### Inherency

#### Most universities maintain speech codes that violate the constitution.

Moore 16 James R. Moore (Cleveland State University) “You Cannot Say That in American Schools: Attacks on the First Amendment” Social Studies Research and Practice Volume 11 Number 1 112 Spring 2016 <http://www.socstrpr.org/wp-content/uploads/2016/04/MS06579_Moore.pdf>

The first amendment, a crucial component of American constitutional law, is under attack from various groups advocating for censorship in universities and public schools. The censors assert that restrictive speech codes preventing anyone from engaging in any expression deemed hateful, offensive, defamatory, insulting, or critical of sacred religious or political beliefs and values are necessary in a multicultural society. These speech codes restrict critical comments about race, religion, gender, sexual orientation, physical characteristics, and other traits in the name of tolerance, sensitivity, and respect. Many hate speech codes are a violation of the first amendment and have been struck down by federal and state courts. They persist in jurisdictions where they have been ruled unconstitutional; most universities and public schools have speech codes. This assault on the first amendment might be a concern to all citizens, especially university professors and social studies educators responsible for teaching students about the democratic ideals enshrined in our constitution. Teachers should resist unconstitutional speech codes and teach their students that the purpose of the first amendment is to protect radical, offensive, critical, and controversial speech. The first amendment in the Bill of Rights, the foundation of individual freedom in the United States, protecting the freedoms of religion, speech, press, assembly, and petition. These basic freedoms, derived from Enlightenment philosophy and codified in the world’s oldest written constitution, have been an essential characteristic of American democracy and law since 1791. This is continuity considering “between 1971 and 1990, 110 of the world’s 162 national constitutions were either written or extensively rewritten” (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003, p. 9). The first amendment has been the conduit employed by U.S. citizens to create an increasingly free and just society based on the constitutional ideals of equality before the law, popular sovereignty, limited government, checks and balances, federalism, and individual liberties (Center for Civic Education, 2009). Advocates for the abolition of slavery and the expansion of civil rights were able, after long struggles, to achieve their goals of expanding freedom and social justice by using their natural rights to free expression and religious liberty (Dye, 2011). Since no constitutional liberty or right is absolute, American institutions continuously debate the definitions, limitations, and exceptions to these fundamental rights based on social, political, and technological changes. This task has been exacerbated by increasing cultural diversity and technological changes (the Internet and social media) that expand communication. In addition, efforts by some people to censor language in the name of tolerance and respect for diversity have increased in recent years (Foundation for Individual Rights in Education, 2013, p.4). The first amendment is the world’s oldest written safeguard for freedom of expression—this includes allowing blasphemy and expression that may be radical, offensive, controversial, ignorant, and militantly bigoted—and is the cornerstone of participatory democracy (Haynes et al., 2003). The first amendment is under constant attack from some religious organizations, political action groups, ethnically-based activist groups, and, most alarmingly, from American public universities that severely restrict freedom of expression and public debate (Foundation for Individual Rights in Education, 2013; Haynes, 2013; Hudson, 2011). The Foundation for Individual Rights in Education (2013) found “62% of universities (254 out of 409 universities in the survey) maintain severely restrictive red-light speech codes – policies that clearly and substantially prohibit protected speech” (p. 4). Many Americans do not understand, or do not accept, that the first amendment protects unpopular, offensive, controversial, and radical speech; this includes making hateful statements about race, gender, religion, and any other topic the speaker wishes to address (Haynes et al., 2003; Marshall & Shea, 2011; Pew Forum on Religion and Public Life, 2010). Many hate speech codes, thus, often are defined “as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion, or sexual orientation” (Dye 2011, p. 508). The hate speech instituted in American universities and Kindergarten-12 schools are often, albeit well-intended, violations of the First Amendment (Foundation for Individual Rights in Education; Haynes, 2013; *Saxe V. State College Area School District*, 2001).

### Plan Text

#### Public colleges and universities ought not restrict any constitutionally protected speech.

### Adv 1 = Counterspeech

#### Hate speech on the rise now—Trump.

Okeowo 16 Alexis (New Yorker staff writer) “HATE ON THE RISE AFTER TRUMP’S ELECTION” The New Yorker November 16th 2016 <http://www.newyorker.com/news/news-desk/hate-on-the-rise-after-trumps-election> JW

Since Donald Trump won the Presidential election, there has been a dramatic uptick in incidents of racist and xenophobic harassment across the country. The Southern Poverty Law Center has reported that there were four hundred and thirty-seven incidents of intimidation between the election, on November 8th, and November 14th, targeting blacks and other people of color, Muslims, immigrants, the L.G.B.T. community, and women. One woman in Colorado told the S.P.L.C. that her twelve-year-old daughter was approached by a boy who said, “Now that Trump is President, I’m going to shoot you and all the blacks I can find.” At a school in Washington State, students chanted “build a wall” in a cafeteria. In Texas, someone saw graffiti at work: “no more illegals 1-20-17,” a reference to Inauguration Day. Such harassment occurred throughout Trump’s campaign, but now appears to have taken on a new boldness, empowered by the election of a Ku Klux Klan-endorsed candidate who has denigrated women and racial and religious minorities. “This represents a big increase in what we’ve seen since the campaign, and these incidents are far and wide: we’re seeing them in schools, we’re seeing them in places of business, we’re seeing them in museums and gas stations,” Richard Cohen, the president of the S.P.L.C., said. “White supremacists are celebrating, and it’s their time, the way they see it.” Cohen said that an online survey of teachers found that more than half had seen an increase in hostile speech during the campaign. Students of color have wondered aloud if their parents will be deported. “We’ve seen a great deal of really troubling stuff in the last week, a spike in harassment, a spike in vandalism, physical assaults. Something is happening that was not happening before,” Jonathan Greenblatt, the national director of the Anti-Defamation League, said. “We’ve been inundated with reports; it’s really crazy out there.” The A.D.L. has also been recording incidents of threats and harassment, and, in October, released a report on a rise in anti-Semitic harassment, often aimed at journalists, on Twitter during the Presidential campaign. (As Ryan Lizza wrote, Twitter has been slow to respond to user complaints.) Some of the harassment would, arguably, have happened without Trump’s rhetoric. But his election has encouraged people to monitor and report such incidents.

#### Allowing open contestation of ideas without restriction leads to social progress—LGBTQ rights, feminism, and abolitionism prove.

Rauch 13 Jonathan (contributing editor at The Atlantic and National Journal and a senior fellow at the Brookings Institution.) “The Case for Hate Speech” The Atlantic November 2013 <https://www.theatlantic.com/magazine/archive/2013/11/the-case-for-hate-speech/309524/> JW

A generation ago, the main obstacle to gay equality was not hatred, though of course there was a good deal of that. Most people who supported the repressive status quo meant well. The bigger problem, rather, was that people had wrong ideas about homosexuality: factual misapprehensions and moral misjudgments born of ignorance, superstition, taboo, disgust. If people think you are a threat to their children or their family, they are going to fear and hate you. Gays’ most urgent need was epistemological, not political. We had to replace bad ideas with good ones. Our great blessing was to live in a society that understands where knowledge comes from: not from political authority or personal revelation, but from a public process of open-ended debate and discussion, in which every day millions of people venture and test billions of hypotheses. All but a few of those theories are found wanting, but some survive and flourish over time, and those comprise our knowledge. The restless process of trial and error does not allow human knowledge to be complete or perfect, but it does allow for steady improvement. If a society is open to robust critical debate, you can look at a tape of its moral and intellectual development over time and know which way it is running: usually toward less social violence, more social participation, and a wider circle of dignity and toleration. And if you see a society that is stuck and not making that kind of progress, you can guess that its intellectual system is not very liberal. The critical factor in the elimination of error is not individuals’ commitment to the truth as they see it (if anything, most people are too confident they’re right); it is society’s commitment to the protection of criticism, however misguided, upsetting, or ungodly. America’s transformation on gay rights over the past few years is a triumph of the open society. Not long ago, gays were pariahs. We had no real political power, only the force of our arguments. But in a society where free exchange is the rule, that was enough. We had the coercive power of truth. History shows that the more open the intellectual environment, the better minorities will do. We learn empirically that women are as intelligent and capable as men; this knowledge strengthens the moral claims of gender equality. We learn from social experience that laws permitting religious pluralism make societies more governable; this knowledge strengthens the moral claims of religious liberty. We learn from critical argument that the notion that some races are fit to be enslaved by others is impossible to defend without recourse to hypocrisy and mendacity; this knowledge strengthens the moral claims of inherent human dignity. To make social learning possible, we need to criticize our adversaries, of course. But no less do we need them to criticize us.

#### Counterspeech solves hate speech—empirical examples prove.

Calleros 95 (Charles, Winter, Professor of Law, Arizona State University, 27 Ariz. St. L.J. 1249, “PATERNALISM, COUNTERSPEECH, AND CAMPUS HATE-SPEECH CODES: A REPLY TO DELGADO AND YUN”, lexis)

Delgado and Yun summarize the support for the counterspeech argument by paraphrasing Nat Hentoff: "Antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes self-reliance, and strengthens one's self-image as an active agent in charge of one's own destiny." n50 Delgado and Yun also cite to those who believe that counterspeech may help educate the racist speaker by addressing the ignorance and fear that lies behind hostile racial stereotyping. n51 But they reject this speech-protective argument, stating that "it is offered blandly, virtually as an article of faith" by those "in a position of power" [\*1257] who "rarely offer empirical proof of their claims." n52 The authors argue that talking back in a close confrontation could be physically dangerous, is unlikely to persuade the racist speaker to reform his views, and is impossible "when racist remarks are delivered in a cowardly fashion, by means of graffiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door." n53 They also complain that "even when successful, talking back is a burden" that minority undergraduates should not be forced to assume. n54 In rejecting the counterspeech argument, however, Delgado and Yun cast the argument in its weakest possible form, creating an easy target for relatively summary dismissal. When the strategies and experiential basis for successful counterspeech are fairly stated, its value is more easily recognized. First, no responsible free speech advocate argues that a target of hate speech should directly talk back to a racist speaker in circumstances that quickly could lead to a physical altercation. If one or more hateful speakers closely confronts a member of a minority group with racial epithets or other hostile remarks in circumstances that lead the target of the speech to reasonably fear for her safety, in most circumstances she should seek assistance from campus police or other administrators before "talking back." Even staunch proponents of free speech agree that such threatening speech and conduct is subject to regulation and justifies more than a purely educative response. n55 The same would be true of Delgado's and Yun's other [\*1258] examples of speech conveyed in a manner that defaces another's property or invades the privacy of another's residence. n56 When offensive or hateful speech is not threatening, damaging, or impermissibly invasive and therefore may constitute protected speech, education and counterspeech often will be an appropriate response. n57 However, proponents of free speech do not contemplate that counterspeech always, or even normally, will be in the form of an immediate exchange of views between the hateful speaker and his target. Nor do they contemplate that the target should bear the full burden of the response. Instead, effective counterspeech often takes the form of letters, discussions, or demonstrations joined in by many persons and aimed at the entire campus population or a community within it. Typically, it is designed to expose the moral bankruptcy of the hateful ideas, to demonstrate the strength of opinion and numbers of those who deplore the hateful speech, and to spur members of the campus community to take voluntary, constructive action to combat hate and to remedy its ill effects. n58 Above all, it can serve to define and underscore the community of support enjoyed by the targets of the hateful speech, faith in which may have been shaken by the hateful speech. Moreover, having triggered such a reaction with their own voices, the targets of the hateful speech may well feel a sense of empowerment to compensate for the undeniable pain of the speech. n59 One may be tempted to join Delgado and Yun in characterizing such a scenario as one "offered blandly, virtually as an article of faith" and without experiential support. n60 However, campus communities that have creatively used this approach can attest to the surprising power of counterspeech. [\*1259] Examples of counterspeech to hateful racist and homophobic speech at Arizona State and Stanford Universities are especially illustrative. n61 In an incident that attracted national attention, the campus community at Arizona State University ("A.S.U.") constructively and constitutionally responded to a racist poster displayed on the outside of the speaker's dormitory door in February 1991. Entitled "WORK APPLICATION," it contained a number of ostensibly employment-related questions that advanced hostile and demeaning racial stereotypes of African-Americans and Mexican-Americans. Carla Washington, one of a group of African-American women who found the poster, used her own speech to persuade a resident of the offending room voluntarily to take the poster down and allow her to photocopy it. After sending a copy of the poster to the campus newspaper along with an opinion letter deploring its racist stereotypes, she demanded action from the director of her residence hall. The director organized an immediate meeting of the dormitory residents to discuss the issues. In this meeting, I explained why the poster was protected by the First Amendment, and the women who found the poster eloquently described their pain and fears. One of the women, Nichet Smith, voiced her fear that all nonminorities on campus shared the hostile stereotypes expressed in the poster. Dozens of residents expressed their support and gave assurances that they did not share the hostile stereotypes, but they conceded that even the most tolerant among them knew little about the cultures of others and would benefit greatly from multicultural education. n62 The need for multicultural education to combat intercultural ignorance and stereotyping became the theme of a press conference and public rally organized by the student African-American Coalition leader, Rossie Turman, who opted for highly visible counterspeech despite demands from some students and staff to discipline the owner of the offending poster. The result was a series of opinion letters in the campus newspaper discussing the problem of racism, numerous workshops on race relations and free speech, and overwhelming approval in the Faculty Senate of a measure to add a course on American cultural diversity to the undergraduate breadth requirement. n63 The four women who initially confronted the racist poster were empowered by the meeting at the dormitory residence and later received awards from the local chapter of the NAACP for their activism. n64 Rossie [\*1260] Turman was rewarded for his leadership skills two years later by becoming the first African-American elected President of Associated Students of A.S.U., n65 a student body that numbered approximately 40,000 students, only 2.3 percent of them African-American. n66 Although Delgado and Yun are quite right that the African-American students should never have been burdened with the need to respond to such hateful speech, Hentoff is correct that the responses just described helped them develop a sense of self-reliance and constructive activism. Moreover, the students' counterspeech inspired a community response that lightened the students' burden and provided them with a sense of community support and empowerment. Indeed, the students received assistance from faculty and administrators, who helped organize meetings, wrote opinion letters, spoke before the Faculty Senate, or joined the students in issuing public statements at the press conference and public rally. n67 Perhaps most important, campus administrators wisely refrained from disciplining the owners of the poster, thus directing public attention to the issue of racism and ensuring broad community support in denouncing the racist poster. Many members of the campus and surrounding communities might have leapt to the racist speaker's defense had the state attempted to discipline the speaker and thus had created a First Amendment issue. Instead, they remained united with the offended students because the glare of the public spotlight remained sharply focused on the racist incident without the distraction of cries of state censorship. Although the counterspeech was not aimed primarily at influencing the hearts and minds of the residents of the offending dormitory room, its vigor in fact caught the residents by surprise. n68 It prompted at least three of them to apologize publicly and to display curiosity about a civil rights movement that they were too young to have witnessed first hand. n69 [\*1261] This effective use of education and counterspeech is not an isolated instance at A.S.U., but has been repeated on several occasions, albeit on smaller scales. n70 One year after the counterspeech at A.S.U., Stanford University responded similarly to homophobic speech. In that case, a first-year law student sought to attract disciplinary proceedings and thus gain First Amendment martyrdom by shouting hateful homophobic statements about a dormitory staff member. The dean of students stated that the speaker was not subject to discipline under Stanford's code of conduct but called on the university community to speak out on the issue, triggering an avalanche of counterspeech. Students, staff, faculty, and administrators expressed their opinions in letters to the campus newspaper, in comments on a poster board at the law school, in a published petition signed by 400 members of the law school community disassociating the law school from the speaker's epithets, and in a letter written by several law students reporting the incident to a prospective employer of the offending student. n71 The purveyor of hate speech indeed had made a point about the power of speech, just not the one he had intended. He had welcomed disciplinary sanctions as a form of empowerment, but the Stanford community was alert enough to catch his verbal hardball and throw it back with ten times the force. Thus, the argument that counterspeech is preferable to state suppression of offensive speech is stronger and more fully supported by experience than is conceded by Delgado and Yun. In both of the cases described above, the targets of hateful speech were supported by a community united against bigotry. The community avoided splitting into factions because the universities eliminated the issue of censorship by quickly announcing that the hateful speakers were protected from disciplinary retaliation. Indeed, the counterspeech against the bigotry was so powerful in each case that it underscored the need for top administrators to develop standards for, and some limitations on, their participation in such partisan speech. n72 Of course, the community action in these cases was effective and empowering precisely because a community against bigotry existed. At A.S.U. and Stanford, as at most universities, the overwhelming majority of students, faculty, and staff are persons of tolerance and good will who deplore at least the clearest forms of bigotry and are ready to speak out [\*1262] against intolerance when it is isolated as an issue rather than diluted in muddied waters along with concerns of censorship. Just as the nonviolent demonstrations of Martin Luther King, Jr., depended partly for their success on the consciences of the national and international audiences monitoring the fire hoses and attack dogs on their television sets and in the print media, n73 the empowerment of the targets of hateful speech rests partly in the hands of members of the campus community who sympathize with them. One can hope that the counterspeech and educational measures used with success at A.S.U. and Stanford stand a good chance of preserving an atmosphere of civility in intellectual inquiry at any campus community in which compassionate, open minds predominate. On the other hand, counterspeech by the targets of hate speech could be less empowering on a campus in which the majority of students, faculty, and staff approve of hostile epithets directed toward members of minority groups. One hopes that such campuses are exceedingly rare; although hostile racial stereotyping among college students in the United States increased during the last decade, those students who harbored significant hostilities (as contrasted with more pervasive but less openly hostile, subconscious racism) still represented a modest fraction of all students. n74 Moreover, even in a pervasively hostile atmosphere, counterspeech might still be more effective than broad restrictions on speech. First, aside from the constitutional constraints of the First Amendment, such a heartless campus community would be exceedingly unlikely to adopt strong policies prohibiting hateful speech. Instead, the campus likely would maintain minimum policies necessary to avoid legal action enforcing guarantees of equal educational opportunities under the Fourteenth Amendment n75 or federal antidiscrimination statutes such as Title VI n76 or Title IX. n77 Second, counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable [\*1263] environments; even a campus with high levels of hostility likely would feel pressures to maintain its status as a minimally integrated institution. n78 The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that "free speech has been minorities' best friend . . . [as] a principal instrument of social reform." n79 In both cases, demonstrations, opinion letters, and other forms of counterspeech dramatically defined the predominant atmosphere on each campus as one that demanded respect and freedom from bigotry for all members of the community; it is doubtful that passage of a speech-restrictive policy could have sent a similar message of consensus any more strongly. Moreover, in the A.S.U. case, the reasoned counterspeech, coupled with the decision to refrain from disciplining the hateful speaker, persuaded the Faculty Senate to pass a multicultural education proposal whose chances for passage were seriously in doubt in the previous weeks and months. n80 The racist poster at A.S.U. may have been a blessing in disguise, albeit an initially painful one, because it sparked counterspeech and community action that strengthened the campus support for diversity.

#### Social science proves counterspeech solves.

Strossen 1 (Nadine, National President, American Civil Liberties Union; Professor of Law, New York Law School, 25 S. Ill. U. L. J. 243, “Incitement to Hatred: Should There Be a Limit?”, lexis)

A study that was done by a professor at Smith College in Massachusetts demonstrated the effectiveness of this kind of counterspeech in combating bias and prejudice. It showed that when a student who hears a statement conveying discriminatory attitudes also promptly hears a rebuttal to that statement-especially from someone in a leadership position-then the student will probably not be persuaded by the initial statement. Dr. Fletcher [\*276] Blanchard, a psychologist at the college who conducted the experiment, concluded that "A few outspoken people who are vigorously anti-racist can establish the kind of social climate that discourages racist acts." n82 Thus, this study provides empirical social scientific support for the free speech maxim, discussed above, that the appropriate response to any speech with which one disagrees is not suppression but rather counterspeech. Social scientific studies also underscore the efficacy of another non-censorial alternative to suppressing hate speech: affirmative action measures to increase the participation of members of minority groups in the relevant communities. The most pertinent studies have been done on countering homophobia, but they have implications for redressing other forms of bias as well. These studies show that the most constructive way to decrease people's negative attitudes toward lesbians and gay men is to give them an opportunity to get to know and interact with lesbians and gay men in settings such as school and work, where they are collaborating on common endeavors. n83 Accordingly, by helping to ensure that members of various minority or disempowered groups are represented on campus and in the workplace, affirmative action measures can play a positive role in reducing present and future prejudice and discrimination.

### Adv 2 = Speech Codes are Bad

#### Speech codes just drive hatefulness underground, which makes it impossible to address and more pernicious.

ACLU 01 American Civil Liberty Union “Hate Speech on Campus” 2001 https://www.aclu.org/other/hate-speech-campus JW

A: Bigoted speech is symptomatic of a huge problem in our country; it is not the problem itself. Everybody, when they come to college, brings with them the values, biases and assumptions they learned while growing up in society, so it's unrealistic to think that punishing speech is going to rid campuses of the attitudes that gave rise to the speech in the first place. Banning bigoted speech won't end bigotry, even if it might chill some of the crudest expressions. The mindset that produced the speech lives on and may even reassert itself in more virulent forms. Speech codes, by simply deterring students from saying out loud what they will continue to think in private, merely drive biases underground where they can't be addressed. In 1990, when Brown University expelled a student for shouting racist epithets one night on the campus, the institution accomplished nothing in the way of exposing the bankruptcy of racist ideas.

#### Speech codes can be used against minorities—setting free speech precedents is key to social activism.

ACLU 01 American Civil Liberty Union “Hate Speech on Campus” 2001 https://www.aclu.org/other/hate-speech-campus JW

A: Free speech rights are indivisible. Restricting the speech of one group or individual jeopardizes everyone's rights because the same laws or regulations used to silence bigots can be used to silence you. Conversely, laws that defend free speech for bigots can be used to defend the rights of civil rights workers, anti-war protesters, lesbian and gay activists and others fighting for justice. For example, in the 1949 case of Terminiello v. Chicago, the ACLU successfully defended an ex-Catholic priest who had delivered a racist and anti-semitic speech. The precedent set in that case became the basis for the ACLU's successful defense of civil rights demonstrators in the 1960s and '70s.

### Framework

#### Rejecting oppression is the only way to account for dominant ideologies that skew our thought processes.

Mills 5 Charles W. Mills (John Evans Professor of Moral and Intellectual Philosophy) ““Ideal Theory” as Ideology” Hypatia vol. 20, no. 3 (Summer 2005) JW

Now what distinguishes ideal theory is not merely the use of ideals, since obviously nonideal theory can and will use ideals also (certainly it will appeal to the moral ideals, if it may be more dubious about the value of invoking idealized human capacities). What distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual. As O’Neill emphasizes, this is not a necessary corollary of the operation of abstraction itself, since one can have abstractions of the ideal-as-descriptive-model type that abstract without idealizing. But ideal theory either tacitly represents the actual as a simple deviation from the ideal, not worth theorizing in its own right, or claims that starting from the ideal is at least the best way of realizing it. Ideal theory as an approach will then utilize as its basic apparatus some or all of the following concepts and assumptions (there is necessarily a certain overlap in the list, since they all intersect with one another): An idealized social ontology. Moral theory deals with the normative, but it cannot avoid some characterization of the human beings who make up the society, and whose interactions with one another are its subject. So some overt or tacit social ontology has to be presupposed. An idealized social ontology of the modern type (as against, say, a Platonic or Aristotelian type) will typically assume the abstract and undifferentiated equal atomic individuals of classical liberalism. Thus it will abstract away from relations of structural domination, exploitation, coercion, and oppression, which in reality, of course, will profoundly shape the ontology of those same individuals, locating them in superior and inferior positions in social hierarchies of various kinds. • Idealized capacities. The human agents as visualized in the theory will also often have completely unrealistic capacities attributed to them—unrealistic even for the privileged minority, let alone those subordinated in different ways, who would not have had an equal opportunity for their natural capacities to develop, and who would in fact typically be disabled in crucial respects. • Silence on oppression. Almost by defi nition, it follows from the focus of ideal theory that little or nothing will be said on actual historic oppression and its legacy in the present, or current ongoing oppression, though these may be gestured at in a vague or promissory way (as something to be dealt with later). Correspondingly, the ways in which systematic oppression is likely to shape the basic social institutions (as well as the humans in those institutions) will not be part of the theory’s concern, and this will manifest itself in the absence of ideal-as-descriptive-model concepts that would provide the necessary macroand micro-mapping of that oppression, and that are requisite for understanding its reproductive dynamic. • Ideal social institutions. Fundamental social institutions such as the family, the economic structure, the legal system, will therefore be conceptualized in ideal-as-idealized-model terms, with little or no sense of how their actual workings may systematically disadvantage women, the poor, and racial minorities. • An idealized cognitive sphere. Separate from, and in addition to, the idealization of human capacities, what could be termed an idealized cognitive sphere will also be presupposed. In other words, as a corollary of the general ignoring of oppression, the consequences of oppression for f the social cognition of these agents, both the advantaged and the disadvantaged, will typically not be recognized, let alone theorized. A general social transparency will be presumed, with cognitive obstacles minimized as limited to biases of self-interest or the intrinsic difficulties of understanding the world, and little or no attention paid to the distinctive role of hegemonic ideologies and group-specifi c experience in distorting our perceptions and conceptions of the social order.

#### Solutions to oppression must be discussed through pragmatic approaches within hegemonic power structures.

Kapoor 8, 2008 (Ilan, Associate Professor at the Faculty of Environmental Studies, York University, “The Postcolonial Politics of Development,” p. 138-139)

There are perhaps several other social movement campaigns that could be cited as examples of a ‘hybridizing strategy’.5 But what emerges as important from the Chipko and NBA campaigns is the way in which they treat laws and policies, institutional practices, and ideological apparatuses as deconstructible. That is, they refuse to take dominant authority at face value, and proceed to reveal its contingencies. Sometimes, they expose what the hegemon is trying to disavow or hide (exclusion of affected communities in project design and implementation, faulty information gathering and dissemination). Sometimes, they problematize dominant or naturalized truths (‘development = unlimited economic growth = capitalism’, ‘big is better’, ‘technology can save the environment’). In either case, by contesting, publicizing, and politicizing accepted or hidden truths, they hybridize power, challenging its smugness and triumphalism, revealing its impurities. They show power to be, literally and figuratively, a bastard. While speaking truth to power, a hybridizing strategy also [it] exploits the instabilities of power. In part, this involves showing up and taking advantage of the equivocations of power — conflicting laws, contradictory policies, unfulfilled promises. A lot has to do here with publicly shaming the hegemon, forcing it to remedy injustices and live up to stated commitments in a more accountable and transparent manner. And, in part, this involves nurturing or manipulating the splits and strains within institutions. Such maneuvering can take the form of cultivating allies, forging alliances, or throwing doubt on prevailing orthodoxy. Note, lastly, the way in which a hybridizing strategy works with the dominant discourse. This reflects the negotiative aspect of Bhabha’s performativity. The strategy may outwit the hegemon, but it does so from the interstices of the hegemony. The master may be paralyzed, but his paralysis is induced using his own poison/medicine. It is for this reason that cultivating allies in the adversarial camp is possible: when you speak their language and appeal to their own ethical horizons, you are building a modicum of common ground. It is for this reason also that the master cannot easily dismiss or crush you. Observing his rules and playing [their] his game makes it difficult for him not to take you seriously or grant you a certain legitimacy. The use of non-violent tactics may be crucial in this regard: state repression is easily justified against violent adversaries, but it is vulnerable to public criticism when used against non-violence. Thus, the fact that Chipko and the NBA deployed civil disobedience — pioneered, it must be pointed out, by the ‘father of the nation’ (i.e. Gandhi) — made it difficult for the state to quash them or deflect their claims.

#### Critique is useless without a concrete policy option that solves for the harms you discuss.

Bryant 12 Levi Bryant (Professor of Philosophy at Collin College) “A Critique of the Academic Left” 2012 <https://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/> JW

Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignor[es]ing how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative. Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows: Phase 1: Ultra-Radical Critique Phase 2: ? Phase 3: Revolution and complete social transformation! Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express [critiques] them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc.

#### Oppression is created by social systems so only a focus on material conditions can solve.

Johnson no date Allan Johnson (PhD in sociology, he joined the sociology department at Wesleyan University) <http://www.cabrillo.edu/~lroberts/AlanJohnsonWhatCanWeDO001.pdf> JW

Privilege is a feature of social systems, not individuals. People have or don't have privilege depending on the system they're in and the social categories other people put them in. To say, then, that I have race privilege says less about me personally than it does about the society we all live in and how it is organized to assign privilege on the basis of a socially defined set of racial categories that change historically and often overlap. The challenge facing me as an individual has more to do with how I participate in society as a recipient of race privilege and how those choices oppose or support the system itself. In dealing with the problem of privilege, we have to get used to being surrounded by paradox. Very often those who have privilege don't know it, for example, which is a key aspect of privilege. Also paradoxical is the fact that privilege doesn't necessarily lead to a "good life," which can prompt people in privileged groups to deny resentfully that they even have it. But privilege doesn't equate with being happy. It involves having what others don't have and the struggle to hang on to it at their expense, neither of which is a recipe for joy, personal fulfillment, or spiritual contentment.... To be an effective part of the solution, we have to realize that privilege and oppression are not a thing of the past. It's [is] happening right now. It isn't just a collection of wounds inflicted long ago that now need to be healed. The wounding goes on as I write these words and as you read them, and unless people work to change the system that promotes it, personal healing by itself cannot be the answer. Healing wounds is no more a solution to the oppression that causes the wounding than military hospitals are a solution to war. Healing is a necessary process, but it isn't enough.... Since privilege is rooted primarily in systems—such as families, schools, and workplaces—change isn't simply a matter of changing people. People, of course, will have to change in order for systems to change, but the most important point is that changing people isn't enough. The solution also has to include entire systems, such as capitalism, whose paths of least resistance shape how we feel, think, and behave as individuals, how we see ourselves and one another.

#### The state is inevitable- speaking the language of power through policymaking is the only way to create social change in debate.

Coverstone 5 Alan Coverstone (masters in communication from Wake Forest, longtime debate coach) “Acting on Activism: Realizing the Vision of Debate with Pro-social Impact” Paper presented at the National Communication Association Annual Conference November 17th 2005 JW 11/18/15

An important concern emerges when Mitchell describes reflexive fiat as a contest strategy capable of “eschewing the power to directly control external actors” (1998b, p. 20). Describing debates about what our government should do as attempts to control outside actors is debilitating and disempowering. Control of the US government is exactly what an active, participatory citizenry is supposed to be all about. After all, if democracy means anything, it means that citizens not only have the right, they also bear the obligation to discuss and debate what the government should be doing. Absent that discussion and debate, much of the motivation for personal political activism is also lost. Those who have co-opted Mitchell’s argument for individual advocacy often quickly respond that nothing we do in a debate round can actually change government policy, and unfortunately, an entire generation of debaters has now swallowed this assertion as an article of faith. The best most will muster is, “Of course not, but you don’t either!” The assertion that nothing we do in debate has any impact on government policy is one that carries the potential to undermine Mitchell’s entire project. If there is nothing we can do in a debate round to change government policy, then we are left with precious little in the way of pro-social options for addressing problems we face. At best, we can pursue some Pilot-like hand washing that can purify us as individuals through quixotic activism but offer little to society as a whole. It is very important to note that Mitchell (1998b) tries carefully to limit and bound his notion of reflexive fiat by maintaining that because it “views fiat as a concrete course of action, it is bounded by the limits of pragmatism” (p. 20). Pursued properly, the debates that Mitchell would like to see are those in which the relative efficacy of concrete political strategies for pro-social change is debated. In a few noteworthy examples, this approach has been employed successfully, and I must say that I have thoroughly enjoyed judging and coaching those debates. The students in my program have learned to stretch their understanding of their role in the political process because of the experience. Therefore, those who say I am opposed to Mitchell’s goals here should take care at such a blanket assertion. However, contest debate teaches students to combine personal experience with the language of political power. Powerful personal narratives unconnected to political power are regularly co-opted by those who do learn the language of power. One need look no further than the annual state of the Union Address where personal story after personal story is used to support the political agenda of those in power. The so-called role-playing that public policy contest debates encourage promotes active learning of the vocabulary and levers of power in America. Imagining the ability to use our own arguments to influence government action is one of the great virtues of academic debate. Gerald Graff (2003) analyzed the decline of argumentation in academic discourse and found a source of student antipathy to public argument in an interesting place. I’m up against…their aversion to the role of public spokesperson that formal writing presupposes. It’s as if such students can’t imagine any rewards for being a public actor or even imagining themselves in such a role. This lack of interest in the public sphere may in turn reflect a loss of confidence in the possibility that the arguments we make in public will have an effect on the world. Today’s students’ lack of faith in the power of persuasion reflects the waning of the ideal of civic participation that led educators for centuries to place rhetorical and argumentative training at the center of the school and college curriculum. (Graff, 2003, p. 57) The power to imagine public advocacy that actually makes a difference is one of the great virtues of the traditional notion of fiat that critics deride as mere simulation. Simulation of success in the public realm is far more empowering to students than completely abandoning all notions of personal power in the face of governmental hegemony by teaching students that “nothing they can do in a contest debate can ever make any difference in public policy.” Contest debating is well suited to rewarding public activism if it stops accepting as an article of faith that personal agency is somehow undermined by the so-called role playing in debate. Debate is role-playing whether we imagine government action or imagine individual action. Imagining myself starting a socialist revolution in America is no less of a fantasy than imagining myself making a difference on Capitol Hill. Furthermore, both fantasies influenced my personal and political development virtually ensuring a life of active, pro-social, political participation. Neither fantasy reduced the likelihood that I would spend my life trying to make the difference I imagined. One fantasy actually does make a greater difference: the one that speaks the language of political power. The other fantasy disables action by making one a laughingstock to those who wield the language of power. Fantasy motivates and role-playing trains through visualization. Until we can imagine it, we cannot really do it. Role-playing without question teaches students to be comfortable with the language of power, and that language paves the way for genuine and effective political activism. Debates over the relative efficacy of political strategies for pro-social change must confront governmental power at some point. There is a fallacy in arguing that movements represent a better political strategy than voting and person-to-person advocacy. Sure, a full-scale movement would be better than the limited voice I have as a participating citizen going from door to door in a campaign, but so would full-scale government action. Unfortunately, the gap between my individual decision to pursue movement politics and the emergence of a full-scale movement is at least as great as the gap between my vote and democratic change. They both represent utopian fiat. Invocation of Mitchell to support utopian movement fiat is simply not supported by his work, and too often, such invocation discourages the concrete actions he argues for in favor of the personal rejectionism that under girds the political cynicism that is a fundamental cause of voter and participatory abstention in America today.

#### Legal debates are key to short-term survival of oppressed populations. Whether the law is good or bad, legal education is crucial to empowerment.

Arkles et al 10 (Gabriel Arkles, Pooja Gehi and Elana Redfield, The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change, Seattle Journal for Social Justice, 8 Seattle J. Soc. Just. 579, Spring / Summer, 2010, LN)

While agenda-setting by lawyers can lead to the replication of patterns of elitism and the reinforcement of systems of oppression, we do believe that legal work is a necessary and critical way to support movements for social justice. We must recognize the limitations of the legal system and learn to use that to the advantage of the oppressed. If lawyers are going to support work that dismantles oppressive structures, we must radically rethink the roles we can play in building and supporting these movements and acknowledge that our own individual interests or even livelihood may conflict with doing radical and transformative work. n162 A. Community Organizing for Social Justice When we use the term community organizing or organizing, we refer to the activities of organizations engaging in base-building and leadership development of communities directly impacted by one or more social [\*612] problems and conducting direct action issue campaigns intended to make positive change related to the problem(s). In this article, we discuss community organizing in the context of progressive social change, but community-organizing strategies can also be used for conservative ends. Community organizing is a powerful means to make social change. A basic premise of organizing is that inappropriate imbalances of power in society are a central component of social injustice. In order to have social justice, power relationships must shift. In Organizing for Social Change: Midwest Academy Manual for Activists (hereinafter, "the Manual"), n163 the authors list three principles of community organizing: n164 (1) winning real, immediate, concrete improvements in people's lives; (2) giving people a sense of their own power; and (3) altering the relations of power. n165 Before any of these principles can be achieved it is necessary to have leadership by the people impacted by social problems. n166 As Rinku Sen points out: [E]ven allies working in solidarity with affected groups cannot rival the clarity and power of the people who have the most to gain and the least to lose . . . organizations composed of people whose lives will change when a new policy is instituted tend to set goals that are harder to reach, to compromise less, and to stick out a fight longer. n167 She also notes that, "[I]f we are to make policy proposals that are grounded in reality and would make a difference either in peoples' lives or in the debate, then we have to be in touch with the people who are at the center of such policies. n168 We believe community organizing has the potential to make fundamental social change that law reform strategies or "movements" led by lawyers cannot achieve on their own. However, community organizing is not always just and effective. Community-organizing groups are not immune to any number of problems that can impact other organizations, including internal oppressive dynamics. In fact, some strains of white, male-dominated [\*613] community organizing have been widely criticized as perpetuating racism and sexism. n169 Nonetheless, models of community organizing, particularly as revised by women of color and other leaders from marginalized groups, have much greater potential to address fundamental imbalances of power than law reform strategies. They also have a remarkable record of successes. Tools from community organizers can help show where other strategies can fit into a framework for social change. The authors of the Manual, for example, describe various strategies for addressing social issues and illustrate how each of them may, at least to some extent, be effective. n170 They then plot out various forms of making social change on a continuum in terms of their positioning with regard to existing social power relationships. n171 They place direct services at the end of the spectrum that is most accepting of existing power relationships and community organizing at the end of the spectrum that most challenges existing power relationships. n172 Advocacy organizations are listed in the middle, closer to community organizing than direct services. n173 The Four Pillars of Social Justice Infrastructure model, a tool of the Miami Workers Center, is somewhat more nuanced than the Manual. n174 According to this model, four "pillars" are the key to transformative social justice. n175 They are (1) the pillar of service, which addresses community needs and stabilizes community members' lives; (2) the pillar of policy, which changes policies and institutions and achieves concrete gains with benchmarks for progress; (3) the pillar of consciousness, which alters public opinion and shifts political parameters through media advocacy and popular education; and (4) the pillar of power, which achieves autonomous community power through base-building and leadership development. n176 According to the Miami Workers Center, all of these pillars are essential in making social change, but the pillar of power is most crucial in the struggle to win true liberation for all oppressed communities. n177 [\*614] In their estimation, our movements suffer when the pillar of power is forgotten and/or not supported by the other pillars, or when the pillars are seen as separate and independent, rather than as interconnected, indispensable aspects of the whole infrastructure that is necessary to build a just society. n178 Organizations with whom we work are generally dedicated solely to providing services, changing policies, or providing public education. Unfortunately, each of these endeavors exists separate from one another and perhaps most notably, separate from community organizing. In SRLP's vision of change, this separation is part of maintaining structural capitalism that seeks to maintain imbalances of power in our society. Without incorporating the pillar of power, service provision, policy change, and public education can never move towards real social justice. n179 B. Lawyering for Empowerment In the past few decades, a number of alternative theories have emerged that help lawyers find a place in social movements that do not replicate oppression. n180 Some of the most well-known iterations of this theme are "empowerment lawyering," "rebellious lawyering," and "community lawyering." n181 These perspectives share skepticism of the efficacy of impact litigation and traditional direct services for improving the conditions faced by poor clients and communities of color, because they do not and cannot effectively address the roots of these forms of oppression. n182 Rather, these alternative visions of lawyering center on the empowerment of community members and organizations, the elimination of the potential for dependency on lawyers and the legal system, and the collaboration between lawyers and directly impacted communities in priority setting. n183 Of the many models of alternative lawyering with the goal of social justice, we will focus on the idea of "lawyering for empowerment," generally. The goal of empowerment lawyering is to enable a group of people to gain control of the forces that affect their lives. n184 Therefore, the goal of empowerment lawyering for low-income transgender people of [\*615] color is to support these communities in confronting the economic and social policies that limit their life chances. Rather than merely representing poor people in court and increasing access to services, the role of the community or empowerment lawyer involves: organizing, community education, media outreach, petition drives, public demonstrations, lobbying, and shaming campaigns . . . [I]ndividuals and members of community-based organizations actively work alongside organizers and lawyers in the day-to-day strategic planning of their case or campaign. Proposed solutions--litigation or non-litigation based--are informed by the clients' knowledge and experience of the issue. n185 A classic example of the complex role of empowerment within the legal agenda setting is the question of whether to take cases that have low chances of success. The traditional approach would suggest not taking the case, or settling for limited outcomes that may not meet the client's expectations. However, when our goals shift to empowerment, our strategies change as well. If we understand that the legal system is incapable of providing a truly favorable outcome for low-income transgender clients and transgender clients of color, then winning and losing cases takes on different meanings. For example, a transgender client may choose to bring a lawsuit against prison staff who sexually assaulted her, despite limited chance of success because of the "blue wall of silence," her perceived limited credibility as a prisoner, barriers to recovery from the Prison Litigation Reform Act, and restrictions on supervisory liability in § 1983 cases. Even realizing the litigation outcome will probably be unfavorable to her, she may still develop leadership skills by rallying a broader community of people impacted by similar issues. Additionally, she may use the knowledge and energy gained through the lawsuit to change policy. If our goal is to familiarize our client with the law, to provide an opportunity for the client [\*616] and/or community organizers to educate the public about the issues, to help our client assess the limitations of the legal system on their own, or to play a role in a larger organizing strategy, then taking cases with little chance of achieving a legal remedy can be a useful strategy. Lawyering for empowerment means not relying solely on legal expertise for decisionmaking. It means recognizing the limitations of the legal system, and using our knowledge and expertise to help disenfranchised communities take leadership. If community organizing is the path to social justice and "organizing is about people taking a role in determining their own future and improving the quality of life not only for themselves but for everyone," then "the primary goal [of empowerment lawyering] is building up the community." n186 C. Sharing Information and Building Leadership A key to meaningful participation in social justice movements is access to information. Lawyers are in an especially good position to help transfer knowledge, skills, and information to disenfranchised communities--the legal system is maintained by and predicated on arcane knowledge that lacks relevance in most contexts but takes on supreme significance in courts, politics, and regulatory agencies. It is a system intentionally obscure to the uninitiated; therefore the lawyer has the opportunity to expose the workings of the system to those who seek to destroy it, dismantle it, reconfigure it, and re-envision it. As Quigley points out, the ignorance of the client enriches the lawyer's power position, and thus the transfer of the power from the lawyer to the client necessitates a sharing of information. n187 Rather than simply performing the tasks that laws require, a lawyer has the option to teach and to collaborate with clients so that they can bring power and voice back to their communities and perhaps fight against the system, become politicized, and take leadership. "This demands that the lawyer undo the secret wrappings of the legal system and share the essence of legal advocacy--doing so lessens the mystical power of the lawyer, and, in practice, enriches the advocate in the sharing and developing of rightful power." n188 Lawyers have many opportunities to share knowledge and skills as a form of leadership development. This sharing can be accomplished, for example, through highly collaborative legal representation, through community clinics, through skill-shares, or through policy or campaign meetings where the lawyer explains what they know about the existing structures and fills in gaps and questions raised by activists about the workings of legal systems. D. Helping to Meet Survival Needs SRLP sees our work as building legal services and policy change that directly supports the pillar of power. n189 Maintaining an awareness of the limitations and pitfalls of traditional legal services, we strive to provide services in a larger context and with an approach that can help support libratory work. n190 For this reason we provide direct legal services but also work toward leadership development in our communities and a deep level of support for our community-organizing allies. Our approach in this regard is to make sure our community members access and obtain all of the benefits to which they are entitled under the law, and to protect our community members as much as possible from the criminalization, discrimination, and harassment they face when attempting to live their lives. While we do not believe that the root causes keeping our clients in poverty and poor health can be addressed in this way, we also believe that our clients experience the most severe impact from state policies and practices and need and that they deserve support to survive them. n191 Until our communities are truly empowered and our systems are fundamentally changed to increase life chances and health for transgender people who are low-income and people of color, our communities are going to continue to have to navigate government agencies and organizations to survive.

#### The aff uses state as heuristic which doesn’t affirm its legitimacy but allows enhanced governmental resistance.

Zanotti 14 Dr. Laura Zanotti (Associate Professor of Political Science at Virginia Tech) “Governmentality, Ontology, Methodology: Re-thinking Political Agency in the Global World” – Alternatives: Global, Local, Political – vol 38(4):p. 288-304,. A little unclear if this is late 2013 or early 2014 – The Stated “Version of Record” is Feb 20, 2014, but was originally published online on December 30th, 2013. Obtained via Sage Database

By questioning substantialist representations of power and subjects, inquiries on the possibilities of political agency are reframed in a way that focuses on power and subjects’ relational character and the contingent processes of their (trans)formation in the context of agonic relations. Options for resistance to governmental scripts are not limited to ‘‘rejection,’’ ‘‘revolution,’’ or ‘‘dispossession’’ to regain a pristine ‘‘freedom from all constraints’’ or an immanent ideal social order. It is found instead in multifarious and contingent struggles that are constituted within the scripts of governmental rationalities and at the same time exceed and transform them. This approach questions oversimplifications of the complexities of liberal political rationalities and of their interactions with non-liberal political players and nurtures a radical skepticism about identifying universally good or bad actors or abstract solutions to political problems. International power interacts in complex ways with diverse political spaces and within these spaces it is appropriated, hybridized, redescribed, hijacked, and tinkered with. Governmentality as a heuristic focuses on performing complex diagnostics of events. It invites historically situated explorations and careful differentiations rather than overarching demonizations of ‘‘power,’’ romanticizations of the ‘‘rebel’’ or the ‘‘the local.’’ More broadly, theoretical formulations that conceive the subject in non-substantialist terms and focus on processes of subjectification, on the ambiguity of power discourses, and on hybridization as the terrain for political transformation, open ways for reconsidering political agency beyond the dichotomy of oppression/rebellion. These alternative formulations also foster an ethics of political engagement, to be continuously taken up through plural and uncertain practices, that demand continuous attention to ‘‘what happens’’ instead of fixations on ‘‘what ought to be.’’83 Such ethics of engagement would not await the revolution to come or hope for a pristine ‘‘freedom’’ to be regained. Instead, it would constantly attempt to twist the working of power by playing with whatever cards are available and would require intense processes of reflexivity on the consequences of political choices. To conclude with a famous phrase by Michel Foucault ‘‘my point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to hyper- and pessimistic activism.’’84

#### And, material equality determines our view of individuals – comes before claims about history and epistemology. Okereke ’07,

**Chukwumerije Okereke, Senior Research Associate at the Tyndall Centre for Climate Change Research at the University of East Anglia, "Global Justice and Neoliberal Environmental Governance", Routledge, 2007**

Notwithstanding these drawbacks, these scholars provide very compelling arguments against mainstream conceptions of justice. In this approach, the obli- gation of justice is derived from the moral equality of human beings irrespective of their race, creed and nationality (O'Neill 1991; Brown 1992: 169; Beitz 1979; Sen 1999). The emphasis is on the positive rights of citizens - that is the kinds of rights that require state authorities to do something in order to provide citizens with the opportunities and abilities to act to fulfil their own potential - as opposed to negative rights/liberty, which refers to freedom from coercion and non-interfer- ence. The notion of justice as meeting needs, as seen in Chapter 2, figures very prominently in quite a number of the influencing materials that form the starting point for the discourse on global sustainable development. It has been suggested, in general, that this idea of justice is 'increasingly influential on non-governmen- tal organizations and the community of international policy makers' (Brighouse 2004: 67). In general, proponents of justice as need criticize liberal ideas of justice for concentrating on political equality (equal right to speech, vote, etc.) without addressing the problem of material equality - especially in the form of equal access to resources. They also claim that the ability to own property as well as the ability to exercise political rights (say the right to vote) depends first and foremost on the ability of citizens to function effectively. When the basic human needs of citizens, for example food, are not being met, other rights become merely 'hypothetical and empty' (Sen 1999: 75). Following on from this basic reasoning, the rights approach to justice is rejected and, in its place, human basic need is seen as the correct basis of political morality and the right benchmark for the determination of political judgment (Plant 1991: 185). In previous sections we saw that libertarian notions of justice sanction unlimited material inequality between citizens, provided that each person has obtained their possessions through legitimate means. All that matters is that the state should ensure fair rules of transitions and equality before the law. We saw also that liberal accounts of justice, especially Rawls' liberal egalitarianism, reject this formula- tion of justice because it does not secure the welfare of the less able in society. On the contrary, Rawls recommends that political institutions should be structured in ways that protect the interests of the least advantaged individuals in society. Accordingly, he sanctions societal inequities provided that such inequities work to the advantage of the least well-off. On closer reading, however, it turns out that Rawls difference principle (that inequities should work in favour of the least well- off) does not contain any explicit demand relating to the basic needs of the poor. As such, it is possible for Rawls' proviso to be met even when the least well-off in the society are denied their basic needs. For example, a distribution that changes from 20:10:2 to 100:30:4 satisfies Rawls difference principle but tells us noth- ing about the actual well-being of the least well-off. So, whereas some (mainly libertarians) criticize Rawls for not specifying the extent to which other people's liberty can be sacrificed for the sake of the least well-off, others (proponents of justice as meeting need) criticize Rawls for leaving the fate of the least well-off unprotected. Many scholars in the latter group sometimes argue along Marxian lines that as long as the means of production remain in the hands of the 'haves' there is no guarantee that inequities will benefit the least well-off. Maslow (1968), Bradshaw (1972) and Forder (1974) have all consequently argued that only the theory of need provides, as Maslow (1968: 4) puts it, 'the ultimate appeal for the determination of the good, bad, right and wrong' in a po- litical community. Without the theory of need, they say, it would be impossible to justify the welfare state in capitalist Western democracies. On the other hand, the co-existence of welfare and capitalism confirms the place of need as the criterion of moral political judgment. O'Neill (1991), Sen (1999) and Nussbaum (2000) have all extended versions of this argument to the international domain. O'Neill (1980, 1991) argues that adherence to the Kantian categorical imperative entails that the global community must act to remove the aching poverty and famine that threaten the existence of millions of people in developing countries. Sen (1999), for his part, calls for the strengthening of international institutions to make them able to assist the least well in the global society to achieve the measure of actual living that is required for the basic function and well-being of citizens. For Sen, as for O'Neill, all forms of liberty and rights are meaningful only when people have the substantive 'freedom to achieve actual living' (Sen 1999: 73; cf. O'Neill 1989: 288; 1986). Thomas Pogge also places emphasis on human basic need and starts his well-known book World Poverty and Human Rights with the rhetorical ques- tion: 'How can severe poverty of half of humankind continue despite enormous economic and technological progress and despite the enlightened moral norms and values of our heavily dominant Western civilization?' (Pogge 2002: 3). Many environmentalists believe that this is the conception of justice most con- sistent with the Bnmdtland version of sustainable development (Dobson 1998; Benton 1999: 201; Langhelle 2000: 299). This assertion is not difficult to sustain because the Bnmdtland Report contains several explicit arguments that firmly link the concept of sustainability with meeting the needs of the global population. It says, for example: The satisfaction of human needs and aspirations is the major objective of sustainable development. The essential needs of vast numbers in the develop- ing countries - for food, clothing, shelter, jobs - are not being met, and be- yond their basic needs, these people have legitimate aspirations for improved quality of life .... Sustainable development requires meeting basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life. (WCED 1987: 43).

#### Inequality creates flawed epistemic conclusions, making normative decision making impossible.

Medina 11 Medina, J. (2011). Toward a Foucaultian Epistemology of Resistance: Counter-Memory, Epistemic Friction, and Guerrilla Pluralism. Foucault Studies, 1(12), 9–35

Foucault invites us to pay attention to the past and ongoing epistemic battles among competing power/knowledge frameworks that try to control a given field. Different fields—or domains of discursive interaction—contain particular discursive regimes with their particular ways of producing knowledge. In the battle among power/ knowledge frameworks, some come on top and become dominant while others are displaced and become subjugated. Foucault’s methodology offers a way of exploiting that vibrant plurality of epistemic perspectives which always contains some bodies of experiences and memories that are erased or hidden in the [hegemonic] mainstream frameworks that become hegemonic after prevailing in sustained epistemic battles. What Foucault calls subjugated knowledges3 are forms of experiencing and remembering that are pushed to the margins and rendered unqualified and unworthy of epistemic respect by prevailing and hegemonic discourses. Subjugated knowledges remain invisible to mainstream perspectives; they have a precarious subterranean existence that renders them unnoticed by most people and impossible to detect by those whose perspective has already internalized certain epistemic exclusions. And with the invisibility of subjugated knowledges, certain possibilities for resistance and subversion go unnoticed. The critical and emancipatory potential of Foucaultian genealogy resides in challenging established practices of remembering and forgetting by excavating subjugated bodies of experiences and memories, bringing to the fore the perspectives that culturally hegemonic practices have foreclosed. The critical task of the scholar and the activist is to resurrect subjugated knowledges—that is, to revive hidden or forgotten bodies of experiences and memories—and to help produce insurrections of subjugated knowledges.4 In order to be critical and to have transformative effects, genealogical investigations should aim at these insurrections, which are critical interventions that disrupt and interrogate epistemic hegemonies and mainstream perspectives (e.g. official histories, standard interpretations, ossified exclusionary meanings, etc). Such insurrections involve the difficult labor of mobilizing scattered, marginalized publics and of tapping into the critical potential of their dejected experiences and memories. An epistemic insurrection requires a collaborative relation between genealogical scholars/activists and the subjects whose experiences and memories have been subjugated: those subjects by themselves may not be able to destabilize the epistemic status quo until they are given a voice at the epistemic table (i.e. in the production of knowledge), that is, until room is made for their marginalized perspective to exert resistance, until past epistemic battles are reopened and established frameworks become open to contestation.

#### Major political gains for blacks have been achieved within civil society- the alt risks throwing out the possibility of a less violent future.

Winant 15 (2015, Howard, Professor of Sociology at UC-Santa Barbara, “The Dark Matter: Race and Racism in the 21st Century,” Critical Sociology 2015, Vol. 41(2) 313–324)

The World-Historical Shitpile of Race Structural racism – an odious stinkpile of shit left over from the past and still being augmented in the present – has been accumulated by ‘slavery unwilling to die’,4 by empire, and indeed by the entire racialized modern world system. The immense waste (Feagin et al., 2001, drawing on Bataille) of human life and labor by these historically entrenched social structures and practices still confronts us today, in the aftermath of the post-Second World War racial ‘break’. Our antiracist accomplishments have reduced the size of the pile; we have lessened the stink. But a massive amount of waste still remains. So much racial waste is left over from the practice of racial domination in the early days of empire and conquest, to the present combination of police state and liberalism! Indeed it often seems that this enormous and odious waste pinions the social system under an immovable burden. How often have despair and hopelessness overcome those who bore this sorrow? How often have slave and native, peon and maquiladora, servant and ghetto-dweller, felt just plain ‘sick and tired’ (Nappy Roots, 2003), encumbered by this deadening inertia composed of a racial injustice that could seemingly never be budged? How often, too, have whites felt weighed down by the waste, the guilt and self-destruction built into racism and the ‘psychological wage’? Yet racial politics is always unstable and contradictory. Racial despotism can never be fully stabilized or consolidated. Thus at key historical moments, perhaps rare but also inevitable, the sheer weight of racial oppression – qua social structure – becomes insupportable. The built-up rage and inequity, the irrationality and inutility, and the explosive force of dreams denied, are mobilized politically in ways that would have seemed almost unimaginable earlier. Racism remains formidable, entrenched as a structuring feature of both US and global society and politics. Indeed it often seems impossible to overcome. Yet That’s Not the Whole Story We are so used to losing! We can’t see that the racial system is in crisis both in the US and globally. Large-scale demographic and political shifts have overtaken the modern world (racial) system, undermining and rearticulating it. During and after the Second World War a tremendous racial ‘break’ occurred, a seismic shift that swept much of the world (Winant, 2001). The US was but one national ‘case’ of this rupture, which was experienced very profoundly: racial transformations occurred that were unparalleled since at least the changes brought about by the US Civil War. Omi and I (1994) – and many, many others – have proposed that the terrain of racial politics was tremendously broadened and deepened after the War. The increased importance of race in larger political life not only grounded the modern civil rights movement but shaped a whole range of ‘new social movements’ that we take for granted today as central axes of political conflict. In earlier stages of US history it had not been so evident that ‘the personal is political’ – at least not since the end of Reconstruction. From the explicit racial despotism of the Jim Crow era to the ‘racial democracy’ (of course still very partial and truncated) of the present period … : that is a big leap, people. In the modern world there were always black movements, always movements for racial justice and racial freedom. The experience of injustice, concrete grievances, lived oppression, and resistance, both large and small, always exists. It can be articulated or not, politicized or not. These movements, these demands, were largely excluded from mainstream politics before the rise of the civil rights movement after the War. Indeed, after the Second World War, in a huge ‘break’ that was racially framed in crucial ways, this ‘politicization of the social’ swept over the world. It ignited (or reignited) major democratic upsurges. This included the explicitly anti-racist movements: the modern civil rights movement, the anti-apartheid movement, and the anti-colonial movement (India, Algeria, Vietnam, etc.). It also included parallel, and more-or-less allied, movements like ‘secondwave’ feminism, LGBTQ (née gay liberation) movements, and others. In short, the world-historical upheaval of the Second World War and its aftermath were racial upheavals in significant ways: the periphery against the center, the colored ‘others’ against ‘The Lords of Human Kind’ (Kiernan, 1995). These movements produced: • Demographic, economic, political, and cultural shifts across the planet • The destruction of the old European empires • The coming and going of the Cold War • The rise of the ‘new social movements’, led by the black movement in the US And this is only the start of what could be a much bigger list. A Crisis of Race and Racism? ‘[C]risis’, Gramsci famously wrote, ‘consists precisely in the fact that the old is dying and the new cannot be born: in this interregnum, morbid phenomena of the most varied kind come to pass’ (Gramsci, 1971: 276). Using the Gramscian formula, I suggest that there is such a crisis of race and racism. On the one hand, the old verities of established racism and white supremacy have been officially discredited, not only in the US but fairly comprehensively around the world. On the other hand, racially-informed action and social organization, racial identity and race consciousness, continue unchecked in nearly every aspect of social life! On the one hand, the state (many states around the world) now claims to be colorblind, non-racialist, racially democratic; while on the other hand, in almost every case, those same states need race to rule. Consider in the US alone: race and electoral politics, race and social control, race and legal order … Why don’t our heads explode under the pressures of such cognitive dissonance? Why doesn’t manifest racial contradiction provoke as much uncertainty and confusion in public life and political activity as it does in everyday experience? Are we just supposed to pretend that none of this is happening? Can anyone really sustain the view that they are operating in a nonracial, ‘colorblind’ society? The ‘colorblind’ claim is that one should not ‘notice’ race. For if one ‘sees’ race, one wouldn’t be ‘blind’ to it, after all.5 But what happens to race-consciousness under the pressure (now rather intense in the US, anyway) to be ‘colorblind’? Quite clearly, racial awareness does not dry up like a raisin in the sun. Not only does it continue as a matter of course in everyday life, but in intellectual, artistic and scientific (both social and natural) life race continues to command attention.6 ‘Colorblind’ ideologies of race today serve to impede the recognition of racial difference or racial inequality based on claims that race is an archaic concept, that racial inclusion is already an accomplished fact, and so on. Just so, persistent race-consciousness highlights racial differences and particularities. ‘Noticing’ race can be linked to despotic or democratic motives, framed either in defense of coercion, privilege, and undeserved advantage, or invoked to support inclusion, human rights, and social justice (Carbado and Harris, 2008; see also Brown et al., 2003). Obama Is he a mere token, a shill for Wall Street? Or is he Neo, ‘the one’? If neither alternative is plausible, then we are in the realm of everyday 21st-century US politics. This is the territory in which, as Sam Rayburn famously said, ‘There comes a time in the life of every politician when he [sic] must rise above principle.’ Yet Barack Obama has transformed the US presidency in ways we cannot yet fully appreciate. Obama is not simply the first nonwhite (that we know of) to occupy the office. He is the first to have lived in the global South, the first to be a direct descendent of colonized people, the first to have a genuine movement background. Consider: How many community meetings, how many movement meetings did Obama attend before entering electoral politics? But he is no more powerful than any of his predecessors; he is constrained as they were by the US system of rule, by the US racial regime, by structural racism. In addition he is constrained by racism as no other US president has ever been. No other president has experienced racism directly: Moreover, while my own upbringing hardly typifies the African American experience – and although, largely through luck and circumstance, I now occupy a position that insulates me from most of the bumps and bruises that the average black man must endure – I can recite the usual litany of petty slights that during my forty-five years have been directed my way: security guards tailing me as I shop in department stores, white couples who toss me their car keys as I stand outside a restaurant waiting for the valet, police cars pulling me over for no apparent reason. I know what it’s like to have people tell me I can’t do something because of my color, and I know the bitter swill of swallowed back anger. I know as well that Michelle and I must be continually vigilant against some of the debilitating story lines that our daughters may absorb – from TV and music and friends and the streets – about who the world thinks they are, and what the world imagines they should be. (Obama, 2006: 233) On the other hand: he has a ‘kill list’. All presidents kill people, but Obama is the first systematically and publicly to take charge of these egregious and unconstitutional uses of exceptional powers. In this he echoes Carl Schmitt, the Nazi political theorist, whose famous dictum is ‘Sovereign is he who decides on the exception’ (2004 [1922]). The drones, the surveillance, and the numerous right turns of his administration all stand in sharp contradiction not only to his campaign rhetoric, but to the anti-racist legacy of the civil rights movement that arguably put him in office. Obama has not interceded for blacks against their greatest cumulative loss of wealth in US history, the ‘great recession’ of 2008. He has not explicitly criticized the glaring racial bias in the US carceral system. He has not intervened in conflicts over workers’ rights – particularly in the public sector where many blacks and other people of color are concentrated. Obama himself largely deploys colorblind racial ideology, although he occasionally critiques it as well. Beneath this ostensibly postracial view the palpable and quite ubiquitous system of racial distinction and inequality remains entrenched. Though modernized and ‘moderated’, structural racism has been fortified, not undermined, by civil rights reform; Obama is not challenging it, at least not directly. Reframing the Discussion What should we be studying and teaching now? The list of themes I have highlighted here is partial of course, and perhaps impressionistic as well. If the argument I have proposed has any validity, then the ‘dark matter’ of race, which is even more invisible now than it was in the past – in its present ‘post-civil rights’, ‘colorblind’, and even ‘presidential’ forms – continues to exercise its gravitational pull on our politics. It continues to shape what is called (and improperly deprecated as) ‘identity politics’. The ‘dark matter’ takes on new significance as a central feature of neoliberalism, which is enacted today through the deployment of ‘accumulation by dispossession’, ‘states of exception’, state violence, and exclusionary politics – all political practices that rely on racism. Yet the legacy of centuries of resistance to these depredations, the undeniable achievements of anti-racist and ant-imperialist struggles, the extension of democracy – often tortuous and always incomplete – to peoples of color, also exerts a significant political force. Race-based ‘freedom dreams’ (Kelley again) sustain the hope of democracy, inclusion, equality, and justice in the US and elsewhere.

#### Even if the state is bad, legal debates are key to critiquing law.

Harris and Maeda 4 (Prof @ UC Davis School of Law; Professor of Critical Theory and Social Justice @ Occidental) (Angela Harris and Donna Maeda, Power and Resistance in Contemporary Legal Education, in Legal Education and the Reproduction of Hierarchy, Project MUSE)

Efforts by progressive students to transform hierarchies indicate the importance of constant resistance, and also the usefulness of a midlevel political analysis: not focusing on the law school (the local) as a fulcrum for changing the world (the global) but understanding legal education as one aspect of very particular social struggles for justice. The Coalition for Diversity in some ways is the embodiment of the kind of resistance Kennedy advocates. Its diffuse structure and efforts have enabled members to figure out how to connect issues, to constantly look for complex relationships of the operations of power, and to set in motion dynamics of change even beyond specific, planned actions. The organization’s success may at times appear small, but the complexity of power relationships indi- cates the necessity of such small, constant resistances. Such organizing work, which contributes to the development of complex critical perspectives and coalition-building skills, as well as lessons learned by efforts to change the most elite, hierarchical structures (such as law review), may help prepare such students for struggles in the hierarchically ordered lib- eral legal-political world we inhabit. At the same time, progressive students in the Coalition and elsewhere add to Kennedy’s two left stances an ability to treat law as only one thread in a web of relations of power and to bring their prior experiences of sub- ordination, resistance, and critical thinking directly to bear on their law school organizing. Both the liberal and radical stances Kennedy describes understand the law as the law understands itself: as, for good or ill, the foundation of the house of power. This view, however, sustains power relations by appealing only to the realm of law itself for resistance. The belief that law school, the legal profession, and the law more generally are the sole, or even key, places for reproducing or undoing hierarchy sets up this realm as the most significant place for work in confronting power, so that people with legal skills continue to be held up as the most important ac- tors for social change. As an alternative, progressive law students may use their involvement with the law to participate in broader resistance practices. We have focused on connecting resistance against legal hierarchy with the fight for racial justice, but of course there are many other kinds of anti-subordina- tion struggles that can serve as the basis for a valuable praxis. Kennedy’s assessment of the circuits of institutional self-replication remains a valu- able one; but left students who come to law school need not choose between liberal naïveté and radical alienation. Instead, law students may draw on their experiences of hierarchy outside legal education to transform their conditions of life, grounded in the knowledge of the necessity of constant struggle and resistance.