning, knowledge, learning, and practice for the sake of life, liberation, and new social possibilities. I am concerned with addressing a pedagogical tendency that artificially separates the teacher-student relation and “the school” from “the prison.”

Such strategic distinctions are useful for delineating the ways that multiple pedagogical epistemes5 (including otherwise critical and radical ones) operate from the a priori notion that prisons and policing serve necessary, peace-and-safety making, and “good” social functions that are somehow separable or recuperable from their historical primacy to socioeconomic/class repression, American apartheid,6 racial slavery,7 indigenous land displacement and cultural genocide,8 and white supremacist colonization.9 In other words, what might happen to the disoriented teaching act if it sere re-oriented against the assumptive necessity, integrity, and taken-for-grantedness of prisons, policing, and the normalized state violence they reproduce.

### Link — Reform

#### The affirmative’s attempt at reform gets co-opted by the state and ultimately reinforces the prison system – that takes out and turns the case.

Ben-Moshe 13 — Liat Ben-Moshe, Assistant Professor of Disability Studies at the University of Toledo, Ph.D. in Sociology from Syracuse University, B.A. Honors Sociology and Anthropology from Tel-Aviv University, 2013 (“The Tension Between Abolition and Reform,” *Academic Journal*, Available Online at <https://www.academia.edu/3483590/The_tension_between_abolition_and_reform>, p. 88, Accessed 07/15/2017, Lenny)

Some factors leading to the growth of the prison industry were the direct result of attempts to reform the system. Public awareness and advocacy efforts to change the conditions inherent in prisons (overcrowding, need to build specific enclosures for specific populations) had eventually led to prison expansion, according to Rick Sauve (1988), who is a prisoner himself. Senger (1988), a fellow prisoner, also critiques prison activists who, although good-intentioned, had brought on reforms that ultimately reinforced the prison and its power. By insisting on reforms in the prison, these activists reinforce the system as a whole, so that positive change in the daily lives of prisoners actually perpetuates the power structure that keeps prisons as a viable solution to criminality.

As a prime example, Marie Gottschalk (2006) demonstrates how various seemingly progressive social movements in the penal arena inadvertently brought forth changes that concluded in more draconian punishments and increased incarceration. For example, opposition to the death penalty brought forth life sentences without parole, and helped strengthen the deterrence argument in crime control discourse. Similarly, LGBT activists fighting against homophobic and transphobic violence helped in creating hate crime legislation that incarcerated people for longer timeframes; and Moms against Gun Violence ushered in gun control measures that also increased the net effect of the penal system, including surveillance measures on communities of color, who sought the legislation originally. An implied facet of Gottschalk’s examples is that being too radical and specialized in demands leads to erasure or cooptation of such arguments by the state, leading to punitiveness. An alternative explanation does not lie in blaming the activists for the unintentional consequence of mass incarceration but in the ideology and overarching goals of public policy. If reform efforts led to the mass expansion of punitive measures, then perhaps the problem is not one of “being too radical” or overarching, but of not reaching far enough, not engaging enough in coalitional and revolutionary politics that will address the root causes of harm. Reformist politics are the main strategy used by the left and liberal politics and are in the greatest risk of being co-opted by the state and its apparatuses (Appel, 2002). Furthermore, in many cases the state’s mechanisms are not even necessary because activists embody the state in their actions and interactions. According to some liberal discourses that call for social change, change entails incorporating excluded groups into current structures—the government, corporations and politics. These calls are also prevalent amongst disability activists who advocate for more hiring of people with disabilities in all sectors of the market economy, and activists calling for the election of a black or a woman president. But these calls only change the hierarchy of the structures in which marginalized populations are placed and not the structures themselves.

### Impact — Prison Regime

#### The U.S. Prison Regime is a system of human domination used to reproduce racist violence globally – millions have been lost in its systemic policing.

Rodríguez 10 – Dylan Rodríguez Professor and Chair in the Ethnic Studies Department at The University of California at Riverside, Ph.D. in Ethnic Studies from the University of California at Berkley, 2010 (“The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *The Radical Teacher*, Volume 88, Summer, Available Online via JSTOR, p. 7-19, MR)

Prison Regime/the Disorientation of the Teaching Act

The global U.S. prison regime has no precedent or peer and has become a primary condition of schooling, education, and pedagogy in every possible site. Aside from its sheer accumulation of captive bodies (more than 2.5 million, if one includes children, military captives, undocumented migrants, and the mentally ill/disordered),1 the prison has become central to the (re)production and (re)invention of a robust and historically dynamic white supremacist state: at its farthest institutional reaches, the prison has developed a capacity to organize and disrupt the most taken-for-granted features of everyday social life, including “family,” “community,” “school,” and individual social identities. Students, teachers, and administrators of all kinds have come to conceptualize “freedom,” “safety,” and “peace” as a relatively direct outcome of state-conducted domestic war (wars on crime, drugs, gangs, immigrants, terror, etc.), legitimated police violence, and large-scale, punitive imprisonment.

In what follows, I attempt to offer the outlines of a critical analysis and schematic social theory that might be useful to two overlapping, urgent tasks of the radical teacher: 1) to better understand how the prison, along with the relations of power and normalized state violence that the prison inhabits/produces, form the everyday condition of possibility for the teaching act; and 2) to engage a historically situated abolitionist praxis that is, in this moment, primarily pedagogical.

A working conception of the “prison regime” offers a useful tool of critical social analysis as well as a theoretical framework for contextualizing critical, radical, and perhaps abolitionist pedagogies. In subtle distinction from the criminological, social scientific, and common sense understandings of “criminal justice,” “prisons/ jails,” and the “correctional system,” the notion of a prison regime focuses on three interrelated technologies and processes that are dynamically produced at the site of imprisonment: first, the prison regime encompasses the material arrangements of institutional power that create informal (and often nominally illegal) routines and protocols of militarized physiological domination over human beings held captive by the state. This domination privileges a historical anti-black state violence that is particularly traceable to the latter stages of continental racial chattel slavery and its immediate epochal aftermath in “post-emancipation” white supremacy and juridical racial segregation/apartheid—a privileging that is directly reflected in the actual demography of the imprisoned population, composed of a Black majority. The institutional elaborations of this white supremacist and anti-black carceral state create an overarching system of physiological domination that subsumes differently racialized subjects (including whites) into institutional routines (strip searching and regular bodily invasion, legally sanctioned torture, ad hoc assassination, routinized medical neglect) that revise while sustaining the everyday practices of genocidal racial slavery. While there are multiple variations on this regime of physiological dominance—including (Latino/a, Muslim, and Arab) immigrant detention, extra-territorial military prisons, and asylums—it is crucial to recognize that the genealogy of the prison’s systemic violence is anchored in the normalized Black genocide of U.S. and New World nation-building.2

Second, the concept of the prison regime understands the place of state-ordained human capture as a modality of social (dis)organization that produces numerous forms of interpersonal and systemic (race, class, gender, sexual) violence within and beyond the physical sites of imprisonment. Here, the multiple and vast social effects of imprisonment (from affective disruptions of community and extended familial ties to long-term economic/geographic displacement) are understood as fundamental and systemic dimensions of the policing and imprisonment apparatus, rather than secondary or unintended consequences of it.3

Third, the prison regime encompasses the multiple knowledges and meanings that are created around the institutional site and cultural symbol of “the prison,” including those that circulate in popular culture and among the administrative bureaucracies and curriculum of schools.

### Impact — Incarceration (Alexander)

#### Incarceration is the gateway to a dehumanized universe – millions are locked into second-class citizenship and out of society.

Alexander 10 — Michelle Alexander, Associate Professor of Law and Faculty Affiliate of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, Former Director of the Civil Rights Clinic at Stanford Law School, Former Director of the Racial Justice Project at the ACLU of Northern California, Former Associate at Saperstein, Goldstein, Demchak & Baller where she specialized in plaintiff-side class action suits alleging race and gender discrimination, Former Law Clerk to Supreme Court Justice Harry Blackman, Received a Soros Justice Fellowship from the Open Society Institute, Holds a J.D. from Stanford Law School and a B.A. from Vanderbilt University, 2010 (The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Published by The New York Press, ISBN 9781595586438, p. 93-96, MR)

Most people imagine that the explosion in the U.S. prison population during the past twenty-five years reflects changes in crime rates. Few would guess that our prison population leaped from approximately 350,000 to 2.3 million in such a short period of time due to changes in laws and policies, not changes in crime rates. Yet it has been changes in our laws— particularly the dramatic increases in the length of prison sentences— that have been responsible for the growth of our prison system, not increases in crime. One study suggests that the entire increase in the prison population from 1980 to 2001 can be explained by sentencing policy changes. 88

Because harsh sentencing is a major cause of the prison explosion, one might reasonably assume that substantially reducing the length of prison sentences would effectively dismantle this new system of control. That view, however, is mistaken. This system depends on the prison label, not prison time.

Once a person is labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal, and privileges of citizenship such as voting and jury service are off-limits. It does not matter whether you have actually spent time in prison; your second-class citizenship begins the moment you are branded a felon. Most people branded felons, in fact, are not sentenced to prison. As of 2008, there were approximately 2.3 million people in prisons and jails, and a staggering 5.1 million people under “community correctional supervision”— i.e., on probation or parole. 89 Merely reducing prison terms does not have a major impact on the majority of people in the system. It is the badge of inferiority— the felony record— that relegates people for their entire lives, to second-class status. As described in chapter 4, for drug felons, there is little hope of escape. Barred from public housing by law, discriminated against by private landlords, ineligible for food stamps, forced to “check the box” indicating a felony conviction on employment applications for nearly every job, and denied licenses for a wide range of professions, people whose only crime is drug addiction or possession of a small amount of drugs for recreational use find themselves locked out of the mainstream society and economy— permanently.

No wonder, then, that most people labeled felons find their way back into prison. According to a Bureau of Justice Statistics study, about 30 percent of released prisoners in its sample were rearrested within six months of release. 90 Within three years, nearly 68 percent were rearrested at least once for a new offense. 91 Only a small minority are rearrested for violent crimes; the vast majority are rearrested for property offenses, drug offenses, and offenses against the public order. 92

For those released on probation or parole, the risks are especially high. They are subject to regular surveillance and monitoring by the police and may be stopped and searched (with or without their consent) for any reason or no reason at all. As a result, they are far more likely to be arrested (again) than those whose behavior is not subject to constant scrutiny by law enforcement. Probationers and parolees are at increased risk of arrest because their lives are governed by additional rules that do not apply to everyone else. Myriad restrictions on their travel and behavior (such as a prohibition on associating with other felons), as well as various requirements of probation and parole (such as paying fines and meeting with probation officers), create opportunities for arrest. Violation of these special rules can land someone right back in prison. In fact, that is what happens a good deal of the time.

The extraordinary increase in prison admissions due to parole and probation violations is due almost entirely to the War on Drugs. With respect to parole, in 1980, only 1 percent of all prison admissions were parole violators. Twenty years later, more than one third (35 percent) of prison admissions resulted from parole violations. 93 To put the matter more starkly: About as many people were returned to prison for parole violations in 2000 as were admitted to prison in 1980 for all reasons. 94 Of all parole violators returned to prison in 2000, only one-third were returned for a new conviction; two-thirds were returned for a technical violation such as missing appointments with a parole officer, failing to maintain employment, or failing a drug test. 95 In this system of control, failing to cope well with one’s exile status is treated like a crime. If you fail, after being released from prison with a criminal record— your personal badge of inferiority— to remain drug free, or if you fail to get a job against all the odds, or if you get depressed and miss an appointment with your parole officer (or if you cannot afford the bus fare to take you there), you can be sent right back to prison— where society apparently thinks millions of Americans belong.

This disturbing phenomenon of people cycling in and out of prison, trapped by their second-class status, has been described by Loïc Wacquant as a “closed circuit of perpetual marginality.” 96 Hundreds of thousands of people are released from prison every year, only to find themselves locked out of the mainstream society and economy. Most ultimately return to prison, sometimes for the rest of their lives. Others are released again, only to find themselves in precisely the circumstances they occupied before, unable to cope with the stigma of the prison label and their permanent pariah status.

Reducing the amount of time people spend behind bars— by eliminating harsh mandatory minimums— will alleviate some of the unnecessary suffering caused by this system, but it will not disturb the closed circuit. Those labeled felons will continue to cycle in and out of prison, subject to perpetual surveillance by the police, and unable to integrate into the mainstream society and economy. Unless the number of people who are labeled felons is dramatically reduced, and unless the laws and policies that keep ex-offenders marginalized from the mainstream society and economy are eliminated, the system will continue to create and maintain an enormous undercaste.

#### Mass incarceration is The New Jim Crow – a system of racial control that pushes millions to the margins of society.

Alexander 10 — Michelle Alexander, Associate Professor of Law and Faculty Affiliate of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, former Director of the Civil Rights Clinic at Stanford Law School, former Director of the Racial Justice Project at the ACLU of Northern California, former Associate at Saperstein, Goldstein, Demchak & Baller where she specialized in plaintiff-side class action suits alleging race and gender discrimination, former Law Clerk to Supreme Court Justice Harry Blackman, received a Soros Justice Fellowship from the Open Society Institute, holds a J.D. from Stanford Law School and a B.A. from Vanderbilt University, 2010 (*The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Published by The New York Press, ISBN 9781595586438, p. 57-58,MR)

Clinton did not stop there. Determined to prove how “tough” he could be on “them,” Clinton also made it easier for federally assisted public housing projects to exclude anyone with a criminal history— an extraordinarily harsh step in the midst of a drug war aimed at racial and ethnic minorities. In his announcement of the “One Strike and You’re Out” Initiative, Clinton explained: “From now on, the rule for residents who commit crime and peddle drugs should be one strike and you’re out.” The new rule promised to be “the toughest admission and eviction policy that HUD has implemented.” 103 Thus, for countless poor people, particularly racial minorities targeted by the drug war, public housing was no longer available, leaving many of them homeless— locked out not only of mainstream society, but their own homes.

The law and order perspective, first introduced during the peak of the Civil Rights Movement by rabid segregationists, had become nearly hegemonic two decades later. By the mid-1990s, no serious alternatives to the War on Drugs and “get tough” movement were being entertained in mainstream political discourse. Once again, in response to a major disruption in the prevailing racial order— this time the civil rights gains of the 1960s— a new system of racialized social control was created by exploiting the vulnerabilities and racial resentments of poor and working-class whites. More than 2 million people found themselves behind bars at the turn of the twenty-first century, and millions more were relegated to the margins of mainstream society, banished to a political and social space not unlike Jim Crow, where discrimination in employment, housing, and access to education was perfectly legal, and where they could be denied the right to vote. The system functioned relatively automatically, and the prevailing system of racial meanings, identities, and ideologies already seemed natural. Ninety percent of those admitted to prison for drug offenses in many states were black or Latino, yet the mass incarceration of communities of color was explained in race-neutral terms, an adaptation to the needs and demands of the current political climate. The New Jim Crow was born.

#### Incarceration has created an enormous racial caste – millions are locked into second-class citizenship and out of society.

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Because harsh sentencing is a major cause of the prison explosion, one might reasonably assume that substantially reducing the length of prison sentences would effectively dismantle this new system of control. That view, however, is mistaken. This system depends on the prison label, not prison time.

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For those released on probation or parole, the risks are especially high. They are subject to regular surveillance and monitoring by the police and may be stopped and searched (with or without their consent) for any reason or no reason at all. As a result, they are far more likely to be arrested (again) than those whose behavior is not subject to constant scrutiny by law enforcement. Probationers and parolees are at increased risk of arrest because their lives are governed by additional rules that do not apply to everyone else. Myriad restrictions on their travel and behavior (such as a prohibition on associating with other felons), as well as various requirements of probation and parole (such as paying fines and meeting with probation officers), create opportunities for arrest. Violation of these special rules can land someone right back in prison. In fact, that is what happens a good deal of the time.

The extraordinary increase in prison admissions due to parole and probation violations is due almost entirely to the War on Drugs. With respect to parole, in 1980, only 1 percent of all prison admissions were parole violators. Twenty years later, more than one third (35 percent) of prison admissions resulted from parole violations. 93 To put the matter more starkly: About as many people were returned to prison for parole violations in 2000 as were admitted to prison in 1980 for all reasons. 94 Of all parole violators returned to prison in 2000, only one-third were returned for a new conviction; two-thirds were returned for a technical violation such as missing appointments with a parole officer, failing to maintain employment, or failing a drug test. 95 In this system of control, failing to cope well with one’s exile status is treated like a crime. If you fail, after being released from prison with a criminal record— your personal badge of inferiority— to remain drug free, or if you fail to get a job against all the odds, or if you get depressed and miss an appointment with your parole officer (or if you cannot afford the bus fare to take you there), you can be sent right back to prison— where society apparently thinks millions of Americans belong.

This disturbing phenomenon of people cycling in and out of prison, trapped by their second-class status, has been described by Loïc Wacquant as a “closed circuit of perpetual marginality.” 96 Hundreds of thousands of people are released from prison every year, only to find themselves locked out of the mainstream society and economy. Most ultimately return to prison, sometimes for the rest of their lives. Others are released again, only to find themselves in precisely the circumstances they occupied before, unable to cope with the stigma of the prison label and their permanent pariah status.

Reducing the amount of time people spend behind bars— by eliminating harsh mandatory minimums— will alleviate some of the unnecessary suffering caused by this system, but it will not disturb the closed circuit. Those labeled felons will continue to cycle in and out of prison, subject to perpetual surveillance by the police, and unable to integrate into the mainstream society and economy. Unless the number of people who are labeled felons is dramatically reduced, and unless the laws and policies that keep ex-offenders marginalized from the mainstream society and economy are eliminated, the system will continue to create and maintain an enormous undercaste.

#### Modern American Racism is hidden by the veil of colorblindness – claims of race neutrality in the criminal justice system have legitimated The New Jim Crow – a system of incarceration that locks millions into second-class citizenship.

Alexander 10 — Michelle Alexander, Associate Professor of Law and Faculty Affiliate of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, Former Director of the Civil Rights Clinic at Stanford Law School, Former Director of the Racial Justice Project at the ACLU of Northern California, Former Associate at Saperstein, Goldstein, Demchak & Baller where she specialized in plaintiff-side class action suits alleging race and gender discrimination, Former Law Clerk to Supreme Court Justice Harry Blackman, Received a Soros Justice Fellowship from the Open Society Institute, Holds a J.D. from Stanford Law School and a B.A. from Vanderbilt University, 2010 (The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Published by The New York Press, ISBN 9781595586438, p. 99-103, MR)

The notion that whites comprise the vast majority of drug users and dealers— and may well be more likely than other racial groups to commit drug crimes— may seem implausible to some, given the media imagery we are fed on a daily basis and the racial composition of our prisons and jails. Upon reflection, however, the prevalence of white drug crime— including drug dealing— should not be surprising. After all, where do whites get their illegal drugs? Do they all drive to the ghetto to purchase them from somebody standing on a street corner? No. Studies consistently indicate that drug markets, like American society generally, reflect our nation’s racial and socioeconomic boundaries. Whites tend to sell to whites; blacks to blacks. 15 University students tend to sell to each other. 16 Rural whites, for their part, don’t make a special trip to the ’hood to purchase marijuana. They buy it from somebody down the road. 17 White high school students typically buy drugs from white classmates, friends, or older relatives. Even Barry McCaffrey, former director of the White House Office of National Drug Control Policy, once remarked, if your child bought drugs, “it was from a student of their own race generally.” 18 The notion that most illegal drug use and sales happens in the ghetto is pure fiction. Drug trafficking occurs there, but it occurs everywhere else in America as well. Nevertheless, black men have been admitted to state prison on drug charges at a rate that is more than thirteen times higher than white men. 19 The racial bias inherent in the drug war is a major reason that 1 in every 14 black men was behind bars in 2006, compared with 1 in 106 white men. 20 For young black men, the statistics are even worse. One in 9 black men between the ages of twenty and thirty-five was behind bars in 2006, and far more were under some form of penal control— such as probation or parole. 21 These gross racial disparities simply cannot be explained by rates of illegal drug activity among African Americans.

What, then, does explain the extraordinary racial disparities in our criminal justice system? Old-fashioned racism seems out of the question. Politicians and law enforcement officials today rarely endorse racially biased practices, and most of them fiercely condemn racial discrimination of any kind. When accused of racial bias, police and prosecutors— like most Americans— express horror and outrage. Forms of race discrimination that were open and notorious for centuries were transformed in the 1960s and 1970s into something un-American— an affront to our newly conceived ethic of colorblindness. By the early 1980s, survey data indicated that 90 percent of whites thought black and white children should attend the same schools, 71 percent disagreed with the idea that whites have a right to keep blacks out of their neighborhoods, 80 percent indicated they would support a black candidate for president, and 66 percent opposed laws prohibiting intermarriage. 22 Although far fewer supported specific policies designed to achieve racial equality or integration (such as busing), the mere fact that large majorities of whites were, by the early 1980s, supporting the antidiscrimination principle reflected a profound shift in racial attitudes. The margin of support for colorblind norms has only increased since then.

This dramatically changed racial climate has led defenders of mass incarceration to insist that our criminal justice system, whatever its past sins, is now largely fair and nondiscriminatory. They point to violent crime rates in the African American community as a justification for the staggering number of black men who find themselves behind bars. Black men, they say, have much higher rates of violent crime; that’s why so many of them are locked up. Typically, this is where the discussion ends. The problem with this abbreviated analysis is that violent crime is not responsible for mass incarceration. As numerous researchers have shown, violent crime rates have fluctuated over the years and bear little relationship to incarceration rates— which have soared during the past three decades regardless of whether violent crime was going up or down. 23 Today violent crime rates are at historically low levels, yet incarceration rates continue to climb.

Murder convictions tend to receive a tremendous amount of media attention, which feeds the public’s sense that violent crime is rampant and forever on the rise. But like violent crime in general, the murder rate cannot explain the growth of the penal apparatus. Homicide convictions account for a tiny fraction of the growth in the prison population. In the federal system, for example, homicide offenders account for 0.4 percent of the past decade’s growth in the federal prison population, while drug offenders account for nearly 61 percent of that expansion. 24 In the state system, less than 3 percent of new court commitments to state prison typically involve people convicted of homicide. 25 As much as half of state prisoners are violent offenders, but that statistic can easily be misinterpreted. Violent offenders tend to get longer prison sentences than nonviolent offenders, and therefore comprise a much larger share of the prison population than they would if they had earlier release dates. In addition, state prison data excludes federal prisoners, who are overwhelmingly incarcerated for nonviolent offenses. As of September 2009, only 7.9 percent of federal prisoners were convicted of violent crimes. 26 The most important fact to keep in mind, however, is this: debates about prison statistics ignore the fact that most people who are under correctional control today are not in prison. As noted earlier, of the nearly 7.3 million people currently under correctional control, only 1.6 million are in prison. 27 This caste system extends far beyond prison walls and governs millions of people who are on probation and parole, primarily for nonviolent offenses. They have been swept into the system, branded criminals or felons, and ushered into a permanent second-class status— acquiring records that will follow them for life. Probationers are the clear majority of those who are under community supervision (84 percent), and only 19 percent of them were convicted of a violent offense. 28 The most common offense for which probationers are under supervision is a drug offense. 29 Even if the analysis is limited to people convicted of felonies— thus excluding extremely minor crimes and misdemeanors— nonviolent offenders still predominate. Only about a quarter of felony defendants in large urban counties were charged with a violent offense in 2006.30 In cities such as Chicago, criminal courts are clogged with low-level drug cases. In one study, 72 percent of criminal cases in Cook County (Chicago) had a drug charge, and 70 percent of them were charged as class 4 felony possession (the lowest-level felony charge). 31

None of this is to suggest that we ought not be concerned about violent crime in impoverished urban communities. We should care deeply, and as discussed in the final chapter, we must come to understand the ways in which mass imprisonment increases— not decreases— the likelihood of violence in urban communities. But at the same time, we ought not be misled by those who insist that violent crime has driven the rise of this unprecedented system of racial and social control. The uncomfortable reality is that arrests and convictions for drug offenses— not violent crime— have propelled mass incarceration. In many states, including Colorado and Maryland, drug offenders now constitute the single largest category of people admitted to prison. 32 People of color are convicted of drug offenses at rates out of all proportion to their drug crimes, a fact that has greatly contributed to the emergence of a vast new racial undercaste. These facts may still leave some readers unsatisfied. The idea that the criminal justice system discriminates in such a terrific fashion when few people openly express or endorse racial discrimination may seem far-fetched, if not absurd. How could the War on Drugs operate in a discriminatory manner, on such a large scale, when hardly anyone advocates or engages in explicit race discrimination? That question is the subject of this chapter. As we shall see, despite the colorblind rhetoric and fanfare of recent years, the design of the drug war effectively guarantees that those who are swept into the nation’s new undercaste are largely black and brown.

This sort of claim invites skepticism. Nonracial explanations and excuses for the systematic mass incarceration of people of color are plentiful. It is the genius of the new system of control that it can always be defended on nonracial grounds, given the rarity of a noose or a racial slur in connection with any particular criminal case. Moreover, because blacks and whites are almost never similarly situated (given extreme racial segregation in housing and disparate life experiences), trying to “control for race” in an effort to evaluate whether the mass incarceration of people of color is really about race or something else— anything else— is difficult. But it is not impossible.

A bit of common sense is overdue in public discussions about racial bias in the criminal justice system. The great debate over whether black men have been targeted by the criminal justice system or unfairly treated in the War on Drugs often overlooks the obvious. What is painfully obvious when one steps back from individual cases and specific policies is that the system of mass incarceration operates with stunning efficiency to sweep people of color off the streets, lock them in cages, and then release them into an inferior second-class status. Nowhere is this more true than in the War on Drugs.

The central question, then, is how exactly does a formally colorblind criminal justice system achieve such racially discriminatory results? Rather easily, it turns out. The process occurs in two stages. The first step is to grant law enforcement officials extraordinary discretion regarding whom to stop, search, arrest, and charge for drug offenses, thus ensuring that conscious and unconscious racial beliefs and stereotypes will be given free rein. Unbridled discretion inevitably creates huge racial disparities. Then, the damning step: Close the courthouse doors to all claims by defendants and private litigants that the criminal justice system operates in racially discriminatory fashion. Demand that anyone who wants to challenge racial bias in the system offer, in advance, clear proof that the racial disparities are the product of intentional racial discrimination— i.e., the work of a bigot. This evidence will almost never be available in the era of colorblindness, because everyone knows— but does not say— that the enemy in the War on Drugs can be identified by race. This simple design has helped to produce one of the most extraordinary systems of racialized social control the world has ever seen.

#### Mass incarceration has allowed slavery to continue to exist

Alexander 10 — Michelle Alexander, Associate Professor of Law and Faculty Affiliate of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, former Director of the Civil Rights Clinic at Stanford Law School, former Director of the Racial Justice Project at the ACLU of Northern California, former Associate at Saperstein, Goldstein, Demchak & Baller where she specialized in plaintiff-side class action suits alleging race and gender discrimination, former Law Clerk to Supreme Court Justice Harry Blackman, received a Soros Justice Fellowship from the Open Society Institute, holds a J.D. from Stanford Law School and a B.A. from Vanderbilt University, 2010 (*The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Published by The New York Press, ISBN 9781595586438, p. 31, MR)

Once again, vagrancy laws and other laws defining activities such as “mischief” and “insulting gestures” as crimes were enforced vigorously against blacks. The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder. Douglas Blackmon, in Slavery by Another Name, describes how tens of thousands of African Americans were arbitrarily arrested during this period, many of them hit with court costs and fines, which had to be worked off in order to secure their release. 18 With no means to pay off their “debts,” prisoners were sold as forced laborers to lumber camps, brickyards, railroads, farms, plantations, and dozens of corporations throughout the South. Death rates were shockingly high, for the private contractors had no interest in the health and well-being of their laborers, unlike the earlier slave-owners who needed their slaves, at a minimum, to be healthy enough to survive hard labor. Laborers were subject to almost continual lashing by long horsewhips, and those who collapsed due to injuries or exhaustion were often left to die.

Convicts had no meaningful legal rights at this time and no effective redress. They were understood, quite literally, to be slaves of the state. The Thirteenth Amendment to the U.S. Constitution had abolished slavery but allowed one major exception: slavery remained appropriate as punishment for a crime. In a landmark decision by the Virginia Supreme Court, Ruffin v. Commonwealth, issued at the height of Southern Redemption, the court put to rest any notion that convicts were legally distinguishable from slaves:

For a time, during his service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is; civiliter mortus and his estate, if he has any, is administered like that of a dead man.

## States CP

### 1NC — States CP

#### Text: The 50 states and relevant territories should:

#### \* clarify statutes pertaining to the referral of students to law enforcement agencies.

#### \* protect the civil rights of all students and safeguard against discriminatory practices that lead to disproportionate expulsion of minority students.

#### \* maintain compulsory attendance requirements for those under 16, mandate and offer alternative educational services

#### \* clearly define and enforce reinstatement procedures

#### \* mandate school districts engage in data collection of arrest/summons data and should monitor referrals to law enforcement to root out subjective, unnecessary, and discriminatory referrals

#### \* remove all zero tolerance policies and harsh disciplinary procedures in elementary and secondary schools.

#### The counterplan resolves problems with zero-tolerance policies.

**Heitzeg 13** — Nancy A. Heitzeg, PhD Critical Studies of Race/Ethnicity, Professor of Sociology and Program Director, 2013 (“Criminalizing Education: Zero Tolerance Policies, Police in the Hallways and The School to Prison Pipeline,” *Hamline*, Available Online at <https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerance-police.pdf>, Accessed 07/14/2017, Lenny)

Since zero tolerance policies represent the most immediate and direct conduit from school to legal systems, they have been the target of reform suggestions. Short of repealing zero tolerance legislation, legislatures and school districts could take steps to alleviate some of the surrounding legal issues and disparities. Recommendations include the following (Advancement Project 2012; American Bar Association 2001; Hewitt and Losen, 2010; NAACP 2005):

• State legislatures must clarify statutes pertaining to the referral of students to law enforcement agencies.

• State legislatures must protect the civil rights of all students and safeguard against discriminatory practices that lead to disproportionate expulsion of minority students

• States should maintain compulsory attendance requirements for those under 16, mandate and offer alternative educational services

• State legislatures should clearly define and enforce reinstatement procedures

• State legislatures should mandate and school districts engage in data collection of arrest/summons data and should monitor referrals to law enforcement to root out subjective, unnecessary, and discriminatory referrals

### States Solve

#### States are necessary to resolve the STPP.

Porter 15 — Tracie R. Porter, Associate Professor of Law and Director of the Business Law Center, Western State College of Law; B.A., 1990, Cornell College; J.D., 1994, Drake University School of Law, 2015 (“The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools,” <http://media.law.uark.edu/arklawreview/2015/05/15/the-school-to-prison-pipeline-the-business-side-of-incarcerating-not-educating-students-in-public-schools/>, Accessed 6/27/2017, Lenny)

The public education system is the water main in the school-to-prison pipeline. The discipline disparities in America’s public schools are indicative of the brokenness of our public education system. Whether students of color attend a predominantly white or predominately African American school, the outcome is the same—African American and Latino students are denied an education.

The public school system for African American and Latino students seemingly provides a dual pipeline to prison. First, students face arrest in school and later become entangled in the criminal justice system, possibly without any chance of going home. Second, students expelled or suspended may have no other educational alternative and are often later arrested as a consequence of negative influences.

To cap the school-to-prison pipeline, our current system must undergo a legal reformation. Lawmakers cannot allow capitalism to influence discipline in our public schools, nor can school administrators continue to disproportionately discipline our children of color. First, zero-tolerance policies are not the solution to controlling the school environment when the policies detrimentally harm students by putting them in prison or excluding them from school. Zero-tolerance policies for all non-violent behavioral offenses must be eliminated, and students cannot be arrested, expelled, or suspended for significant periods of time. Second, to the extent policies give school administrators discretion for all non-violent offenses that do not involve a weapon,[106] they must exercise this discretion and keep students in school. This allows African American and Latino [[74]]students to receive the same treatment as their white peers. Our society can no longer place children under arrest and exile them from the learning environment. After all, many of these students are acting like adolescents, not criminals. Third, school administrators must create an environment which embraces learning, not warfare. States and school districts must redirect the funds currently used for school security to other areas. For example, schools could devote resources to educational enhancement programs and social services for troubled students. This could include counseling services to help students with behavior issues or equipment that aids students in advancing their education to be competitive in the global market.

#### States solve Zero Tolerance policy repeals.

Coulson 12 — Andrew J. Coulson, previous director of Cato’s Center for Educational Freedom, senior fellow in education policy at the Mackinac Center for Public Policy, served on the advisory council of the E.G. West Centre for Market Solutions in Education at the University of Newcastle, wrote for academic journals, including the *Journal of Research in the Teaching of English*, the *Journal of School Choice*, and the *Education Policy Analysis Archives* and for newspapers such as the *Wall Street Journal,* the *Washington Post*, and Canada’s *Globe and Mail*, 2012 (“‘Zero Tolerance.’ Causes, Consequences, and Alternatives,” *Cato Institute*, December 12th, Available Online at <https://www.cato.org/publications/congressional-testimony/zero-tolerance-causes-consequences-alternatives>, Accessed 07/21/2017, Lenny)

From a policy standpoint, these findings are problematic. Under our present system, the people with the least access to independent schools are low-income families—precisely those who are more likely to live in higher crime neighborhoods with troubled public schools; the very people most desperately in need of better, safer alternatives.

I do not present this evidence to encourage Congress to enact nation-wide private school choice legislation. Even if the Constitution permitted such a program, which it does not, evidence from other nations suggests it would be more effective to implement such policies at the state level. But Congress can encourage the adoption of such state-level programs by virtue of the public prominence of its Senators and Representatives. Congress can also nurture and expand the DC Opportunity Scholarship program, as an example to states of what is possible. And above all, Congress can avoid instituting new regulations and programs that would impede states’ efforts to bring safe, responsive independent schools within reach of all children, and can discontinue federal programs that have proven themselves ineffective and that consume funds that could more effectively be spent by the states and the people.

#### States solve best — roll back of sentences are key.

**Economist 15** — Newspaper and Journal, 2015 (“The moral failures of America's prison-industrial complex,” *Democracy In America*, July 20th, Available Online at <https://www.economist.com/blogs/democracyinamerica/2015/07/criminal-justice-and-mass-incarceration>, Accessed 07/09/2017, Lenny)

Mr Obama is starting small, calling for increased judicial discretion for non-violent drug offenders. John Boehner, the Republican Speaker of the House, has indicated his support for reforming federal sentences for non-violent drug crimes, which means something might actually get done. Federal-level sentencing reform for drug crimes is certainly most welcome, but it would barely put a dent in America's overall incarceration rate. Drug offenders make up only about a fifth of America's prison population, and less than 15% of America's prisoners are housed in federal cells.

To really roll back the prison-industrial complex, it is necessary to reduce sentences for violent criminals at the state level, too. That's a tougher sell. It involves not only considering its racial inequities and costly bloat, but also the moral failures of a system that doles out punishments that are out of proportion with their crimes.

### They Say: “Strict Scrutiny/CP Struck Down”

#### No strike down — the CP fiats legislatures change policies — status quo proves strict scrutiny doesn’t take out the CP.

**Heitzeg 13** — Nancy A. Heitzeg, PhD Critical Studies of Race/Ethnicity, Professor of Sociology and Program Director, 2013 (“Criminalizing Education: Zero Tolerance Policies, Police in the Hallways and The School to Prison Pipeline,” *Hamline*, Available Online at <https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerance-police.pdf>, Accessed 07/14/2017, Lenny)

Pilot projects in several school districts have achieved success in reducing suspension and expulsions by relying on alternatives to zero tolerance policies. A number of school districts and states have revised their disciplinary policies, distinguishing between minor infractions and more serious violations, offering graduated responses to discipline, reducing the amount of suspension time, and encouraging a non-punitive common sense approach to discipline (APA 2006; Southern Poverty Law Center 2008; NAACP 2005; NASP 2008). Other districts have implemented better data collection methods to facilitate the documentation of disparities in school discipline with an eye towards remedies. Still others have offered additional training and evaluation for police officers who patrol the hallways, with a particular emphasis on dealing with students who have disabilities or mental health challenges (Advancement Project 2012; Justice Policy Institute 2011). Most recently, several school districts have turned away from a punishment –centered approach entirely with an emphasis instead on restorative/ transformative justice models and peace circles as means to create a positive school climate and culture (Brown 2013; Urban Strategies Council 2012; Prison Culture 2013).

## Prevention CP

### 1NC — Prevention CP

#### Text: The United States federal government should:

#### \* Increase resources for schools for implementing disciplinary prevention policies.

#### \* Increase training for teachers in culturally responsive classroom behavior management and instruction.

#### The counterplan solves — alternative policies key.

Porter 15 — Tracie R. Porter, Associate Professor of Law and Director of the Business Law Center, Western State College of Law; B.A., 1990, Cornell College; J.D., 1994, Drake University School of Law, 2015 (“The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools,” <http://media.law.uark.edu/arklawreview/2015/05/15/the-school-to-prison-pipeline-the-business-side-of-incarcerating-not-educating-students-in-public-schools/>, Accessed 6/27/2017, Lenny)

B. Changing the Attitudes of School Administrators

Even if lawmakers eliminate zero tolerance for non-violent offenses, they cannot unilaterally change the attitudes of public school administrators, which may be entrenched in racial and social biases, or who may feel ill-equipped to meet the needs of students. Without addressing this, they will continue to use expulsion and suspension for disciplinary violations involving students of color. African American students in particular experience harsher punitive discipline than their nonminority peers, even when controlling for socioeconomic status. [118] Annually, 40% of all students expelled from school are African American, and 70% of all in-school arrests involve African American or Latino students.[119] Social biases, and stereotypes about African American children in general, may account for this disproportionate application. According to some, these [[77]] attitudes are attributable to explicit and implicit biases.[120] To the extent possible, teachers and administrators must eliminate the biases formed about African American students. In her address at the University of Arkansas, Professor Laura R. McNeal urged districts to train school administrators and teachers about developmental and cultural competency as one means of addressing the problems associated with biases. [121] Common sense suggests that some form of bias causes today’s school administrators to discipline African American children more harshly in the absence of zero-tolerance policies. Biases could also account for the inconsistent application of zero-tolerance policies, which are often applied unevenly following minor rule infractions involving African American students. Recognizing administrators use discretion in disciplinary decisions, the Department of Education issued guidelines, rather than mandates, for administrators to consider because of the disparate impact commonly experienced by African American students. [122]

### Prevention Solves

#### The counterplan solves — *reforms* programs instead of *abolishing them*.

**APA 8** — American Psychological Association, largest psychologist interest group, 2008 (“Are Zero Tolerance Policies Effective in the Schools?” *American Psychological Association*, December, Available Online at <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>, Accessed 07/06/2017, Lenny)

B.2 Policy

B.2.1 Legislative initiatives should encourage schools and school districts to provide an array of disciplinary alternatives prior to school suspension and expulsion and, to the extent possible, increase resources to schools for implementing a broader range of alternatives, especially prevention.

Although school suspension and expulsion will continue to be part of the disciplinary resources available to schools for handling disruptive and violent behavior, and are in some cases necessary to protect students and teachers from serious disruption and violence, students who are removed from school are placed at risk for a host of negative outcomes. Programs such as Positive Behavior Supports or Bullying Prevention that assist schools in increasing their resources for addressing disruptive or violent behavior can be expected to reduce reliance on school suspension and expulsion, thus increasing students’ opportunity to learn.

B.2.2 Increase training for teachers in culturally responsive classroom behavior management and instruction.

One of the most effective disciplinary strategies is to prevent the occurrence of misbehavior through effective instruction and classroom management, thereby maximizing student opportunity to learn and reducing disciplinary referrals (Brophy & Good, 1986; Jones & Jones, 2004). In particular, high overall and disproportionate rates of office referrals suggest a need for teacher training at all levels in elements of culturally responsive classroom management and instruction (Gay, 2000; Weinstein, Tomlinson-Clarke, & Curran, 2004).

#### Mental support programs resolve crime and schooled-inequality.

Gorman 15 — Nicole Gorman, Education World Contributor, Co-Founder & CEO of DreamWakers, Cited in The New York Times, The Washington Post, Bloomberg, Forbes, and People, B.A. and M.P.P. in education policy from the University of Virginia, 2015 (“Fixing the School-to-Prison Pipeline With Mental Health Support in Schools” *Education World*, August 15th, <http://www.educationworld.com/a_news/fixing-school-prison-pipeline-mental-health-support-schools-543983303>, Accessed 07/14/2017, Lenny)

It's no secret or hush-hush fact that the United States has the largest prison population in the entire developed world. In fact, incarcerated people is the one thing above else that the United States leads the world in. Also, a fact- students who are suspended are three times more likely to "be in contact with the juvenile justice system within one year," said the Huffington Post.

In order to fix what is known as a school-to-prison pipeline, there needs to be less ineffectual suspension and more emphasis on support services in schools. "

Children who are exposed to violence tend to suffer from a range of psychological issues, and often have 'difficulties with attachment, regressive behavior, anxiety and depression and conduct problems.' Without mental health support services, few are able to cope with the emotional stress in a productive manner on their own," said The Huffington Post.

Mental health services in schools and communities have proven to help reduce crime. The Huffington Post points to a 2004 study conducted in Illinois, where measures to add out-reach programs and support services resulted in sweeping success.

In the four sites where the lowered detention was tested, crime became 44% lower just three years later; for every $1 spent on "Aggression Replacement Training, Functional Family Therapy, and substance abuse treatment" programs, $3.50 of incarceration expenses was saved.

In New Orleans, where the charter school reform has yet to provided tangible measures of success in increased student achievement, something else is producing tangible results that signal a good thing.

In one New Orleans charter schools, Shonda Gray has founded "The Ultimate Purpose Program" which provides students with "group and personalized therapy sessions, as well as college and career coaching" within the school's walls.

The program has experienced so much success in raising student grades and attendance that Gray will be expanding the program into a small private school. "Sometimes as educators we just look at the behavior and we're quick to suspend the kid without really knowing what's the root of the issue. You can suspend a kid, but when that kid comes back, you're still going to have to deal with the same thing. So what happens is the kids become repeat offenders. You never got to the root of the issue. Then you end up with a kid that drops out of school, and decides not to come back, and just says, 'Forget it,'" Gray told The Huffington Post.

An investment in mental health services on a nationwide level is the first step in making sure "forget it" is not what kids in need end up saying about education.

#### Alternative programs solve the STTP.

**Advancement Project et al. 11** — Advancement Project, Racial Justice Non-Profit, Education Law Center, Education Policy Advocates, Juvenile Law Center, Justice for Minors Organization, The Forum for Education and Democracy, NAACP Legal Defense and Educational Fund, Inc. 2011 (“Federal Policy, ESEA Reauthorization, and the School-to-Prison Pipeline,” *Fairtest*, Spring, p. 4, Accessed 07/14/2017, Lenny)

Provide funding and incentives aimed at improving school climate, reducing the use of exclusionary discipline, and limiting the flow of students from schools to the juvenile and criminal justice systems.

• Increase the availablity of federal funds to replace exclusionary methods of discipline with: (a) proven and promising school-based discipline frameworks to be implemented in a culturally relevant manner, such as School-Wide Positive Behavior Support (SWPBS) and restorative justice programs; and (b) greater reliance on school-based mental health providers, such as school social workers, school psychologists, school counselors, and school nurses.32

• Provide federal funding for comprehensive local or regional strategies involving multiple stakeholders – including, but not limited to, schools, the justice system, parents, and students – to reduce the use of exclusionary discipline and the number of students entering the juvenile and criminal justice systems.

#### Only the counterplan solves — the plan leaves schools undefended against behavior problems.

**NASP 8** — National Association of School Psychologists, 2008 (“Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policymakers,” *National Association of School Psychologists*, Accessed 07/09/2017, Lenny)

Alternatives to Zero Tolerance Policies

Systemic changes in a school's or district's approach to discipline and behavioral intervention can significantly impact school climate and student learning. Schools implementing effective strategies have reported reductions in office discipline referrals by 20-60%; this results in improved access to academic engaged time and improved academic performance for all students. Schools can utilize their mental health experts - school psychologists, counselors and social workers - to research and develop discipline policies and positive behavior training strategies. Effective and promising alternatives to zero tolerance should involve families and community resources, including:

Violence prevention - the most frequent components of a violence prevention program include a prevention curriculum; services from school psychologists, counselors or social workers; family and community involvement; and implementation of effective school-wide discipline practices. Some examples of proven programs include: Second Step, Resolving Conflict Creatively Program and Promoting Positive Thinking Strategies (see below).

Social skills training and positive behavioral supports - interventions that help students with emotional/behavioral disorders and social skills deficits have potential to significantly improve school-wide behavior and safety. Effective programs include: Stop and Think (Project ACHIEVE) and Positive Behavioral Interventions and Supports (PBIS).

Early intervention strategies - interventions that target low levels of inappropriate behavior before they escalate into violence can significantly reduce the need for harsh consequences later. Examples of proven practices include First Step to Success (kindergarten) and Positive Adolescent Choices Training (developed for African American youth).

#### Highlight.

**Redfield & Nance 16** — Sarah E. Redfield, Professor of Law Emerita, UNH (COREJ appointee), Jason P. Nance, Associate Professor of Law, Associate Director of Education Law and Policy, University of Florida Levin College of Law, 2016 (“School-to-Prison Pipeline,” *American Bar*, Winter, Available Online at <https://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf>, Accessed 07/14/2017, Lenny)

Implicit bias and its impact on the school to prison pipeline were discussed at all of the Town Halls. The research on implicit bias continues to grow. As discussed in this report, the research is increasingly clear that implicit bias is part of being human, that such bias can be measured by both social and neuroscience, and that such bias may, without intent, contribute to the kinds of disproportionality discussed in the report. Implicit bias is an unconscious response that often is disassociated from our consciously held beliefs. Because so many decisions that impact young people along the school to prison pipeline are discretionary, openings for implicit bias to influence those decisions, albeit decisions made in all good faith, are many.

As discussed previously, research now shows that motivation to change implicit biases can help bring about change. But to be motivated, we have to first be aware of what implicit bias is and how it might operate in decisions about young people in education and juvenile justice. Training can bring about this awareness and offer possible debiasing techniques.

## Politics DAs

### Link — Court Politics

#### The plan requires Kennedy to rule for a controversial liberal policy — he’ll be on the top of a 5-4 decision and he’ll write the majority opinion — uniquely saps his PC.

Himes 13 — Stephen Himes, Studies Educational Leadership and Policy Analysis at University of Missouri-Columbia, J.D. from University of Kansas School of Law, B.A. in English and Secondary Education, 2013 (“The Race-Based School Assignment Policy Response to *Parents Involved V. Seattle School*s by 125 Districts from the Civil RightsCommision’s 1987 Meta Study on the Effects of Desegregation,” Dissertation Presented to the Faculty of the Graduate Schoolof University of Missouri-Columbia, May, Available Online at <https://mospace.umsystem.edu/xmlui/bitstream/handle/10355/37616/research.pdf?sequence=2>, Accessed 07-26-2017, p. 1-3)

In the middle of the argument sat Justice Anthony Kennedy, the Roberts Court’s “swing justice.” Justice Kennedy (2007) affirmed the Chief Justice’s holding that the RCSAPs in the Seattle and Louisville districts violated the Equal Protection Clause, but wrote separately to affirm that “Diversity, depending on its meaning and definition, is a compelling educational goal a school district may pursue” (p. 783). Justice Kennedy 2 found a constitutionally compelling interest in a district’s pursuit of a “diverse student population,” but “[r]ace may be one component of that diversity…other demographic factors, plus special talents and needs, should also be considered” (p. 798).

In short, Justice Kennedy’s controlling opinion holds that districts may use race as a factor in school assignment policy, but does not give much definitive guidance about when and how.

“Constitutional Law Is What Justice Kennedy Says It Is” A Reagan appointee, Justice Kennedy’s vote is crucial to almost all 5-4 cases (Schmidt, 2010). In fact, Justice Kennedy has cast the deciding vote in 27.5% of his 5-4 cases, a percentage second only to Justice Sherman Minton since 1953 (Enns & Wohlfarth, 2011, p. 43). During the 2008-2009 term, Justice Kennedy voted in the majority in 92% of all cases, including 18 of 23 decided by a 5-4 margin (Liptak, 2009). More importantly, Justice Kennedy authors more 5-4 majority opinions than any current justice. Since the 1996-1997 term, Justice Kennedy voted in 5-4 majorities 187 times (25 times more than any other justice) and authored 25.1% of those 5-4 opinions. Justice Kennedy authored 47 of the most closely contested decisions in the Court’s recent history—16 more than Justice Antonin Scalia, whose 31 opinions ranks second, and 26 more than the average for each justice (Bhatia, 2011, p. 2).

The results are not surprising, considering the Court’s history of wooing the swing justice with the promise of authoring the controlling opinion (Bonneau, Hammond, Maltzman, & Wahlbeck, 2007). Because the Parents Involved line of cases is a battle to define the legendary decision in Brown v. Board of Education, most Court observers expect Justice Kennedy to not only cast the deciding vote in the next RCSAP case, but 3 also to author the opinion. As Chicago-Kent College of Law Professor Christopher Schmidt (2010) observed, “Put simply, on a striking number of contentious issues, constitutional law is what Justice Kennedy says it is” (p. 3). For school leaders in districts with RCSAPs, the upshot is obvious: for the policy to survive, it must win the heart and mind of Justice Anthony Kennedy (Scott, 2008, p. 559).

### Link — Agenda Politics

#### Federal involvement in school discipline is massively unpopular—it’s seen as overreach on both sides of the aisle

Peterson 15 (Paul E. Peterson is a leading scholar on education reform. His work has largely focused on the importance of parental choice for improving school outcomes, August 24, 2015, “Federal Meddling in School Discipline” The National Review <http://www.nationalreview.com/article/422906/federal-meddling-school-discipline-paul-e-peterson>, accessed 7/29/17)//ac

In January 2014, the Obama administration’s Departments of Justice and Education, acting together, sent every school district in the country a letter warning local officials to avoid racial bias when suspending or expelling students. The letter said that African Americans receive about 35 percent of one-time suspensions and about 36 percent of expulsions, even though they account for only about 15 percent of students attending public schools. The departments, citing the Civil Rights Act of 1964, gave the school districts “guidance on how to identify, avoid, and remedy discriminatory discipline,” telling them they risked legal action if school disciplinary policies had “a disparate impact, i.e., a disproportionate and unjustified effect on students of a particular race.” Despite the “Dear Colleague” greeting at the beginning of the letter, the document has more the odor of diktat than collegiality. At a press conference on the subject, then–Attorney General Eric Holder explained that guidance was needed because current disciplinary policies, “however well-intentioned they might be, make students feel unwelcome in their own schools; they disrupt the learning process.” Secretary of Education Arne Duncan claimed that racial discrimination in the administration of discipline is “a real problem today — it’s not just an issue from 30 or 40 or 50 years ago.” Law professor Richard A. Epstein, however, questions the legal basis for the federal guidance. He says it “represents the worst in federal policy on K–12 education” in that it uses a dubious, extreme interpretation of the Civil Rights Act, for which there is no clear legal precedent, “to federalize all issues of discipline in the nation’s schools.” But whatever its legal basis, does the Obama administration’s new policy have broad-based support? To find out, we at the Harvard Program on Education Policy and Governance have asked nationally representative cross-sections of parents, teachers, and the general public (as part of the ninth annual Education Next survey, conducted in May and June of this year) whether they support or oppose “federal policies that prevent schools from expelling or suspending black and Hispanic students at higher rates than other students.” Only 23 percent of parents favor the new policy, while 54 percent oppose it, with the remainder responding that they neither support nor oppose the idea. Among the public as a whole, opposition is just about as large, with 51 percent opposing the “no disparate impact” policy, and just 21 percent backing the idea. UP NEXT Trump threatens to end health payments if Obamacare isn't repealed 00:00 00:35 A majority in favor of federal involvement in school discipline cannot be found among either Democrats or Republicans. Only 29 percent of Democrats like the new federal ruling, while barely 11 percent of Republicans give it their support. Teachers are even more opposed to federal involvement in school discipline. Teachers are even more opposed to federal involvement in school discipline. No less than 59 percent of teachers oppose federally mandated “no disparate impact,” while only 23 percent say they favor it. Within the African-American community, a plurality of support for the federal policy can be found — 41 percent in favor, 23 percent opposed. But whites are overwhelmingly against an expanded federal role in setting school-discipline standards: Just 14 percent favor the new federal policy, while 57 percent oppose it. Among Hispanic respondents, those against federal “guidance” outnumber supporters by 44 percent to 31 percent. Given the strong opposition to the policy among parents, teachers, and the general public, the federal government would be wise to drop further efforts to impose racially based rules for suspension and expulsion rates. But civil-rights attorneys at the Departments of Justice and Education are known for their activism, and a committed President Obama is eager to use all his putative executive power, whether or not it is well grounded in statutory law or judicial precedent. So the “Dear Colleague” letter may yet be followed up by stronger federal action. Should that happen and should school districts resist the pressure, they are likely to find a sympathetic audience both within and without the teaching profession.