# Off

### Litigation

#### Litigation is controlled now---the aff kills it

Emily S. Taylor Poppe 21, Assistant Professor of Law at the University of California, Irvine School of Law, “Institutional Design for Access to Justice”, UC Irvine Law Review, 11 U.C. Irvine L. Rev. 781, February 2021, Lexis

This law-centric orientation is strikingly different from that of most Americans, despite popular claims about their litigiousness. Most individuals never even identify the civil legal problems they experience as "legal." Only a tiny minority will ever seek legal advice in response to a problem, and most are more likely to do nothing than to file a lawsuit. Decades of empirical scholarship have confirmed that despite the prevalence of civil legal problems in everyday life, there is remarkably little recourse to formal law. [FOOTNOTE BEGINS] DAVID M. ENGEL, THE MYTH OF THE LITIGIOUS SOCIETY: WHY WE DON'T SUE 3 (2016) (noting that "specious claims of a litigation explosion have been made so often that they have rooted themselves in the national psyche"). [FOOTNOTE ENDS]

#### Antitrust litigation is uniquely complex and resource-intensive---a spike trades-off with judicial functioning in other areas

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs. Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact. In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party. Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm. Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best: A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time? [\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

Robert J. Rando 16, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

### State PIK 1nc

#### Text: Patent control over seeds should be illegal per se and patent-tying arrangements involving seeds should be eliminated.

#### The aff uses the social construction of the “United States Federal Government”—this entity does not exist—their recognition of the state forces them to ignore what they can do within the everyday as individuals while empowering capitalism making all of their impacts inevitable

Hallward in 2k3 (Peter, [French Department @ Kings College], Badiou a Subject to Truth, p. 96-99, kdf)

The state is thus a kind of primordial response to anarchy. The violent imposition of order, we might say, is itself an intrinsic feature of being as such. The state maintains order among the subsets, that is, it groups elements in the various ways required to keep them, ultimately, in their proper, established places in the situation. **The state** does not present things, nor does it merely copy their presentation, but instead, “through an entirely new counting operation, re-presents them, ” and re-presents them in a way that groups them in relatively fixed, clearly identifiable, categories. 44 Because the state is itself the immeasurable excess of parts over elements made ordered or objective, under normal or “natural” circumstances there is a literally “immeasurable excess of state power” over the individuals it governs (namely, the infinite excess of 2ℵ0 over ℵ 0 ). Within the situational routine, within business as usual, it is strictly impossible to know by how much the state exceeds its elements. In normal circumstances, there can indeed be no serious question of resisting the “state of things as they are.” This excess is essential to the efficient everyday operation of state business. By the same token, the first task of any political intervention is to interrupt the indetermination of state power and force the state to declare itself, to show its hand—normally in the form of repression (AM, 158–60). From a revolutionary perspective, if the excess of the state appears “very weak, you prepare an insurrection; if you think it is very large, you establish yourselves in the idea of a 'long march.'” 45 Today, of course, the power of the state is chiefly a function of the neoliberal economy. As far as any given individual or group of individuals is concerned, the blind power of capital is certainly more than immeasurable, and so “prevails absolutely over the subjective destiny of the collective” (AM, 164). One thing that any contemporary political intervention must do, then, is to keep the economy at a principled distance from politics as such. Whatever the circumstances, the struggle for truth takes place on the terrain first occupied by the state. It involves a way of conceiving and realizing the excess of parts over elements in a properly revolutionary (or disordered, or inconsistent) way, a way that will allow the open equality of free association to prevail over an integration designed to preserve a transcendent unity. So while the distinction between structure and metastructure, or between presentation and re-presentation, might suggest that analysis begins with the first term in each pair, in actual practice (i.e., from within any given situation) the members of a situation always begin with the second term, with the normality regulated by state-brokered distinction and divisions. From within the situation, it is impossible immediately to grasp the “intrinsic, ” presented individuality of particular elements belonging to the situation. If any such grasp is to have a chance of success, the state's mechanisms of classification and re-presentation must first be suspended. There are many different kinds of states. The communist-totalitarian state, for instance—in this respect like the state of the ancien régime—is one that organizes the way it counts its parts around the explicit interests of one particular privileged part, the party (or aristocracy). Our liberal état de droit, by contrast, counts without direct reference to a privileged part per se, but rather according to a perspective that works indirectly but efficiently in the interests of such a part (C, 239–40; DO, 45). The state can re-present only what has already been presented, but it does so in a certain way. In a capitalist society, of course, the state represents its elements—including and especially its “laboring elements”—as commodities, in the interests of those who own commodities. The chief task of such a state, then, is to arrange these commodity-elements into parts whose relations are governed as much as possible by the rules that preserve and regulate the ownership of property. What such a state counts is only capital itself; how people are in turn counted or re-presented normally depends upon how much they themselves count(in terms of capital or property). Like all states, the liberal-capitalist state defends itself against any attack on its way of arranging parts, that is, it is designed to foreclose the possibility of an uprising against property. The true alternative to our state, then, is not the invention of (or regression to) pre state forms of social ties or community, but the dissolution of all links specifically based on a binding respect of property or capital: “The state is founded not on the social bond [lien] that it would express, but on unbonding [dé-liaison], which it forbids” (EE, 125). The dé-liaison, or unbonding, forbidden by the state, is itself the very operation of a truth.It is in this way that Badiou's mature work has continued the Maoist war against the state by other, more measured, means: “To think a situation [penser une situation] is always to go toward that which, in it, is the least covered or protected by the shelter the general regime of things provides.” For example, in contemporary France, the political situation (the situation that structures the nature of a specifically French democracy) is to be thought from the point of view of the vulnerability of the sans-papiers (D, 126); in Israel, the political situation must be thought from the point of view of the dispossessed Palestinians. “To count finally as One that which is not even counted [in a situation] is what is at stake in any genuinely political thought” (AM, 165). But we know, too, that Badiou is no longer waging a struggle for the strict elimination of the state. L'Etre et l'événement provides a properly ontological reason for Maoism's historical defeat: the state is co-original with any situation. It is objectively irreducible. If “there is always [toujours] both presentation and representation” (EE, 110), the task is indeed to find an alternative to this toujours, this everyday. Simply, such an alternative can no longer be a once-and-for-all transformation, a destructive redemption from historical time, so much as a rigorous conception of the exceptional as such, a basis for a notion of time that transcends, without terminating, the toujours and the tous-les-jours. Badiou's goal, early and late, has been to “outline in the world an imperative that is able to subtract us from the grip of the state.” 46 What has always been “invariant” about the communist ideal is precisely the “conflict between the masses and the state” (DI, 67; cf. DO, 15–19). Marxists have always sought “the end of representation, and the universality of simple presentation, ” an egalitarian counting for one and the unrestricted reign of the individual qua individual (EE, 125–26). To this day, “the heart of the question is indeed the reaffirmation of the state [réassurance étatique],”“the disjunction between presentation and representation” (EE, 149). But the whole point is that this disjunction can be tackled only subjectively and not objectively. Badiou's project persists as the “destatification of thought [désétatisation de la pensée],” the subtraction of subject from state. 47 For as long as his philosophy remains a philosophy of the subject, it will remain a philosophy written against the state.

### 1nc cp

#### The United States federal government should:

#### prohibit the cultivation and consumption of GM seeds and foods, including in public and private food security and agricultural development programs;

#### require food programs be based on the use of non-GM seeds;

#### create community seed banks that store and reproduce non-GM seeds.

#### Solves the whole aff

1ac Escobar 16 – ESU reads yellow

Laura. 2016. The Political Ontology Of Seeds: Seed Sovereignty Struggles In An Indigenous Resguardo In Colombia. Conclusion: pgs. 340-345) [https://doi.org/10.17615/4k8s-t747 //](https://doi.org/10.17615/4k8s-t747%20//) zh

5. Community Seed Economies: Rethinking Commons and Markets Chapter 6 explored why and how recovering creole seeds have become fundamental to the defense and reinvention of collective indigenous selves in Riosucio, particularly seed savers associated with the grassroots organization Asproinca, and the indigenous governments or cabildos. Creole seeds embody the historical agri-food worlds –memories, practices, knowledges– of Emberá-Chamí people in this region. To be sure, the defense and conservation of creole seeds is another kind of ‘engaged universal,’ or place-based conjugations of the agroecological paradigm with ‘traditional’ farming and food practices, and some aspects of Fedecafé’s model of coffee production. In this chapter, I analyzed three seed sovereignty initiatives to explain how creole seeds and anti-GM activism have become part of indigenous struggles for identity and autonomy. First, the seed savers’ networks that conserve, exchange, and breed creole seeds at different scales from on-farm to the national –and even international– through seed fairs. Second, the 2009 declaration of the Cañamomo and Lomaprieta resguardo as one of the few “Transgenic-Free Territories” in Colombia. This declaration forbade the cultivation and consumption of GM seeds and foods, particularly in public and private food security and agricultural development programs; expressed the commitment to defend traditional seeds, ancestral knowledges and territory; and mandated that local food sovereignty programs were based on the use of creole seeds from local seed savers or obtained through exchange with other seed saving networks. 341 Third, the Community Seed House in this same resguardo which temporarily stores and reproduce creole seeds and organically-grown commercial seeds to supply cabildos food sovereignty programs and conserve agrobiodiversity in the resguardos. I argued that these three initiatives evidenced not only a community seed economy (Gibson-Graham), but also the diversity of seed-human worlds that include seed barter, giftgiving, and fair prices; inter-epistemic dialogue between ‘traditional knowledges’, agroecology, and critical western science; or alternative seed certification systems that reflect the manifold values of seeds from ritualistic, to medicinal, to agronomical and dispute the primacy of industrial scientific breeding of ‘improved seeds,’ which seed savers refers to as semillas desmejoradas or “degraded seeds.” Finally, in this chapter I analyzed how these seed sovereignty initiatives in Riosucio have prompted conflicts with the government and corporations which enforce seed certification and intellectual property rights on seeds, as well as promote GM crops. These seed conflicts in Riosucio originated in the implementation of Ica’s Resolution 970 that requires the exclusive use of certified seed and prohibits on-farm seed saving, as mandated by the US-Colombia FTA, that erodes seed commons. Furthermore, **these seeds conflicts are at the base of broader issues, namely indigenous rights to self-government and the defense of their own agricultural practices**. Seed conflicts are then part of larger conflicts over autonomy and ‘modelos propios’ or placebased ways of inhabiting the territory that defy the developmentalist governmentality of the agrobiotechnology apparatus. In this sense, seed sovereignty is an integral part of food sovereignty and self-government. I end this section by clarifying that not all farmers in Riosucio are radically against GM, hybrid and other industrial improved seed. Many of these farmers have, in different degrees, 342 adopted the Green Revolution paradigm which is difficult to challenge and subvert; other are in a too vulnerable position to reject GM and other ‘improved’ kinds of seeds, be them in the form of food aid, agricultural and food security programs, or as a condition for obtaining credit. As I and Elizabeth Fitting (2016) wrote: “With the current coffee-crisis and the strengthening of indigenous politics, farmers in Riosucio are diversifying their production and increasing the cultivation of creole varieties, but this may not be as fast and steady as seed-savers networks and indigenous leaders hope for. Furthermore, seed sovereignty, the conservation of creole crops, agroecology, and anti-GM activism are increasingly important but not fully among the main issues currently on the political agenda of Colombian agrarian organizations as land reform, the peace process, and opposition to mega-mining and FTAs continue to be more salient issues. This may prove challenging for on-going and future alliances between seed savers networks and other agrarian movements in the country”. 6. Seed Relational Ontologies By looking at Seed Systems in Riosucio, in Chapter 6, I bring a bio-centric perspective to identity-making processes. A possibility opens for conceiving what Holland calls figured worlds that become embodied in –and through– non-human beings, such as seeds, who are both agents and socio-natural ‘artifacts’ that shape indigeneity in Riosucio. Seeds-human worlds in Riosucio are based on a sense of multispecies care and coevolution that supports practices of reciprocity, autonomy and diversity. Seeds may represent domination and exploitation for peasants and indigenous people when enclosed by powerful outside market actors, such as biotechnology corporations, and genetically modified. However, creole seeds may also constitute a figured world with humans; a living being who is material, symbolic and spiritually significant to definitions of personhood in the Colombian Andes. There are plenty of processes by which Asproinca farmers and seeds become together in their territory: the cyclical expenditure and renovation of energy or fuerza through cultivating and consuming seeds; the ritual bondages associated to agricultural cycles where seeds figure 343 prominently; the transmission of identities and knowledges in seed conservation; or the ways seed walk the territory alongside farmers as they are exchanged. One important caveat. The meaning of ‘creole’ seeds and its association with indigenous identities and struggles is historically and contextually dependent in Riosucio. The clearest example is coffee. Coffee has been both a vehicle of coloniality and resistance. Coffee is native to Africa, was then brought as a plantation crop to the Americas during European colonization and arrived in Riosucio in the hands of a later colonization by antioqueño settlers. However, shade-grown coffee varieties became traditional since the 1960s with Fedecafé’s implementation of the Green Revolution model that included sun-grown varieties. 7. The Epistemological and Ontological Dimensions of Seed Conflicts In a nutshell, in this dissertation I argued that seed conflicts in Colombia are ontological and epistemological conflicts to define what seeds are, and whose knowledge and labor counts in seed development at several, interconnected dimensions: First conflicts over whether seeds are, on the one hand, commodities **that can be privately owned and monopolized using the legal figure of ‘invention’** under the modern corporate ontology or, on the other, closely related beings that constitute a commons, under a more relational ontology. I showed how seed savers in Riosucio challenge this corporate seed ontology by arguing that creole varieties are not resources to be ‘discovered’, ‘invented’, and commodified by corporations and western-based science, and that UPOV91-based laws are unconstitutional. Second, a dispute over which knowledge systems and labour define what a good seed is. For the industry, it is seeds ‘improved’ using western techno-science for capital accumulation. Hence, corporations define GM seeds as good seeds because they are homogeneous, hold commodity value in global markets, are engineered for efficient pest control, and have high 344 productivity and input-dependency. Seed savers in Riosucio challenge the superiority of industry seeds by calling them ‘degraded seeds’ and refusing to use ICA’s certification systems. In contrast, they consider creole seeds ‘good’ seeds, because they are connected to their indigenous worlds and struggles, they are free and circulate in farmers’ hands, are heterogeneous and adapted to the different agricultural systems of small-scale farmers, and contribute to seed and food sovereignty and autonomy. 8. Future Seed Journeys On a final note, I believe my dissertation opens up discussion on how **seed conflicts contribute to theorizations on non-human agency**. In my opinion, seeds are endowed with agency, not because of consciousness or subjectivity, but due to their capacity to act on others somewhat independently of those others’ –including humans’– will, meanings, designs or control. In contrast, for most Asproinca and NFS seed savers, seeds are conscious, sacred beings; their vital force or elemental emerges from a supranatural, spiritual being or substance –be it Mother Nature, the Creator, God, etc.– that is present in all living creatures. From my perspective, such vitality and agency may be thought as intrinsic to living beings in the terms proposed by systems theory; as a “propensity of living systems and organisms for selforganization and self-generation” (Capra, 2002). The agency of genes, toxins, and other proto-agents, as Bennet (2010) calls them, is clearly seen in that they exceed the control of human-led genetic manipulation by causing unforeseen effects when violently inserted into foreign genomes and organisms. Bt toxins present in GM crops travels beyond the confines of GM organisms through water, soil, wind, and metabolic networks to end up in new organisms and life networks such as breastfeeding babies, bees, cattle or monarch butterflies and producing unknown effects. Transgenes producing 345 unknown –and unaccounted for– variant proteins that may be toxic or allergenic for host organisms, including humans. **Extending agency to non-human beings is important for two reasons**. **First** because **it calls into question the objectification of nature** –inanimate objects- **that leads to** instrumentalization, **exploitation and suffering of non-human beings, such as seeds**. **Second**, and interrelated, **because considering non-humans as actants contributes to dismantle human ‘uniqueness’** and superiority **that has grounded our fantasy of control and prevented us from feeling empathy** for -and recognizing our interconnectedness and co-dependence on- other earth-beings and systems. These issues are open for further research as they are beyond the scope of this dissertation.

### Frame Subtraction

#### The 1AC’s value stands on its own---responding to it with abstract judgement is a hollow validation that siphons off political energy and draws them into the oppressive gaze of the academy---vote Negative to decline affirmation

Phillips 99(Dr. Kendall R. Phillips, Professor of Communication at Central Missouri State University) “Rhetoric, Resistance, and Criticism: A Response to Sloop and Ono”, Philosophy & Rhetoric, Volume 32, Number 1, p. 96-101

My **concern** with this movement **centers around** an issue that Sloop and Ono seem to take as a given, namely, **the role of the critic**. On one hand, calling for the systematic investigation of existing marginalized discourses is a natural extension both of critical rhetoric (see McKerrow 1989, 1991) and of the general ideological turn in criticism (see Wander 1983). On the other hand, **the ease of transition from criticism in the service of resistance to criticism of resistance may obscure the need to address some fundamental issues regarding the general function of rhetorical criticism in an uncertain and contentious world.** Beyond licensing the critic to engage in political struggle, Sloop and Ono advocate the pursuit of covert resistant discourses. Such a move not only stretches our understanding of rhetoric and criticism, but also alters significantly the relationship between critic and out- law. **Critical interrogation of dominant discursive practices in the service of political/cultural reform is supplanted in favor of positioning covert out- law communities as objects of investigation. Invited to seek out subversive discourses, the critic is positioned as the active agent of change and the out-law discourse becomes merely instrumental. Rather than academic criticism acting in service of everyday acts of resistance, everyday acts of resistance are put into the service of academic criticism.** Rhetorical resistance That we are "caught within conflicting logics of justice that are culturally struggled over" (Sloop and Ono 1997, 50) and that rhetoric is employed in these struggles seems an uncontroversial statement. Despite the theoretical miasma surrounding judgment, Sloop and Ono accurately note, the material process of rendering judgments (and of disputing the logics of litigation) continues in the world of actually practiced discourse. In the materially contested world, rhetoric is utilized both by those seeking to secure the grounds of dominant judgment and by those seeking to undermine or supplant dominant cultural logics with some out-law notion of justice. The distinction between these two cultural groups, "in-law" and out- law, however, deserves some consideration prior to any discussion of the role of the critic as implied in the out-law discourse project. The discourse of the dominant or those within the bounds of superordinate logics of litigation is reminiscent of Michel De Certeau's (1984) strategic discourse. For De Certeau, strategies are utilized by those who have authority by virtue of their proper position. Strategies exploit the institutionally guaranteed background consensus by which power relations (and litigations) are maintained and advanced. In contrast, tactics are utilized by those having no proper place of authority within the discursive economy who must seek opportunities whereby the discourse of the dominant might be undermined and contested. To extend Sloop and Ono's definition, out-law discourses are those that can (and, by their analysis, do) take advantage of situations (e.g., race riots) to disrupt the regularity of dominant cultural groups. The ongoing struggle between strategically instituted cultural dominants and the "out-law always lurk[ing] in the distance" (66) is acknowledged, even celebrated, by Sloop and Ono. What their acknowledgment fails to provide, however, is a clear need for critical intervention. Indeed, quite the reverse is presented: It is the critic (particularly the left-leaning critic) who needs out-law discourse. While the struggles over justice, equality, and freedom have gone on, the left-leaning critics are those who have theoretically excluded themselves from the disputes. The study of out-law dis- courses, then, provides a means to reinvigorate the intellectual and re-institute (academic) leftist thinking into popular political struggles (53-54). Thus, Sloop and Ono's project incorporates three types of rhetoric: the rhetoric of the in-law, presumably the traditional object of critical attention; the rhetoric of the out-law, the study of which may transform our understanding of judgment as well as reinvigorate leftist democratic critiques; and the rhetoric of the critics who, having lost their political po- tency, can exploit the discourse of the out-law to promote ideological struggles. It is to this critical rhetoric that I now turn. Resistance criticism Sloop and Ono (1997) clearly state the relationship they envision between the rhetorical critic and out-law discourse: "Ultimately, we will argue that the role of critical rhetoricians is to produce 'materialist conceptions of judgment,' using out-law judgments to disrupt dominant logics of judgment" (54; emphasis added). Here the critic seeks out vernacular discourse (60), focuses on the methods and values embodied in these communities (62), listens to and evaluates the out-law community (62-63), and chooses appropriate discourses for the purpose of disrupting dominant practices (63). Essentially, it is the critic who seeks out marginalized discourses and returns them to the center for the purpose of provoking dominant cultural groups (63). Despite acknowledging the efficacy of out-law discourses, Sloop and Ono assume that the critiques generated and presented by the out-law community have only minimal effect. The irony, and indeed arrogance, of this assumption is evident when they claim: "There are cases, however, when, without the prompting of academic critics, out-law discourses serve local purposes at times and at others resonate within dominant discourses, disrupting sedimented ways of thinking, transforming dominant forms of judgment" (60; emphasis added). Sloop and Ono seem to suggest that such locally generated critiques are the exception, whereas the political efficacy of the academic critic is the rule. This seems an odd claim, given that the justification for their out-law discourse project is the lack of politically viable academic critique and the perceived potency of out-law conceptions of judgment. **Their suggestion that out-law communities are in need of the academic critic contradicts not only the already disruptive nature of existing out-law discourses** (the grounds for using out-law discourse), but also the impotence of contemporary critical discourse (the warrant for studying out-law discourse). By this I do not mean that the critiques and theories generated by academically instituted intellectuals have not been incorporated into subversive discourses. Just as out-law discourses inevitably mount critiques of dominant logics, so, too, the perspectives on rhetoric and criticism generated by academics are used in resistance movements. Feminist critiques of patriarchy, queer theories of homophobia, postcolonial interrogations of race have found their way into the service of resistant groups. The key distinction I wish to make is that the existence of criticism (academic or self-generated) in resistance does not necessitate Sloop and Ono's move to a criticism of resistance. What **Sloop and Ono fail to offer is an adequate argument for "taking public speaking out of the streets and studying it in the classroom, for treating it less as an expression of protest" (Wander 1983, 3) and more as an object for analysis and reproduction within the political economy of the academy.** Philip Wander made a similar charge against Herbert Wicheln's early critical project, and this concern should remain at the forefront of any discussion aimed at expanding the scope and function of criticism. **Sloop and Ono offer numerous directives for the critic without addressing whether the critic should be examining out-law discourses in the first place.** While it is too early to suggest any definitive answer to the question of criticism of resistance, some preliminary arguments as to why critics should not pursue out-law discourses can be offered: (1) Hidden out-law discourses may have **good reasons to stay hidden**. Sloop and Ono specifically instruct us that "the logic of the out-law must constantly be searched for, brought forth" (66) and used to disrupt dominant practices. But **are we to believe that** all out-law discourses are prepared to mount such a challenge to the dominant cultural logic? Or, indeed, that the **members of out-law communities are prepared to be brought into the arena of public surveillance** in the service of reconstituting logics of litigation? It seems highly unlikely that all divergent cultural groups have developed equally, or that all members of these groups share Sloop and Ono's "imperial impulse" (51) to promote their conceptions and practices of justice. (2) Academic critical discourse is not transparent. Here I allude to the overall problem of translation (see Foucault 1994; Lyotard 1988; Lyotard and Thebaud 1985; Zabus 1995) as an extension of the previous concern. Critical discourse cannot become the medium of commensurability for divergent language games. Are we to believe that the "use" of out-law dis- course by critics to disrupt dominant practices can fail to do violence to these diverse/divergent logics? Are out-law discourses merely tools to be exploited and discarded in the pursuit of returning leftist academic dis- course to the center? (3) Perhaps the academic translation of out-law discourse could be true to the internal logic of the out-law community. **And, perhaps the re-presentation of out-law logic within the academic community will bestow a degree of legitimacy on the out-law community. Nonetheless, the effect of legitimizing out-law discourse is unknown and potentially destructive. In an effort to siphon the political energy of out-law discourse into academic practice, we may ultimately destroy the dissatisfaction that serves as a cathexis for these out-law discourses. It seems possible that academic recognition might take the place of struggle for material opportunities (see Fraser 1997). But, will academic legitimation create any material changes in the conditions of out-law communities**? I mean to suggest, not that it is better to allow the out-law community to suffer for its cause, but rather that incorporating the struggle into an (admittedly) impotent academic critique does not offer a prima facie alternative. (4) Criticism of resistance denies the practical and theoretical importance of opportunity. Returning to De Certeau's notion of tactics, the crucial element of these discursive moves is their use of opportunity to disrupt the proper authority of the dominant. The kairos of intervention provides the key to undermining "in-law" discourses. But when is the "right moment in time" for the academic reproduction of out-law discourse? Mapping the points of resistance (ala Foucault and Biesecker) entails interrogating "in-law" discourses for their incongruities and contradictions, not turning the academic gaze upon those communities waiting for an opportunity. Out-laws do not lurk in the forefront (66), hoping to be exposed by academic critics; they wait for the right moment for their disruption. Rhetoricians can provide rhetorical instructions for seeking opportunities and for exploiting these opportunities (literally making the culturally weaker argument the stronger), but this does not justify interrogating (intervening in) the cultural logics of the marginalized. The concerns raised here are not designed to dismiss Sloop and Ono's provocative essay. The divergent critical logic they outline deserves careful consideration within the critical community, and it is my hope that the concerns I raise may help to further problematize the relationship between resistance and rhetorical criticism. Rhetorical criticism As I have suggested, my purpose is to use the provocative nature of Sloop and Ono's project to extend disputes regarding the ends of rhetorical criticism. Diverging perspectives on the ends of criticism have been categorized by Barbara Warnick (1992) as falling along four general lines: artist, analyst, audience, and advocate. Leah Ceccarelli (1997) discerns similar categories around the aesthetic, epistemic, and political ends of rhetorical criticism. The out-law discourse project presents clear ties to the notion of critic as advocate. **For Sloop and Ono, the critic is an interested party, discerning (and at times disputing) the underlying values and forces contained within a discourse. Additionally, however, the out-law discourse critic is an analyst focusing on the hidden, aberrant texts of the out-law and "rendering] an incoherent or esoteric text comprehensible"** (Warnick 1992, 233). Now, I am not suggesting that a critic must serve only one function or that the roles of advocate and analyst are mutually exclusive; rather**, these entanglings of power** (political ends) **and knowledge** (epistemic ends) are inevitable. My concern is that we not neglect the complexity of these entanglements. **Turning covert out-law discourses into objects of our analyses runs the risk of subjecting them both to the gaze of the dominant and to the power relations of the academy**. As the works of Michel Foucault (especially 1979, 1980) aptly illustrate, practices presented as extending such noble goals as emancipation and humanity may endow institutions of confinement and objectification. Any justification for studying out-law dis- course because doing so may extend our political usefulness in the pursuit of emancipatory goals must not obscure the already existing power relations authorizing such studies. Our attempts to extend our domains of knowledge and expertise (authority) must not be pursued unreflexively.

**The Aff deploys the phrase “monopoly” to describe the patent system. It *occludes the aff’s alternate perspectives on the world* AND simultaneously *secures a system of neoliberal violence*.**

**Saltman 07** Kenneth J. Saltman is an associate professor in the Department of Education Policy Studies and Research of the School of Education at DePaul University, Chicago, Illinois. “Schooling in Disaster Capitalism: How the Political Right Is Using Disaster To Privatize Public Schooling” - Teacher Education Quarterly, Spring 2007 - #E&F - https://files.eric.ed.gov/fulltext/EJ795160.pdf

In education, neoliberalism has pervasively infiltrated with radical implications, remaking educational practical judgment and forwarding the privatization and deregulation program. The steady rise of privatization and the shift to **business language** and logic can be understood through the extent to which neoliberal ideals have succeeded in taking over **educational debates.** Neoliberalism appears in the now common sense framing of education through presumed ideals of upward individual economic mobility (the promise of cashing in knowledge for jobs) and the social ideals of global economic competition. In this view national survival hinges upon educational preparation for international economic supremacy. The preposterousness of this assumption comes as school kids rather than corporate executives are being blamed for the global economic race to the bottom. The "TINA" thesis (There Is No Alternative to the Market) that has come to dominate politics throughout much of the world has infected **educational thought** as omnipresent **market terms** such as "accountability," "choice," "efficiency," "competition," **"monopoly,"** and "performance" **frame** educational **debates.** Nebulous terms borrowed from the business world such as "achievement," "excellence," and "best practices" conceal ongoing struggles over competing values, visions, and ideological perspectives. (Achieve what? Excel at what? Best practices for whom? And says who?) The only questions left on reform agendas appear to be how to best enforce knowledge and curriculum conducive to individual upward mobility within the economy and national economic interest as it contributes to a corporately managed model of globalization as perceived from the perspective of business. This is a dominant and now commonplace view of education propagated by such influential writers as Thomas Friedman in his books and New York Times columns, and such influential grant-givers as the Bill and Melinda Gates Foundation.

**Our model teaches a form of engagement that corrects flaws in political strategies. Rejecting our approach is normatively worse for the Aff’s own cause.**

**Williams ‘15**

Douglas Williams is a third-generation organizer, He earned his BA in Political Science at the University of Minnesota at Morris and his MPA at the University of Missouri Columbia, where he was also a Thurgood Marshall Fellow and a Stanley Botner Fellow. He is currently a doctoral student in political science at Wayne State University in Detroit, where his research centers around public policy as it relates to disadvantaged communities and the labor movement. From the article: “The Dead End of Identity Politics” - From: The South Lawn - March 10, 2015 – Internally quoting Freddie DeBoer, Lecturer, Purdue University. DeBoer holds a PhD in Rhetoric and Composition from Purdue and an MA in English, concentration in Writing and Rhetoric from The University of Rhode Island, Modified for potentially objectionable language. In one instance a capital “B” was adjusted to a lower case “b” in a manner that boosted readability, but did not alter context. https://thesouthlawn.org/2015/03/10/the-dead-end-of-identity-politics/

Freddie **DeBoer** makes a great point in his piece on what he calls “critique drift“: “This all largely descends from a related condition: **many in the** broad online **left** have adopted a norm where being an ally means that you never critique people who are presumed to be speaking from your side, and especially if they are seen as speaking from a position of greater oppression. I understand the need for solidarity, I understand the problem of undermining and derailing, and I recognize why people feel strongly that those who have traditionally been silenced should be given a position of privilege in our conversations. B(b)ut critique drift demonstrates why a healthy, functioning political movement can’t forbid tactical criticism of those with whom you largely agree. Because critical vocabulary and political arguments are common intellectual property which gain or lose power based on their communal use, never criticizing those who misuse them ultimately disarms (hampers) the left. **Refusing** to say ‘***this*** is a real thing, but you are not being fair or helpful in making ***that*** accusation right now’ alienates potential allies, contributes to the burgeoning backlash against social justice politics, and prevents us from making the most accurate, cogent critique possible.”

----- (Williams is now no longer quoting DeBoer)

Look, I am Black. Also, sometimes, I can be wrong. Those two things are not mutually exclusive, and yet we have gotten to a point where any critique of tactics used by oppressed communities can result in being deemed “sexist/racist/insert oppression here-ist” and cast out of the Social Justice Magic Circle. And listen, maybe that is cool with some folks. Maybe the revolution that so many of these types speak about will simply consist of everyone spontaneously coming to consciousness **and there will be no need for coalitions**, give-and-take, or contact with people who do not know every word or phrase that these groups use as some sort of litmus test for the unwashed. But for the rest of us who reside in a reality-based world, where every social interaction is not tailored for your idiosyncratic indignations, we know that casting folks out for the tiniest of offenses will lead to a Left that will forever be marginalized and ineffective. I have stated before that the kind of people who put out these lists and engage in the kind of identitarian caterwauling that has become rote copy on the Internet might actually want that, as a world where left-wing activism is made potent and transformative will be one where they cannot simply take comfort in their cocoon of self-righteousness. But damn them when I can turn on my computer and see one Black person after another being gunned down by police. Damn them when we have a president that can sit there with a straight face and speak the words of freedom and liberation while using the power at his disposal to deny those very concepts to others. And damn them when we can get thousands of words on Patricia Arquette drunk at a party or how it is privileged to not like the same musicians that they do, but we cannot seem to get any thoughts on how the biggest moment for communities of color since the 1960s is being squandered in a hail of intergenerational squabbling. And do not even get me started on people writing articles that malign long-standing activist organizations without a whiff of evidence that there has been any wrongdoing on their part.

#### We can defend the rest of their advocacy and negate only certain parts. 2NR consolidation is the best alt:

#### -our model teaches a form of engagement that corrects flaws in political strategies. Rejecting our approach is worse for the Aff’s cause

#### - negating the whole aff makes only the most extreme stances strategic, like prejudice is good. We should debate framing strategies rather than impact turns to injustice

# On

## F

#### No reason the aff spills up, it can’t resolve colonialism. Land is still stolen, waste is still dumped on reservations, and bioprospecting is still inevitable world-wide for industries like medicine.

#### No impact to bio-d loss

Kareiva 12 (Peter Kareiva et. al, – Chief Scientist and Vice President of the Nature Conservancy, Michelle Marvier, Robert Lalasz, “Conservation in the Anthropocene Beyond Solitude and Fragility”, The Breakthrough, http://thebreakthrough.org/index.php/journal/past-issues/issue-2/conservation-in-the-anthropocene/)

2.

As conservation became a global enterprise in the 1970s and 1980s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity. Nature was described as primeval, fragile, and at risk of collapse from too much human use and abuse. And indeed, there are consequences when humans convert landscapes for mining, logging, intensive agriculture, and urban development and when key species or ecosystems are lost.

But ecologists and conservationists have grossly overstated the fragility of nature, frequently arguing that once an ecosystem is altered, it is gone forever. Some ecologists suggest that if a single species is lost, a whole ecosystem will be in danger of collapse, and that if too much biodiversity is lost, spaceship Earth will start to come apart. Everything, from the expansion of agriculture to rainforest destruction to changing waterways, has been painted as a threat to the delicate inner-workings of our planetary ecosystem.

The fragility trope dates back, at least, to Rachel Carson, who wrote plaintively in Silent Spring of the delicate web of life and warned that perturbing the intricate balance of nature could have disastrous consequences.22 Al Gore made a similar argument in his 1992 book, Earth in the Balance.23 And the 2005 Millennium Ecosystem Assessment warned darkly that, while the expansion of agriculture and other forms of development have been overwhelmingly positive for the world's poor, ecosystem degradation was simultaneously putting systems in jeopardy of collapse.24

The trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species **does not** necessarily lead to the extinction of any others, much less all others in the same ecosystem. In many circumstances, the demise of formerly abundant species can be inconsequential to ecosystem function. The American chestnut, once a dominant tree in eastern North America, has been extinguished by a foreign disease, yet the forest ecosystem is surprisingly unaffected. The passenger pigeon, once so abundant that its flocks darkened the sky, went extinct, along with countless other species from the Steller's sea cow to the dodo, with no catastrophic or even measurable effects.

These stories of resilience are not isolated examples -- a thorough review of the scientific literature identified 240 studies of ecosystems following major disturbances such as deforestation, mining, oil spills, and other types  of pollution. The abundance of plant and animal species as well as other measures of ecosystem function recovered, at least partially, in 173 (72 percent) of these studies.25

While global forest cover is continuing to decline, it is rising in the Northern Hemisphere, where "nature" is returning to former agricultural lands.26 Something similar is likely to occur in the Southern Hemisphere, after poor countries achieve a similar level of economic development. A 2010 report concluded that rainforests that have grown back over abandoned agricultural land had 40 to 70 percent of the species of the original forests.27 Even Indonesian orangutans, which were widely thought to be able to survive only in pristine forests, have been found in surprising numbers in oil palm plantations and degraded lands.28

Nature is so resilient that it can recover rapidly from even the most powerful human disturbances. Around the Chernobyl nuclear facility, which melted down in 1986, wildlife is thriving, despite the high levels of radiation.29 In the Bikini Atoll, the site of multiple nuclear bomb tests, including the 1954 hydrogen bomb test that boiled the water in the area, the number of coral species has actually increased relative to before the explosions.30 More recently, the massive 2010 oil spill in the Gulf of Mexico was degraded and consumed by bacteria at a remarkably fast rate.31

Today, coyotes roam downtown Chicago, and peregrine falcons astonish San Franciscans as they sweep down skyscraper canyons to pick off pigeons for their next meal. As we destroy habitats, we create new ones: in the southwestern United States a rare and federally listed salamander species seems specialized to live in cattle tanks -- to date, it has been found in no other habitat.32 Books have been written about the collapse of cod in the Georges Bank, yet recent trawl data show the biomass of cod has recovered to precollapse levels.33 It's doubtful that books will be written about this cod recovery since it does not play well  to an audience somehow addicted to stories of collapse and environmental apocalypse.

Even that classic symbol of fragility -- the polar bear, seemingly stranded on a melting ice block -- may have a good chance of surviving global warming if the changing environment continues to increase the populations and northern ranges of harbor seals and harp seals. Polar bears evolved from brown bears 200,000 years ago during a cooling period in Earth's history, developing a highly specialized carnivorous diet focused on seals. Thus, the fate of polar bears depends on two opposing trends -- the decline of sea ice and the potential increase of energy-rich prey. The history of life on Earth is of species evolving to take advantage of new environments only to be at risk when the environment changes again.

The wilderness ideal presupposes that there are parts of the world untouched by humankind, but today it is impossible to find a place on Earth that is unmarked by human activity. The truth is humans have been impacting their natural environment for centuries. The wilderness so beloved by conservationists -- places "untrammeled by man"34 -- never existed, at least not in the last thousand years, and arguably even longer.

## Impact framing

#### Consequences first – focus on morality is complicity with injustice

Issac 2 (Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University, Spring 2002, Dissent, Vol. 49, No. 2)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that **in a world of real violence** and injustice, **moral purity is** not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; **it is the effects of action, rather than the motives of action, that is most significant.** Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### Reducing existential risk by even a tiny amount outweighs every other impact

Bostrom 11 — Nick Bostrom, Professor in the Faculty of Philosophy & Oxford Martin School, Director of the Future of Humanity Institute, and Director of the Programme on the Impacts of Future Technology at the University of Oxford, recipient of the 2009 Eugene R. Gannon Award for the Continued Pursuit of Human Advancement, holds a Ph.D. in Philosophy from the London School of Economics, 2011 (“The Concept of Existential Risk,” Draft of a Paper published on ExistentialRisk.com, Available Online at http://www.existentialrisk.com/concept.html, Accessed 07-04-2011)

Holding probability constant, risks become more serious as we move toward the upper-right region of figure 2. For any fixed probability, existential risks are thus more serious than other risk categories. But just how much more serious might not be intuitively obvious. One might think we could get a grip on how bad an existential catastrophe would be by considering some of the worst historical disasters we can think of—such as the two world wars, the Spanish flu pandemic, or the Holocaust—and then imagining something just a bit worse. Yet if we look at global population statistics over time, we find that these horrible events of the past century fail to register (figure 3). [Graphic Omitted] Figure 3: World population over the last century. Calamities such as the Spanish flu pandemic, the two world wars, and the Holocaust scarcely register. (If one stares hard at the graph, one can perhaps just barely make out a slight temporary reduction in the rate of growth of the world population during these events.) But even this reflection fails to bring out the seriousness of existential risk. What makes existential catastrophes especially bad is not that they would show up robustly on a plot like the one in figure 3, causing a precipitous drop in world population or average quality of life. Instead, their significance lies primarily in the fact that they would destroy the future. The philosopher Derek Parfit made a similar point with the following thought experiment: I believe that if we destroy mankind, as we now can, this outcome will be much worse than most people think. Compare three outcomes: (1) Peace. (2) A nuclear war that kills 99% of the world’s existing population. (3) A nuclear war that kills 100%. (2) would be worse than (1), and (3) would be worse than (2). Which is the greater of these two differences? Most people believe that the greater difference is between (1) and (2). I believe that the difference between (2) and (3) is very much greater. … The Earth will remain habitable for at least another billion years. Civilization began only a few thousand years ago. If we do not destroy mankind, these few thousand years may be only a tiny fraction of the whole of civilized human history. The difference between (2) and (3) may thus be the difference between this tiny fraction and all of the rest of this history. If we compare this possible history to a day, what has occurred so far is only a fraction of a second. (10: 453-454) To calculate the loss associated with an existential catastrophe, we must consider how much value would come to exist in its absence. It turns out that the ultimate potential for Earth-originating intelligent life is literally astronomical. One gets a large number even if one confines one’s consideration to the potential for biological human beings living on Earth. If we suppose with Parfit that our planet will remain habitable for at least another billion years, and we assume that at least one billion people could live on it sustainably, then the potential exist for at least 10^(18) human lives. These lives could also be considerably better than the average contemporary human life, which is so often marred by disease, poverty, injustice, and various biological limitations that could be partly overcome through continuing technological and moral progress. However, the relevant figure is not how many people could live on Earth but how many descendants we could have in total. One lower bound of the number of biological human life-years in the future accessible universe (based on current cosmological estimates) is 1034 years.[10] Another estimate, which assumes that future minds will be mainly implemented in computational hardware instead of biological neuronal wetware, produces a lower bound of 1054 human-brain-emulation subjective life-years (or 1071 basic computational operations).(4)[11] If we make the less conservative assumption that future civilizations could eventually press close to the absolute bounds of known physics (using some as yet unimagined technology), we get radically higher estimates of the amount of computation and memory storage that is achievable and thus of the number of years of subjective experience that could be realized.[12] Even if we use the most conservative of these estimates, which entirely ignores the possibility of space colonization and software minds, we find that the expected loss of an existential catastrophe is greater than the value of 10^(18) human lives. This implies that the expected value of reducing existential risk by a mere one millionth of one percentage point is at least ten times the value of a billion human lives. The more technologically comprehensive estimate of 1054 human-brain-emulation subjective life-years (or 1052 lives of ordinary length) makes the same point even more starkly. Even if we give this allegedly lower bound on the cumulative output potential of a technologically mature civilization a mere 1% chance of being correct, we find that the expected value of reducing existential risk by a mere one billionth of one billionth of one percentage point is worth a hundred billion times as much as a billion human lives. One might consequently argue that even the tiniest reduction of existential risk has an expected value greater than that of the definite provision of any “ordinary” good, such as the direct benefit of saving 1 billion lives. And, further, that the absolute value of the indirect effect of saving 1 billion lives on the total cumulative amount of existential risk—positive or negative—is almost certainly larger than the positive value of the direct benefit of such an action.[13]

#### Existential risks mitigation is a decolonial imperative of care.

Offord, 17—Faculty of Humanities, School of Humanities Research and Graduate Studies, Bentley Campus (Baden, “BEYOND OUR NUCLEAR ENTANGLEMENT,” Angelaki, 22:3, 17-25, dml) [ableist language modifications denoted by brackets]

You are steered towards overwhelming and inexplicable pain when you consider the nuclear entanglement that the species Homo sapiens finds itself in. This is because the fact of living in the nuclear age presents an existential, aesthetic, ethical and psychological challenge that defines human consciousness. Although an immanent threat and ever-present danger to the very existence of the human species, living with the possibility of nuclear war has infiltrated the matrix of modernity so profoundly as to paralyse [shut down] our mind-set to respond adequately. We have chosen to ignore the facts at the heart of the nuclear program with its dangerous algorithm; we have chosen to live with the capacity and possibility of a collective, pervasive and even planetary-scale suicide; and the techno-industrial-national powers that claim there is “no immediate danger” ad infinitum.8 This has led to one of the key logics of modernity's insanity. As Harari writes: “Nuclear weapons have turned war between superpowers into a mad act of collective suicide, and therefore forced the most powerful nations on earth to find alternative and peaceful ways to resolve conflicts.”9 This is the nuclear algorithm at work, a methodology of madness. In revisiting Jacques Derrida in “No Apocalypse, Not Now (Full Speed Ahead, Seven Missiles, Seven Missives),”10 who described nuclear war as a “non-event,” it is clear that the pathology of the “non-event” remains as active as ever even in the time of Donald Trump and Kim Jong-un with their stichomythic nuclear posturing. The question of our times is whether we have an equal or more compelling capacity and willingness to end this impoverished but ever-present logic of pain and uncertainty. How not simply to bring about disarmament, but to go beyond this politically charged, as well as mythological and psychological nuclear algorithm? How to find love amidst the nuclear entanglement; the antidote to this entanglement? Is it possible to end the pathology of power that exists with nuclear capacity? Sadly, the last lines of Nitin Sawhney's “Broken Skin” underscore this entanglement: Just 5 miles from India's nuclear test site Children play in the shade of the village water tank Here in the Rajasthan desert people say They're proud their country showed their nuclear capability.11 As an activist scholar working in the fields of human rights and cultural studies, responding to the nuclear algorithm is an imperative. Your politics, ethics and scholarship are indivisible in this cause. An acute sense of care for the world, informed by pacifist and non-violent, de-colonialist approaches to knowledge and practice, pervades your concern. You are aware that there are other ways of knowing than those you are familiar and credentialed with. You are aware that you are complicit in the prisons that you choose to live inside,12 and that there is no such thing as an innocent bystander. You use your scholarship to shake up the world from its paralysis, abjection and amnesia; to unsettle the epistemic and structural violence that is ubiquitous to neoliberalism and its machinery; to create dialogic and learning spaces for the work of critical human rights and critical justice to take place. All this, and to enable an ethics of intervention through understanding what is at the very heart of the critical human rights impulse, creating a “dialogue for being, because I am not without the other.”13 Furthermore, as a critical human rights advocate living in a nuclear armed world, your challenge is to reconceptualise the human community as Ashis Nandy has argued, to see how we can learn to co-exist with others in conviviality and also learn to co-survive with the non-human, even to flourish. A dialogue for being requires a leap into a human rights frame that includes a deep ecological dimension, where the planet itself is inherently involved as a participant in its future. This requires scholarship that “thinks like a mountain.”14 A critical human rights approach understands that it cannot be simply human-centric. It requires a nuanced and arresting clarity to present perspectives on co-existence and co-survival that are from human and non-human viewpoints.15 Ultimately, you realise that your struggle is not confined to declarations, treaties, legislation, and law, though they have their role. It must go further to produce “creative intellectual exchange that might release new ethical energies for mutually assured survival.”16 Taking an anti-nuclear stance and enabling a post-nuclear activism demands a revolution within the field of human rights work. Recognising the entanglement of nuclearism with the Anthropocene, for one thing, requires a profound shift in focus from the human-centric to a more-than-human co-survival. It also requires a fundamental shift in understanding our human culture, in which the very epistemic and rational acts of sundering from co-survival with the planet and environment takes place. In the end, you realise, as Raimon Panikkar has articulated, “it is not realistic to toil for peace if we do not proceed to a disarmament of the bellicose culture in which we live.”17 Or, as Geshe Lhakdor suggests, there must be “inner disarmament for external disarmament.”18 In this sense, it is within the cultural arena, our human society, where the entanglement of subjective meaning making, nature and politics occurs, that we need to disarm. It is 1982, and you are reading Jonathan Schell's The Fate of the Earth on a Sydney bus. Sleeping has not been easy over the past few nights as you reluctantly but compulsively read about the consequences of nuclear war. For some critics, Schell's account is high polemic, but for you it is more like Rabindranath Tagore: it expresses the suffering we make for ourselves. What you find noteworthy is that although Schell's scenario of widespread destruction of the planet through nuclear weaponry, of immeasurable harm to the bio-sphere through radiation, is powerfully laid out, the horror and scale of nuclear obliteration also seems surreal and far away as the bus makes its way through the suburban streets. A few years later, you read a statement from an interview with Paul Tibbets, the pilot of “Enola Gay,” the plane that bombed Hiroshima. He says, “The morality of dropping that bomb was not my business.”19 This abstraction from moral responsibility – the denial of the implications on human life and the consequences of engagement through the machinery of war – together with the sweeping amnesia that came afterwards from thinking about the bombing of Hiroshima, are what make you become an environmental and human rights activist. You realise that what makes the nuclear algorithm work involves a politically engineered and deeply embedded insecurity-based recipe to elide the nuclear threat from everyday life. The spectre of nuclear obliteration, like the idea of human rights, can appear abstract and distant, not our everyday business. You realise that within this recipe is the creation of a moral tyranny of distance, an abnegation of myself with the other. One of modernity's greatest and earliest achievements was the mediation of the self with the world. How this became a project assisted and shaped through the military-industrial-technological-capitalist complex is fraught and hard to untangle. But as a critical human rights scholar you have come to see through that complex, and you put energies into challenging that tyranny of distance, to activate a politics, ethics and scholarship that recognises the other as integral to yourself. Ultimately, even, to see that the other is also within.20