# Framework

### Notes

#### Framework is essentially a topicality argument that says the affirmative by not reading a plan that advocates for USFG action is “out of bounds”. The negative is trying to argue that if the affirmative does not fulfill a literal (some would say traditional) reading of the resolution that hurts the negative’s ability to engage and debate them.

#### Essentially, when the negative sees the topic they try and brainstorm arguments/strategies that they can prepare to argue about it. If the affirmative discusses something outside of the topic they get an unfair prep advantage- they know what will be discussed ahead of time and the negative does not. While in this packet the affirmative is limited in what they can say, in the larger debate world the number of affs is much, much larger. This makes it important for the negative to be able to rely on “generics”- like the states CP in this packet. By having generics the neg can be sure they will never be caught with nothing to say. These generics have to relate to the topic- that’s why on this topic you would research the federalism disad but not the US-China relations disad.

#### Besides this basic “fairness” argument the debate about framework will be focused on whether or not parts of traditional debate are good or bad.

#### Switching Sides- everyone goes aff and neg. If you don’t follow the resolution, however, its possible that you could say “education is bad” in every round and thus never defend “education is good”- you don’t have to switch sides. Now plenty of people in debate don’t switch sides about everything- some teams never say “heg bad”, most teams never say “genocide good”- but the idea is not you must switch on every single issue ever, its that you must on the RESOLUTION.

#### The State- many teams will argue the state is an illegitimate actor that they will not defend. The negative will want to argue that there is value in discussing state policy/being knowledgeable about it even if you disagree with the state in the abstract

#### Exclusion- many will argue they do not have “access” to the same kind of debate(or responsive government) that the negative does. Differences could be rooted in identiy (black or white), class (rich or poor), ability (or level of ability) etc. They will say if debate only focuses on “technocratic” or “elite” policy making than they cannot/will not be able to engage the neg on a level playing field from the get go

#### Racism- much of the affirmative evidence argues that racism, and specifically racist speech, is a social problem. The evidence here says racism is a creation of government policy and can only be deconstructed through policy change. Since the affirmative forecloses policy advocacy this “turns the case”

### 1NC Framework

#### A. Interpretation: the affirmative can only win based on arguments why education should be funded or regulated by the federal government

**1. A restriction on speech is a government policy**

**Schwabach, Prof of Law @Berkeley, 14**

(Aaron, JD, Internet and the Law: Technology, Society, and Compromises, 2nd Edition )

Censorship is the act or process of inspecting expressive content, such as books, movies, recorded music, or Web pages, and deleting or restricting access to material deemed offensive by the person or organization doing the inspection. The Internet provides new problems for censorship because of its international nature, the ease with which it provides children as well as adults with access to information, the widespread availability of encryption technology, and the quantity of information exchanged. The law of the United States and of the individual states, in accordance with the First and Fourteenth Amendments to the U.S. Constitution, severely restricts the censorship powers of governments. State action: The First Amendment protects against censorship by the government and not ordinarily against censorship by private parties; state action, rather than private action, is the target of the Amendment. It is perfectly legal, for instance, for a private Internet Service Provider (ISP) such as America Online to block certain mass-mailed email messages even if it would be impermissible for the government to do so; America Online’s action is not state action {America Online, 948 F. Supp. 456).(26)

#### 2. Legitimate state action is the heart of censorship debates

Ooten, PhD, 14

(Melissa, Associate Director of WILL\* Gender Research Specialist, Race, Gender, and Film Censorship in Virginia, 1922–1965)

The question of who would emerge as the governing authority in 1920s Virginia operated at the crux of censorship debates. Would it be religious authorities, parents, lay public leaders, or Virginia's lawmakers? While these controversies specifically addressed the question of mov ie censorship, they spoke to a much more encompassing question of the time: what should be the role of a modern state? Debates ov er movie censorship often revealed substantial controversies over this question. In Virginia, the question of movie censorship became a question of who would ultimately regulate individuals’ behavior both on and off the screen. By the end of the 1920s. Virginia's lawmakers had successfully gained the ability to regulate the state's citizens. They had successfully banned the consumption of alcohol, regulated images on film, defined acceptable sexualities and reproduction by regulating which individuals could many each other and providing for the sterilization of those they construed to be dangerous to the modernizing state, and established strict public boundaries of race by passing segregation statutes in the late 1920s and early 1930s. Censorship debates revealed that individuals’ views on film censorship specifically and the role of the stale in regulating individuals' lives were generally far from dichotomous. As this chapter will show, voices from such diverse sectors of the community as police officers. Klan members, and NAACP activists indicated an ongoing process of negotiation and contestation between those favoring censorship and their opponents.(32)

#### B. Fairness-

#### 1. Debate is a game: forced winner/loser, competitive norms, and the tournament invite prove. Alternative impacts like activism or education can be pursued in other forums. This makes fairness the most important impact

#### 2. Not defending the topic is not fair

#### A. Preparation- repacking the topic gives the aff a huge edge, they can prepare for 6 months on an issue that catches us by surprise. Preparation is better than thinking on your feet- research demonstrates pedagogical humility and research skills are the only portable debate training

#### B. Limits- there are a finite amount of government restrictions, but an infinite number of non topical affirmatives. Consider this our “library disad”- not debating the topic allows someone to specialize in one area of the library for 4 years giving them a huge edge over people who switch research focus every year

#### C. Causality- debating the resolution forces the affirmative to defend a cause and effect relationship, the state doing x results in y. Non topical affs establish their own barometer “I think x is good for me” that aren’t negateable. Only the neg promotes switch side debate

#### D. Exclusionary rule- you can’t vote on the case outweighs T because lack of preparation prevents rigorous testing of the AC claims. If we win fairness we don’t have to “outweigh” other impacts

**C. Cede the Political**

#### 1. The state isn’t monolithic or fixed- it’s a contingent site of political struggle. Blanket rejection empowers right wing policies, while strategic resistance can use cracks in the state as a focal point of transformation

Khachaturian, PhD candidate, 17

(Rafael, PoliSci@Indiana Bloomington, 2-20, https://www.jacobinmag.com/2017/02/deep-state-michael-flynn-leaks-federal-bureaucracy-trump/)

The Trump administration had a rough first month. On top of mass protests, historically low approval ratings, and staffing disorganization, the various bureaucracies of the federal civil service are riven with conflict and openly resisting the administration’s agenda. Last week, Michael Flynn resigned as national security adviser following leaked reports that he’d met with Russian intelligence prior to the presidential election. If anything, the rebellion within the intelligence community is only escalating. The mounting discord has led many to comment on the persistence of the “deep state” — shorthand for the nexus of corporate power and political and administrative institutions, including the branches of the armed forces, the federal bureaucracy, and the FBI, CIA, NSA, and other secretive intelligence agencies — and its ability to act as a check on the Trump presidency. According to critics — and until recently, references to the “deep state” were rarely positive — these subterranean networks exercise disproportionate influence over public policy. While parts of the Left have long been concerned about the deep state, lately the Right has taken up the term, using it to decry a purported fifth column of Obama loyalists. From Glenn Greenwald to Bill Kristol, Breitbart to Foreign Policy, it seems everyone now accepts the reality of the deep state, even if they disagree about its role in the present controversy. The term’s surge in popularity is understandable. The “deep state” appears to be an appropriate way to describe the complex networks tying together the various state apparatuses. In particular, it can easily be invoked to explain the seemingly invisible, drawn out, and arcane processes by which public policy is actually negotiated and made. Yet for the same reason, references to the deep state obscure more than they clarify. They shed hardly any light on the nature of the power struggle currently roiling the federal government. If we want to fight Trump, we’ll need conceptual and theoretical frameworks with more explanatory power than the “deep state” can provide. The Concept on Everyone’s Mind The notion of the deep state has a long history in American politics. While emanating from different ends of the political spectrum, President Eisenhower’s warnings in 1961 about the “military-industrial complex” and C. Wright Mills’s famous 1956 study of “the power elite” can both be seen as indictments of the deep state as an undemocratic distortion of policymaking. After Vietnam and Watergate, the concept embedded itself even more deeply in the political discourse, as the notion of a pluralistic distribution of power in American society appeared increasingly farcical in the face of structural inequalities. The regulatory state and the entrenched network of intelligence agencies came to be viewed as political actors just like the visible branches of government. With Trump’s ascendance to the White House, the “deep state” is once again on everyone’s mind. Trump — in keeping with his managerial style, which mirrors that of many authoritarian leaders — has attempted to sow discord among rival factions of his cabinet to ensure their direct loyalty. Likewise, he has sought to appoint outsiders to bureaucratic leadership positions, in part to prevent them from identifying with their appointed agencies, and in part to weaken the agencies traditionally favored by Democrats and progressives. A highly mobilized public has slowed down the latter. But so too has the civil service’s active disobedience (including, in the case of the intelligence bureaucracy, leaking highly damaging information). On one level, these sectors are hostile to Trump’s agenda because it seeks, at least in part, to upset the stability of the American political order and thus, of their institutional autonomy. But even if we grant that state agencies have their own interests and domains of authority that they jealously defend against encroachment, it’s unwise to think of the mounting internal opposition to Trump as a “deep state” giant now awake and attempting to restore things to normal. The Problem With the “Deep State” The deep state concept is harmful in two key ways. First, invoking the deep state implies a misleading view of the state as a monolithic, unitary actor. While the deep state is usually said to be a network of individuals and agencies, it is assumed that these component parts are held together by a common will or mission (in this case, something like defending the “national interest” against Trumpism). This leads to a reification of the state as an autonomous and internally coherent force. Yet modern capitalist states are more fragmented than they appear. First, they are composed of class fractions and coalitions that have frequently clashing interests and are motivated by short-term considerations. Often, these internal differences arise from the pressure exerted by various economic interests (such as the competition between the financial, manufacturing, and small business sectors). In addition, these class forces are intersected by other factors, including the different social bases of support behind the major political parties (including voter cleavages based on urban versus rural interests, racial and gender attitudes, and “populist” appeal), the mass media’s role in shaping certain ideological narratives, and competing visions of foreign policy and geopolitical strategy. As the Greek sociologist Nicos Poulantzas wrote in State, Power, Socialism, we need to “discard once and for all the view of the State as a completely united mechanism, founded on a homogeneous and hierarchical distribution of the centers of power moving from top to bottom of a uniform ladder or pyramid.” The state is better understood as a temporary and historically contingent crystallization of social forces, a formation whose institutions are as liable to come into conflict with each other in times of political duress as they are to align seamlessly in times of stability. It is not at all clear, then, that the leaks are a power play by a unified deep state. The rivalry within the White House between the Bannon and Priebus camps, and Trump’s intent to govern by executive order (with little consultation from Congress, the Justice Department, or the federal agencies responsible for implementing these orders) have disturbed the normal functioning of the bureaucracy. As state personnel develop ways of coping with the unpredictable and ad hoc nature of this administration, the dissent within their ranks is a sign of the uncertainty that they have been thrown into since the election, rather than a well-coordinated, conspiratorial effort. Second, to talk of the deep state is to suggest that political power is sealed off from broader social struggles. The state–civil society binary is one of the fundamental bases of liberal political theory. But this distinction is largely a byproduct of the way that political power has represented itself, rather than a social fact. Where the state ends and civil society begins has always been permeable and contested — in other words, subject to politics and political struggle. The state is not an entity standing over and above society, but instead one premised upon the social forces that bring it into being. Loose talk of the “deep state” misses this crucial point, advancing instead a facile vision of institutionalized power that constitutes its own foundation, and is therefore opaque, mysterious, and beyond the reach of citizens. The State and the Struggle Rejecting the deep state framework is not an academic exercise. The way we think about the state shapes how we, as democratic agents, conceive of and relate to organized political power. It affects how we organize and participate in the growing movement against the Trump administration and the GOP’s agenda. Treating the state as a nebulous substratum of bureaucratic networks and institutions — ones that really call the shots behind visible electoral politics — overlooks its potential as a terrain for political struggle. To again quote Poulantzas, “the State is not a monolithic bloc but a strategic field.” Through concerted struggles inside and outside of political institutions, the opposition can displace and alter the state’s internal dynamics. They can attack the hegemonic coalition (currently headed by Trump) at the core. What would this look in practice? What would it entail for the movement against Trumpism to analyze, leverage, and exploit for its own ends the various coalitions, fractions, and hegemonic blocs within the state that are now publicly clashing? First, it would mean embracing the plurality of political resistance, from legislative pressure to marches and public demonstrations, economic boycotts, and civil disobedience. Since the election we have seen a new politicization of civil society, and the proliferation of local initiatives seeking to stem the new administration’s onslaught. Among these are the rapid growth of the Democratic Socialists of America, and the movements for sanctuary cities and campuses. These struggles in civil society always reverberate within the state, turning the latter into a contested ground where these new movements can push back, both directly within and outside of state institutions, against the Trump agenda. Second, it would mean deepening the existing ties between the various popular struggles fighting Trump and the GOP, including the movements for women’s and reproductive rights, immigrant rights, workers’ rights, and environmental justice. In the short term, cultivating a broad coalition around overlapping interests (and seeking to fragment the support behind the Trump coalition, where possible) could encourage a further de-legitimization of the Trump administration’s far-right agenda, and thereby spur more refusals and defections from within the ranks of the civil service. Eventually, this movement building would go a long way in creating a positive common agenda for an already-revitalizing left. In sum, it would mean challenging the state’s ability to establish the new normal envisioned in Trump’s campaign agenda, and to inject popular struggles into the heart of the ruling coalition, which cannot act without the ongoing support of both major parties and the bureaucracy. But for any of this to happen, we first have to abandon the idea of a coherent, unitary deep state that is dictating politics behind the scenes. Relying on an illusory deep state to save us indulges in a fantasy at a time when we can ill afford to do so.

#### 2. Racism is a product of government policy-debates about government policy are crucial to solve it

**Bouie 13**—Jamelle Bouie is a staff writer at The American Prospect. (“Making (and Dismantling) Racism”, 3-11-13, http://prospect.org/article/making-and-dismantling-racism)

Over at The Atlantic, Ta-Nehisi Coates has been exploring the intersection of race and public policy, with a focus on white supremacy as a driving force in political decisions at all levels of government. This has led him to two conclusions: First, that anti-black racism as we understand it is a creation of explicit policy choices**—**the decision to exclude, marginalize, and stigmatize Africans and their descendants has as much to do with racial prejudice as does any intrinsic tribalism. And second, that it's possible to dismantle this prejudice using public policy. Here is Coates in his own words: Last night I had the luxury of sitting and talking with the brilliant historian Barbara Fields. One point she makes that very few Americans understand is that racism is a creation. You read Edmund Morgan’s work and actually see racism being inscribed in the law and the country changing as a result. If we accept that racism is a creation, then we must then accept that it can be destroyed. And if we accept that it can be destroyed, we must then accept that it can be destroyed by us and that it likely must be destroyed by methods kin to creation. Racism was created by policy. It will likely only be ultimately destroyed by policy. Over at his blog, Andrew Sullivan offers a reply: I don’t believe the law created racism any more than it can create lust or greed or envy or hatred. It can encourage or mitigate these profound aspects of human psychology—it can create racist structures as in the Jim Crow South or Greater Israel. But it can no more end these things that it can create them. A complementary strategy is finding ways for the targets of such hatred to become inured to them, to let the slurs sting less until they sting not at all. Not easy. But a more manageable goal than TNC’s utopianism. I can appreciate the point Sullivan is making, but I'm not sure it's relevant to Coates' argument. It is absolutely true that "Group loyalty is deep in our DNA," as Sullivan writes. And if you define racism as an overly aggressive form of group loyalty—basically just prejudice—then Sullivan is right to throw water on the idea that the law can "create racism any more than it can create lust or greed or envy or hatred." But Coates is making a more precise claim: That there's nothing natural about the black/white divide that has defined American history. White Europeans had contact with black Africans well before the trans-Atlantic slave trade without the emergence of an anti-black racism. It took particular choices made by particular people—in this case, plantation owners in colonial Virginia—to make black skin a stigma, to make the "one drop rule" a defining feature of American life for more than a hundred years. By enslaving African indentured servants and allowing their white counterparts a chance for upward mobility, colonial landowners began the process that would **make white supremacy the ideology of America**. The position of slavery generated a stigma that then justified continued enslavement—blacks are lowly, therefore we must keep them as slaves. Slavery (and later, Jim Crow) **wasn't built to reflect racism as much as it was built in tandem with it**. And later policy, in the late 19th and 20th centuries, further entrenched white supremacist attitudes. Block black people from owning homes, and they're forced to reside in crowded slums. Onlookers then use the reality of slums to deny homeownership to blacks, under the view that they're unfit for suburbs. In other words, create a prohibition preventing a marginalized group from engaging in socially sanctioned behavior—owning a home, getting married—and then blame them for the adverse consequences. Indeed, in arguing for gay marriage and responding to conservative critics, Sullivan has taken note of this exact dynamic. Here he is twelve years ago, in a column for The New Republic that builds on earlier ideas: Gay men--not because they're gay but because they are men in an all-male subculture--are almost certainly more sexually active with more partners than most straight men. (Straight men would be far more promiscuous, I think, if they could get away with it the way gay guys can.) Many gay men value this sexual freedom more than the stresses and strains of monogamous marriage (and I don't blame them). But this is not true of all gay men. Many actually yearn for social stability, for anchors for their relationships, for the family support and financial security that come with marriage. To deny this is surely to engage in the "soft bigotry of low expectations." They may be a minority at the moment. But with legal marriage, their numbers would surely grow. And they would function as emblems in gay culture of a sexual life linked to stability and love. [Emphasis added] What else is this but a variation on Coates' core argument, that society can create stigmas by using law to force particular kinds of behavior? Insofar as gay men were viewed as unusually promiscuous, it almost certainly had something to do with the fact that society refused to recognize their humanity and sanction their relationships. The absence of any institution to mediate love and desire encouraged behavior that led this same culture to say "these people are too degenerate to participate in this institution." If the prohibition against gay marriage helped create an anti-gay stigma, then lifting it—as we've seen over the last decade—has helped destroy it. There's no reason racism can't work the same way.

#### 3.Focus on political structures is crucial to combat racism and prevent extinction. Focus on individual acts reinforces a neoliberal model of activism

Emanuele, Iraq war veteran, 17

(Vincent, 8-18, https://www.counterpunch.org/2017/08/18/the-fetishization-of-violence-reflections-on-charlottesville-wwii-and-activism/)

White Supremacy isn’t a series of attitudes or opinions, it’s a structural-systemic-institutional problem. Indeed, most of the activists and writers on the Left treat racism as if it’s a personal fault. It’s not. It’s a structural issue. The difference between individual racism and structural racism is important. Since the Civil Rights Movement, one could argue that individual racism is much lower. Yes, there are White Supremacists who feel comfortable espousing their reactionary views online, but nowhere near the number of whites who felt comfortable doing so several decades ago. Yet, structurally, with regard to the prison industrial complex, housing, wealth and education, we’ve made little gains, and in many cases, have taken several steps back. As a result, leftwing activists are confused. They lash out at racists on an individual level, but have no serious plans to deal with racism on a structural level. Dismantling White Supremacy requires dismantling or significantly altering existing institutions, including the corporate media (TV, Radio, Internet, Hollywood), the prison-industrial-complex and criminal justice system (Courts, Jails, Private Prisons, Police), the U.S. Empire (Bases, Weapons Contractors, Private Security Firms), global capitalism (Private Banks, Property Rights, Corporations, Trade Agreements) and a series of relationships, mechanisms, and institutions that uphold White Supremacy. The difference between calling out and/or confronting individual racists and addressing structural racism is the difference between Neoliberal Activism (hyper-individualism) and Leftwing Activism (hyper-collectivity). Neoliberal activists have no ties to a collective body of people. They only address racism on an individual/subjective level, and fail to engage in the sort of collective work that it takes to actually dismantle the systems that produce the sort of racism they find so abhorrent. In the end, the only response to large-scale collective challenges are large-scale collective political projects. In our context, that means creating new economic, political and cultural institutions aimed at radically changing society. And radically change society we must, at least according to the living world. Today, the concept of a new society is no longer an ideological pipe-dream, it’s a basic requirement for planetary survival. As organizers, educators, activists and artists, it is our primary duty in the context of Neoliberalism to constantly remind people that our challenges are collective in nature. It’s also our responsibility to think critically and constantly improve upon our existing programs, campaigns, and so forth. The Right is playing to win. Are we?

## Block args

### XT: K2 Race

#### Policy action crucial to combat racism

 Ta-Nehisi **Coates** is a senior editor at The Atlantic 3-8-**13** http://www.theatlantic.com/national/archive/2013/03/good-people-racist-people/273843/

Along with that (perhaps in the 60s) comes the idea that racism is something that "low-class" white people do. It's not a system of **laws and policies**, so much as the ideology of Cletus the slack-jawed yokel. But Arnold Hirsch and Beryl Satter's work shows the University of Chicago quietly and privately pursuing a racist strategy of "urban renewal" while publicly claiming otherwise. None of this is new. It's akin to proto-Confederates loudly and lustily defending slavery, daring the North to war before 1865, and then afterward claiming that the war really wasn't about slavery. The point is to save face. Last night I had the luxury of sitting and talking with the brilliant historian Barbara Fields. One point she makes that very few Americans understand is that **racism is a creation**. You read Edmund Morgan's work and actually see racism being inscribed in the law and the country changing as a result. If we accept that racism is a creation, then we must then accept that **it can be destroyed**. And if we accept that it can be destroyed, we must then accept that it can be destroyed by us and that it likely must be destroyed by **methods kin to creation**. Racism was **created by policy**. It will likely only be ultimately destroyed by policy. That is hard to take. If Forrest Whitaker sticks out in that deli for reasons of individual mortal sin, we can castigate the guy who frisked him and move on. But if he -- and others like him -- stick out for reasons of policy, for decisions that we, as a state, have made, then we have a problem. Then we have to do something beyond being nice to each other.

#### Their explosion of the definition of "political" makes effective resistance and social change impossible

Adolph **Reed,** Jr., University of Pennsylvania http://nonsite.org/editorial/django-unchained-or-the-help-how-cultural-politics-is-worse-than-no-politics-at-all-and-why 2-25**-13**

In addition **to knee-jerk anti-statism**, the objection that the slaves freed themselves, as it shows up in favorable comparison of Django Unchained to Lincoln, stems from a racial pietism that issued from the unholy union of cultural studies and black studies in the university. More than twenty years of “resistance” studies that find again and again, at this point ritualistically, that oppressed people have and express agency have contributed to **undermining the idea of politics as a discrete sphere** of activity directed toward the outward-looking project of affecting the social order, most effectively through creating, challenging or redefining institutions that anchor collective action with the objective of developing and wielding power. Instead, the notion has been largely evacuated of specific content at all. “Politics” can refer to whatever one wants it to; all that’s required is an act of will in making a claim. The fact that there has been no serious left presence with any political capacity in this country for at least a generation has exacerbated this problem. In the absence of dynamic movements that cohere around affirmative visions for making the society better, on the order of, say, Franklin Roosevelt’s 1944 “Second Bill of Rights,” and that organize and agitate around programs instrumental to pursuit of such visions, what remains is the fossil record of past movements—the still photo legacies of their public events, postures, and outcomes. Over time, the idea that a “left” is defined by commitment to a vision of social transformation and substantive program for realizing it has **receded from cultural memory**. Being on the left has become instead a posture, an identity, utterly disconnected from any specific practical commitments.

### Engagement Good

#### Hegemonic institutions and practices are contingent, not fixed. Withdrawal cedes the political, only critique as engagement can transform oppressive structures

Mouffe 9 - Professor of Political Theory at the Centre for the Study of Democracy, University of Westminster

(Chantal, “The Importance of Engaging the State”, What is Radical Politics Today?, Edited by Jonathan Pugh, pp. 233-7)

In both Hardt and Negri, and Virno, there is therefore emphasis upon ‘critique as withdrawal’. They all call for the development of a non-state public sphere. They call for self-organisation, experimentation, non-representative and extra-parliamentary politics. They see forms of traditional representative politics as inherently oppressive. So they do not seek to engage with them, in order to challenge them. They seek to get rid of them altogether. This disengagement is, for such influential personalities in radical politics today, the key to every political position in the world. The Multitude must recognise imperial sovereignty itself as the enemy and discover adequate means of subverting its power. Whereas in the disciplinary era I spoke about earlier, sabotage was the fundamental form of political resistance, these authors claim that, today, it should be desertion. It is indeed through desertion, through the evacuation of the places of power, that they think that battles against Empire might be won. Desertion and exodus are, for these important thinkers, a powerful form of class struggle against imperial postmodernity. According to Hardt and Negri, and Virno, radical politics in the past was dominated by the notion of ‘the people’. This was, according to them, a unity, acting with one will. And this unity is linked to the existence of the state. The Multitude, on the contrary, shuns political unity. It is not representable because it is an active self-organising agent that can never achieve the status of a juridical personage. It can never converge in a general will, because the present globalisation of capital and workers’ struggles will not permit this. It is anti-state and anti-popular. Hardt and Negri claim that the Multitude cannot be conceived any more in terms of a sovereign authority that is representative of the people. They therefore argue that new forms of politics, which are non-representative, are needed. They advocate a withdrawal from existing institutions. This is something which characterises much of radical politics today. The emphasis is not upon challenging the state. Radical politics today is often characterised by a mood, a sense and a feeling, that the state itself is inherently the problem. Critique as engagement I will now turn to presenting the way I envisage the form of social criticism best suited to radical politics today. I agree with Hardt and Negri that it is important to understand the transition from Fordism to post-Fordism. But I consider that the dynamics of this transition is better apprehended within the framework of the approach outlined in the book Hegemony and Socialist Strategy: Towards a Radical Democratic Politics (Laclau and Mouffe, 2001). What I want to stress is that many factors have contributed to this transition from Fordism to post-Fordism, and that it is necessary to recognise its complex nature. My problem with Hardt and Negri’s view is that, by putting so much emphasis on the workers’ struggles, they tend to see this transition as if it was driven by one single logic: the workers’ resistance to the forces of capitalism in the post-Fordist era. They put too much emphasis upon immaterial labour. In their view, capitalism can only be reactive and they refuse to accept the creative role played both by capital and by labour. To put it another way, they deny the positive role of political struggle. In Hegemony and Socialist Strategy: Towards a Radical Democratic Politics we use the word ‘hegemony’ to describe the way in which meaning is given to institutions or practices: for example, the way in which a given institution or practice is defined as ‘oppressive to women’, ‘racist’ or ‘environmentally destructive’. We also point out that every hegemonic order is therefore susceptible to being challenged by counter-hegemonic practices – feminist, anti-racist, environmentalist, for example. This is illustrated by the plethora of new social movements which presently exist in radical politics today (Christian, anti-war, counter-globalisation, Muslim, and so on). Clearly not all of these are workers’ struggles. In their various ways they have nevertheless attempted to influence and have influenced a new hegemonic order. This means that when we talk about ‘the political’, we do not lose sight of the ever present possibility of heterogeneity and antagonism within society. There are many different ways of being antagonistic to a dominant order in a heterogeneous society – it need not only refer to the workers’ struggles. I submit that it is necessary to introduce this hegemonic dimension when one envisages the transition from Fordism to post-Fordism. This means abandoning the view that a single logic (workers’ struggles) is at work in the evolution of the work process; as well as acknowledging the pro-active role played by capital. In order to do this we can find interesting insights in the work of Luc Boltanski and Eve Chiapello who, in their book The New Spirit of Capitalism (2005), bring to light the way in which capitalists manage to use the demands for autonomy of the new movements that developed in the 1960s, harnessing them in the development of the post-Fordist networked economy and transforming them into new forms of control. They use the term ‘artistic critique’ to refer to how the strategies of the counter-culture (the search for authenticity, the ideal of selfmanagement and the anti-hierarchical exigency) were used to promote the conditions required by the new mode of capitalist regulation, replacing the disciplinary framework characteristic of the Fordist period. From my point of view, what is interesting in this approach is that it shows how an important dimension of the transition from Fordism to post- Fordism involves rearticulating existing discourses and practices in new ways. It allows us to visualise the transition from Fordism to post- Fordism in terms of a hegemonic intervention. To be sure, Boltanski and Chiapello never use this vocabulary, but their analysis is a clear example of what Gramsci called ‘hegemony through neutralisation’ or ‘passive revolution’. This refers to a situation where demands which challenge the hegemonic order are recuperated by the existing system, which is achieved by satisfying them in a way that neutralises their subversive potential. When we apprehend the transition from Fordism to post- Fordism within such a framework, we can understand it as a hegemonic move by capital to re-establish its leading role and restore its challenged legitimacy. We did not witness a revolution, in Marx’s sense of the term. Rather, there have been many different interventions, challenging dominant hegemonic practices. It is clear that, once we envisage social reality in terms of ‘hegemonic’ and ‘counter-hegemonic’ practices, radical politics is not about withdrawing completely from existing institutions. Rather, we have no other choice but to engage with hegemonic practices, in order to challenge them. This is crucial; otherwise we will be faced with a chaotic situation. Moreover, if we do not engage with and challenge the existing order, if we instead choose to simply escape the state completely, we leave the door open for others to take control of systems of authority and regulation. Indeed there are many historical (and not so historical) examples of this. When the Left shows little interest, Right-wing and authoritarian groups are only too happy to take over the state. The strategy of exodus could be seen as the reformulation of the idea of communism, as it was found in Marx. There are many points in common between the two perspectives. To be sure, for Hardt and Negri it is no longer the proletariat, but the Multitude which is the privileged political subject. But in both cases the state is seen as a monolithic apparatus of domination that cannot be transformed. It has to ‘wither away’ in order to leave room for a reconciled society beyond law, power and sovereignty. In reality, as I’ve already noted, others are often perfectly willing to take control. If my approach – supporting new social movements and counterhegemonic practices – has been called ‘post-Marxist’ by many, it is precisely because I have challenged the very possibility of such a reconciled society. To acknowledge the ever present possibility of antagonism to the existing order implies recognising that heterogeneity cannot be eliminated. As far as politics is concerned, this means the need to envisage it in terms of a hegemonic struggle between conflicting hegemonic projects attempting to incarnate the universal and to define the symbolic parameters of social life. A successful hegemony fixes the meaning of institutions and social practices and defines the ‘common sense’ through which a given conception of reality is established. However, such a result is always contingent, precarious and susceptible to being challenged by counter-hegemonic interventions. Politics always takes place in a field criss-crossed by antagonisms. A properly political intervention is always one that engages with a certain aspect of the existing hegemony. It can never be merely oppositional or conceived as desertion, because it aims to challenge the existing order, so that it may reidentify and feel more comfortable with that order. Another important aspect of a hegemonic politics lies in establishing linkages between various demands (such as environmentalists, feminists, anti-racist groups), so as to transform them into claims that will challenge the existing structure of power relations. This is a further reason why critique involves engagement, rather than disengagement. It is clear that the different demands that exist in our societies are often in conflict with each other. This is why they need to be articulated politically, which obviously involves the creation of a collective will, a ‘we’. This, in turn, requires the determination of a ‘them’. This obvious and simple point is missed by the various advocates of the Multitude. For they seem to believe that the Multitude possesses a natural unity which does not need political articulation. Hardt and Negri see ‘the People’ as homogeneous and expressed in a unitary general will, rather than divided by different political conflicts. Counter-hegemonic practices, by contrast, do not eliminate differences. Rather, they are what could be called an ‘ensemble of differences’, all coming together, only at a given moment, against a common adversary. Such as when different groups from many backgrounds come together to protest against a war perpetuated by a state, or when environmentalists, feminists, anti-racists and others come together to challenge dominant models of development and progress. In these cases, the adversary cannot be defined in broad general terms like ‘Empire’, or for that matter ‘Capitalism’. It is instead contingent upon the particular circumstances in question – the specific states, international institutions or governmental practices that are to be challenged. Put another way, the construction of political demands is dependent upon the specific relations of power that need to be targeted and transformed, in order to create the conditions for a new hegemony. This is clearly not an exodus from politics. It is not ‘critique as withdrawal’, but ‘critique as engagement’. It is a ‘war of position’ that needs to be launched, often across a range of sites, involving the coming together of a range of interests. This can only be done by establishing links between social movements, political parties and trade unions, for example. The aim is to create a common bond and collective will, engaging with a wide range of sites, and often institutions, with the aim of transforming them. This, in my view, is how we should conceive the nature of radical politics.

### Exclusion

**Inside/outside “the state” dichotomy is selfmarginalizing**

Krause, PhD Oxford, Williams, PhD, 97

(Keith, IR @Graduate Institute, Michael, International Politics @Aberystwyth, Critical Security Studies)

These (and other) critical perspectives have much to say to each other in the construction of a critical theory of international relations and, in turn, to contemporary security studies. While elements of many approaches may be found in this volume, no one perspective dominates. If anything, several of the contributions to this volume stand more inside than outside the tradition of security studies, which reflects our twofold conviction about the place of critical perspectives in contemporary scholarship. First, to stand too far outside prevailing discourses is almost certain to result in continued disciplinary exclusion. Second, to move toward alternative conceptions of security and security studies, one must necessarily reopen the question subsumed under the modern conception of sovereignty and the scope of the political. To do this, one must take seriously the prevailing claims about the nature of security. Many of the chapters in this volume thus retain a concern with the centrality of the state as a locus not only of obligation but of effective political action. In the realm of organized violence states also remain the preeminent actors. The task of a critical approach is not to deny the centrality of the state in this realm but, rather, to understand more fully its structures, dynamics, and possibilities for reorientation. From a critical perspective, state action is flexible and capable of reorientation, and analyzing state policy need not therefore be tantamount to embracing the statist assumptions of orthodox conceptions. To exclude a focus on state action from a critical perspective on the grounds that it plays inevitably within the rules of existing conceptions simply reverses the error of essentializing the state. Moreover, it loses the possibility of influencing what remains the most structurally capable actor in contemporary world politics.(XV-XVI)

#### Affirming the topic is “active sabotage”, not complicity. Forsaking democratic debate on government policy results in the use of force, not viable alternatives

Evans and Spivak 2016 (Brad Evans, Lecturer in the School of Politics and International Studies at the University of Leeds and Programme Director for International Relations., and Political Theorist, Philosopher, and Professor of International Relations, Julian Reid Is Renown for His Advance of the Theory of Biopolitics, Contributions to Cultural Theory, Postcolonial and Post-structural Thought, Critique of Liberalism, and Seminal Deconstruction of Resilience. Gayatri Chakravorty Spivak Is an Indian Scholar, Literary Theorist, and Feminist Critic. She Is University Professor at Columbia University, Where She Is a Founding Member of Institute for Comparative Literature and Society. "When Law Is Not Justice 53." New York Times. N.p., 13 July 2016. Web. 15 July 2016. <http://mobile.nytimes.com/2016/07/13/opinion/when-law-is-not-justice.html?\_r=0&referer=>.)

B.E.: What are the implications when the promotion of human rights is left to what you have called “self-appointed entrepreneurs” and philanthropists, from individuals such as Bill Gates onto organizations like the World Bank, who have a very particular conception of rights and the “rule of law?” G.C.S.: It is just that there be law, but law is not justice. The passing of a law and the proof of its existence is not enough to assure effective resistance to oppression. Some of the gravest violations of rights have occurred within legal frameworks. And, if that law governs a society never trained in what Michel Foucault would call “the practice of freedom,” it is there to be enforced by force alone, and the ones thus forced will find better and better loopholes around it. That is why the “intuition” of democracy is so vital when dealing with the poorest of the poor, groups who have come to believe their wretchedness is normal. And when it comes time to starve, they just tighten their nonexistent belts and have to suffer, fatefully accepting this in silence. It’s more than children playing with rocks in the streets. It takes over every aspect of the people’s existence. And yet these people still work, in the blazing heat, for little or next to nothing for wealthy landowners. This is a different kind of poverty. Against this, we have this glamorization of urban poverty by the wealthier philanthropist and aid agencies. There is always a fascination with the picture-perfect idea of poverty; children playing in open sewers and the rest of it. Of course, such lives are proof of grave social injustice. But top-down philanthropy, with no interest in an education that strengthens the soul, is counterproductive, an assurance that there will be no future resistance, only instant celebrity for the philanthropist. I say “self-appointed” entrepreneurs because there is often little or no regulation placed upon workers in the nongovernmental sector. At best, they are ad hoc workers picking up the slack for a neo-liberal state whose managerial ethos cannot be strong on redistribution,, and where structural constitutional resistance by citizens cannot be effective in the face of an unconstituted “rule of law” operating, again, to protect the efficiency of global capital growth. The human rights lobby moves in to shame the state, and in ad hoc ways restores rights. But there is then no democratic follow-up, and these organizations rarely stick around long enough to see that. Another problem with these organizations is the way they emphasize capitalism’s social productivity without mentioning capital’s consistent need to sustain itself at the expense of curtailing the rights of some sectors of the population. This is all about the removal of access to structures of reparation: the disappearance of the welfare state, or its not coming into being at all. If we turn to “development,” we often see that what is sustained in sustainable development is cost-effectiveness and profit-maximization, with the minimum action necessary in terms of environmental responsibility. We could call such a thing “sustainable underdevelopment.” Today everything is about urbanization, urban studies, metropolitan concerns, network societies and so on. Nobody in policy circles talks about the capitalization of land and how this links directly to the dispossession of people’s rights. This is another line of inquiry any consideration of violence must take into account. B.E.: While you have shown appreciation for a number of thinkers known for their revolutionary interventions, such as Frantz Fanon, you have also critiqued the limits of their work when it comes to issues of gender and the liberation of women. Why? G.C.S.: I stand by my criticism of Fanon, but he is not alone here. In fact he is like most other men who talk about revolutionary struggle. Feminist struggle can’t be learned from them. And yet, in “A Dying Colonialism,” Fanon is really trying from within to understand the position of women by asking questions about patriarchal structures of domination. After the revolution, in postcolonial Algeria and elsewhere, those women who were part of the struggle had to separate themselves from revolutionary liberation organizations that were running the state in order to continue fighting for their rights under separate initiatives. Gender is bigger and older than state formations and its fight is older than the fight for national liberation or the fight between capitalism and socialism. So we have to let questions of gender interrupt these revolutionary ideas, otherwise revolution simply reworks marked gender divisions in societies. B.E.: You are clearly committed to the power of education based on aesthetic practices, yet you want to challenge the canonical Western aesthetic ideas from which they are derived using your concepts of “imaginative activism” and “affirmative sabotage.” How can this work? G.C.S.: Imaginative activism takes the trouble to imagine a text — understood as a textile, woven web rather than narrowly as a printed page — as having its own demands and prerogatives. This is why the literary is so important. The simplest teaching of literature was to grasp the vision of the writer. This was disrupted in the 1960s by the preposterous concern “Is this book of relevance to me?” which represented a tremendous assault on the literary, a tremendous group narcissism. For literature to be meaningful it should not necessarily be of obvious relevance. That is the aesthetic challenge, to imagine that which is not immediately apparent. This can fight what is implicit in voting bloc democracy. Relevant to me, rather than flexible enough to work for others who are not like me at all. The inbuilt challenge of democracy – needing an educated, not just informed, electorate. I used the term “affirmative sabotage” to gloss on the usual meaning of sabotage: the deliberate ruining of the master’s machine from the inside. Affirmative sabotage doesn’t just ruin; the idea is of entering the discourse that you are criticizing fully, so that you can turn it around from inside. The only real and effective way you can sabotage something this way is when you are working intimately within it. This is particularly the case with the imperial intellectual tools, which have been developed not just upon the shoulders, but upon the backs of people for centuries. Let’s take as a final example what Immanuel Kant says when developing his “Critique of Aesthetic Judgment.” Not only does Kant insist that we need to imagine another person, he also insists for the need to internalize it to such an extent that it becomes second nature to think and feel with the other person. Leaving aside the fact that Kant doesn’t talk about slavery whatsoever in his book, he even states that women and domestic servants are incapable of the civic imagination that would make them capable of cosmopolitan thinking. But, if you really think about it, it’s women and domestic servants who were actually trained to think and feel like their masters. They constantly had to put themselves in the master’s shoes, to enter into their thoughts and desires so much that it became second nature for them to serve. So this is how one sabotages. You accept the unbelievable and unrelenting brilliance of Kant’s work, while confronting the imperial qualities he reproduces and showing the contradictions in this work. It is, in effect, to jolt philosophy with a reality check. It is to ask, for example, if this second-naturing of women, servants and others can be done without coercion, constraint and brainwashing. And, when the ruling race or class claims the right to do this, is there a problem of power being ignored in all their claimed benevolence? What would educated resistance look like in this case? It would misfire, because society is not ready for it. For that reason, one must continue to work — to quote Marx — for the possibility of a poetry of the future.

### Macro> Micro

#### Macro skills are crucial to address a host of global problems from climate change to racism- micropolitics is contingent on, not prior to, macro politics

Reisch, PhD, 17

(Michael, Daniel Thursz Distinguished Professor of Social Justice @Maryland Why Macro Practice Matters Human Service Organizations: Management, Leadership & Governance Volume 41, 2017 - Issue 1)

The social work profession faces many challenges today including attacks on the concept of social welfare itself. On a global level, the effects of public health crises, civil conflicts, and natural disasters, once considered local problems, have now acquired an international dimension. In the U.S, serious divisions have erupted over the “Black Lives Matter” movement, issues like marriage equality and reproductive rights, and what constitute appropriate societal responses to terrorism, climate change, child poverty, and increasing inequality. It is ironic, therefore, that while macro interventions are increasingly critical, macro practice has become “a marginalized subfield in social work” (Fisher & Corciullo, 2011, p. 359) as recent statistics by CSWE (2012) and NASW (Whitaker & Arrington, 2008, pp. 7–8) confirm. Rothman (2013) found considerable faculty resistance to the integration of macro content into predominantly clinical curricula, a devaluing of this content by some deans and directors, and a general lack of interest in or understanding of macro practice among many students. Many programs pay scant attention to macro content in either their courses or field placements. Yet, the need for the structural approach of macro practice is now increasingly critical, particularly if the social work profession is to realize its goal of social justice (Hasenfeld & Garrow, 2012). Macro social workers play an essential role in transforming private troubles into public issues (Mills, 1963; Schwartz, 1969) and in translating awareness of these “troubles” into concrete policies and programs, which interventions at the individual and family level cannot (Mizrahi & Morrison, 2013). Only macro practitioners provide an understanding of community structure and dynamics and the processes that affect the design and delivery of social services (Homan, 2016); collective efforts to empower clients and constituents (Burghardt, 2013); and recognition of how complex issues affect diverse communities differently. These knowledge and skills are essential components of all social work practice. An underlying assumption of macro practice is that most societal conditions accepted as “givens” are neither “natural” nor inevitable. Through this critical lens, macro social workers pose questions about how problems are identified, defined, explained, and addressed. Merely posing these questions and emphasizing both socially just means and ends reveals new “truths” and increases the possibility of systemic change (Mizrahi, 2015; Reisch & Garvin, 2016). Macro practice, therefore, is a collective and collaborative form of social work which seeks to create purposive change (Meenaghan, Gibbons, & McNutt, 2005; Netting, Kettner, McMurty, & Thomas, 2011). It enables people to create “good communities” (Warren, 1978). Macro social work practice pushes the boundaries of the profession by fostering a “big picture” perspective that analyzes people’s issues “outside the box” and focuses on the prevention of problems, not merely their amelioration. It embodies social work’s commitment to social justice and social change by promoting structural solutions to systemic inequalities and various forms of oppression that go beyond individual adaptation and resilience. Contrary to frequent usage, macro social work is not “indirect practice.” All social workers work with people within the context of communities and organizations that are affected by social policies. Like practice with individuals, couples, families, and groups, macro practice involves working with people, not merely with or within “systems” (Burghardt, 2013). Like “micro” practitioners, the changes macro social workers seek make conscious use of evidence gleaned from research and knowledge obtained from practice experience. Like efforts to produce changes in individuals, and families, macro level changes require information gathering, effective problem definition and issue framing, resource mobilization (of finances and people), strategic planning, targeted action, and reflective evaluation or praxis (Reisch, 2012). Perhaps of greatest importance, micro and macro social workers are both committed to the foundational values of the profession (NASW, 2015). How they express these values in their practice may differ, but these means are complementary and mutually supportive. Throughout the history of the social work profession, while small in numbers, macro practitioners have been leaders in translating the profession’s ethical imperative of social justice into practice (Reisch & Andrews, 2002). They have embodied this pursuit of social justice in three complementary ways: Expanding people’s genuine participation in identifying their needs and developing effective ways to address these needs; embracing a non-hierarchical definition of “expertise” that acknowledges the wisdom of clients and constituents; and promoting an inclusive definition of leadership that cultivates new, indigenous, and diverse leaders. Although the label “macro practice” is a fairly recent invention, under other names it appeared in workers’ struggles to organize unions, radical political organizations and social movements, and in the self-help/mutual aid organizations that excluded and marginalized minorities created for survival purposes (Betten & Austin, 1990; Fisher, 1994). In the early 20th century, macro practitioners played a major role in establishing the U.S. social welfare system. They developed public and non-profit social service organizations at the local and state levels. They conducted research on poverty, child welfare, juvenile justice, factory conditions, and public health issues and trained a generation of social researchers. They helped organize labor unions, especially for women and immigrants. They helped pass laws banning child labor and creating mothers’ pensions, establish public health standards, housing codes and occupational safety requirements, and introduce many of the features of modern urban life that we take for granted today. Macro practitioners also helped democratize the concept of community and industry, used research to illuminate social issues, and modernized the concept of human services administration (Reisch, 2008). Without these efforts, the social work profession would have lacked the foundation it required to develop and thrive (Wenocur & Reisch, 1989). During the 1960s, macro social workers developed new models of service, helped create Medicare, Medicaid, the Older Americans Act, the Food Stamp Program, and the Economic Opportunity Act, and played important roles in the National Welfare Rights Organization, the United Farm Workers, and various civil rights and anti-war groups (Reisch & Andrews, 2002). In today’s conservative climate, macro practitioners have heightened public awareness of poverty, the HIV/AIDS crisis, domestic violence, chronic homelessness, environmental racism, the needs of immigrants and refugees, and the importance of human rights. Macro practitioners are also increasingly involved in electoral politics, forging multicultural, cross-national, and interdisciplinary alliances; addressing new issues such as climate change, global poverty, civil conflict, human trafficking, police violence, mass incarceration, LGBTQ rights, and growing inequality; and using new technologies, particularly social media (Mizrahi & Morrison, 2013). Without macro practice, social work would be a dramatically different profession. Through often risky activism, macro social workers have given the profession the “moral cover” needed to engage in work that is often unpopular, unrecognized, and underfunded. In the future, the knowledge and skills that macro practitioners possess will be more critical than ever. Social work scholars and educators will need to play a critical role in educating nimble and strategic students and assuming leadership at the tables of influence—where policies are made and implemented (Rothman, 1999). It is the contention of this article that the survival of macro practice is in the collective self-interest of the social work profession as a whole and the people with whom we work. Social work can no longer promote itself as a “value-based profession,” committed to social justice, human dignity, and human rights, without recognizing the importance of organizing and advocating for these values at the community, organizational, societal, and global levels, and of playing a leadership role in formulating and implementing policies and programs that reflect them (Wronka, 2008). Responsibility for the survival of macro practice within social work lies with its major professional organizations and the schools of social work that educate the workforce of the future (Rothman, 2013).1

### Politics Good

#### Politics supplements rather than supplants cultural theory- we don’t say ignore racism/sexism etc, use theory to inform political praxis. We object to their refusal of politics, not their concern for difference

Illing, sw, 17

(Sean, former prof of politics and philosophy “at a university”, http://www.vox.com/policy-and-politics/2017/2/9/14543938/richard-rorty-liberalism-vietnam-donald-trump-obama)

America was viewed, increasingly, as a failed promise, a malevolent empire beyond redemption. Of what use is reformist politics in such a context? Rorty elaborates: For if you turn out to be living in an evil empire (rather than, as you had been told, a democracy fighting an evil empire), then you have no responsibility to your country; you are accountable only to humanity. If what your government and your teachers are saying is all part of the same Orwellian monologue – if the differences between the Harvard faculty and the military-industrial complex, or between Lyndon Johnson and Barry Goldwater, are negligible – then you have a responsibility to make a revolution. It’s not that these sentiments were wrong; America was, for much of the country, a failed promise. The racial divide was real and socially engineered. The war in Vietnam was an inhuman sham. There was something deeply troubling about the structure of American society. Rorty disputed none of this. From his perspective, the problem was the total rejection of pragmatic reform. The belief that there was nothing in America that could be salvaged, no institutions that could be corrected, no laws worth passing, led to the complete abandonment of conventional politics. Persuasion was replaced by self-expression; policy reform by recrimination. There was a shift away from economics towards a “politics of difference” or “identity” or “recognition.” If the intellectual locus of pre-’60s leftism was social science departments, it was now literature and philosophy departments. And the focus was no longer on advancing alternatives to a market economy or on the proper balance between political freedom and economic liberalism. Now the focus was on the cultural status of traditionally marginalized groups. In many ways, this was a good thing. The economic determinism of the pre-’60s left was embarrassingly myopic. Most of the gains made by the left in the early and mid-20th century went to white males. “The situation of African-Americans was deplored,” as Rorty notes, “but not changed by this predominantly white Left.” The plight of minorities and gay Americans and other oppressed groups was an afterthought. This was a moral failure the cultural left sought to correct. And it did this by “teaching Americans to recognize otherness,” as Rorty put it. Multiculturalism, as it’s now called, was about preserving otherness, preserving our differences; it doesn’t oblige us to cease to notice those differences. There’s nothing morally objectionable about that. As a political strategy, however, it’s problematic. It reinforces sectarian impulses and detracts from coalition-building. The pivot away from politics toward culture spawned academic fields like women and gender studies, African-American studies, Hispanic-American studies, LGBTQ studies, and so on. These disciplines do serious academic work, but they don’t minister to concrete political ends. Their goal has been to make people aware of the humiliation and hate endured by these groups, and to alienate anyone invested in that hate. Rorty doesn’t object to these aims; indeed, he (rightly) celebrated them. The cultural left succeeded in making America a better, more civilized country. The problem, though, is that that progress came at a price. “There is a dark side to the success story I have been telling about the post-sixties cultural Left,” Rorty writes. “During the same period in which socially accepted sadism diminished, economic inequality and economic insecurity have steadily increased. It’s as if the American Left could not handle more than one initiative at a time — as if it either had to ignore stigma in order to concentrate on money, or vice versa.” The left’s focus on cultural issues created an opening for the populist right, for people like Pat Buchanan and Donald Trump, who galvanize support among the white working class by exploiting racial resentment and economic anxiety. Rorty explains: While the Left’s back was turned, the bourgeoisification of the white proletariat which began in WWII and continued up through the Vietnam War has been halted, and the process has gone into reverse. America is now proletarianizing its bourgeoisie, and this process is likely to culminate in bottom-up revolt, of the sort [Pat] Buchanan hopes to foment. Racial animus is baked into the founding of America; it exists regardless of what the left does. But Rorty’s point holds: By divorcing itself from class and labor issues, the left lost sight of its economic agenda and waged a culture war that empowers the right and has done little to improve the lives of the very people it seeks to defend. Rorty’s advice to the left was to pay attention to who benefits from such a strategy: The super-rich will have to keep up the pretense that national politics might someday make a difference. Since economic decisions are their prerogative, they will encourage politicians of both the Left and the Right, to specialize in cultural issues. The aim will be to keep the minds of the proles elsewhere – to keep the bottom 75 percent of Americans and the bottom 95 percent of the world’s population busy with ethnic and religious hostilities, and with debates about sexual mores. If the proles can be distracted from their own despair by media-created pseudo-events…the super-rich will have little to fear. Big business benefits most from the culture wars. If the left and the right are quarreling over religion or race or same-sex marriage, nothing much changes, or nothing that impacts wealth concentration changes. Rorty is particularly hard on Presidents Jimmy Carter and Bill Clinton, both of whom he accuses of retreating “from any mention of redistribution” and of “moving into a sterile vacuum called the center.” The Democratic Party, under this model, has grown terrified of redistributionist economics, believing such talk would drive away the suburbanite vote. The result, he concludes, is that “the choice between the major parties has come down to a choice between cynical lies and terrified silence.” Rorty’s concern was not that the left cared too much about race relations or discrimination (it should care about these things); rather, he warned that it stopped doing the hard work of liberal democratic politics. He worried that it’s retreat into academia, into theory and away from the concrete, would prove politically disastrous. Immediately after the now-famous passage about a future “strongman,” Rorty offered yet another disturbing prophecy: One thing that is very likely to happen is that the gains made in the past forty years by black and brown Americans, and by homosexuals, will be wiped out. Jocular contempt for women will come back into fashion. The words ‘nigger’ and ‘kike’ will once again be heard in the workplace. All the sadism which the academic Left has tried to make unacceptable to its students will come flooding back. All the resentment which badly educated Americans feel about having their manners dictated to them by college graduates will find an outlet. If this were to happen, Rorty added, it would be a calamity for the country and the world. People would wonder how it happened, and why the left was unable to stop it. They wouldn’t understand why the left couldn’t “channel the mounting rage of the newly dispossessed” and speak more directly to the “consequences of globalization.” They would conclude that the left had died, or that it existed but was “no longer able to engage in national politics.” And they would be right in at least one sense: On a purely political level, the left would have failed.

### State Good

#### No offense- state action is key to create space for more revolutionary movements. Revolutionary reform is an appetizer, not dessert

Wray, researcher @Reid Foundation, 14

(Ben, 4-14, <http://www.internationalsocialist.org.uk/index.php/2014/04/the-case-for-revolutionary-reforms/>)

We need revolutionary change. There’s no two ways about it – if the exploitation of labour by capital continues to be the central dynamic driving economic development, we are headed for human and environmental catastrophe.¶ But as I’ve discussed in the previous five parts of this series, getting from where we are to a revolutionary transformation that overthrows the dominant property relations of the capitalist economy and replaces them with social relations based on democratic control of the world’s resources is not as simple as declaring our desire for it to be so. I saw a petition on change.org the other day proposing the overthrow of capitalism. If one million people signed that petition and one million people signed a further petition to introduce full collective bargaining rights for trade-unions in the UK, which one would move us closer to the overthrow of capitalism? I wager the latter.¶ Whilst having an end goal in sight is important, most people don’t change their thinking about the world based on bold visions of what could be done at some point in the future: they change their ideas based on evidence from their material lives which points to the inadequacy or irrationality of the status quo. In other words, we need to have ideas that build upon people’s lived experience of capitalism, and since that it is within the framework of a representative democracy system, we need ideas based around proposals for reforms. At the same time those reforms have to help rather than hinder a move to more revolutionary transformation that challenges the very core of the capitalist system.¶ The dialectic of reform and revolution¶ What we need, therefore, is a strategy of revolutionary reforms. Such a notion would appear as a contradiction in terms to many who identify as reformists or revolutionaries and see the two as dichotomous, but there is no reason why this should be the case. Indeed, history has shown that revolutionary transformations have always happened as a dialectical interaction between rapid, revolutionary movements and more institutional, reform-based challenges. Even the revolutionary part of that dialectic has always been motivated by the immediate needs of the participants involved – ‘land, bread and peace’ being the first half of the slogan of the Russian Revolution.¶ What does a strategy of ‘revolutionary reforms’ entail? Ed Rooksby explains that it is a political strategy that builds towards revolutionary change by using reforms to ‘push up against the limits’ of the ‘logic of capitalism’ in practice:¶ “At first these “feasible objectives” will be limited to reforms within capitalism—or at least to measures which, from the standpoint of a more or less reformist working class consciousness, appear to be legitimate and achievable within the system, but which may actually run counter to the logic of capitalism and start to push up against its limits. As the working class engages in struggle, however, the anti-capitalist implications of its needs and aspirations are gradually revealed. At the same time, through its experience of struggle for reform, the working class learns about its capacity for “self-management, initiative and collective decision” and can have a “foretaste of what emancipation means”. In this way struggle for reform helps prepare the class psychologically, ideologically and materially for revolution.” The late Daniel Bensaid expressed this argument through the lens of the history of the socialist movement:¶ “In reality all sides in the controversy agree on the fundamental points inspired by The Coming Catastrophe (Lenin’s pamphlet of the summer of 1917) and the Transitional Programme of the Fourth International (inspired by Trotsky in 1937): the need for transitional demands, the politics of alliances (the united front), the logic of hegemony and on the dialectic (not antinomy) between reform and revolution. We are therefore against the idea of separating an (‘anti-neoliberal’) minimum programme and an (anti-capitalist) ‘maximum’ programme. We remain convinced that a consistent anti-neoliberalism leads to anti-capitalism and that the two are interlinked by the dynamic of struggle.”¶ So revolutionary reforms means a policy agenda that, as Alberto Toscano has put it, “at one and the same time make concrete gains within capitalism which permits further movement against capitalism”. The Italian marxist Antonio Gramsci described this approach as a ‘war of positon’.

#### Voting affirmative links to state bad- alternative systems have to be articulated in state discourse or they fail

Frost, PhD, 96

(Mervyn, IR @Kings college, Ethics in International Relations)

A first objection which seems inherent in Donelan’s approach is that utilizing the modern state domain of discourse in effect sanctifies the state: it assumes that people will always live in states and that it is not possible within such a language to consider alternatives to the system. This objection is not well founded, by having recourse to the ordinary language of international relations I am not thereby committed to argue that the state system as it exists is the best mode of human political organization or that people ought always to live in states as we know them. As I have said, my argument is that whatever proposals for piecemeal or large-scale reform of the state system are made, they must of necessity be made in the language of the modern state. Whatever proposals are made, whether in justification or in criticism of the state system, will have to make use of concepts which are at present part and parcel of the theory of states. Thus,for example. any proposal for a new global institutional arrangement superseding the state system will itself have to be justified, and that justification will have to include within it reference to a new and good form of individual citizenship, reference to a new legislative machinery equipped with satisfactory checks and balances, reference to satisfactory law enforcement procedures, reference to a satisfactory arrangement for distributing the goods produced in the world, and so on. All of these notions are notions which have been developed and finely honed within the theory of the modern state. It is not possible to imagine a justification of a new world order succeeding which used, for example, feudal, or traditional/tribal, discourse. More generally there is no worldwide language of political morality which is not completely shot through with state-related notions such as citizenship, rights under law, representative government and so on. (90-1)

#### State good impacts outweigh on timeframe- we control try or die

Gilreath 14 (Shannon Gilreath - Associate Professor of Law and Associate Professor of Women's, Gender, and Sexuality Studies, Wake Forest University. “THE INTERNET AND INEQUALITY: A COMMENT ON THE NSA SPYING SCANDAL” - This Essay is an expanded version of remarks prepared for two live events, "Regulating Privacy on the Internet," held at Wake Forest University, from which this symposium issue of the Wake Forest Law Review emerged, and "Being Social: The Effects of Social Media on Our Lives," held at the University of Quebec at Montreal. 49 Wake Forest L. Rev. 525 – 2014 – available via google scholar and lexis.)

I have criticized obedience to the rule of law as a convenient cover for excessive use of power. Certainly, I believe this to be true in many cases. But the law is also-perhaps unfortunately-the best shot we have at dealing with immediate problems. I echo the late Ann Scales, who once said that "my heart need[s] the world to change in more immediate and more enforceable ways than [are] observable from nonlegal political activism." 175 I certainly do not advocate abandoning the law as an instrument of change. Such is the work of postmodern theory, mostly the luxury of academics, and also, generally, a university-subsidized collection of "familiar if fancier reasons for doing nothing."176 As lawyers, we have to continue to use the law, as we know it, and as we invent it, to respond to governmental anti-equality intrusions into the everyday lives of citizens. One grassroots possibility would be to pressure Congress to change the Communications Assistance for Law Enforcement Act of 1994, which, as written, requires telecommunications companies to build their networks in ways that make government surveillance of Internet activity possible, including the interception of e-mail and web traffic.177 Many of the contributions to this Symposium provide a range of other possibilities. 178 CONCLUSION Part of the problem of doing anything about the problem of the Internet and inequality is not only that we are dealing with power perpetuating itself-and power is a serious thing-but also that we are dealing with notions of reality with which people have become comfortable or, at least, in which they have largely surrendered in their protest. In this sense, technology itself is a panopticon. Its ubiquity is transforming society in its image, as well as the rule of law.179 At stake, now, in our new-or at least newly revealed-"United States of Surveillance" is nothing less than a democratic ideal, that is to say how a free society (however arbitrary that meaning may be) makes decisions about governing itself and dealing with the rest of the world. Any intelligent response must include the ingredients sketched in these remarks: a seriousness about the problem; a knowledge of history; a healthy skepticism regarding "national security" justifications for increasing governmental power; and a determination to change the present situation for the better. Beyond these, I leave you with an exhortation. In 1995, my heroine, the late Andrea Dworkin, gave a speech that she entitled "Remember, Resist, Do Not Comply."180 That is exactly what I am asking you to do with regard to the technologization of oppression and the NSA Internet surveillance program as an extension of that historical process: remember, resist, do not comply.

### AT: Delgado/Fairness Bad

#### Their critique of fairness devolves into radical anti-Semitism

Farber and Sherry 95—\*Daniel A. Farber, Earl R. Larson Professor of Civil Rights and Civil Liberties Law, University of Minnesota, AND \*\*Suzanna Sherry, Henry J. Fletcher Professor of Law and Associate Dean of Faculty, University of Minnesota [“Is the Radical Critique of Merit Anti-Semitic?” *California Law Review*, May, 1995 83 Calif. L. Rev. 853, Lexis]

Several years ago, the Duke Law Journal published a remarkable exchange over the validity of societal standards of merit. Duncan Kennedy, one of the founders of Critical Legal Studies, opened the debate. In support of affirmative action in law school faculty hiring, Kennedy attacked existing standards of merit as socially constructed and impossible to apply in a colorblind fashion. n2 In response, Judge Richard Posner, a leading pragmatist and pioneer in Law and Economics, criticized Kennedy's affirmative action proposal and implicitly defended merit standards. n3 Posner, in turn, was labeled a racist by Jerome Culp, a prominent advocate of Critical Race Theory. Culp accused Posner of exercising the "majority voice, attempting to silence black voices." n4 Posner's fatal flaw was his failure to acknowledge that "facially objective and disinterested standards in fact serve the interests of the white majority," n5 and therefore are not truly objective at all. As we will see, a similar position on merit is taken by other leading critical theorists such as Catharine MacKinnon. n6 This essay will suggest the existence of deeply troubling links between the logic of this position and historic forms of racial and religious discrimination. More than the evaluation of the merit of legal scholarship is at stake in this debate. Although the debate about merit was sparked by a disagreement over the narrower question of law school hiring, the critique of merit is tied to fundamental philosophical issues. As critical scholar Gary Peller has pointed out, the critique of merit stems from philosophical attacks on the concepts of objectivity and knowledge currently employed in our society. n7 For example, Catharine MacKinnon disavows "standard scientific [\*855] norms" because the radical feminist critique of "the objective standpoint as male" is necessarily "a critique of science as a specifically male approach to knowledge." n8 Similar attacks have been mounted on traditional moral concepts such as fairness and justice. According to Richard Delgado, a leading critical race theorist, "normative orderings always reflect the views of the powerful" and therefore serve to stifle social change. n9 Consequently, the "game" of normative discussion is "rigged against" the oppressed, for "one cannot use categories like justice, equality, etc., to overturn the very system" that created those values. n10 Normative talk, Delgado suggests, merely masks the operation of the "Home Office," which "does not speak normativese at all, but a sharper, brusquer, unfamiliar language full of consonants and commands." n11 Thus, like "merit," existing concepts of truth and morality are seen as part and parcel of systems of oppression. We will refer to this stance as "radical constructivism," since it views these fundamental concepts as socially constructed aspects of systems of power. This viewpoint should be contrasted with more moderate forms of social constructivism, such as the view that categories defining social groups (such as homosexuals) are socially constructed. These moderate views do not challenge our entire structure of thought and are not the subject of this discussion. n12 The position taken by Delgado, MacKinnon, and Culp (and to some extent by Kennedy) cuts considerably deeper to the bone of existing conceptual schemes. These broad philosophical implications [\*856] prompt us to write about a topic that, considered narrowly, might seem to involve only an intramural dispute over academic standards. The views of radical constructivists have not gone unopposed. Pragmatists such as Posner argue that current conceptions of objectivity, knowledge, and merit may be flawed but are necessary starting points in analysis. As he puts it, "those who believe that "reality' is constructed rather than found are prone to forget that not every social construction is arbitrary." n13 Although anti-dogmatic and refusing to accept even the most entrenched beliefs as final truths, n14 pragmatism also has a common sense vein that keeps it from veering into radical constructivism and utopianism. n15 While open to uses of metaphor, rhetoric, and even imaginative but false ideas in advancing inquiry, pragmatists do not abandon conventional values of truth and merit: But to acknowledge that mistakes, emotive utterances, and literal falsehoods (which may be imaginative or emotional "truths") can have social utility is not to deny that truth and falsity can and ordinarily must be distinguished. It is not to endorse sloppy or tendentious scholarship, an "anything goes" attitude toward claims and assertions, or, what is closely related, the belief that, like everything else, science and mathematics are "just rhetoric." n16 The pragmatist, then, "recognizes the importance of logic and clear thinking," and does not embrace "epistemological or moral skepticism, or scientific or moral relativism." n17 We join this debate in support of Posner's position, but we do so only indirectly, by arguing that the logical implications of radical constructivism are disturbingly anti-Semitic. n18 In a sense, our argument might itself be considered an exercise in Critical Race Theory, since it assesses a viewpoint (radical constructivism) from the perspective of a historically oppressed group. In a nutshell, our argument is as follows. Radical constructivists contend that standards of merit are socially constructed to maintain the power of dominant groups. n19 In other words, "merit" has no meaning, except as a way for those in power to perpetuate the existing hierarchy. In explaining [\*857] why some minorities have been less successful than whites, these writers repudiate genuine merit as even a partial explanation of the current distribution of social goods. They are then left in a quandary, unable to explain the success of other minority groups that have actually surpassed the dominant majority. If the accomplishments of these "model minorities" - Jews, Japanese Americans, and Chinese Americans - cannot be justified as reflecting the merit of their endeavors, then some other explanation must be sought. Unfortunately, once merit is put aside, no explanation for competitive success can be anything but negative. These groups have obtained disproportionate shares of important social goods; if they have not earned their shares fairly on the merits, then they must have done so unjustly. Thus, the radical constructivist view of merit logically carries negative implications regarding groups that have surpassed the dominant majority - in particular, Jews, the group that is our primary focus. Although radical constructivists are surely as appalled by anti-Semitism as by racism, we contend that negative stereotypes about Jews and some Asian Americans are a logical concomitant of the rejection of the concept of merit. Anti-Semitic propositions are a nearly inescapable implication of the radical constructivist critique of merit. Rejecting merit could inadvertently leave these writers closer to the rhetoric and politics of Louis Farrakhan than to those of Martin Luther King, Jr. Before expanding on our argument, we present a few important caveats. First and most emphatically, we do not suggest that the scholars we discuss harbor anti-Semitic feelings, even unconsciously. n20 We seek to alert them to logical implications they will surely find unacceptable, in order to prompt them to rethink their current attachment to radical constructivism. In short, we accuse the theory, not the theorists, of anti-Semitism. n21

#### No evidence of scholarly exclusion- alternative standards reinforce racism

Farber, MA/JD, & Sherry, JD, 93

(Daniel A., Associate Dean and Henry J. Fletcher Professor of Law, University of Minnesota, and Suzanna, Earl R. Larson Professor of Civil Rights and Civil Liberties Law, University of Minnesota Telling Stories Out of School: An Essay on Legal Narratives. The Board of Trustees of Leland Stanford Junior University Stanford Law Review April, 1993 45 Stan. L. Rev. 807)

Different voice theorists argue, however, that those traditional standards operate unfairly against the scholarship of women and people of color generally, and against storytelling in particular. They are thus claiming to be exempt from conventional standards, which differentiates their work from other scholarship (including traditional but substandard scholarship). Before discussing the specific standards that might be applied to stories, we need to consider the attack on the general standards of the academy. The issue of evaluating scholarship often arises in personnel decisions. [\*841] Attacks on faculty hiring and promotion practices have, by and large, moved away from claims of intentional discrimination, and most critics now concede that the same standards are usually applied to everyone, at least superficially. n166 The more common argument is that the universal standard of "merit" is ideologically and culturally defined in a way that excludes the unconventional voices of women and people of color. n167 To remedy this problem, different voice scholars, especially critical race theorists, argue that traditional standards should not be applied to the work of minority scholars. Alex Johnson, for example, argues that "the meritocratic evaluative standard . . . embodies white, majoritarian norms," n168 and that that standard is "inappropriate when applied to scholarship written in a distinct voice of color," n169 because it is "culturally biased against the inclusion of a voice of color." n170 Similarly, Richard Delgado states that the meritocratic standard "measures the black candidate through the prism of preexisting, well-agreed-upon criteria of conventional scholarship and teaching. Given those standards, it purports to be scrupulously meritocratic and fair." n171 Despite this purported fairness, however, Delgado suggests that "[m]erit criteria may be the source of bias, rather than neutral instruments by which we determine whether or not that bias exists." n172 Indeed, according to Delgado, merit is "potentially hostile to the idea of voice," n173 has "a special affinity for procedural racism," and is "the perfect excluder of 'deviant' or culturally stigmatized groups." n174 Likewise, Derrick Bell suggests that the refusal to recognize even outstanding nontraditional scholarship disproportionately harms blacks, "whose approach, voice, or conclusions may depart radically from traditional forms." n175 And Jerome Culp implies that ordinary scholarly standards impose a "herculean task" on black legal scholars. n176 These arguments assume that the work of women and minority scholars is different -- so different that it cannot be judged by conventional standards of merit. As noted earlier, available evidence does not support such a strong [\*842] claim about "different voices." The critique of traditional standards as biased appears to be based largely on the fact that the works of some outsider scholars have not fared well under those standards. n177 As Randall Kennedy points out, however, this might be because those specific works lacked merit. n178 The arguments also assume that people of color cannot meet the traditional standards of merit, a suggestion that many scholars of color naturally find demeaning, n179 and for which no evidence exists.

### AT: Exclusion

#### No convincing evidence of exclusion- law is about intragroup interest, and intergroup conflict- no one identify should be given a monopoly

Kennedy, JD, 89

(Randall L, Law @Harvard, RACIAL CRITIQUES OF LEGAL ACADEMIA Harvard Law Review JUNE, 1989 102 Harv. L. Rev. 1745)

Applying a meritocratic model, does Delgado show persuasively that in legal academia scholars of color are wrongly excluded on racial grounds from a proper share of academic recognition? His effort to [\*1774] substantiate the allegation is unlikely to persuade those who are not already committed to believing his charge. On the basis of twenty-eight articles published in law reviews between 1959 and 1979, n121 Delgado states that certain well-known white scholars writing in the race-relations field "only infrequently" cite work by minority scholars. n122 He argues further that this neglect is wrongful, and that it is related to race. The persuasive way to reveal this alleged sin of omission would be to identify scholarship that deserves to be recognized but that is unfairly overlooked. Yet Delgado fails to shoulder the essential burden of championing on substantive grounds specific works that deserve more recognition than they have been given. When critics of American historical studies rail against the white establishment's neglect of black historians, n123 they do not simply document that white academicians have ignored scholarship by blacks. They compare writings by blacks to work by whites and delineate the features that make the neglected writings worthy of attention. n124 [\*1775] By contrast, Delgado's concern with authors' racial identity ends up dwarfing his attentiveness to the work he seeks to advance. He writes with little specificity about the merits of the writings that, according to him, have wrongly been ignored. He refers to Judge A. Leon Higginbotham's history of race-relations law in colonial America as "monumental" and the social-psychological analysis of Drs. W. Grier and P. Cobbs as "powerful." n125 Yet these encomia do nothing to explain what, as a matter of substance, distinguishes these works. At another point, Delgado lists a number of articles by scholars of color that, according to him, illustrate that "[m]inority writers . . . have focused on difficult problems overlooked by mainstream writers." n126 But when he describes these "difficult problems" with such generality, it becomes immediately apparent that, contrary to his assertion, white scholars, too, have seen and addressed the problems supposedly overlooked. n127 [\*1776] Even where Delgado expressly attempts to add specificity to his account, he says strikingly little about the scholarship he champions. Consider an anecdote he relates about an interaction he had with an unnamed white colleague who requested criticisms on a draft of an article. According to Delgado, the article involved an elaboration of the ideal of "equal personhood" and a critique of the way that this ideal is undermined by excluding persons from acceptance in a given political community. He describes the article as "excellent" and agrees with its premises and conclusions. n128 Yet the piece disturbs him because on reading its footnotes, he "noticed that [the author of the article] had failed to cite Black or minority scholars, an exclusion from the community of kindred souls as glaring as any condemned in the paper." n129 To demonstrate to the white colleague the inadequacies of his citation practice, Delgado noted that in a discussion of "withered self-concepts" -- the psychological consequences of exclusion -- the colleague had referred to an article by Frank Michelman, a white professor at Harvard Law School. n130 "I pointed out," Delgado writes, "that although Frank Michelman may be a superb scholar and teacher, he probably has relatively little first-hand knowledge about withered self-concepts. I suggested that [my colleague] add references to such works as Kenneth Clark's Dark Ghetto and Grier and Cobb's Black Rage, and he agreed to do so." n131 Delgado thus clearly implies that the reason for citing the works he recommended is the minority status of their authors and certain experiences he presumed they had had on account of that status. The laxity of Delgado's argumentation in favor of the works for which he seeks more attention may stem, in part, from the belief that, at least with respect to issues involving race relations, n132 there is no need to argue on behalf of the merit of work done by scholars of color. He appears to think that their work in this area is self-evidently entitled to recognition. Comparing legal academia unfavorably with the social sciences, Delgado contends that with respect to the latter: [\*1777] [M]inority status constitutes virtually a presumption of expertise; Blacks writing about the Black community and Chicanos about the Chicano community are accepted as equal (perhaps more than equal) partners. Indeed, ethnic studies departments sometimes resist hiring Caucasian faculty members out of the belief that they are generally less qualified for the position than candidates who are members of the minority group in question. n133 That statement, however, is problematic. First, although some have argued in favor of reforming canons of evaluation along the lines he suggests, n134 these arguments have generally been rejected, at least formally; no significant academic institution as a matter of policy accords to minority scholars a presumption of expertise merely on the basis of racial identity. n135 Second, his analogy between race-relations law and black or Chicano studies is inapt. By definition, race-relations law involves more than the study of any one community; it involves the study of communities in conflict and how legal structures have mediated their interaction. Given that race-relations law necessarily embraces more than any single group, it is difficult to see the justification for presuming expertise on the part of scholars of one racial identity as opposed to another. n136 Third, even if the scholarship at issue was narrowly concerned with the inner-experience of a single racial group, it would still be improper to presume expertise merely on the basis of a scholar's membership in a given group. One's racial (gender, religious, regional) identity is no substitute for the disciplined study essential to achieving expertise. Although one is born with certain physical characteristics to which society attaches various labels, one is not born with the knowledge we expect of experts; that characteristic is something that is attained and not merely inherited. My comments on Professor Delgado's presentation should not be read as an implicit exoneration of legal academia. The law school [\*1778] professoriat is, as I note elsewhere, n137 beset by troublesome racial problems. Delgado, however, fails to support his specific allegations. One simply cannot make an effective argument that work by academics of color is being treated in a racially invidious manner without taking the time, energy, and risk of elaborating in detail the substantive merits of that scholarship in comparison with that produced by white competitors.

#### “Silencing” metaphor is misplaced- policy making doesn’t exclude voices, it prioritizes certain issues. Alleged “outsider” perspectives can be used to compensate for normative blinders

Farber, MA/JD, & Sherry, JD, 93

(Daniel A., Associate Dean and Henry J. Fletcher Professor of Law, University of Minnesota, and Suzanna, Earl R. Larson Professor of Civil Rights and Civil Liberties Law, University of Minnesota Telling Stories Out of School: An Essay on Legal Narratives. The Board of Trustees of Leland Stanford Junior University Stanford Law Review April, 1993 45 Stan. L. Rev. 807)

Although current storytelling efforts are unlikely to have a major impact on public attitudes, stories from the bottom may still provide some benefits by helping to identify and eliminate biases in the legal system. The storytelling literature contains a good deal of rhetoric, such as the following eloquent statement by David Luban, suggesting that the legal system "silences" certain stories: n113 Equally important is the parallel power over local narratives, the power of the victor to build whatever facts he or she wishes into the fabric of legal decisions by (re)interpreting the record. Just as in the case of political narratives, losers endure not only the material burdens of defeat, but also the ignominy of helplessly witnessing their own past edited, their own voices silenced in the attempt to tell that past. And thus the fight of those voices that have been silenced by the law -- and those obviously include not only the voices of miscreants and justifiably unsuccessful litigants, but also the voices of racial minorities, of women, of homosexuals, of the poor -- is, as Benjamin put it, "the fight for the oppressed past." n114 The metaphor of "silencing" is powerful but elusive. In what respect, for instance, is losing a lawsuit the same as being gagged? Losers are in fact often very vocal, perhaps more so than victors (who seem just as likely to enjoy their victory in smug silence). In part, the "silencing" metaphor invokes some broader concepts about the relationship between power and truth, but it does not elucidate that relationship. The basic idea seems to be that we fail to receive information about the experiences of outsiders because the legal system itself filters out these stories. Or, turning to social science jargon, the claim is that our present sample of stories is biased. Although the claims are perhaps exaggerated, they do have some substance. To evaluate [\*828] this substance, we must examine the sources of the bias and ascertain what the value of the missing information would be. One source of bias is simply that people tend to associate with those similar to themselves and, consequently, possess few informal methods of tracking the experience of other groups. A related problem is that our perceptions of the frequency of a problem may depend on vantage point. For example, if relatively few men engage in sexual harassment, men might think sexual harassment occurs relatively infrequently. Women, on the other hand, may view it as a widespread problem if, for instance, a small number of men each harasses many women. Moreover, behavior that is widespread may seem trivial to members of a dominant group but quite significant to members of subordinated groups. n115 Because legal analysis is often based on informal experience and folk wisdom rather than rigorous social science, these problems may lead to mistaken policy recommendations. n116 Legal storytelling is unlikely to correct these forms of bias because the problems themselves stem from broader social conditions. More effective solutions include integration and affirmative action, both of which attack the problem directly by broadening the personal contacts of the individuals involved. And to the extent that vicarious contacts through stories can be used to supplement these direct solutions, there is little reason to think that the publication of stories in law reviews is the best solution. For example, novels can provide much more textured versions of individual experiences, while movies and television have greater dramatic impact and reach far larger audiences than law review prose. Moreover, there is reason to question whether the personal stories of middle-class law professors can accurately convey the perspectives of the truly disadvantaged. The more interesting sources of bias stem directly from the legal system itself. First, as several advocates of storytelling have pointed out, the facts in appellate opinions are usually stated in terms most favorable to the victor. As a result, stories told in appellate opinions are likely to be biased in favor of a group consisting of successful litigants. This group will therefore systematically exclude individuals whose problems are not yet addressed by existing legal rules, since they will have lost the litigation. For example, if the [\*829] legal system provides no remedy for victims of hate speech, they will not win lawsuits, and their version of the facts will not be reflected in appellate opinions. Although most legal scholars recognize that appellate opinions are highly unreliable and biased sources of empirical evidence, we are all prone to rely on them nonetheless, given that they are so easily accessible. Second, some facts are filtered out even before the opinion-writing stage. For example, if the legal system disallows damages for emotional distress, evidence of these damages will be considered irrelevant. Cases involving certain fact patterns will simply not be brought if the law clearly offers no remedy. Hence, lawyers, judges, and scholars may be unaware of widespread problems. n117 For instance, before sexual harassment became a potential cause of action, a victim of harassment would have had no reason to bring a clearly futile lawsuit. Therefore, male legal observers would be unaware that this was a widespread problem. n118 Similarly, prosecutors may be reluctant to bring acquaintance rape cases, which may lead criminal law specialists to assume that this form of rape is uncommon. Some cases may not be brought because they fail to fit existing legal categories. For example, allegations about heterosexual abuse often surface in divorce cases. But because the law does not recognize lesbian marriages and thus cannot recognize lesbian divorces, information about physical abuse between lesbians is less likely to come to the attention of the legal system. n119 More subtly, in the effort to force grievances into existing legal categories, lawyers may strip away crucial aspects of the victim's experience. n120 A third source of bias emerges from the impact of legal rules on conduct. When legal rules disfavor certain kinds of conduct, we may rarely observe such conduct and conclude that few people are motivated to engage in it. For example, if the legal system generally disfavors altruism, it may produce a self-confirmatory body of evidence about the weakness of altruistic motivations. This evidence might then mislead legal theorists into rejecting altruism as a potentially powerful social force. n121 An even clearer case involves intentional racism. Given the existence of Title VII, only a very poorly informed employer will ever explicitly state that he is firing an employee out of [\*830] racial animus. In the absence of such cases, lawyers and scholars may conclude that racial animosity has vanished from the workplace. n122 There are certainly ways of correcting such biases apart from storytelling. Survey research, for example, may document the existence of behavior that is overlooked by the legal system. Still, storytelling can at least suggest areas where more formal social science research might be helpful. The use of narratives can also provide several other special benefits. To begin with, careful study of a case history may provide important insights that are missing from statistical analysis. n123 Social science data may be crude or unreliable, and formalized research often says more about what is happening than why it is happening. It takes considerable skill to identify causal relationships from cross-sectional or even the less commonly available longitudinal data. Often, these relations are elusive despite use of the best available statistical techniques. Moreover, even if we are able to describe or predict behavior, our understanding may be incomplete without some awareness of how the person in question experiences the situation. Stories can be a source of empathetic understanding about members of outsider groups. n124 This type of understanding may be particularly important for some kinds of legal policy analysis. Much of legal analysis involves balancing trade-offs of various kinds. Our ability to engage in such balancing is heavily dependent on our ability to assimilate the emotional experiences of those affected by a legal rule. n125 Finally, stories may be useful to counteract weaknesses in the ways in which we process information. Vivid examples often influence us more than statistical evidence, which explains, for example, why many people are more afraid of airplane crashes (which are statistically rare) than car crashes (which are statistically more common but less horrifying). Also, statistical information is subject to "framing" effects: A treatment with an eighty-percent survival rate sounds better than one with a twenty-percent mortality rate, even though the two are equivalent. n126 If used carefully, stories can help counter these distortions. As we will discuss in the next section, however, stories can also make these problems worse.