# 1NC – Round the Fifth

### OFF

#### Interpretation: The resolution should define the division of ground- the role of the ballot is to determine the efficacy of a topical proposal relative to the status quo or a competing option.

#### The ‘United States federal government’ is the three branches.

U.S. Legal ’16 [U.S. Legal; 2016; Organization offering legal assistance and attorney access; U.S. Legal, “United States Federal Government Law and Legal Definition,” <https://definitions.uslegal.com/u/united-states-federal-government/>]

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

#### The resolution is a proposition of policy – “United States” and “should” prove

Ericson 3 (Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

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

#### Core antitrust laws refer to statutory laws – the increased prohibitions must be reflected IN Clayton, Sherman and FTC

Kuntz 2-23-21

(Kendall. MARYLAND CAREY SCHOOL OF LAW. Can the Courts and New Antitrust Laws Break Up Big Tech? https://www.law.umaryland.edu/Programs-and-Impact/Business-Law/JBTLOnline/Break-Up-Big-Tech/)

There are three core antitrust laws in effect today: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. These three antitrust laws attempt to protect market competition for the benefit of consumers. The Sherman Act outlaws monopolies and contracts that unreasonably restrain trade. The Clayton Act prohibits mergers and acquisitions that substantially lessen competition or create a monopoly. Lastly, the Federal Trade Commission Act bans “unfair methods of competition” and “unfair or deceptive acts or practices.” Antitrust laws are not established to punish success, but are focused on preventing anticompetitive effects, exclusionary practices, reduced consumer choice, and hindered innovation.

#### C. Two impacts:

#### 1. Clash: Debate requires negation- affirmatives that don’t address the resolution makes irrative clash impossible because shifting away from the resolutional agent and mechanism kills negative ground by making it concessionary and allows for aff conditionality which cements the structural advantages of the affirmative through crushing limits.

#### 2. Fairness- debates about scholarship in a vacuum are myopic and breed reactionary generics – they allow the aff to cement their infinite prep advantage, because all the aff has to do is find evidence supporting an ideological orientation towards the world – this crushes clash because all of our prepared negative strategies are based on praxis, and by not defending a clear actor and mechanism we lose 90% of negative ground, and the aff still retains traditional competition standards like perms to make being neg impossible

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#### The rhetorical militancy of the affirmative is a veneer of radicalism that hides a deeper complicity with the ideological structures of neoliberal interest-group pluralism. It is an ahistorical erasure of class dynamics that undermines organizing for social transformation.

Reed 17 [Adolph, Prof of Political Science at UPenn, “Revolution as ‘National Liberation’ and the Origins of Neoliberal Antiracism,” *Socialist Register*, p.299-322]

Whatever it may have been at earlier historical moments, antiracism as a contemporary politics is not necessarily aligned with projects of broad social transformation animated by the egalitarian vision that prompted the twentieth century’s iconic revolutions. Rather, antiracist politics in the United States and elsewhere in the West and much of Latin America can be, and often enough has been, an antagonistic alternative to such projects of broad transformation. That is, notwithstanding a persistent inclination among leftists to consider it a discourse at least in dialogue with the left, antiracism is as likely now to be an ideological and practical programme that fits more comfortably within neoliberalism than with a socialist left. In the United States especially, but increasingly in Western Europe and Canada also, antiracism and other political tendencies based on ascriptive identities – that is, those expressing what one supposedly is rather than what one does – commonly reject Marxist and other socialist politics as insufficiently attentive, if not inimical, to the special position and needs of racial or other ascriptively defined populations understood to be oppressed in ways that are not causally or most consequentially rooted in capitalist political economy. In fact, these tendencies commonly object to the universalizing perspectives associated with socialism and Marxism in particular as Eurocentric (or phallocentric, or heteronormative) homogenization that denies the specificity of ascriptive groups’ distinctive perspectives, grievances and demands. To the extent the political orientation from which antiracist and other identity-based tendencies proceed is more ‘groupist’ than broadly solidaristic, the vision of a just society around which they cohere can be more in line with liberal interest-group pluralism than with a left that relates its lineage or marks its affinities to the broad tradition that generated the revolutionary movements of the last century. Eric Hobsbawm pointed to this tension in the mid-1990s indicating that, while the left naturally has supported movements advocating for the rights of stigmatized groups, identity groups ‘are not committed to the Left as such, but only to get support for their cause wherever they can’.3 Openness to this kind of politics stems partly, as Hobsbawm points out, from the left reflex to support the cause of the oppressed. The victories won in the second half of the twentieth century against ideologies and regimes of ascriptive hierarchy, chiefly those grounded on narratives of race and gender, made leftists, and labour, all the more conscious of past failings with respect to inattentiveness to, acceptance or even overt embrace of ascriptive inegalitarianism. The generation of leftists who emerged in the 1960s came of age with the militant anti-colonial movements and national liberation struggles in what was then known as the Third World, the civil rights struggle in the United States, and anti-apartheid struggles in South Africa, as well as the resurgent women’s movement. That generation was also likely to be self-critical regarding what were perceived as failings and limitations – some would say ossification, even debasement or perversion – of the dominant practical models of socialism in Eastern Europe and elsewhere on the capitalist periphery. The New Left generation’s inclination to criticize ‘really existing socialism’ extended also to the orthodox Marxist parties in the West, which were easily enough seen as out of touch with the new spirit of insurgency coming from youth, minority groups in advanced capitalist societies, and Third World movements of national liberation. In the US, many displayed similar scepticism toward the trade union movement, which in the eyes of many radicals had settled into a narrow, self-interested class collaborationism. This is a familiar story to Socialist Register readers, and one I summarize very schematically. In addition to Hobsbawm’s account mentioned above, Leo Panitch and the late Ellen Meiksins Wood have discussed these developments more extensively, especially the impact of the intellectual left’s movement both into the academy and away from an intellectual and epistemic commitment to class struggle.4 Several features of that moment are pertinent for making sense of the subsequent development of antiracist politics in itself and the left’s embrace of it. Disillusionment with democratic centralism and sclerotic bureaucratism fed a skeptical attitude toward organizational and intellectual discipline, as well as toward commitment to specific visions and programmes of social transformation. Those tendencies became exacerbated over the 1980s and 1990s as left activity retreated increasingly into universities. In that climate, as more and more of the left came to be defined by moral stance rather than strategic politics and practical programme, self-criticism and atonement regarding racism and sexism on the part of labour and the left in the past, and bearing witness against injustice in the present, loomed steadily larger as an element of left political discourse, especially in the US. And then, with rote repetition of ever more deeply embedded commonsense knowledge, the narrative of labour’s and the left’s past failings with respect to racial and gender inequalities was increasingly shed of nuance, to the point that in recent decades it has become a truism in some activist circles that failure to challenge ascriptive inequalities, or even active reproduction of them, has been a definitive characteristic of the working-class-based left and trade unions, and is substantially responsible for the decline of either or both.5 Commitment to the accusatory narrative can underwrite extraordinary historical misrepresentation, for example, Eugene Debs’s statement that socialism has ‘nothing special to offer the Negro’ [black people] is taken as evidence of his indifference to racial inequality – when his intent was exactly the opposite.6 A left that had by and large given up the goal of radical social transformation and the objective of pursuing political power for the purpose of realizing that goal became less distinct from liberalism. Such a left, as Russell Jacoby notes, ‘ineluctably retreats to smaller ideas, seeking to expand the options within the existing society’.7 Militant embrace of the discourses of identity politics, most notably antiracism, has helped to sustain an appearance that the left is not in retreat but remains on the cutting edge of transformational politics. That is because of the prominence of a view that construes ‘oppressions’ rooted in race and gender, etc., as both foundational to American society – or the West – and so deeply embedded that most whites/men are in denial about their power. From that perspective the civil rights movement’s legislative victories in the 1960s were superficial and could not address the deep-structural sources of racism and sexism, which are effectively ontological and therefore beyond the reach of normal political or social intervention. Thus the struggle against these sources of inequality is always insurgent because their power never diminishes. CONTEMPORARY ANTIRACISM’S AHISTORICAL CHARACTER Representing racism as a transhistorical phenomenon, sometimes characterized as a ‘national disease’ or ‘original sin’, underwrites a claim that it continues to shape life chances for blacks and other nonwhites as it did in earlier periods when, as W. E. B. Du Bois put it, ‘the walls of race were clear and straight; when the world consisted of mutually exclusive races; and even though the exact edges might be blurred there was no question of exact definition and understanding of the meaning of the word’, that is, when notions of racial hierarchy were hegemonic and were open and explicit principles of social and political organization.8 That view, to the extent that it understands racism as transcending patterns of historically specific social relations, presumes primordial understandings of race/racism as a phenomenon shared by both postwar racial liberalism and the earlier racial determinism it challenged. This is, moreover, a political problem as well as an intellectual one. The politics crafted in this antiracist framework has a rearguard character that is expressed in its proponents’ tendency to rely on evocation of past racist practices – law professor Michelle Alexander’s book The New Jim Crow is one prominent illustration9 – to mobilize outrage about injustices in the present. The argument by means of historical analogy, i.e., that current injustices that may seem to derive most directly from different, more complex sources are more significantly understood as like latter-day instances of racist practices in the past, rests on the trope that the current outrages demonstrate the deep continuity of racism as a force and at least suggests the inadequacy of the victories of the civil rights struggle. Yet that trope is also in effect an acknowledgment that big victories on that front have indeed been won. Otherwise there would be no basis for assuming that the comparison would have rhetorical force. Condemnation of an act or practice by comparing it to slavery or Jim Crow could provoke the desired effect only if we can assume consensus that slavery and Jim Crow were bad things. Moreover, sustaining the conviction that racism remains most significantly causal of contemporary patterns of inequality requires terminological gymnastics which enable positing racism – ‘institutional’, ‘structural’, even ‘post-racial’ – as, at least by default, the causal explanation for inequalities that appear statistically as racial disparity and are lived as such in day-to-day life. In fact, historical analogy typically stands in lieu of empirical argument to explain why we should automatically see contemporary disparities as evidence of the unspecified workings of a generic racism rather than as products of current and concrete political-economic processes that are very much ‘presentist’ elements of the regime of steadily intensifying regressive redistribution, the mechanisms, that is, that constitute the telos of neoliberalism. Assertion of the centrality of racist ideas and practices among labour and the left is similarly ahistorical both as a representation of the past and in its implications of continuity in the present. It is more allegory or fable than historical account. Presumptions, stances, and practices that now would be clearly recognized and negatively sanctioned as racist certainly were common enough in the Marxist left and the labour movement in the nineteenth and early twentieth centuries. The appropriate basis of comparison – if one wants to make the sort of moral assessment that many critics of those institutions intend – would, however, not be early twenty-first century sensibilities, but whether racism and sexism were more prominent within unions and left politics than within other contemporaneous institutions. Frankly, from an historicist perspective this sort of exercise in moralistic calculation seems rather puerile, but, because antiracist criticisms of the left in the present depend so heavily on claims regarding the past, it is necessary to address them. Toward that end an important first step is recognizing that what race means and does not, how it has operated as a politically and ideologically potent category, as well as its meanings and significance, have evolved over time and context. The period of revolutionary ferment out of which the Bolshevik revolution emerged coincided with the historical moment when the race idea was at or approaching its apogee in the history of the world, before or since. At the beginning of the twentieth century race science identified between three and sixty-three ‘basic’ races in the world, including between three and six, or even thirty-six, in Europe alone.10 That ambiguity was the inevitable result of efforts to establish precise characteristics of a nonexistent phenomenon: ‘races’ simply do not exist as natural populations. Race theorists assumed that their efforts at taxonomic specification failed because generations of population movement and mixing had diluted original, ‘pure’ racial types; so they looked for racial essences beneath national or linguistic affiliations. This conviction in turn supported the manifestly unscientific approach of positing a priori ideal types and attempting to classify existing populations ‘racially’ by comparing the frequencies of geographical distribution of physical characteristics imputed to the ideal racial types constructed in the race scientists’ taxonomies.11 Marxists and other leftists were more likely to dissent from hegemonic racialism than others, but race-thinking permeated political and intellectual discourse and everyday common sense. It was reproduced among progressives, Fabians and many socialist reformers, as well as conservatives, in dominant notions of evolution as progress. Teleological presumptions about fixed stages of cultural and social evolution and the comparative method in Victorian anthropology that considered contemporary ‘primitives’ as living versions of ancestral Europeans reinforced the tendency – convenient for proponents of colonial expansion – to rank populations hierarchically on the basis of natural limits and capacities ascribed to them. And even many revolutionaries believed that colonial domination was justified because ‘backward’ peoples needed periods of tutelage to prepare them for the modern world. Many English race scientists were convinced that the indigenous working class was racially different from the aristocracy. Just as some socialists opposed imperialist expansionism on egalitarian grounds, others opposed it on racial grounds, expressing fear of degeneration through contact with racially inferior populations.12 Often class struggle was fought at least partly on the terrain of racialist ideology. In the latter half of the nineteenth century fights in the American West over importation of Chinese labour and Japanese immigration also centred around racialist ideologies. Railroad operators and other importers of Chinese labour imagined and openly asserted that those workers’ distinctive racial characteristics made them more tractable and able to live on less than white Americans; opponents, including the California labour movement, argued that those very racial characteristics would degrade American labour and that Chinese were racially ‘unassimilable’. But it was the employer class, not the workers likely to be displaced or impoverished, who established the debate on racial terms. Post-bellum southern planters imported Chinese to the Mississippi Delta region to compete with black sharecroppers out of the same racialist presumptions of greater tractability, as did later importers of Sicilian labour to Louisiana sugarcane and cotton fields.13 Large-scale industrial production in the late nineteenth and early twentieth centuries depended on mass labour immigration mainly from the eastern and southern fringes of Europe. The innovations of race science – that is, of racialist folk ideology transformed into an academic profession – promised to assist employers’ needs for rational labour force management and were present in the foundation of the fields of industrial relations and industrial psychology. Hugo Münsterberg, a founding luminary of industrial psychology, included ‘race psychological diagnosis’ as an element in assessment of employees’ capabilities, although he stressed that racial or national temperaments are averages and considerable individual variation exists within groups. He argued that assessment, therefore, should be leavened with consideration of individuals’ characteristics and that the influence of ‘group psychology’ would be significant ‘only if the employment not of a single person, but of a large number, is in question, as it is most probable that the average character will show itself in a sufficient degree as soon as many members of the group are involved.’14 As scholarship on race science and its kissing cousin, eugenics, has shown, research that sets out to find evidence of racial difference will find it, whether or not it exists. Thus race science produced increasingly refined taxonomies of racial groups, and the apparent specificity of race theorists’ just-so stories about differential racial capacities provided rationales for immigration restriction, sterilization, segregation and other regimes of inequality and subordination, including genocide. It also generated practical applications to assist employers in assigning workers to jobs for which they were racially suited. A ‘racial adaptability’ chart used by a Pittsburgh company in the 1920s mapped thirty-six different racial groups’ capacities for twenty-two distinct jobs, eight different atmospheric conditions, jobs requiring speed or precision, and day or night shift work.15 Of course, all this was bogus, nothing more than narrow upper-class prejudices parading about as science. It was convincing only if one shared the folk narratives of essential hierarchy that the research assumed from the outset. But the race theories did not have to be true to be effective. They had only to be used as if they were true to produce the material effects that gave the ideology an authenticating verisimilitude. Poles became steel workers in Pittsburgh, Baltimore, Buffalo, Chicago, and Gary, not for any natural aptitude or affinity but because employers and labour recruiters sorted them into work in steel mills. RACIALIST IDEOLOGY’S MATERIAL FOUNDATIONS As a significant social force, racialist ideology has always been anchored to material imperatives, in both domestic and international domains. It became commonsense truth to the extent that it connected with the perspectives and interests of powerful elites. Like all ideologies of ascriptive difference, it would pre-empt debate over evolving programmes of exploitation and domination by reading them into nature. While the discourse of white supremacy certainly has had no shortage of sincere adherents, it became hegemonic over the second half of the nineteenth century because it comported well with upper-class prejudices and capitalists’ economic programmes. That is how, as the Pittsburgh racial adaptability chart illustrates, it became the conceptual frame of reference within which other groups and strata came to understand their social position, articulate their own interests and thus constitute themselves practically as groups. In the US for instance, in the late 1830s and 1840s, in a context of rising abolitionist sentiment and the democratization of public discourse associated with the spread of universal (white male) suffrage, white supremacist ideology undergirded and propelled a shift in defences of slavery. Previously, pro-slavery arguments centred on defending the institution as a ‘necessary evil’, an unpleasant and even morally dubious requirement of the plantation- based economic order of the southern states. One antebellum planter put the matter succinctly: ‘For what purpose does the master hold the servant? Is it not that by his labor, he, the master, may accumulate wealth?’16 In the changing political climate, the rhetorical centre of gravity of defences of slavery shifted to an argument that the institution was indeed a positive good for all involved, including the enslaved. This moment coincided with the formation of the embryo of what by the end of the century would become race science. As the sectional crisis sharpened in the late 1840s and early 1850s, propagation of white supremacist ideology – both rhetorically and institutionally, through carrots and sticks – became important as a basis for accommodating non-slaveholding southern whites to the possibility of secession. Appeals to racial solidarity provided a narrative of political cohesion and negatively sanctioned dissent. To be clear, indicating that it had a material foundation is not to suggest that embrace of white supremacy was ‘purely’ instrumental, even among proto-race scientists and pro-slavery ideologues. An important feature of ideologies of ascriptive difference is that they hopelessly cloud the distinction between principled belief and pursuit of self-interest. Josiah C. Nott and George R. Gliddon, the authors of Types of Mankind, one of the most prominent texts of mid-nineteenth century race theory, both no doubt believed sincerely that the races they identified were equivalent to separate species and that blacks were naturally fit for enslavement. They were also, respectively, a wealthy slave-owning Alabama physician and an English Egyptologist who also wrote on the cotton economy in Egypt.17 A striking testament to the harmonizing power of ideology is the appearance of an antebellum field of slave medicine, devoted to identification and treatment of conditions peculiar to blacks. Among those was drapetomania, a ‘disease of the mind’ that afflicted slaves with an irrational inclination to ‘run away from service’. Samuel A. Cartwright, the slave-owning Louisiana physician who discovered and reported the malady in the early 1850s, when ‘positive good’ arguments had become dominant among slavery’s defenders, was convinced that he had identified a genuine medical condition, preposterously transparent as it seems to a twenty-first century sensibility.18 White supremacist ideology, and the racialism in which it was embedded, operated similarly, of course, in relation to European and American colonialism in the late nineteenth century. Pioneer sociologist Edward A. Ross in 1901 laid out an especially clear account that links scientific race theory, rooted in the neo-Lamarckian evolutionism common in the early social sciences, and an argument for imperialism and colonization as inexorable imperatives of the ‘vigorous’ races.19 In an illustration of the complex ways that hegemonic racialism could work, Ross had been fired from the Stanford University faculty the year before for having run afoul of Jane Lathrop Stanford, widow of Leland Stanford of the Union Pacific railroad and domineering force on the University’s board of trustees. Ross had earned Mrs Stanford’s ire for two particular transgressions: he militantly advocated, in league with trade unions, intensified enforcement of Chinese exclusion on racial grounds (Union Pacific was a principal proponent of importing Chinese labour, also on racial grounds); and he advocated with equal militancy public ownership of utilities.20 Rudyard Kipling, a literal product of British imperialism, extolled ‘The White Man’s Burden’, which – in a gush of enthusiasm at the US’s recent acquisitions from the Spanish- Cuban-American War – he urged Americans to take up. I am agnostic with respect to how earnestly Kipling held the brew of condescension dressed as altruism projected in his infamous contention. We can say with certitude, though, that he understood that there was much more to colonialism than altruistic tutelage. In response to Kipling, one of the most emphatic racists of the day in American politics, Democratic US Senator from South Carolina Benjamin R. ‘Pitchfork Ben’ Tillman, denounced imperialist expansionism on racial grounds, stressing concerns that sustained contact with inferior populations would lead to white racial degeneration.21 By the turn of the twentieth century racialist ideology had become a global frame of reference through which arguments about colonialism and economic and political hierarchy were commonly conducted. Therefore, it should not be surprising that opposition to those hierarchies would be expressed, at least initially, in that same language. An oft-cited instance of that perception is W. E. B. Du Bois’s 1903 observation that ‘the problem of the Twentieth Century is the problem of the colour line’, which he went on to specify as ‘the relation of the darker and lighter races of men in Asia and Africa and the islands of the sea’.22 In the US, mass disfranchisement of blacks and imposition of strictly codified white supremacist apartheid in nearly all the South made the colour line particularly salient as a bulwark against egalitarian political interests. This is consistent with how ascriptive ideologies naturalize contingent material relations of inequality by making them invisible within narratives of fixed hierarchy. The racialized discourse of tutelage, persistence of the presumptions of the Victorian comparative method, and direct and overt racialized domination all reinforced a similar understanding of the driving impetus of colonialism. It was reasonable for egalitarian opponents to assume either that racialist ideology was the proximate source of the inequality and exploitation, or that combating that ideology was a necessary precondition for attacking the inequality. It is noteworthy that both in the US and in much of the fin-de-siècle colonial world, as Du Bois’s colour line apothegm illustrates, the first tentative expressions of modern political assertiveness from the dominated populations were formulated within the paradigm of tutelage of the underdeveloped. The nascent professional and functionary classes in the colonies and the American South, the ‘new men’, as Judith Stein describes them, began to yield a stratum who pursued advocacy for subordinate populations alongside managerial authority over, and organized guidance of, their progress toward self-government. In the US that stratum of racial advocates, often describing themselves as ‘race men’ and ‘race women’, attained civic voice in the context of mass disfranchisement and shared a commitment to the large ideal of ‘racial uplift’.23 This established a recognized social role and occupational niche for the race or ethnic group leader as a sort of freelance broker or ethnic-group entrepreneur. Booker T. Washington and Du Bois were prominent voices of this stratum. Both in the US and colonial territories this politics of group advocacy often rested on racialist presumptions about the subordinate populations’ general backwardness and the stewardship role the group’s more cultivated and advanced members should play in leading the masses out of their benighted state. This was a petition politics that addressed governing elites as its principal audience because it understood them to be the only source of e ective political agency. That meant as well that the mission of group uplift was defined within parameters set by the ruling class. By the 1930s racialist ideology was increasingly under attack on biological, anthropological, and political fronts, in part as an expression of the left’s social momentum, which helped to buttress and disseminate egalitarian ideas and sensibilities. In that environment, the Great Migration from the Jim Crow South to big cities in the North and Midwest encouraged popular mass politics among black Americans, particularly as black workers were incorporated into the new industrial unionism. Mass organization as a political form as well as trade unionism also spread through much of the colonial world. In both settings, insurgent politics understandably joined opposition to racism with opposition to exploitation, as defences of those hierarchical regimes still depended on racialist arguments and would continue to do so for several decades. But the cultural and ideological victory of egalitarianism over racialism that consolidated in post-Second World War intellectual life came with a very large asterisk. What was largely defeated was the historically specific strict bio-determinist discourse of race that had prevailed as common sense between the last decades of the nineteenth century and the first quarter of the twentieth. Walter Benn Michaels and Werner Sollors have shown that the retreat from race to culture in theories of social di erence that began in the 1920s was in some ways more an exchange of one metaphor of essential di erence for another than a rejection of the notion of essential group di erence. As historian of anthropology George Stocking, Jr points out, from its origins in the early twentieth century the modern culture idea never fully escaped race theory’s presumptions.24 In the postwar years, culture increasingly supplanted race in discourses legitimating inequality, particularly regarding exploitation of colonized societies and racial minorities in the US. In its taxonomy of ‘stages of development’, modernization theory in the academic study of comparative political development merely rehearsed hoary racialist accounts, such as that by E. A. Ross cited above, and the logic of the Victorian comparative method, while dressing them in a later generation’s scientistic raiment. Robert Vitalis has shown recently how the academic field and political practice of international politics in the US remained rooted in substantively racialist paradigms well into the 1960s.25 And the State Department’s and other national elites’ concerns about the impact that domestic civil rights agitation could have on US imperial designs in former colonial territories led to a concern with damage control that generated, on the one hand, censorship of news broadcast abroad and intense monitoring and policing of domestic activists’ overseas engagements and, on the other, liberal Cold Warriors’ pressure on the domestic front in support of some versions of the movement’s aims.26 AMBIGUITIES OF RACE AND CLASS IN POSTWAR INSURGENCIES Anti-colonial and national liberation movements also paid attention and to some extent drew inspiration from the postwar black American insurgency and vice versa. At least through the 1950s, movements on both planes of insurgency mobilized in general terms on a popular front basis. In both spheres – economic position and racial or national category – each signified the other. In the black American case, the postwar insurgency, which had germinated since the mid-1930s, incubated by industrial unionism and socialist agitation, was propelled partly by a tension between what Preston Smith characterizes as racial democratic (i.e., committed to radical equality of opportunity within American capitalism) and social democratic tendencies and programmes.27 Occasionally, the ultimate contradiction between those tendencies would erupt as open conflict around specific initiatives. However, in quotidian experience racial discrimination and subordination and economic exploitation and degradation seemed, and on one level were, elements in a singular system of oppression. For leftists in both loci of insurgency, pursuit of redistribution along racial and class lines each seemed to be a necessary condition for successful pursuit of the other, if they were not treated as indistinguishable. By the end of the Second World War, even very conventional black liberals and moderates were emphatic that continued growth of industrial unionism and expansion of public social wage policies were indispensable for black Americans’ advancement toward equality.28 For many, including activists, the social-democratic and racial-democratic imperatives were so tightly melded that, even on those occasions when tension between them erupted into explicit conflict in relation to specific initiatives, the sources of conflict typically were interpreted as deriving from individual, idiosyncratic differences rather than more portentous ideological contradiction. A downside of the popular front style of politics, which was very successful through the major legislative victories of the mid-1960s, was that it proceeded from an abstract commitment to the interests of the race as a whole as a governing norm for political judgment, which was by definition murky and facilitated evasion of those sharp, potentially zero-sum disagreements over political vision that would surface in strategic or even tactical debates. This murkiness left many popular front black radicals ill- prepared for a critical moment in the mid-1960s when the submerged class contradiction sharpened in debate over ways forward after the legislative victories against segregation. THE CLASS CONTRADICTION That tension in black politics was at its core a class contradiction; racial democracy is the social ideal of the aspiring professional-managerial and business strata. Failure, inability or reluctance to address class dynamics in black politics as such, while understandable in the context of dynamic racial popular front insurgency as a strategic desideratum or even simple oversight, nonetheless has had consequences for subsequent understandings of the relation of race and politics and assertions of the scope of authentically black political interests that eventually undermined possibilities for sustaining a working-class agenda in black politics. Antagonistic reactions from both antiracist activists and political elites to Senator Bernie Sanders’s campaign for the 2016 Democratic presidential nomination, on a platform inspired by social democracy, threw into bold relief the extent to which what is now generally recognized as black politics is fundamentally a professional- managerial class programme that constitutes the left-wing of neoliberalism. This politics actively invokes the cultural authority of earlier moments of black insurgency, shorn of their working-class programmatic character, and spectres of the racial order it opposed, to align with a neoliberal ideal of social justice – parity in the distribution of capitalism’s costs and benefits among recognized ascriptive categories – as the boundary of the politically thinkable, even among a nominal left. This odd state of affairs is the product of several developments in postwar American politics, beginning with the impact of the business counterattack on labour in the years after the war and the aggressive anti-communism of the late 1940s and 1950s, and including the terms on which the victories of the mid-1960s were consolidated institutionally within black politics and the country at large. And, perhaps counter-intuitively, identification with Third World anti-colonial and national liberation movements in the 1960s and 1970s played a significant role in rendering invisible the class dynamics that shaped the thrust and impact of post-segregation black politics. The decade after the end of the Second World War was a key moment in helping form the trajectory that has culminated in contemporary antiracist politics in the US. Two linked pressures, one suppressive and the other affirmative, shifted the balance in black popular front radicalism sharply in favour of the racial-democratic tendency. The reactionary anti- communist offensive of those years, as was its domestic intent, stigmatized and suppressed expressions of socialist or anti-capitalist politics or critique. Its effects on accelerating purges of the left from the labour movement are well known. Leah N. Gordon and Risa Golubo have examined its impact on the strategic orientation of black politics and racial advocacy.29 Crucially, aggressive, putschist anti-communism and its ‘loyalty’ apparatus drove a retreat from political-economic interpretations of the bases of racial inequality and toward an individualist, psychologistic perspective focused on racism as prejudice, bigotry, or intolerance. On the affirmative side of the ledger, that new racial liberalism divorced from political economy encouraged a litigation strategy of challenging the codified apartheid in the South as violating the guarantees of equal protection against discriminatory state action provided by the Fourteenth Amendment of the Constitution. By the mid-1940s the federal courts had shown that that direction could produce positive results for litigants, and that potential opening impelled a focus on the segregationist southern order and its infringements on the civil rights of blacks as a class of individuals. Of course, segregation violated the Fourteenth Amendment no more in 1954, when the US Supreme Court found state-sponsored racially segregated education unconstitutional by definition, than it had in 1896, when the Court’s ruling in Plessy v. Ferguson upheld codified segregation in the ‘separate but equal’ doctrine. Moreover, black activists had fought against the segregationist regime with whatever means available since before Plessy had established it as legitimate. What had changed was the political and cultural centre of gravity with regard to racial inequality and discrimination. To be sure, the social-democratic tendency in black politics did not disappear. It remained an important engine of popular political action through the 1960s. The fabled 1963 March on Washington was organized principally by labour leader A. Philip Randolph’s Negro American Labor Council, and was officially called the March on Washington for Jobs and Freedom, organized and carried out with considerable trade union support. The impetus for the protest in Memphis at which Martin Luther King, Jr was assassinated was a sanitation workers’ strike that was an outcropping of a regional organizing campaign of the American Federation of State, County, and Municipal Employees (AFSCME). Labour and class-related issues were central to much of the militant action that made up the high period of southern civil rights activism from the 1940s through the 1960s, as well as a two-decade long struggle – mainly outside the South, where ruling-class dominance was too complete – for local, state, and federal Fair Employment Practices legislation. This would extend beyond anti-discrimination efforts to authorize public intervention in labour markets to pursue full employment, which had been a central goal of black political agitation – and the black-labour-left alliance in which it was embedded – since the war years. Even in the South, however, as the Memphis case illustrates, labour and class issues were often as not high on the movement’s agenda. Even such proceduralist liberal staples of the anti-segregation struggle as restoration of voting rights were linked in the minds of activists and rank-and-file movement supporters to working-class and labour objectives. NATIONAL LIBERATION, BLACK POWER AND CLASS POLITICS As Cold War liberalism and postwar racial liberalism converged, activists increasingly tended to link the civil rights agenda to the Cold War international agenda, especially regarding the decolonizing Third World, characterizing southern segregationists as out of step with world opinion and harmful to national security. Thus, at the same time as politically attentive black Americans drew inspiration from and inspired decolonization and national liberation movements abroad, many also found it at least instrumentally useful to identify their domestic struggles with US international aspirations. Not many perceived that there was a possible contradiction between those positions. Black Americans’ identification with anti-colonial struggles rested on an almost unavoidable and a ectively powerful sense of common, or at least comparable condition. I recall, on first seeing the film soon after its release, finding the ‘Battle of Algiers’ immensely resonant; it seemed that I had lived some of it as a child and adolescent in New Orleans and other American cities. But that general identification was also in important ways superficial and naïve, and it would eventually become implicated in the critical defeat of the social-democratic tendency in black politics in the late 1960s and 1970s. Black American Third Worldism was more nationalist than revolutionary. Going back to Du Bois’s apothegm about the colour line – and it is much less known that he essentially recanted it by the early 1950s, specifically describing race as an ‘excuse’ in class war30 – black identification with colonized populations stemmed partly from an idealized racial nationalism that presumed white supremacist constructions of the stakes of western imperialism. Du Bois’s 1928 novel Dark Princess is a romance based on the premise of a global rising of united peoples of colour.31 In the 1930s and even into the war, many black Americans cheered on Japanese imperialism as a non-white challenge to white supremacy.32 The roots of the characterization of black Americans’ position as an instance of ‘domestic colonialism’ in the early 1960s lay in an e ort not merely to elevate the black insurgency’s power and significance through association with Third World struggles, but also to advocate a model of national liberation as a programme and approach for black politics in the US.33 Third Worldism was in general more a rhetorical phenomenon than a substantively programmatic one. Marxist revolutionaries on the capitalist periphery embraced it as an aspiration. Mao propounded a ‘three worlds’ theory, and Cuba still maintains the Organización de Solidaridad con los Pueblos de Asia, África, y América Latina (OSPAAL). Left governments in Venezuela and elsewhere have drawn on imagery at least evocative of Third Worldism and Non-Alignment in their e orts to organize regional and supra-regional (typically based on common export commodities) economic and political blocs. The Alianza Bolivariana para los Pueblos de Nuestra América (ALBA), with member states in South America, Central America, and the Caribbean, is arguably the most extensive and successful of those e orts. For the most part, however, the history of Third Worldism and the Non-Aligned Movement as predicated on the goal of global alliance of ‘peoples of colour’ – anti-imperialist or otherwise – has been very much oversold.34 Moreover, the view that non-whiteness provides a basis for transnational political alliance simply rehearses the mystification that colonialism had been driven fundamentally by white supremacist ideology. As Fanon observed early in the period of decolonization, that mystification, in identifying racial transfer of formal authority as the essence of national liberation, also obscured the extent to which imperialism was always first and foremost a class project, of which colonialism buttressed by racialist fables was only one historically specific form. In any event, as anti-colonial and national liberation struggles intensified in the 1960s against the backdrop of the escalating Indochina War, Western leftists, almost as a reflex, generally supported those insurgent movements and defended them against inegalitarian critics and imperialist state power; doing so was consistent with the left’s egalitarian and democratic values. Many of those movements contained different ideological and class tendencies, a complexity often obscured by their populist rhetoric, which posited claims to represent the authentic ‘people’. How class dynamics played out in national liberation movements that succeeded in winning independence and official self-determination is well known. Even several of those movements that embraced socialism and attempted to link the national liberation struggle to a popular class politics – e.g., the FLN in Algeria, the African National Congress in South Africa and those that came to power in the former Portuguese colonies in Africa – were ultimately incorporated into the logic of capitalist globalization in ways that articulated with domestic class contradictions.35 In the US, escalation of the war on Vietnam encouraged greater attentiveness in the left to imperialist interventionism, and over that decade armed national liberation or revolutionary struggles intensified in much of the former colonial world and Latin America. At the same time the Black Power nationalist embrace of the domestic colonial analogy and the discourse of national liberation gave a radical halo to what was, militant rhetorical flourishes aside, programmatically an ethnic politics fully incorporable with the pluralist interest-group system. Notwithstanding the sincere convictions of adherents, Black Power was, consistent with ethnic politics in general, very much a class-based affair, harnessing an abstract and symbolic racial populism to an agenda that centred concretely on advancing the interests and aspirations of new political and entrepreneurial strata which emerged from the victories of the civil rights movement and demographic racial transition in American cities.36 In relation to a history of racial exclusion, it was reasonable and appropriate that many leftists supported what was substantively a programme for inclusion on a racial-democratic model. And the rhetorical militancy and racial-populist symbolism associated with Black Power, including the tropes of national liberation, reinforced the sense that it was a radical or revolutionary tendency that leftists should support. For more than half a century that view of Black Power has obscured the significance of the mid-1960s debate in black politics over the movement’s direction in the wake of the legislative victories. On one side, a working- class and labour-based black radicalism, propounded principally by A. Philip Randolph and his associate and longtime civil rights activist Bayard Rustin, argued that the struggle for black equality faced new, larger challenges opened by the defeat of Jim Crow that required building a different sort of movement centred on the familiar black-liberal-labour-left alliance. In questioning whether ‘civil rights movement’ even remained an accurate description, Rustin argued, in a widely read essay published a year before Stokely Carmichael introduced the Black Power slogan to the world, that the next phase of the struggle called for expanding the movement’s vision ‘beyond race relations to economic relations’. He argued that it could not succeed ‘in the absence of radical programs for full employment, abolition of slums, the reconstruction of our educational system, new definitions of work and leisure. Adding up the cost of such programs, we can only conclude that we are talking about a refashioning of our political economy.’ For that reason, he contended: ‘The future of the Negro struggle depends on whether the contradictions of this society can be resolved by a coalition of progressive forces which becomes the effective political majority in the United States. I speak of the coalition which staged the March on Washington, passed the Civil Rights Act, and laid the basis for the Johnson landslide – Negroes, trade unionists, liberals, and religious groups.’37 This was an unambiguous assertion of the social-democratic tendency in black politics, which Randolph and Rustin followed up with introduction of a ‘Freedom Budget’ that laid out an agenda for realizing a full-employment economy and its benefits for the society as a whole, noting that black Americans’ circumstances would be improved disproportionately if the Budget were implemented.38 For a variety of structural and idiosyncratic reasons, their call did not gain social traction.39 Contributing to its defeat was that the racial-democratic tendency aligned more comfortably with new institutional opportunities made available by the Voting Rights Act, racial transition in cities, anti-discrimination enforcement and the War on Poverty, all of which constituted a class-based racial redistribution that comported with the material aspirations of the emerging, post-segregation black professional-managerial class.40 Incipient Black Power racial populism obscured the class character of those developments. Particularly ironic, in light of the subsequent development of black politics, is that many radicals successfully deployed racial populism, reinforced by allusions to anti-colonial and national liberation struggles, to portray the social-democratic approach advocated by Randolph and Rustin as a conservative ‘integrationist’ call for subordination to white interests. Because black radicals never had the political capacity to challenge for state power or a broad and deep popular base, the movement’s class tensions seldom surfaced in political debate. By the mid-1960s the racial-democratic tendency’s cultural force and institutional clout – including its incorporation within postwar liberalism – had made its commitment to racial redistribution practically hegemonic as the standard of justice and equality for black Americans. In retrospect, that moment marked the birth of antiracism as a claim to a discrete politics. The ambiguity and murkiness in black popular front radicalism regarding intra-racial class dynamics undercut the ability of social-democratic advocates to mount appropriate critical responses. For the most part, such advocates also fell back on a discourse of racial authenticity and objections that the strategies and objectives of the emerging political class did not properly represent the interests of the ‘community’ or the ‘people’. The conceptual limitations imposed by that fetishized racial populism testified to and reinforced professional-managerial class hegemony in black politics. Partly from ideological purblindness, partly from material imperatives, the expressions of political radicalism that purported to dissent from the consolidating new black class politics – openly idealist cultural nationalism, a new, anti-imperialist Pan-Africanism, and a potted Marxism-Leninism – defined their radicalism through withdrawal from mundane political dynamics and embrace of one or another flavour of millenarian revolutionary catechism.41 Some black radicals, particularly in the 1970s moment of the largely Maoist New Communist movement in the US, strove to meld their fundamentally nationalist discourse of national liberation with a Marxist anti-imperialism. The Black Panther Party had been an early expression of this inclination.42 However, that turn retained the crucial assumptions of national liberation discourse, especially the most significant one – the nationalist premise that posits the group as an authentically communitarian and singular ‘people’ united against external oppression, and represents the character of class struggle within the population (e.g., black Americans) as that ‘people’ arrayed against inauthentic ‘misleaders’ or a co-opted, comprador element. That view originated in the ‘domestic colonialism’ analogy that emerged from some radicals’ early 1960s identification with Third World insurgencies. The great irony of this apparently radical tendency is that the communitarian populism on which it rested worked mainly to obscure class dynamics within black politics. It is a marker of retreat from programmatic commitment to social transformation that many who consider themselves on the left accept the stance that racial politics is more radical or inclusive than class politics and that pursuit of socialism is suspect on identitarian grounds. Ascriptive identity becomes the primary basis for political commitment, and solidarity on the basis of who we are trumps solidarity on the basis of what we believe only when the left no longer has a transformative vision around which to cohere as a basis for political judgment. Antiracism does not have an affirmative agenda, a fact that complements a left that by and large has little clarity of social vision itself. Antiracist politics mimes radicalism with posture and performative evocation of earlier insurgent politics like Black Power radicalism in the US and the national liberation movements of the 1960s and 1970s, but with complete erasure of the class and political-economic tensions in which those movements were immersed. CONCLUSION Positing a singular black community or racial political aspiration has had long- reaching effects on black politics, and leftist scholarship on black Americans, that have facilitated accommodation to neoliberal imperatives often while intending quite the opposite. Proliferation of a literature that presumes a singular ‘black freedom movement’, ‘black liberation movement’ or even a ‘long civil rights movement’ divests black Americans’ political activity of its tensions and structural contradictions. The effect is to de-historicize examination of black politics. Politically, this tendency has obscured thirty years or more of steadily lowered expectations for what can be gained from political action. This was exemplified clearly during the 2016 campaign for the Democratic presidential nomination when in South Carolina, longtime Georgia Congressman and former civil rights movement icon John Lewis and his fellow black Congressman James Clyburn from South Carolina denounced the Sanders campaign’s proposal for free public higher education as irresponsible because it sent the bad message that people should expect free things – that is, decommodified public goods and services – from government. ‘Nothing is free in America’, Lewis snarled.43 Left-neoliberal exuberance surrounding the Democratic National Convention’s official nomination of Hillary Clinton as its presidential candidate made undeniably clear that antiracism and other identitarian expressions are more than simply compatible with neoliberalism but are most meaningfully active components of its ideological reproduction. Dara Lind, writing in vox.com, exulted that ‘a commitment to diversity has become the [Democratic] party’s unifying principle’, and Jeet Heer gushed in The New Republic that ‘the Democratic Party opened their arms to Republicans – without compromising their liberal values’.44 Identity and social liberalism in this happy vision will completely override the Democrats’ enduring class loyalties, and contradictions. There are two final ironies to note regarding the left embrace of antiracist politics. First, all politics in a class society is class politics. Antiracism is not exempt from that reality. What its proponents will not admit is that it is a class politics but not a working-class politics. Second, representing race as a primordial identity also elevates it as a social force above the dynamics of the reproduction of capitalist social relations; in that sense, antiracist politics of the contemporary sort proceeds from the same primordialist view of race as did fin-de-siècle race theorists. And that is also a case of argument by historical analogy coming home to roost.

#### The alternative is recovery of Marxist materialist analysis in the interrogation of anti-blackness and capitalism. Theory & praxis that orients itself toward working class organizing and collective activism is key and has been historically central to the black radical tradition.

Ferguson 15 [Stephen, Associate Prof of Liberal Studies at North Carolina A&T, *Philosophy of African American Studies: Nothing Left of Blackness*, p.7-14]

Marxism in Ebony Materialist Philosophical Inquiry and Black Studies In any academic discipline, there exist varying, oftentimes even conflicting, conceptual frameworks, theoretical approaches, and methods. Black Studies is no different. In light of the theoretical works prominent today, however, a number of students in AAS might easily conclude that philosophical idealism is the only school of thought. To the contrary, Black Leftist activists were significant players during the early period of Black Studies. The first introductory textbooks in African American Studies were written by Marxist/socialist scholars and activists; for instance, Peoples College's Introduction to Afro-American Studies and Clarence Munford's Production Relations, Class and Black Liberation: A Marxist Perspective in Afro-American Studies. Communist like Jack O'Dell and Robert Rhodes taught African American Studies courses at the Antioch College branch campus in Washington, D. C. And pioneering Black historian and "antibourgeois gadfly" Earl Thorpe - chair of the history department at North Carolina College - was recruited to teach courses on "Marxism and Black Liberation" for the Black Studies program at Duke University.23 However, today, Leftist thought is marginal to the politics and philosophy of Black Studies. Socialism and Marxism-Leninism are integral parts of African American history and culture. Of course, Marxist scholar/activists contributed to African American intellectual history and culture long before what is, in more formal terms, considered the advent of Black Studies during the late 1960s. In the tradition of Hubert Harrison, Susie Revels Cayton, Maude White Katz, Richard B. Moore, Paul Robeson, Oliver Cox, Eugene Holmes, Abram Harris, Claudia Jones, Walter Rodney, Angela Davis, and John McClendon, there is a need to bring the Black working-class-men and women-back into AAS. A materialist philosophy inquiry into Black Studies is grounded on three presuppositions. A materialist conception of epistemology and ontology presumes that there is a reality independent of our consciousness. A materialist ontology asserts the primacy of material reality over consciousness. And a materialist epistemology posits that this reality is knowable and knowledge or what is cognitive (social consciousness) corresponds to and thus ideally approximates this material reality. Lastly, a materialist philosophy presupposes that the social world is a stratified ontology of which class relations (i.e., social relations of production) form the ground for understanding social processes. The call for a materialist conception of science and epistemology should not be seen as a call for an essentialist ascription of AAS, wherein it is viewed only as a social scientific enterprise devoid of cultural studies. The current popularity of cultural studies, often in collaboration with various species of historicism and postmodernist trends, fosters a separation between cultural studies and social relations of production. As a school of thought, it gives less attention to the material conditions that give rise to African American culture and relativizes the objective character of the Black experience. In my estimation, the Black working-class has become lost in the whirlwind of cultural idealism. Contemporary Black cultural theory – under the spell of poststructuralism and Afrocentricity – has declared: class is dead! All that exists is intersectionality and a "matrix of domination," in which everyone is oppressed – women, men, capitalist, workers, children, ad infinitum. And there is a tendency in Black Studies to transform the Black working-class into some obscure gray matter known as the consumer, the multitude, or – my favorite from the "friends of the poor" – the Black underclass.24 The relevance and importance of the Black working-class must be brought to the forefront of Black Studies.25 This would entail discarding analytical notions such as "cultural deprivation," "human capital," "culture of poverty," "nihilism," "feminization of poverty," "intersectionality," "underclass," "cultural pathology," and "menticide" that have served to explain the contemporary and historical crisis that confronts the Black working-class. We must discard the cultural idealism of Maulana Karenga, Corne! West, Jawanza Kunjufu, Marimba Ani, Patricia Hill Collins, Molefi Asante, and William Julius Wilson who perceive the "Negro Question'' as an ideological or axiological crisis, for example, as alienation from ancient African values, the loss of a "love ethic," or the lack of human capital. When we view the “Negro Question” as preeminently ideological, moral, or cultural, we ultimately discount the determinate role of material contradictions rooted in class contradictions. As Robert Allen astutely noted, " ... the question is not politics or no politics; rather it is which politics? Whom will Black Studies serve? Will it be truly democratic in its intellectual and political vision, or will it become 'apolitical' and acquiesce to a narrow, elitist and bourgeois view of education?"26 Black Studies and the Question of Western Civilization Revisited C. L. R. James wrote what could be considered a Marxist manifesto for Black Studies in 1969. Speaking at Federal City College, James argues, at the level of theory, that Black Studies should be anti-racist and anti-imperialist in character, but not anti-white. From James's perspective, there is no intellectual space in Black Studies for philosophies of Blackness in which ancient African civilizations, values, and cultural perspectives constitute a "presuppositionless beginning" for Black Studies.27 He parts company with Black nationalists and their contemporary progeny (e.g., Afrocentrists) who argue that every culture rests on a metaphysical, permanent substratum that gives rise to a particular system of thought. He cogently proclaims: We need a careful systematic building up of historical, economic, political, literary ideas, knowledge and information, on the Negro question ... Because it is only where we have Bolshevik ideas, Marxist ideas, Marxist knowledge, Marxist history, Marxist perspectives, that you are certain to drive out bourgeois ideas, bourgeois history, bourgeois perspectives which are so powerful on the question of the races in the United States.28 [Italics Added] For James, the antithesis between bourgeois ideology and proletarian ideology is essential to the development, direction, and aim of Black Studies. James is often viewed as someone who was head-over-heels in love with Western culture and/or civilization. Yet, it is important to note that dialectical and historical materialism (or Marxism-Leninism) constitutes the conceptual and theoretical framework for his assessment of "The Fate of Humanity." In a 1939 article, "Revolution and the Negro" James boldly avows, "What we as Marxists have to see is the tremendous role played by ~~Negroes~~ [black people] in the transformation of Western civilization from feudalism to capitalism. It is only from this vantage-point that we shall be able to appreciate (and prepare for) the still greater role they must of necessity play in the transition from capitalism to socialism."29 James's classic works such as The Black Jacobins and A History of Pan-African Revolt are ardently attentive to the fact that slavery, colonialism, and imperialism are part and parcel of capitalism. Moreover, the revolutionary resistance of people of African descent ostensibly indicates the critical role of Black people as actors or subjects of history and the dialectical development of Western civilization. In unswerving disapproval of Hegel's views about Africans and their place outside of world history, James meticulously documents and effectively demonstrates that-far from being removed from world historical event-African people and their descendants in the diaspora transformed the landscape of world history in a monumental fashion.3° Yet, James's historiography is not some form of racial vindicationism, which claims that ancient African civilization is the real source of Black historic magnitude and ultimately collective identity. Rather James offers insights into the Black struggles against slavery and colonialism as manifestations of the antagonistic contradictions within the modern (bourgeois) stage of world history. Cultural idealism has no place within James's worldview and consequently his philosophy of history. James's philosophy of history is not anti-European, anti-Western, or anti-white; his philosophy of history is stridently anti-slavery, anti-imperialist, anti-racist, and anticapitalist.31 James introduces a conceptual distinction between what is European and what is Eurocentrism. Moreover, he did not accept the abstract concept of the West as monolithic, devoid of internal class relations and contradictory class interests. Black sociologist Alex Dupuy points out that James's dialectical analysis takes into consideration the tremendous value of European culture and its influence on the African diaspora, and vice versa.32 Dupuy argues, "James was redefining the meaning of Western culture away from its Eurocentric understanding. For [James], West Indians were a modern and Western people, though they were not European, a point [James] made in many of his writings, e.g., his semiautobiography, Beyond a Boundary (1963)." 33 James resolutely rejected any outlook that requires Black Studies to be grounded on a uniquely formulated Black perspective (e.g., Senghor's Negritude or Karenga's Kawaida or Asante's Afrocentricity). Dupuy points out that James does not "reject African culture in favor of Western culture." 34 Rather, James's analysis is based on "a historical materialist understanding of culture" and the recognition that "the predominant influences in the Caribbean were those of Western Europe."35 As Dupuy insightfully notes, "The Black Jacobins remains ... one of the most succinct critiques of the barbarism of Western European imperialism but also of the promise of bourgeois civilization."36 Any philosophy of AAS worth its salt should follow in the "Giant Steps" of C. L. R. James. Embracing an ethnophilosophy that is anti-European is as fruitful as masturbation. It may be pleasurable, perhaps even therapeutic, but it won't give birth to a scientific approach to Black Studies. "And that Black Fist becomes a Red Spark" Black Studies and Black Working-Class Studies37 In a post-Cold War world, the "spectre of communism" has apparently been exorcised and laid to rest. There is the widespread belief that we have witnessed the death-knell of Marxism. So, why argue for the legitimacy of and necessity for Marxism in Black Studies? No doubt this has been a hotly debated question both in the Black Liberation movement and in Black Studies for a considerable time. I tend to agree with Brian Lloyd: "I presume that we are witnessing, not the death of Marxism, but the end of the first period during which Marxists managed to seize and, for a time, wield state power. That it has fewer adherents at the end than during other phases of this period, and that as many of them can be found in universities as in factories or fields, is neither disheartening as is imaged by some of its proponents nor as amusing as is supposed by all of its detractors."38 It has become the custom to summarily dismiss Marxism as a viable methodological approach and philosophical perspective for Black Studies. Most of the adversarial postures toward Marxism-Leninism in Black Studies have discounted the value of a materialist dialectical philosophy of liberation, class analysis, class struggle, proletarian internationalism, and the scientific socialist principle of the dictatorship of the proletariat. Despite the sharp divergence of their political views, Harold Cruse, Cedric Robinson, Cornel West, Marimba Ani, Patricia Hill Collins, and Charles Mills have condemned Marx and Marxism for everything from economic determinism to class reductionism to historical teleology and any number of other "conceits." We even find Asante making such puerile statements such as the following: "In fact, we have no history of a communist movement in the United States where communists put their bodies and lives on the line as African Americans did."39 Contrary to Asante's claim, scholars such as Mark Naison, Ted Vincent, Erik S. McDuffie, Gerald Horne, Carole Boyce Davies, Robin Kelley, Minkah Makalani, and Mark Solomon in addition to autobiographies by Harry Haywood, Hosea Hudson, and Michael Hamlin offer a much more nuanced picture of communism, socialism, and Marxism-Leninism in Black life and culture. Over the years, scholarship in labor studies and Black Studies has revealed the historical legacy of Black worker militancy. As we travel through the annals of Black history, we unearth Peter Clark's crucial involvement in the Great Railway Strike of 1877, Lucy Parsons's unflinching engagement in the Haymarket Square struggle, the heroic efforts of Ralph Gray, Tommy Gray, Eula Gray, Al Murphy, and scores of Black sharecroppers, tenant farmers, and agricultural laborers to organize the predominantly Black underground organization the Share Croppers Union, A. Philip Randolph's tireless efforts with the Brotherhood of Sleeping Car Porters, Ferdinand Smith's vanguard role in the National Maritime Union and Paul Robeson's monumental efforts to use folk music to entertain Spanish Civil War loyalists and striking workers as he gave support to international socialist solidarity. We could mention the steadfast leadership of Velma Hopkins and Moranda Smith in the 1947 strike at the Reynolds Tobacco Company in Winston Salem, North Carolina. There were Black postal workers like Cleveland Morgan, a member of New York Branch 36 of the National Association of Letter Carriers, who played a seminal role in the nationwide 1970 postal wildcat strike. We could also mention the historic efforts of the League of Revolutionary Black Workers to organize wildcat strikes in Detroit, Michigan. And, in more recent times, we could mention working-class Black women who have fought against the attack on public services, such as public housing and welfare. We should not ignore the fact that many of these activists were socialists, and quite a few were Marxist-Leninist in their ideological outlook. The scholarship of Clarence Lang, John Arena, Adolph Reed, Barbara Ransby, Rhonda Y. Williams, and Joe Trotter has demonstrated the historic importance of the Black working-class to African American history and culture. They bring to light the centrality of class struggle and conflict as determinate features of what makes up the Black working-class. World capitalism gave birth to the Black working-class. The initial accumulation of large sums of capital, which in turn, was invested in the exploitation of European workers, derived from the slave trade and the plantation system in the so-called New World. In volume one of Capital, Marx so famously wrote "capital comes dripping from head to foot, from every pore, with blood and dirt."40 The ruthless exploitation of Black bodies, in a manner of speaking, became the proverbial goose that lays golden eggs, possessing the magical ability to increase the magnitude of capital. Incidentally, the profitability of the "proverbial goose" prompted slaveholder Thomas Jefferson to remark, "it would never do to destroy the goose."41 Leaving the decks of the slave ship, "In the Name of Jesus," large numbers of Wolof, Mande, Fulani, and Mandingo were bound together by chains, from neck to neck and wrist to wrist.42 Out of the diversity of African ethnic groups a new synthesis was formed under the brutal system of capitalist slavery, giving birth to African Americans. The incessant "demand for Black labor" by Northern industrial capital and the plantation bourgeoisie fueled world capitalist development. Black slaves toiled in textile mills, shipyards, sawmills, and coalmines from Virginia to Mississippi. Black women labored on tobacco fields in the Carolina piedmont and picked cotton on plantations along the coast of Georgia. Black men like Tom Molineaux and Black women like Sylvia DuBois were given release time from slave labor in order to engage in athletic labor (as boxers) to bring entertainment and profits to slaveholders and the larger white Southern community. 43 From the seventeenth century to the twenty-first century, from slave plantations to auto factories, Black women, men, and children labored under the hard times of capitalist exploitation. The brutal forces unleashed by the capitalist drive for surplus value laid the foundation for the development of African American life and culture, from religion to music.44 Presently, we are witnessing, from New York to North Carolina to Missouri to Wisconsin to California, concerted attacks on public sector workers in order to resolve the economic crisis ravaging US capitalism. We cannot ignore the fact that Black people are prominent in the leadership as well as in the rank and file in a great number of these mass demonstrations. In cities throughout the country, working-class men and women, Black, white, and Latino, are being blown away by police officers who are ultimately protected by the rule of law. In the aftermath of the murders of Trayvon Martin, Michael Brown, Aiyanna Jones, Yvette Smith, Rekia Boyd, and Eric Garner, Black working people are not silently standing by while the "Lords of Capital" via their "special bodies of armed men'' – with military weapons and tanks – confront them in the streets. This seminal point is lost on Black critics of Marxism during the past 90 years. As numerous studies in AAS have demonstrated, the working-class is not one-dimensional, exclusively composed of white people. The working-class is composed of women, men, and children, in addition to being multinational in character. Marxist studies of Black working-class life and culture are needed now more than ever because in the souls of the Black working-class the grapes of wrath are filling and growing heavy. As Karl Marx so famously put it, "The weapon of criticism cannot, of course, replace criticism of the weapon, material force must be overthrown by material force; but theory also becomes a material force as soon as it has gripped the masses."45 Philosophy of African American Studies, I hope, will serve a prolegomena to the Herculean task of developing a philosophy of AAS from the standpoint of materialism. How well I have backed up this reaffirmation of philosophical materialism and revolutionary socialism with good arguments I leave it to my readers to judge. But the attempt to do so provides an answer-satisfactory to me at least-to justify writing this book.

### 1NC

#### CP Text: Debate labor should organize and advocate for a general strike and debate stoppage until the debate community

#### - Acknowledges economic and academic exclusion of Black and Native communities and the role debate has in replicating the actions of academia.

#### - Create a platform for debaters to share any issues they have with the activity and foster organization for activism.

#### Solves the affirmative – strikes produce meaningful change

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“Historically speaking, the general strike is incredibly successful since it completely shuts down the functions of the economy,” author and union organizer Shane Burley tells Teen Vogue. “This is really the foundation of the power workers have under capitalism, to withhold their labor and undermine capital. Because a general strike affects the economy so broadly, it gives workers a huge bargaining chip to make massive societal demands — not just in one workplace, but of capital across all sectors.”

As noted by Black liberation and socialist author W.E.B. Du Bois, one of the country’s most successful general strikes happened during the Civil War, when roughly half a million enslaved Africans escaped Southern plantations and found the Union Army, and mass numbers of poor white Confederates deserted their posts — two independent collective actions that, together, helped kneecap the Confederacy.

More recently, a general strike in India saw 150 million workers across various industries demanding higher wages and union protections in what may well be history’s largest general strike. In 2006, janitors in Houston made waves with a nine-week strike that piggybacked on a wave of wildcat strikes and school walkouts in response to H.R. 4437, a bill that sought to criminalize both undocumented people and anyone who offered them aid (the legislation ultimately failed).

“To this day, the idea of a mass or general strike remains both an ideal and a tactic that can be picked up by everyday people if and when they discover the power to do so,” Andrew O'Conner, an editor at It's Going Down, an anarchist news and podcast platform, tells Teen Vogue. “And as American history has shown, this tactic is one that has been used by the working class as a whole, across lines of color, gender, trade, and geography.”

Organizers stress the importance of first building mutual aid networks and strong community systems to care for people in the event of a mass labor action like a general strike, before asking people to hit the streets. It’s hard enough to go out on a planned strike during union contract negotiations (and the Trump-controlled National Labor Relations Board is trying to make it harder). In those cases, workers at least have the support of their union, and, hopefully, a strike fund to help cover bills.

The resources and infrastructure needed to adequately care for those participating in a general strike are impossible to calculate. In addition, the 1947 Taft-Hartley Act (which was passed in the wake of the women-led 1946 Oakland general strike) outlawed actions taken by unionized workers in support of workers at other companies, effectively rendering both solidarity actions and the general strike itself illegal.

Elana Levin, a former union organizer who teaches digital strategy as program director for New Media Mentors and is a co-founder of Organizing 2.0, tells Teen Vogue that “striking means not asking permission” in the first place. She’s excited about the interest she’s seen in the idea of a general strike, but warns that hastily planned action could end up harming more than it helps.

“If you are asking someone to strike, you have to be able to help them answer the question of how will you help them survive if they do. It’s a question that has been asked and answered before, but it is a serious thing,” she says. “In reality, general strikes are generally lead by the most marginalized groups, because it is a way to wield power.”

O’Conner says self-organization is one of the most useful building blocks of any major worker action, and adds that it's important to break down barriers between striker and supporter to craft a more cohesive, purpose-driven community based on class solidarity.

“As we saw with the current mass teachers strikes, which can be seen as literal general strikes across trade lines, collective and communal mutual aid and support from both picketers and community members, like schoolchildren, is key,” O’Conner says. “In some instances, workers also choose to strike by offering services for free: For instance, during many transit strikes and job actions, bus drivers and transit operators will refuse to collect money. We see many of these experiments playing out now with the shutdown, from mass sickout strikes to services being offered for out-of-work employees.”

An organizer with the Industrial Workers of the World (IWW), who chose to remain anonymous for this story, tells Teen Vogue that one of the keys to unlocking those levels of support also lies in good old-fashioned community organizing and remembering how difficult it can be for people to take that step toward the picket line, because of familial obligations or existing financial hardship.

“The way to actually figure this out is to do the work of labor and community organizing — that is, actually asking your coworkers and your neighbors about the material issues that affect them, how you can address those issues collectively, and, if they think a general strike could work, what they would need to take that step,” they said. “Maybe it's child care? Maybe it's a hardship fund to cover lost wages? Maybe it's just the support of the community? With the current government shutdown threatening to starve the poor through lack of SNAP funding and various bodies of federal workers already furloughed, we could be entering the kind of crisis that makes a general strike possible.”

So, is it time for a general strike? We clearly have a whole lot to do before anyone goes calling for mass action, but activists around the U.S. are already hard at work on these kinds of mutual aid projects and community outreach efforts. We may not be ready yet, but the groundwork is already being laid. As bad as things are now, oppressed workers in the past have fought against even more daunting odds to take their power back … and if things get gnarly enough, it may happen again.

## Case

### 1NC – Turn

#### Turn- debate is structurally incapable of actualizing their method- adversarialism means no aff solvency

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(Michael J Ritter, September 2013, National Journal of Speech & Debate, Volume II Issue I, “Overcoming the Fiction of ‘Social Change Through Debate’: What’s To Learn From 2PAC’s *Changes*”, Pages 19-38)//DZ

Introduction In his immortal Changes, the supposedly late Tupac (2PAC) Shakur lamented, “I see no changes.” 2PAC expresses in Changes both his frustration with social racism and his hope for change. Acknowledging that race-based social inequalities would likely never completely disappear, he provocatively presented a model for improved communication and understanding to minimize racial inequalities. In 1999, Changes was released, topped international charts, and for many years thereafter, impressed a global audience (including The Vatican). Many students who participate in competitive interscholastic debate in high school and college frequently argue during debates that their speech acts, performances, or presentations criticizing a particular concept in a debate round could, just like 2PAC’s Changes, actually affect social inequities or issues inside and outside of the debate community. To preserve the activity, coaches and judges should discourage debaters from attempting to use—or deceiving others that they are using—competitive interscholastic debate to create social change. Those in the debate community who believe (or argue) that competitive interscholastic debate can reach an audience beyond the debate room, and their opponents, coaches, and judges, should consider this question: “What can I learn from 2PAC’s success in communicating his message in Changes?” Those who have wed themselves to the fiction that in-round speech acts in a competitive interscholastic debate setting can and does create actual social change (due to either some strategic reasoning or simple denial) will have a difficult time reaching the honest answer to that question: “I am wrong.” The structure of competitive interscholastic debate renders any message communicated in a debate round virtually incapable of creating any social change, either in the debate community or in general society. And to the extent that the fiction of social change through debate can be proven or disproven through empirical studies or surveys, academics instead have analyzed debate with nonapplicable rhetorical theory that fails to account for the unique aspects of competitive interscholastic debate. Rather, the current debate relating to activism and competitive interscholastic debate concerns the following: “What is the best model to promote social change?” But a more fundamental question that must be addressed first is: “Can debate cause social change?” Despite over two decades of opportunity to conduct and publish empirical studies or surveys, academic proponents of the fiction that debate can create social change have chosen not to prove this fundamental assumption, which—as this article argues—is merely a fiction that is harmful in most, if not all, respects. The position that competitive interscholastic debate can create social change is more properly characterized as a fiction than an argument. A fiction is an invented or fabricated idea purporting to be factual but is not provable by any human senses or rational thinking capability or is unproven by valid statistical studies. An argument, most basically, consists of a claim and some support for why the claim is true. If the support for the claim is false or its relation to the claim is illogical, then we can deduce that the particular argument does not help in ascertaining whether the claim is true. Interscholastic competitive debate is premised upon the assumption that debate is argumentation. Because fictions are necessarily not true or cannot be proven true by any means of argumentation, the competitive interscholastic debate community should be incredibly critical of those fictions and adopt them only if they promote the activity and its purposes. Competitive Interscholastic Debate: The Break Down Competitive interscholastic debate is uniquely different from other types of persuasive activities. Each individual component of the term “competitive interscholastic debate” describes the essential structures of the activity from which very important precepts can be discerned. These precepts are fundamental to any application of any rhetorical theory regarding speech acts within a debate round because the precepts necessarily affect the scope of two crucial aspects of all communication: audience and purpose. The debate community’s members, many of whom are shorthand enthusiasts, simply refer to the activity as “debate.” But what that simple term omits, and what many frequently forget when uncritically accepting the “social change through debate” fiction, is any reference to the essential structures from which the community spawned: a competition of argumentation during which students from one school compete against students from other schools for the votes of judges. Therefore, before any plausible argument can be made concerning the purposes or benefits of debate, the assumptions upon which those arguments are based must be identified and explained. The following discussion (perhaps painstakingly) analyzes the essential components of competitive interscholastic debate to identify the essential precepts that debunk the assumptions relied upon by those endorsing the fiction that competitive interscholastic debate can create social change. “Debate” “Debate,” in its simplest and most basic form, is the presentation of seemingly inconsistent positions to convince an audience. A position could be a factual or empirical position that describes current or historical fact (e.g. A = B). The presentation of a seemingly inconsistent position to convince an audience (e.g. A ≠ B) would constitute an empirical debate about what facts are (or were) true or false (or neither). A position could also be a normative position (i.e. a position about how the way things should have been or should be (e.g. “A should not have been or should be A). The presentation of inconsistent normative positions to convince an audience (e.g. A should not or should be A) constitutes a normative debate. The intent-to-convince element is an indispensible part of any debate. Presenting apparently conflicting positions with the intent to convince requires an audience of some sort, as an audience is necessary for someone to be convinced. For instance, if a person writes an article on the propriety of the verdict in the Trayvon Martin trial to convince others that the verdict was wrong, but then no one reads it, there is no consideration of the position by the intended audience because no one (other than the author himself) could be persuaded. An audience can be as simple as a single person (e.g. having an internal debate with oneself to consider the validity of two seemingly inconsistent positions). An audience could constitute only one person when someone presents two seemingly inconsistent positions for that one-person audience to consider (e.g. an attorney advising his client that he has two options and presents the pros and cons of both for his client to make a decision). Two people could comprise an audience. For example, a debate could involve two people who present apparently inconsistent positions to try to convince each other of the rightness of their respective positions. A seeming or apparent inconsistency between positions is also a necessary component of a debate. If two positions are clearly consistent, then there is no debate. Conversely, an actual inconsistency is not necessary for a debate. The following hypothetical demonstrates why an actual inconsistency is not required for a debate: Two debaters go on a date appear to disagree over which movie, Django Unchained or Kill Bill, to see at Quinton Tarantino’s privately owned theater on Friday night at 10 p.m. This appears to be a conflict because the two cannot watch both in different theaters together at the same time. Both of them want to see the most violent Tarantino movie with a revenge theme at that time. During the exchange their arguments for why Django Unchained or Kill Bill is more violent, one debater mentions Inglorious Bastards and both agree that Inglorious Bastards is the most violent Tarantino movie with a revenge theme. Fortunately, Inglorious Bastards is also playing at the theater at the same time. Just because the two debaters did not decide between Kill Bill and Django Unchained does not mean that they did not have a debate. During their debate, they realized that their apparently conflicting positions were not actually conflicting; they had the same position—wanting to see the most violent Tarantino revenge movie. And in this example, neither audience member was convinced of either initial position. Therefore, in any “debate” there will be some audience that must resolve an apparent conflict of positions. In all communications, there is some audience. Sometimes the audience has a specific goal, such as being entertained, informed, or persuaded. The discussion about what debate “is” demonstrates that identifying the audience is essential to understanding how the context of a speech act can advance or hinder the speaker’s goals. A Competitive Activity A second component of competitive interscholastic debate is that it necessarily involves a competition. Not all debates must occur within the context of a competition, as the Tarantino example above suggests. But most—if not all— debates in the debate community occur either to win a debate round at a debate tournament or in preparation for winning a debate round at a debate tournament. The tournament structure is a sin qua non (a fundamental component) of the debate community. And in the very rare case that debaters host a public debate (and in the very fortunate case that an audience attends and does not leave during the first speech), the purpose is ordinarily not to convince the audience of a particular side, but to demonstrate what the school’s debate team does. At a typical tournament, there are a pre-determined number of preliminary rounds in which all entered schools’ debaters compete against debaters from other schools that have entered the tournament. The tournament usually determines beforehand the number of debaters that will advance to elimination rounds, and that number usually equals four to thirty-two teams divided into brackets (semifinals to double octafinals). If a team loses an elimination round, as the term suggests, then they are eliminated from the tournament. The prevailing team advances further into the tournament until the “winner” is left with no competitor. A hypothetically neutral critic will be assigned as a “judge.” The judge, or a panel of an odd number of judges, will vote for the debaters who they believe won the debate by doing [did] “the better debating.” Many judges have written paradigms; and the vast majority of written paradigms express a preference for how the debate should occur, but express little or no concern about what (in terms of content) is argued. In almost all debate rounds, the judge will make his decision based on how the debate occurs, not based on what persuaded the judge. A primary (and probably the best) example of this point is a “dropped” argument. Many debate rounds are won, not on the basis of the persuasiveness of an argument, but because the opponents failed to directly respond to the argument. Judges will ordinarily permit the opponent to then “blow up the impact” of this drop in the following speech. Thus, the competitive nature of debate causes, to a great degree, the how to precede the what (unless the point is immaterial or nonessential). As a result, many judges divorce their human experiences and logical reasoning skills of objectively evaluating the persuasiveness of an argument from the decision of which team to vote for. And even when there is a “point-for-point and warrant-for-warrant” debate, many judges will vote based on who does the better job (technically speaking) extending and explaining the argument (even if the argument is atrociously absurd). The target audience is solely the judge, and the sole issue the judge must decide is which side “did the better debating.” Mandatory switch-side debating confirms that the debaters themselves are not the audience for persuasion is mandatory switch-side debating. And because fair opportunity is valued when there are winners and losers in competitions, most judges approach their paradigms with an attempt to be objective. Tournaments hire judges to objectively evaluate debates based on direct language from the ballot, the ballot the judge must sign his or her name to: who did the “better debating” or who “won the round” (which is a rephrasing of who did the better debating). Competitive debate is a very narrow slice of “debate.” One could persuasively argue that competitive debate barely qualifies as “debate” because the target audience (the judge) is persuaded not by the truth of an argument, but who “does the better debating.” Hence, the only point on which the judge of a competitive debate is seeking to be persuaded of is who to vote for. This conclusion narrows the previous section’s conclusions regarding “debate” (generally) because the “competition” element narrows the audience in the debate to the judge, not the competitors. The debaters are not competing to be persuaded. They are competing to persuade. And the only issue on which the audience—the judge—is asked to resolve is which competitors did the better debating. The judges are not present to objectively evaluate the content of messages and arguments for their persuasive value outside of the narrow issue of who did the better debating. An Interscholastic Activity The final essential component of competitive interscholastic debate is that students from different schools compete at debate tournaments. Many academics who have spent decades competing in and coaching debate have probably never encountered an intrascholastic debate competition, at least not in any of the formats in the debate community. The interscholastic element further narrows “competitive debate” to a student activity that faces resource constraint (e.g. time, budget, rooms available, etc.). Perhaps, noting that the competitive debates are interscholastic highlights the more important point about what competitive student debate is not: “academic debate” or “public debate.” The interscholastic element determines how the competitive debates take place. Generally, several factors constrain interest in and participation on a school’s debate team. First, a school likely could not afford to send every enrolled student to travel to and register in debate tournaments. Even if some schools could afford this, not all could. But even the possibility of all schools’ students would be problematic in terms of one school making up more than half of the field. And even if all schools could afford to send all students to a debate competition, debate tournaments likely could not occur (perhaps, only during the summer) because debate tournaments would last several weeks. The tournament structure means that only a select few will be included in the first place to compete, and as tournaments progress, more and more debaters are excluded. Because only a limited number of teams can be sent to tournaments, coaches must decide who “makes the team” and which teams go to what tournaments. But these decisions (while they could be made for a good reason, bad reason, or no reason at all) will likely be influenced by a student’s natural ability or potential to become skilled at how to do our community’s particular formats of competitive debate. And because teams generally can and do not compete against other teams from their schools, a competitive interscholastic debate will result in one school advancing over the other whose chances of advancing then diminish if not disappear. Finally, the interscholastic nature of competitive interscholastic debate is a point of differentiation from other types of competitive debates: the debaters are all students from different schools. They are either in college or high school. This distinguishes competitive interscholastic debate from other types of debate— particularly academic debate. High schoolers are generally still developing physically and mentally, as well as start developing intellectually. Most college students continue their intellectual development as they obtain their associate’s or bachelor’s degrees. It is not until students begin studying for a master’s, law, or doctorate degree that they must study a particular field in depth, reading publications from academics in their respective fields. Many former competitive interscholastic debaters must, for the first time, become familiar with the academics in the particular field for the sole purpose of learning, not “cutting cards” for debate. It is at the end of a master’s studies or PhD program that students finally must contribute something novel within their particular field of study that contributes something to that field of study. This is the point at which students have made an academic contribution (assuming that what is written is selected for publication). Thus, competitive interscholastic debate is radically different from every other kind of debate. It is not “academic debate,” and it is not “public debate.” Because schools’ resources limit debate participation, it is necessarily an exclusive activity to which no students have the right to participate in. And without accounting for how the structures unique to competitive interscholastic debate—exclusion, competition, a limited audience, very narrow audience purpose, etc.—affect the application of a general communications or rhetorical theory in this specific context, the application should be reconsidered or viewed highly skeptically if not outright rejected. Let’s Talk 2PAC To illustrate many of the reasons why “social change through debate” is a fiction, consider the question posed in the introduction: “How did 2PAC’s Changes reach a substantial and diverse cross-section of a global audience?” Any reader who picked up on the humor of the “supposedly-late” descriptor above would immediately know that it is a trick question: 2PAC didn’t make any impression by releasing Changes in 1999; 2PAC died in 1996. 2PAC’s estate contracted with players in the music industry to produce Changes by splicing together several of 2PAC’s pre-death recordings, and released Changes in 1999. The song was advertised and played on the radio and CD players internationally. The similarities and differences between 2PAC when recording Changes and a student arguing that competitive interscholastic debate can create social change are informative. Although 2PAC wrote and recorded parts of Changes, several other individuals in a very complex series of transactions and communications were responsible for the song’s global successes. When 2PAC recorded the various parts of Changes, he merely spoke and sang words into a microphone in an Interscope Records studio where the audience was solely concerned with operating equipment for quality assurance purposes. Similarly, a debater who is asserting that debate can cause social change, like 2PAC in Interscope Records’ recording studio, is speaking to an audience who typically cares little (if at all) about the debater’s intended message and cares about recording it “on the flow.” But unlike 2PAC’s audience (the recording studio that likely had solely a financial interest in re-communicating 2PAC’s message), the judge generally does not re-communicate the debater’s message for any persuasive purpose, and the judge usually has little or no interest or incentive to do so. Changes’s commercial context is part of what allowed the song to spread worldwide. Those initially re-communicating 2PAC’s message did so for financial reasons; the fact that 2PAC’s message was concerned with minimizing racial inequalities likely contributed only a limited extent to the song’s success. Pys’s Gangnam Style had similar success at reaching a global audience, and it made fun of Korean culture. What Changes, Gangnam Style (both messages disseminated in a commercial context), and debate (a competitive activity and, yet ironically, one increasingly marked by anti-capitalist sentiments) have in common is that form is so much more important than substance. But the difference between the form of international hit songs and debate is that the form of musical productions—with a catchy tune, visually stimulating music video, and sometimes a valuable message—makes the message appealing to a general audience. The form of modern competitive interscholastic debate—with, at its worse, rapid fire spreading of dense philosophical verbiage or personal attacks tangentially related (at best) to the topic—is simply unappealing to a general audience. If anything, the form in which messages are communicated in competitive interscholastic debate repels audiences outside of the community. To the extent that Changes was made more popular by its message, the crucial difference between the message of Changes and messages communicated in a debate round is that the in original production of Changes, and the recommunication of that original message, the message has never changed (save some remixes) or contradicted itself. The original version of Changes was the same as it was when it was released until (and after) the time that it made the Pope’s playlist. Conversely, debaters who communicate messages in a debate round will, almost always, contradict their argument (again for persuasive reasons, not because they were convinced that they were wrong initially) in another round, read a different part of the card they were reading previously, reading different phrasings of the same argument by a different author, etc. Therefore, the message-repetition element is missing from competitive interscholastic debate. The multiple points of distinction between 2PAC’s Changes and messages made in debate rounds demonstrate why the dissemination of messages outside of a debate round for persuasive purposes is highly unlikely. The Kicker As the question, “How did 2PAC reach a substantial and diverse cross-section of that global audience?” was trick question, so (to some extent) was this article’s initial question: “What can I learn from 2PAC’s success in communicating his message in Changes?” While one lesson we can learn from the success 2PAC’s changes concerns the factors that make messages more likely to be disseminated worldwide, there is pretty much nothing else to learn in terms of persuasion in the context of competitive interscholastic debate. Up to this point, this article has shown how each of the essential components of “competitive interscholastic debate” makes it very different from any other kind of debate. But one thing that is persuasive in any kind of debate is some sort of properly conducted study (or even a mere survey) that provides empirical proof or even substantial anecdotal support. To date, none of the many academics who coach or participate in the debate community have published a study or survey to support the social change fiction. (Perhaps they have tried, and discovered they were just wrong.) But until such an empirical study of competitive interscholastic debate is conducted, students, judges, and coaches should not take it for granted. Similarly, no one has studied whether 2PAC’s Changes had any effect on people’s attitudes toward racial equality. (Thus, it would be equally supported to say that 2PAC’s Changes increased racial violence.) No survey or statistical studies have been conducted, constrained by academic standards, and then published, that suggest that 2PAC’s Changes had any real effect on anyone (other than the objectively measurable effect that purchasing the song had on the buyer’s wallet). Similarly, no one has studied whether any individual debate round, a team’s year-long “project,” or a debate team’s seemingly perpetual social campaign has created any social change regarding the position they support. While it is theoretically possible that someone has listened to 2PAC and thought to himself, “Hmm, perhaps I should not be so racist,” it is as equally possible that, according to the arguments of Judith Butler or Jacques Derrida (or insert any other philosophy academic or rhetorical theorist—from Aristotle to Slavoj Žižek—here), debate has created some sort of social change. The problem is that nothing supports that debate rounds can create social change other than the adage, “Anything is possible.” The reasoning that debate can create social change is circular at its best. The absurdity is that judges prefer specific, predictive, and empirical evidence over general theoretical possibilities in almost every single context except when it comes to attempts to use debate to create social change. Bald theoretical assertions with flowery language from philosophers are accepted over uncarded but logical analytical arguments. Any explanation for why coaches and students (at least pretend to) believe that debate can create social change would require an unacceptable degree of speculation. The bottom line is that the proposition that competitive interscholastic debate will (or more accurately, can) result in social change is merely speculation without any logical or empirical support. Overcoming the Fiction Merely labeling a proposition a fiction is insufficient to merit the proposition’s abandonment. This article uses the term “fiction” because the idea that debate rounds could likely create any social change is, in all meanings of the term, is a fiction. A fiction is a conclusion that is feigned, invented, or imagined. It is an imaginary thing or event, postulated for the purposes of argument or explanation. One can distinguish a fiction from a statement of fact (which can be determined true or false) or a scientific hypothesis (a falsifiable theory answering a posed question). A fiction, on the other hand, is something that is either false or has not been attempted to be proven true. A fiction is neither inherently good nor inherently bad. Rather, it is a tool to achieve some other purpose. Fictional stories frequently convey a moral to be extracted or lesson to be learned. In law, a legal fiction is a legal rule that is known to be factually false (such as the legal fiction that all people are presumed to know the law) that is endorsed for some greater public policy purpose (such as to avoid ignorance and discourage intentionally avoiding knowledge of the law). After identifying whether a proposition is a fiction (or a truth or hypothesis), determining whether the fiction is worthwhile requires weighing the pros and cons of the fiction against the purposes of the context in which it is used. The Fiction The idea or proposition that competitive interscholastic debate can result in social change is properly characterized as a fiction because it is false and has not been proven true. The proposition that debate rounds can create social change is a fiction because it is false on a theoretical level. Those who attempt to apply theories about academic debate (i.e. arguments published in books and journals by PhDs who argue about concepts within their respective fields of study), social movements, rhetorical acts, and performances are not discussing competitive interscholastic debate. Philosophers and rhetorical theorists have never written an article or book using competitive interscholastic debate as an example of their theory or position. Their theories draw upon historical (i.e. anecdotal) examples to demonstrate their theories. None of them have ever cited a debate round or “debate movement” as an example of their theories. Those who attempt to apply academic theories to competitive interscholastic debate (primarily communications academics, who also frequently happen to be participants in the debate community), decontextualize the broader theories to apply them to competitive interscholastic debate without adequately accounting for the competitive and interscholastic structures of competitive interscholastic debate. Although some “competition” is part of any debate, this part is more accurately described as the presence of seemingly conflicting positions, which is discussed above and exemplified by the Tarantino hypothetical. In social movements or public debate, there are two (or more) apparently conflicting positions. Competitive interscholastic debate is uniquely different because there is not a possibility for compromise on the ultimate question of who did the better debating; most tournaments prohibit double wins, and no debaters would agree to a double loss. The competition is absolute; one side must win and one side must lose. This is radically different from the ability of individuals to be persuaded by the other side of a social movement. The switching of sides outside of the debate context comes from a person’s willingness to be persuaded by a particular position; it is not forced by tournament rules. Thus, the competitive structures of competitive interscholastic debate render the applicability of philosophical or rhetorical theory inapplicable to the extent that it does not account for particular competitive interscholastic debate context. The unique structures of debate rounds rob all arguments or positions therein (or in a series of rounds) of any persuasive value beyond the very narrow issue of “which side did the better debating.” The competitive element and tournament structure of competitive interscholastic debate taint all positions proffered in a debate round to create social change with a stench of “I am actually lying about my goals; I am clearly just using this argument to win the ballot.” Even debates about how debates should proceed (i.e. theory arguments or arguments about the practices in debate, or “meta-debate” (debates about debate)) are not proffered for the truth of the proposition, but to win the debate. The audience—only the judge—is solely concerned with the ultimate question: “Which side did the better debating?” Competitive interscholastic debate is certainly a venue in which students can become aware of societal issues and topics of concern. But the persuasive value of arguments presented in a debate round to convince debaters of the truth of either side on a topic is virtually nil. Students will generally form opinions about issues they learn about in a debate round outside of their debate rounds. The issues debaters become aware of include issues external to debate (e.g. affirmative action, foreign policy) and issues internal to debate (e.g. theory, community issues). When debaters choose to bring those issues into a debate round, they necessarily use those issues as a competitive means to the ultimate end of convincing the judge that they did the better debating. This requires the opposing team to adopt a competitive counterstrategy to that position; it forecloses the option of the opposing team being fully persuaded by the other team’s position. Even an attempt to “compromise” via a permutation (as a competitive strategy rather than a persuasive position) will meet vigorous, usually-pre-scripted opposition. As a result, any in-round action (whether a speech act or the judge voting for one team or the other) will have no out-of-round effect consistent with or contemplated by any cited authors or postulated by the high school or college student making the assertion. Even arguments about competitive interscholastic debate—primarily theory and issues about inequalities in the debate community—will necessarily lose all persuasive value about those particular issues when they are raised in a debate round. Although more specific to competitive interscholastic debate and not general theories about academic debate, meta-debate loses its power to convince anyone in the round because the audience—only the judge—is solely concerned with the question of “which team did the better debating.” Theory and arguments about “social issues in debate” made in a debate inherently reek of disingenuousness. Most debaters and judges do not even consider adopting a position on the meta-debate until after the round in reflective discussion and thought about the issue, thought that never incorporates the truthfulness of an argument because “it was dropped” in a debate round. In the particular debate, the result is always based on who, in the judge’s opinion, did the better debating. It is not based on who convinced the judge of some proposition irrelevant to deciding which team did the better debating. The preceding discussion demonstrates why arguments about social change— even social change within the debate community—have persuasive value only outside of a debate round. The debate community has developed multiple forums in which members of the community engage in noncompetitive and, sometimes, academic debate on issues within the debate community. These include discussions before and after rounds with judges, teammates, and competitors; on forums or online message boards; or in academic publications. For the social issues external to the debate community, there are almost an unlimited number of ways that students form opinions. And, after students form their opinions and join causes and organizations, there are about an equal number of non-competitive ways that students can use techniques and modes of persuasion discussed by academics and rhetorical theories. Debate rounds, at the very most, operate as venue solely for raising awareness about social issues and debate practices. It would be illogical to conclude that, because issues were debated in a particular debate and out-of-round discussion about that practice followed, the in-round debate created a social change. Because coaches and students strategically consider their arguments and practices prior to a debate round, the social issues or the “concern” about a debate tactic initially spawns outside of debate rounds, not from within a singular debate round. And just because one event occurred before another does not make the former the cause of the latter. To the extent that the in-round practice causes a subsequent out-of-round discussion, debate is admittedly a form for raising awareness about practices and social issues for students. But the arguments presented in the debate round will lack persuasive value insofar as convincing the judge in the round of anything beyond the ultimate question of who did the better debating. But even if this article’s arguments up to this point have no validity, and creating social change through debate rounds is more likely than just theoretically possible, this is insufficient to adopt the proposition that competitive interscholastic debate creates social change. It remains a fiction because no academics—not even those who have remained in the debate community for decades—have attempted to prove its validity with any form of study or survey. No studies or surveys have been conducted on any particular application of philosophical or rhetorical theory to the practices within competitive interscholastic debate. Thus, competitive interscholastic debates and meta-debates therein claiming to create some sort of change either within the community or outside the community have no empirical support. They simply present the possibility, but fail to show any probability of success. Because any critically thinking person (in or out of the debate community) should be hesitant to presume probability based on mere possibility, the probability of the general theory being applicable in the competitive interscholastic debate context should be presumed to be zero, as no probability has been proven. Although practices have certainly evolved, no empirical study has causally linked this evolution to in-round arguments to the exclusion of out-of-round, non-competitive discussions. Why We Should Get Over This Fiction Fictions are neither inherently good nor inherently bad. Fictions must be judged based on whether they serve some relevant purpose to the context in which the fiction is adopted. The legal fiction that all people are presumed to know the law is one such fiction. If no one follows laws, then passing laws is pointless. Therefore, compliance with the law is fundamental. The fiction that people are presumed to know the law encourages individuals to know the law and increases compliance. If individuals can shield themselves from the ramifications of violating the law by not knowing the law, people would be encouraged to avoid learning about the law to excuse or justify non-compliance. The methodology for determining whether a fiction is good or bad must include: (1) an identification of whether the proposition is a fiction; (2) what the purposes of the context, field, or activity that is considering adoption of the fiction; and (3) whether the fiction advances or hinders those purposes. Up until this point, this article has argued why it is a fiction to believe that debate rounds cause social change. And, as was discussed at length in Nix the Nixonism: Identifying the Purposes of Debate by Understanding Constituency, Transparency & Accountability, the primary purposes of debate are self-preservation and to promote skills including public speaking, researching, and critical thinking as judged by the larger academic community and the general public. Thus, deciding whether to dispense with the fiction of “social change through debate” is a worthwhile endeavor will require determining whether this fiction promotes or hinders the self-preservation of the community and promotes skills including public speaking, research, and critical thinking. Although either maintaining or dispensing with the fiction would likely be neutral with respect to promoting public speaking, researching, and critical thinking skills, the fiction continues to deal damaging blows to the debate community. These damaging effects can be shown anecdotally. The fiction has damaged the legitimacy of the debate community by encouraging a race to the bottom in terms of debaters—in a competitive flurry—trying to outdo each other and themselves. The best examples of this are in college policy debate, which has existed for much longer than any other interscholastic debate format in the U.S. The development of the “kritik” opened possibilities for deployment of a new body of literature in rounds. The race to the bottom has caused the debate community’s acceptance of the following in-round tactics: stripping nude to de-mystify the female body; dance-offs; defecating into a bag to face our waste; simulating an abortion; actual in round violence between debate partners to illustrate and dramatize domestic violence; voting down white debaters because they were white in order to promote minority participation in competitive interscholastic debate; and debating with the lights off to performatively save energy. Those outside of the debate community in academic and professional circles have noticed this downward trend in competitive interscholastic debate. As a result of this trend, debate is currently viewed as having diminished educational value. This presents a very real threat to the existence of schools’ debate programs. A possible advantage of adopting the fiction is that if students believe in the persuasive power of their positions, then they would be more likely to recommunicate the message in non-competitive formats outside of the competitive interscholastic debate community. Not only has this argument been empirically disproven, the opposite has proven to be true. Most debaters are involved in few, if any, other extra-curricular activities. Sometimes debate programs discourage participation in other activities to hone skills unique to competitive interscholastic debate (e.g. spreading). Furthermore, to the extent that debaters are convinced of their own argument that debate can create social change, the fiction discourages participation in more effective methods of persuasion that do not require the participants to contradict themselves. Students are led to believe that they have accomplished something when, in fact, they have contributed nothing (except to the decline of the community). Additionally, arguing that debate can create social change by the judge voting for the argument is also unethical. The fiction of social change through debate is powerful because it abuses debate’s structures designed to ensure fairness and minimize arbitrariness in judges’ decision-making. One primary structure is the contractual requirement that when the judges sign their ballots, they are voting for the team that does the better debating, as they have contracted with the tournament to do so. When the judge agrees with the host school to judge, he has promised to vote for the debaters who do the better debating. An argument that voting for one team over the other solely because of some out-of-round benefit compromises the judge’s objectivity of evaluating who did the better debating through the arguments made in the particular debate round. In essence, it is a promise for a benefit outside of the debate round in exchange for the ballot that would outweigh the judge’s sense of duty to remain objective and decide the round on who did the better debating. In this sense, endorsing the fiction of social change through debate is, by definition, is endorsing bribery. The only way this ethical dilemma would not exist would be for debaters relying on the fiction to admit that there really is no out-of-round benefit, which is this article’s ultimate point. Not only does the fiction unfairly place the judge in an ethical dilemma, it is also unfair by asking the judge to consider and accept out-of-round benefits of voting for a particular team but ignore all of the judge’s and other debaters’ personal out of-round experiences. In debate rounds, judges attempt to adopt neutral, objective paradigms by not disregarding an argument simply because they personally disagree or do not like it. The general motivation for this is to be fair to the students and allow them an opportunity to succeed despite the judge’s idiosyncratic preferences, the full disclosure of which would take too long to explain prior to a debate or write in a paradigm (although some judges definitely try). The fiction of social change through debate invites the judge to insert his or her subjective preferences only to the extent the judge personally agrees. If the judge personally disagrees with the team’s particular social goals, the judge will be shunned by rejecting the team’s argument absent some argument that the opposing team wins “on the flow.” But if the judge personally agrees with the team’s particular social goals (or at least what the debaters purport their social goals to be), then the debaters relying on the fiction of social change through debate invites and attempts to justify judges’ intervention only to the extent it benefits them even if the argument is not won “on the flow.” This is true because arguments about what the ballot can would, if the argument is true (or dropped), outweigh a technically bad performance by the debaters relying on those arguments. By placing the judge in an ethical dilemma, bribing the judge, and inviting and justifying one-sided intervention, the fiction of social change through debate encourages debaters to commit the ultimate in-round abuse. Arguments and strategies are not, by themselves, properly considered unfair or abusive to another debater. There are always counter-arguments and counter-strategies. Tactics—or the in-round conduct of debaters—can be unfair and abusive. For example, card clipping (purporting to read the entirety of a card but only reading part of it), hiding the other team’s evidence, name-calling, promising the judge money or job in exchange for voting for a particular team, blanket refusal to answer questions in cross-examination, and other rule violations (meaning the actual rules of the debate tournament or the organization under which the tournament is conducted) are all examples of tactics that are unfair and abusive. These tactics and the fiction of social change through debate place the judge in an ethical dilemma, bribe the judge with out-of-round compensation to vote for a team who does not do the better debating, and invite and justify one-sided intervention. They compromise the integrity of the activity and are thus the ultimate unfair tactics and the worst forms of in round abuse. The fiction of social change through debate abuses the win–loss structure of debate and permits debaters to otherize, demonize, dehumanize, and exclude opponents. The win–loss structure of debate rounds requires a judge to vote for one side or the other, as judges generally cannot give a double win. This precludes the possibility of compromise on any major position in the debate when the resolution of the position would determine the ultimate issue of “which team did the better debating.” Thus, the fiction of social change through debate encourages debaters to construct narratives of good versus evil in which the other team is representative of some evil that threatens to bring about our destruction if it is endorsed (e.g. capitalism). The team relying on the fiction of social change through debate then paints themselves as agents of the good, and gives the judge a George W. Bush-like “option”: “You’re either with us or you’re against us.” The fiction of social change through debate—like Bush’s rhetorical fear tactics and creation of a false, polarizing, and exclusionary dichotomy to justify all parts of the War on Terror—enables the otherization, demonization, dehumanization, and exclusion of the opposing team. When the unfairness of this tactic is brought to light—particularly in egregious situations when a team is arguing that the other team should lose because of their skin color—all can see that the debate centers on personal attacks against opposing debaters. This causes tensions between debaters that frequently result in debaters losing interest or quitting. By alienating and excluding members of the competitive interscholastic debate community for the purpose of winning a debate, it also makes the reaching of any compromise outside of the debate—the only place where compromise is possible—much less likely. By bringing the social issue into a debate round, debaters impede out-of round progress on the resolution of social issues within and outside the debate community by prompting backlash.

### 1NC - Turn

#### Positioning within the structure of debate to be validated by the judge as a critic subverts the radical intentions of the Aff – their resistance becomes an object of surveillance and consumption

Phillips 99 – Dr. Kendall R. Phillips, Professor of Communication at Central Missouri State University, PhD in Speech Communication from Pennsylvania State University, MA in Speech Communication from Central Missouri State University, BS in Psychology and Sociology from Southwest Baptist 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.

### 1NC- Case

#### Structural accounts of settlerism reifies settler political control and is used to justify evading political action – settler violence is not inevitable and not all actions are settlerist

Alissa Macoun 13, Researcher @ Indigenous Studies Research Network, The Ethical Demands of Settler Colonial Theory, Settler Colonial Studies, 3(3-4), pp. 426-443

Despite these powerful contributions, we also identify some important issues associated with SCT in Australian academic debates about the NT intervention. The first is a direct consequence of one of SCT’s vital contributions, arising from the theory’s present tense iteration of settler colonialism. By emphasizing continuities in colonial relationships between the past and the present, SCT can depict colonization as structurally inevitable, and can be deployed in ways that re‐inscribe settler colonialism. We suggest that SCT’s struggle to narrate its own ending can be countered by approaching the theory as an account of settler desires which makes visible our own frames of reference. This in turn exposes a range of possibilities and political visions outside these frames. Such an approach is significant in countering potentially problematic misuses of SCT that erase its location as a settler discourse. Such erasures problematically empower academics to speak with neutral descriptive authority over both settler and Indigenous realities. Firstly, by disturbing settler colonialism’s narratives of progress, SCT attributes a peculiar suspended temporality to the settler project. This can portray settler colonialism as an inevitable structure likely to exist across time – the fact that the past persists in the present implies that this past will also persist in the future. Foundational scholar Patrick Wolfe has been labelled ‘very much a structuralist stuck in a poststructuralist world’.63 As we have outlined, this structuralism is particularly useful in identifying the operation of political hierarchies. However, it can also excuse us from human political action in the present by presenting this action as futile or already determined.64 The role of political activists is to wait for the structurally determined future, and at most to prepare others for its arrival. The particular challenge of SCT’s analysis is that it does not give an account of such a transformed future, or of the conditions for settler colonialism’s demise. This can lead to a theoretical and political impasse and result in a kind of colonial fatalism. Such fatalism can be deployed to imply a moral equivalence between different forms of settler political interaction with Indigenous people, and, at its worst, to deny the legitimacy of Indigenous resistances. Structuralist narratives are able to posit radical change, but only if this change is built into the structures they describe – for example because these structures are subject to internal contradictions or are inherently unstable. Settler colonial structures, however, appear as highly stable and ‘relatively impervious to regime change’.65 Therefore, at the same moment settler scholars finally see the depth and reach of settler colonialism in the present they feel unable to find ‘postsettler colonial passages’.66 This tendency is reinforced by SCT’s capacity to identify significant commonalities in the objectives of conservative and progressive policy approaches, as discussed above. It shows that traditional ‘decolonizing’ pathways such as treaty making, reconciliation and formal apologies may also serve colonial ends by absorbing and extinguishing Aboriginal political difference without disturbing the foundational structures of settler dominance. As Australian anthropologist Deborah Bird Rose notes, this makes it ‘difficult to offer a critique of the colonizing features without calling into question the whole decolonizing project’.67 If every settler action is framed as always already colonizing, then individuals are excused from anti‐colonial action in the present and Indigenous people are destined to be victims of an unstoppable colonizing state.68 As bell hooks argues in relation to US race relations, this is useful to those in a position of dominance: ‘so many White people are eager to believe racism cannot be changed because internalizing that assumption downplays the issue of accountability. No responsibility need be taken for not changing something if it is perceived as immutable.’69 Is it possible that settlers are particularly attracted to SCT precisely because it gives us a sense of being intellectually committed to the end of colonialism while simultaneously unable to act against our own privilege? As a recent article concluded about the prospects for decolonization: I can only assess this with a degree of gloom. I am yet to be convinced that we can prevent indigenous disadvantage remaining structurally embedded in society and through the state even after any kind of ‘transition’ or ‘transformation’. At the same time, I fear decolonization. I am myself a settler, like several of my ancestors before me, and I have nowhere else to belong.70 SCT’s structuralism may serve these conflicted interests, in allowing us to feel we have done all we can while facing the ‘reality’ of an inevitable settler colonial future. This structuralism gives many within settler colonial studies a particular orientation towards Indigenous resistance and scholarship. Australian scholar Tim Rowse argues that critical settler perspectives on colonialism can ‘reproduce that sorrowing form of attention in which defeat and marginality are highlighted at the expense of understanding the nature and limits of the Indigenous agency that circumstances afforded’.71 He and others suggest that this sort of analysis caricatures Indigenous responses, presenting a false binary between resistance/sovereignty and co-optation in the colonizing process.72 This, they suggest, leads scholars to position one sort of Indigenous response as more valid and authentic than others, re‐performing the authority settlers have always claimed over definitions of Indigenous reality. Joanne Barker identifies a ‘troubled focus within settler colonial studies on structure to the erasure of Indigenous experiences and perspectives about colonialism even within analyses of the “logic of elimination” that fuels colonial processes of social formation.’73 SCT may be revelatory to many settler scholars, but Indigenous people have been speaking for a long time about colonial continuities based on their lived experiences.74 Some SCTs have sought to connect with these discussions and to foreground Indigenous resistance, survival and agency.75 Others, however, seem to use SCT as a pathway to explain the colonial encounter without engaging with Indigenous people and experiences – either on the grounds that this structural analysis already conceptually explains Indigenous experience, or because Indigenous resistance is rendered invisible. In these cases, the structuralism of SCT theory can be mobilized to actively reinforce settler colonial authority and to participate in the attempted erasure of Indigenous independence. We argue that Australian scholar Dirk Moses76 deploys SCT in his analysis of the NT intervention in ways that clearly demonstrate this potential re‐inscription of colonial authority.77 Moses, perhaps more than some others, recognizes the radical implications of settler colonial analysis. He acknowledges that because ‘Australia remains a settler colonial entity,’ the Indigenous ‘experience of disintegration is intense … in the face of a White settler colony determined to assimilate the “Native” other. Cultural survival is, then, a pressing issue for Indigenous leaders and intellectuals’.78 In his recent pieces on contemporary Australian Indigenous policy, Moses deploys postcolonial and SCT to evaluate the responses of Indigenous intellectuals and political leaders, leveraging theory and his status as a settler intellectual to provide an account of Indigeneity. He seeks to both encompass Indigenous experiences of colonization and offer an assessment of appropriate Indigenous survival strategies. Ultimately, Moses uses SCT to argue that, for their own good, Indigenous people must give up the struggle for survival in order to release themselves from violence and find freedom and policy agency. In what Moreton‐Robinson has labelled a form of ‘racial ventriloquism’,79 Moses uses the work of African postcolonial theorist Achille Mbembe to suggest that Aboriginal people should ‘inculcate an ethics of responsibility by recalling, mourning, accepting and transcending the trauma of colonialism’.80 Moses acknowledges Mbembe is speaking in a formally decolonized context while Australian Indigenous people are

#### You don’t meet your own solvency advocate. Stopping with description of anti-Black and anti-indigenous structures analytically reprises the violence of conquest and fuels the impulse of the academy to find Black and Indigenous death everywhere – without articulations of livingness the aff locks in dominant narratives and open new political and ethical possibilities

King 19 [Tiffany Lethabo, Assistant Prof of Women’s, Gender, and Sexuality Studies at Georgia State, *The Black Shoals: Offshore Formations of Black and Native Studies*, p.30-1]

Finally, throughout each chapter—and, more explicitly, in the second chapter of the book—I attempt make my eye softer and more supple to attend to what McKittrick terms a “noticing” or attention to (and for) “black Atlantic livingness.”98 Evolving within her body of work after the publication of Demonic Grounds: Black Women and the Cartographies of Struggle (2006), McKittrick urges Black studies scholars to move beyond simply theorizing or “analytically reprising” anti-Black violence.99 For McKittrick, naming violence has never been the only, or the most important task, of Black studies projects. Recognizing that it is difficult to sift through an overwhelming archive and contemporary landscape shaped by anti-Black violence, McKittrick attempts in more recent essays, such as “Mathematics Black Life” (2014) and “Diachronic Loops/Deadweight Tonnage/Bad Made Measure” (2016), to create a methodology, ethics of care, and way of “noticing” the “other possibilities” in the midst of Black death and Black degradation.100 While there is no methodological formula for developing this awareness and capacity to notice “Black livingness,” part of the effort involves reading intertextually.101 By assembling, shoaling, and rubbing disparate texts against one another, unexpected openings emerge where different voices are brought into relationship. As new relationships among texts and voices are made, new and “transgressive ground[s] of understanding” emerge where one can begin to notice where rupture and “momentary dislodgings” reveal that the archive is not a closed system that contains only one story.102 McKittrick argues that it is in these moments of rupture that we can—and must dare to—betray the archive of violence to look, listen, and feel for “what else happened.”103 McKittrick argues that within the historical and contemporary records of anti-Black violence there remains a surplus or pulse of Black resistance and “Black livingness.”104 In chapter 2, I adopt this practice and desire to notice Black and Indigenous livingness as I read an eighteenth-century map that intends to mark Black people and Native people as natural and sensuous bodies and spaces marked for death. Rather than read the map as primarily a scene of horror and violence, I develop a Black geographical reading practice that mines it for where Black and Indigenous signs of life bleeds through the surface to disrupt a single narrative of Black and Indigenous death. I use this practice of noticing and caring for Black and Indigenous life throughout the chapters and analytical sites of the book. McKittrick’s method and noticing of Black life functions as a crucial intervention that shoals and disrupts the current impulse and tendency within the academy that seems to focus on and find Black death wherever it looks. Throughout the book, the reader will notice that the shoal functions theoretically as a disruptive mechanism that interrupts and slows normative thought and violent knowledge production. The theoretical shoal is primarily one of disruption and displacement where necessary. As a methodological practice and approach, the shoal functions as a process and space where boundaries and binaries constructed between sea and land, Black and Native, aesthetics and theory, and human and nonhuman are blurred. Each chapter engages the shoal on its own, unique terms and at different theoretical and methodological registers. Ultimately, the theoretical and methodological shoals bring the reader to new and, at times, “unthought” terrain from which to reconsider the relational and ethical spaces of Black and Indigenous scholarship and the liberatory practices of abolition and decolonization.

#### The aff’s method leads to authenticity testing that shames and blames Indigenous actors. Only sustained engagement with the state creates the political pressure for radical systemic change.

Lightfoot 20 [Sheryl, Anishinaabe from the Lake Superior Band of Ojibwe, Canada Research Chair of Global Indigenous Rights and Politics at the Univ of British Columbia, Senior Advisor to the UBC President on Indigenous Affairs, “The Pessimism Traps of Indigenous Resurgence,” *Pessimism in International Relations*, ed. Stevens & Michelsen, p.157-70]

All of these writers advocate Indigenous resurgence, through a combination of rejecting the current reconciliation politics of settler colonial states, coupled with a return to land-based Indigenous expressions of governance as the only viable, ‘authentic’ and legitimate path to a better future for Indigenous peoples, which they refer to as decolonisation. While inherently critical in their orientation, these three approaches do make some positive and productive contributions to Indigenous movements. They help shed light on the various and subtle ways that Indigenous leaders and communities can become co-opted into a colonial system. They help us to hold leadership accountable. They also help us keep a strong focus on our traditional, cultural and spiritual values as well as our traditional forms of governance which then also helps us imagine future possibilities. As I have pointed out here, however, all three theorists are also caught in the same three pessimism traps: authenticity versus co-option; a vision of the state as unified, deliberate and never changing in its desire to colonise and control; and a view of engagement with the state as futile, if not dangerous, to Indigenous sovereignty and existence. When combined, these three pessimism traps aim to inhibit Indigenous peoples’ engagement with the state in any process that could potentially re-imagine and re-formulate their current relationship into one that could be transformative and post-colonial, as envisioned by the UN Declaration on the Rights of Indigenous Peoples. The pessimism traps together work to foreclose any possibility that there could be credible openings of opportunity to negotiate a fairer and just relationship of co-existence with even the most progressive state government. This pessimistic approach is not innocuous. By overemphasising structure and granting the state an enormous degree of agency as a unitary actor, this pessimistic approach does a remarkable disservice to Indigenous resistance movements by proscribing, from academia, an extremely narrow view of what Indigenous self-determination can and should mean in practice. By overlooking and/or discounting Indigenous agency and not even considering the possibility that Indigenous peoples could themselves be calculating, strategic political actors in their own right, and vis-à-vis states, the pessimistic lens of the resurgence school unnecessarily, unproductively and unjustly limits the field of possibility for Indigenous peoples’ decision-making, thus actually countering and inhibiting expressions of Indigenous self-determination. By condemning—writ large—all Indigenous peoples and organisations that wish to seek peaceful co-existence with the state, negotiate mutually benefcial agreements with the state, and/or who have advocated on the international level for a set of standards that can provide a positive guiding framework for Indigenous-state relations, the pessimistic lens of resurgence forecloses much potential for new and improved relations, in any form, and is very likely to lead to deeper conflicts between states and Indigenous peoples, and potentially, even violent action, which Fanon indicated was the necessary outcome. The pessimism traps of the resurgence school are therefore, likely self-defeating for all but the most remote and isolated Indigenous communities. Further, this approach is quite out of step with the actions and vision of many Indigenous resistance movements on the ground who have been working for decades to advance Indigenous self-determination, both domestically and globally, in ways that transform the colonial state into something more just and may eventually present creative alternatives to the Westphalian state form in ways that could respect and accommodate Indigenous nations. Rather, it aims to shame and blame those who wish to explore creative and innovative post-colonial resolutions to the colonial condition. The UN Declaration on the Rights of Indigenous Peoples (the Declaration or UN Declaration) was adopted by the General Assembly in 2007 after 25 years of development. The Declaration is ground-breaking, given the key leadership roles Indigenous peoples played in negotiating and achieving this agreement.45 Additionally, for the first time in UN history, the rights holders, Indigenous peoples, worked with states to develop an instrument that would serve to promote, protect and affirm Indigenous rights, both globally and in individual domestic contexts.46 Many Indigenous organisations and movements, from dozens of countries around the world, were involved in drafting and negotiating the UN Declaration and are now advocating for its full implementation, both internationally and in domestic and regional contexts. In Canada, some of the key organisational players—the Grand Council of the Crees (Eeyou Istchee), the Assembly of First Nations, and the Union of British Columbia Indian Chiefs, or their predecessor organisations—were involved in the drafting and lengthy negotiations of the UN Declaration during the 1980s, 1990s and 2000s. In the United States, organisations like the American Indian Law Alliance and the Native American Rights Fund have been involved as well as the Navajo Nation and the Haudenosaunee Confederacy, who represent themselves as Indigenous peoples’ governing institutions. From Scandinavia, the Saami Council and the Sami Parliaments all play a key role in advancing Indigenous rights. In Latin America, organisations like the Confederación de Nationalidades Indígenas del Ecuador (CONAIE) and the Consejo Indio de Sud America (CISA) advocate for implementation of the UN Declaration. The three, major transnational Indigenous organisations— the World Council of Indigenous Peoples, the International Indian Treaty Council and the Inuit Circumpolar Council—were all key members of the drafting and negotiating team for the UN Declaration, and the latter two, which are still in existence, continue their strong advocacy for its full implementation. Implementation of the UN Declaration on the Rights of Indigenous Peoples requires fundamental and significant change, on both the international and domestic levels. Because implementation of Indigenous rights essentially calls for a complete and fundamental restructuring of Indigenous-state relationships, it expects states to enact and implement a significant body of legal, constitutional, legislative and policy changes that can accommodate such things as Indigenous land rights, free, prior and informed consent, redress and a variety of self-government, autonomy and other such arrangements. States are not going to implement this multifaceted and complex set of changes on their own, however. They will require significant political and moral pressure to hold them accountable to the rhetorical commitments they have made to support this level of change. They will also require ongoing conversation and negotiation with Indigenous peoples along the way, lest the process becomes problematically one-sided. Such processes ultimately require sustained political will, commitment and engagement over the long term, to reach the end result of radical systemic change and Indigenous state relationships grounded in mutual respect, co-existence and reciprocity. This type of fundamental change requires creative thinking, careful diplomacy, tenacity, and above all, optimistic vision, on the part of Indigenous peoples. The pessimistic approaches of the resurgence school are ultimately of little use in these efforts, other than as a cautionary tale against state power, of which the organisational players are already keenly aware. Further, by dismissing and discouraging all efforts at engagement with states, and especially with the blanket accusations that all who engage in such efforts are ‘co-opted’ and not ‘authentically’ Indigenous, the resurgence school actually creates unnecessary negative feelings and divisions amongst Indigenous movements who should be pooling limited resources and working together towards better futures.

#### Contingent legal solutions can avoid re-inscribing settlerism by exposing contradictions within the current law

Bhandar 13 [Brenna, Senior Lecturer in Law at SOAS, University of London Strategies of Legal Rupture: the politics of judgment, http://www.forensic-architecture.org/wp-content/uploads/2013/02/BHANDAR-Brenna.-Strategies-of-Legal-Rupture.pdf]

Strategies of Rupture In this article, my aim is to consider the use of law as a political strategy of rupture in colonial and post-colonial nation states. The question of whether and how to use law in order to transform and potentially shatter an existing political-legal order is one that continues to plague legal advocates in a variety of places, from Australia, to India, to Canada to Israel/Palestine. For example, the struggle for the recognition of indigenous rights in the context of colonial settler regimes has often produced pyrrhic victories.21 The question of indigenous sovereignty is ultimately quashed, and aboriginal rights are paradoxically recognised as an interest that derives from the prior occupation of the land by aboriginal communities but is at the same time parasitic on underlying Crown sovereignty; an interest that can be justifiably limited in the interests of settlement.22 Thus, the primary and inescapable question remains: how does one utilise the law without re-inscribing the very colonial legal order that one is attempting to break down?23 I argue that this is an inescapable dilemma; as critical race theorists and indigenous scholars have shown, to not avail ourselves of the law in an effort to ameliorate social ills, and to promote and protect the rights of oppressed minorities is to essentially abrogate one’s political responsibilities. Moreover, the reality of political struggle (particularly of the anti-colonial variety) is that it is of a diffuse and varied nature, engaging multiple different tactics in order to achieve its ends. The notion of the ruptural defence emerges from the work of Jacques Vergès, a French advocate and subject of a film by Barbet Schroder entitled Terror’s Advocate. The film is as much a portrait of Vergès’ life as it is a series of vignettes of armed anti-colonial and anti-imperial struggle during the decades between the late 1940s and the 1980s. I should say at the beginning that I do not perceive Vergès as a heroic figure or defender of the oppressed; we can see from his later decisions to defend Klaus Barbie, for instance, that his desire to reveal the violence wrought by European imperial powers was pursued at any cost. But in tracing the development of what Verges called the ruptural defence, the film takes us to the heart of the inescapable paradoxes and contradictions involved in using law as a means of political resistance in colonial and post- colonial contexts. I want to explore the strategy of rupture as developed by Verges but also in a broader sense, to consider whether there is in this defence strategy that arose in colonial, criminal law contexts, something that is generalisable, something that can be drawn out to form a notion of legal rupture more generally. To begin then, an exploration of Verges\* 'rupture defence', or rendered more eloquently, a strategy of rupture. At the beginning of the film, Verges comments on his strategy for the trial of Djamila Bouhired, a member of the KLN, who was tried in a military court for planting a bomb in a cafe in Algiers in 1956. Verges states the following in relation to the trial: The problem wasn't to play for sympathy as left-wing lawyers advised us to do, from the murderous fools who judged us, but to taunt them, to provoke incidents that would reach people in Paris, London, Brussels and Cairo... The refusal to play for sympathy from those empowered to uphold the law in a colonial legal order hints at the much more profound refusal that lies at the basis of the strategy of rupture, which we see unfold throughout the film. In refusing to accept the characterisation of Djamila s acts as criminal acts, Verges challenges the very legal categories that were used to criminalise, condemn and punish anti-colonial resistance. The refusal to make the defendants' actions cognisable to and intelligible within the colonial legal framework breaks the capacity of the judges to adjudicate in at least two senses. First, their moral authority is radically undermined by an outright rejection of the legal terms of reference and categories which they are appointed to uphold. The legal strategy of rupture is a politics of refusal that calls into question the justiciability of the purported crime by challenging the moral and political jurisdiction of the colonial legal order itself. Second, the refusal of the legal categorisation of the FLN acts of resistance as criminal brought into light the contradictions inherent in the official French position and the reality of the Algerian context. This was not, as the official line would have it, simply a case of French criminal law being applied to French nationals. The repeated assertion that the defendants were independent Algerian actors fighting against colonial brutality, coupled with repeated revelations of the use of torture on political prisoners made it impossible for the contradictions to be "rationally contained" within the normal operations of criminal law. The revelation and denunciation of torture in the courtroom not to prevent statements or admissions from being admissable as evidence (as such violations would normally be used) but to challenge the legitimacy of the imposition of a colonial legal order on the Algerian people made the normal operation of criminal law procedure virtually impossible.24 And it is in this making impossible of the operation of the legal order that the power of the strategy of rupture lies. In refusing to render his clients\* actions intelligible to a colonial (and later imperial) legal Framework, Verges makes visible the obvious hypocrisy of the colonial legal order that attempts to punish resistance that employs violence, in the same spatial temporal boundaries where the brute violence of colonial rule saturates everyday life. In doing so, this is a strategy that challenges the monopoly of legitimate violence the state holds. Verges aims to render visible the raise distinction between common crimes and political crimes, or more broadly, the separation of law and politics.25 The ruptural defence seeks to subvert the order and structure of the trial by re-defining the relation between accuser and accused. This illumination of the hypocrisy of the colonial state questions the authority of its judiciary to adjudicate. But more than this, his strategy is ruptural in two senses that are fundamental to the operation of the law in the colonial settler and post-colonial contexts. The first is that the space of opposition within the legal confrontation is reconfigured. The second, and related point, is that the strictures of a legal politics of recognition are shattered. In relation to the first point, a space of opposition is, in the view of Fanon, missing in certain senses, in the colonial context. A space of opposition in which a genuinely mutual struggle between coloniser and colonised can occur is denied by spatial and legal-political strategies of containment and segregation. While these strategies also exhibit great degrees of plasticity2", the control over such mobility remains to a great degree in the hands of the colonial occupier. The legal strategy of rupture creates a space of political opposition in the courtroom that cannot be absorbed or appropriated by the legal order. In Christodoulidis' view, this lack of co-option is the crux of the strategy of rupture. This strategy of rupture also points to a path that challenges the limits of a politics of recognition, often one of the key legal and political strategies utilised by indigenous and racial minority communities in their struggles for justice. Claims for recognition in a juridical frame inevitably involve a variety of onto-epistemological closures.2' Whether because of the impossible and irreconciliable relation between the need for universal norms and laws and the specificities of the particular claims that come before the law, or because of the need to lit one's claims within legal- political categories that are already intelligible within the legal order, legal recognition has been critiqued, particularly in regards to colonial settler societies, on the basis that it only allows identities, legal claims, ways of being that are always-already proper to the existing juridical order to be recognised by the law. In the Canadian context, for instance, many scholars have elucidated the ways in which the legal doctrine of aboriginal title to land imports Anglo- American concepts of ownership into the heart of its definition; and moreover, defines aboriginality on the basis of a fixed, static concept of cultural difference. The strategy of rupture elides the violence of recognition by challenging the legitimacy of the colonial legal order itself. In an article discussing Verges\* strategy of rupture, Emilios Christodoulidis takes up a question posed to Verges by Foucault shortly after the publication of Verges' book, De La Strategic Jiwuiare, as to whether the defence of rupture in the context of criminal law trials in the colony could be generalised more widely, or whether it was "not in fact caught up in a specific historical conjuncture." In exploring how the strategy of rupture could inform practices and theory' outside of the courtroom, Christodoulidis characterises the strategy of rupture as one mode of immanent critique. As individuals and communities subjected to the force of law, the law itself becomes the object of critique, the object that needs to be taken apart in order to expose its violence. To quote from Christodoulidis: Immanent critique aims to generate within these institutional frameworks contradictions that are inevitable (they can neither be displaced nor ignored), compelling (they necessitate action) and transformative in that (unlike internal critique) the overcoming of the contradiction does not restore, but transcends, the 'disturbed' framework within which it arose. It pushes it to go beyond its confines and in the process, famously' in Marx's words, "enables the world to clarify' its consciousness in waking it from its dream about itself” 29 Christodoulidis explores how the strategy of rupture can be utilised as an intellectual resource for critical legal theory and more broadly, as a point of departure for political strategies that could cause a crisis for globalised capital. Strategies of rupture are particularly crucial when considering a system, he notes, that has been so successful at appropriating, ingesting and making its own, political aspirations (such as freedom, to take one example) that have also been used to disrupt its most violent and exploitative tendencies. Here Christodoulidis departs from the question of colonialism to locus on the operation of capitalism in post-war European states. It is also this bifurcation that I want to question, and rather than a distinction between colonialism and capitalism, to consider how the colonial (as a set of economic and political relations that rely on ideologies of racial difference, and civilisational discourses that emerged during the period of European colonialism) is continually re-written and re-instantiated through a globalised capitalism. As I elaborate in the discussion of the Salwa Judum judgment below, it is the combination of violent state repression of political dissent that finds its origins (in the legal form it takes) during the colonial era, and capitalist development imperatives that implicate local and global mining corporations in the dispossession of tribal peoples that constitutes the legal- political conflict at issue. After the Trial: From Defence to Judgement "Les bons juges, comme les hero de la presse du coeur, n'existent pas."30 In response to a question from Jean Lapeyrie (a member of the Action Committee for Prison- Justice) during a discussion of De La Strategic Judiciare published as the Preface to the second edition, Verges remarks that there are actually effective judges, but that they are effective when forgetting the essence of what it is to be a judge.51 The strategy of rupture is a tactic utilised to subvert the order and structure of a trial; to re-define the very terms upon which the trial is premised. On this view, the judge, charged with the obligation to uphold the rule of law is of course by definition not able to do anything but sustain an unjust political order. In the film Terror'^ Advocate, one is left to wonder about the specificities of the judicial responses to the strategy deployed by Verges. (Djamila Bouhired, for instance, was sentenced to death, but as a result of a worldwide media campaign was released from prison in 1962). While I would argue that the judicial response is clearly' not what is at stake in the ruptural defence, I want to consider the potentiality of the judgment to be ruptural in the sense articulated by Christodoulidis. discussed above. Exposing a law to its own contradictions and violence, revealing the ways in which a law or policy contradicts and violates rights to basic political freedoms, has clear political-legal effects and consequences. Is it possible for members of the judiciary to expose contradictions in the legal order itself, thereby transforming it? Would the redefinition, for instance, of constitutional provisions guaranteeing rights that come into conflict with capitalist development imperatives constitute such a rupture? In my view, the re-definition of the limitations on the guarantees of individual and group freedom that are inevitably and invariably utilised to justify state repression of rights in favour of capitalist development imperatives, security, or colonial settlement have the potential to contribute to the re-creation of political orders that could be more just and democratic. We may be reluctant to ever claim a judgment as ruptural out of fear that it would contaminate the radical nature of this form of immanent critique. Is to describe a judgment as ruptural to belie the impossibility of justice, the aporia that confronts every moment of judicial decision- making? I want to suggest that it is impossible to maintain such a pure position in relation to law, particularly given its capacity (analogous to that of capital itself) for reinvention. Thus, I want to explore the potential for judges to subvert state violence engendered by particular forms of political and economic dispossession, through the act of judgment. In my view, basic rights protected by constitutional guarantees (as in the Indian case) have been so compromised in the interests of big business and development imperatives, that re-defining rights to equality, dignity and security of person, and subverting the interests of the state-corporate nexus is potentially ruptural, in the sense of causing a crisis for discrete tentacles of global capitalism. At this juncture, we may want to explicitly account for the specific differences between criminal defence cases and Verges' basic tactic, which is to challenge the very jurisdiction of the court to adjudicate, to define the act of resistance as a criminal one and constitutional challenges to the violation of rights in cases such as Salwa Judum. While one tactic seeks to render the illegitimacy of the colonial state bare in its confrontation with anti-colonial resistance, the other is a tactic used to re-define the terms upon which political dissent and resistance take place within the constitutional bounds of the post-colonial state. These two strategies appear to be each other's opposite; one challenges the legitimacy of the state itself through refusing the jurisdiction of the court to criminalise freedom fighters, while the other calls on the judiciary to hold the state to account for criminalising and violating the rights of its citizens to engage in political acts of dissent and resistance. However, the common thread that situates these strategies within a singular political framework is the fundamental challenge they pose to the state's monopoly over defining the terms upon which anti-colonial and anti-capitalist political action takes place.

#### Refusal fails

Laing 15, Ph.D. candidate, School of Geographical and Earth Sciences, College of Science and Engineering, University of Glasgow (Anna Frances Laing, January 2015, “Territory, resistance and struggles for the plurinational state: the spatial politics of the TIPNIS Conflict,” Ph.D. thesis, pgs. 215-216, http://theses.gla.ac.uk/5974/7/2015laingphd.pdf)

The use of indigeneity as a common signifier has fostered mobilisation across different ethnic groups. This process has been aided by NGOs and técnicos (technical experts) that accompanied the Eighth and Ninth Marches. NGO representatives facilitated meetings, provided training, funded activities and constructed written announcements and texts. These mediatory actors therefore helped to re-articulate the grievances of the marchers under the banner of indigenous rights. This could be seen in the writing of open letters to the government during both the Eighth and Ninth Marches, made possible through the aid of technical experts from one of the principle legal organisations defending indigenous rights in Bolivia CEJIS (Centro de Estudios Jurídicos e Investigación Social; Centre of Legal Studies and Social Investigation). Therefore, in order to ‘speak’ and be heard, the indigenous peoples have to undergo a process of representation through the language of legal rights. They therefore remain ‘subaltern’ because their attempts at self-representation fall outside the ‘the lines laid down by the official institutional structures of representation’ (Spivak 1996: 306). Thus, Glenn (2011) contends that the UN Declaration on the Rights of Indigenous Peoples is ironic since it seeks the recognition of alternative epistemologies through civic institutions that have homogenising and universalising tendencies. However, as Fabricant notes in her work with the Landless Peasants Movement in Bolivia, movements ‘take NGO ideas and meld them with their own creative strategies to come up with solutions that will work for their communities’ (2012: 120). Moreover, Gustafson (2009b) offers a balanced interpretation of the ways that NGOs offer a language and model for politicising alternative worldviews. The indigenous movement consciously reifies certain strategic essentialisms whilst at other times actively resisting them. Indeed, indigenous knowledges do not exist outside of other knowledge forms (Walsh 2002). As Walsh argues ‘[t]he efficacy of the movement in fact derives from its ability to construct and use the correspondences among various contemporary knowledge positions […] in order to exercise political tactics and strategies’ (2002: 71). A politics of refusal is unlikely to advance indigenous demands. As such, Hale suggests an analytical framework based on the Gramscian notion of articulation to ask: will the subjugated knowledge and practices be articulated within the dominant, and neutralised? Or will they occupy the space opened from above while resisting its built in logic, connect with others, toward ‘transformative’ cultural-political alternatives that still cannot be fully imagined? (2002: 499). Indeed, there is the danger that identifying under a single indigenous label risks losing the complexities and processes that permeate the heterogeneous inter-ethnic collectivity of the lowland indigenous movement. This acts to disembody the identity claims from some of the more radical tangents of the movement. Mexican anthropologist Miguel Alberto Bartolomé argues that indigenous autonomy should contemplate ‘new modes of [interethnic, inter-cultural] social articulation that are more egalitarian than existing [ones]’ and that a multi-ethnic state ‘should explore all possible paths in the search for novel forms of conviviality between culturally distinct groups’ (2005: 146 cited in Gustafson 2009a: 998). Escobar similarly calls for a decolonisation that ‘can be started in earnest from a deessentialized perspective’ (2008: 305). Indeed, the movement seeks the recognition of plurality without the homogenisation of indigenous cultures or ideologies or the ranking of difference that necessarily works to subordinate some cultures and let others dominate. This project of emancipatory societal transformation is an on-going challenge for the lowland indigenous movement.