## 1

### 1NC—OFF

#### Settlement is an everyday process, constituted not only by the initial clearing of the land but the ideological reiteration of the geopolitical and spatial self-evidence of the terrain on which political struggle occurs.

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(Mark, “Settler common sense,” *Settler Colonial Studies*, Volume 3, Issue 3, pp. 322-340)

As opposed to the sense of withdrawal into a space divorced from contemporary political economy, the text also proposes a reframing of perspective, altering the physical sense of relation to one's surroundings via a suspension of their givenness. In this vein, Ahmed suggests, “If orientation is about making the strange familiar through the extension of bodies into space, then disorientation occurs when that extension fails” (11). These moments in the text suggest how the self can become the site for an imaginative break with routine that produces a sensuous reorientation (getting “turned round”). The critical project of the text appears here less as locating a space apart in which to discover the fullness of the self than as the making alien of an already occupied place, such that “we should not recognize” it. The act of turning round, of shifting one's orientation and redirecting the momentum by which one previously was impelled, offers possibilities for perceiving differently, for seeing and engaging in ways that less take for granted the jurisdictional matrix of the state and in which contemporary Native peoples can be acknowledged as themselves important “inhabitants of New England” whose indigeneity compels a reconceptualization of the terms of occupancy for everyone.¶ Becoming conscious of the everyday enactment of settlement involves relinquishing the notion of an autonomous, extra-political selfhood existing in a place apart, instead opening onto a recognition not only of enduring Native presence within contemporary political economy but of the effaced history of imperial superintendence and displacement that provides the continuing condition of possibility for the sense of settler escape into the wilderness. To be clear, the absence of a declared set of imperial commitments does not suggest non-Natives' exoneration from continuing histories of violence perpetrated and perpetuated by the settler-state. Returning from a different direction to Nicoll's critique discussed earlier, there may be an absence of sentiments hostile to Native peoples in non-Natives' speech or writing, or non-Natives may adopt a particular viewpoint supportive of Indigenous sovereignty on delimited plots of land when considering Native peoples as such. However, that absence of malice or declaration of support does not address the ways quotidian experiences of space (with respect to jurisdiction, occupancy, and ownership) and subjectivity (as modular, self-identical, and extralegal) affectively register and iterate settler sovereignty in ways that shape the generation of, for example, ethics, ideals, and political projects that do not take Native nations, voices, and lands as their direct object. While arguments about the structural quality of settler colonialism – its scale, density, duration, and centrality to US life – remain important, their very insistence on its pervasive and systemic operation can create the impression of an integrated whole. However, as Latour observes, if “the body politic” is taken “to be virtual, total, and always already there”, then “the practical means to compose it are no longer traceable; if it's total, the practical means to totalize it are no longer visible; if it's virtual, the practical means to realize, visualize, and collect it have disappeared from view” (162–3). How is the settler body politic composed, collected, and realized in everyday ways through the experiences, perceptions, associations, emplacements, and trajectories of non-Native bodies? How do settler jurisdiction and governmentality shape the material possibilities available to non-Natives in scenes and sites apparently disconnected from Native peoples and Indian policy, and how do non-Natives in their quotidian feelings and interactions (and the cultural productions for which ordinary sensation serves as background) actualize the political and legal geographies of the settler-state? Attending to settler common sense in this way does not so much bracket Indigenous self-determination as draw on it as ethical inspiration to investigate the ways it is deferred through ordinary action whose aim is not such but whose effect is to reiterate the self-evidence of settler geopolitics. Reciprocally, such analysis also seeks to suggest how non-Natives might disorient and reorient themselves, how they might come to understand not only that Indigenous peoples remain part of the social landscape of life in the US but that the very terrain non-Natives inhabit as given has never ceased to be a site of political struggle.

#### Their arguments about radical alterity itself an attempt to ascribe intentionality onto indigenous bodies – their theory merely converts the indigenous body into the very circumscribed commodity they claim to criticize

Li 2 – Professor of English at Dalhousie (Victor, “The Premodern Condition: Neo-Primitivism in Baudrillard and Lyotard” in After Poststructuralism: writing the intellectual history of theory p. 93-95)//jml

The problem with Baudrillard's valorization of radical alterity is that its incomprehensibility and incommensurability open up an absolute cognitive relativism that would not permit him to know or say anything about the Other, about whom he has in fact quite a lot to say. The Other may resist ethnographic understanding but Baudrillard not only knows about its resistance, he also confidently describes its feelings towards us. Thus about other non-Western cultures he has this to say: Outward conversion to Western ways invariably conceals inward scoffing at Western hegemony. One is put in mind of those Dogons who made up dreams to humour their psychoanalysts and then offered these dreams to their analysts as gifts. Once we despised other cultures; now we respect them. They do not respect our culture, however; they feel nothing but an immense condescension for it. We may have won the right by conquest to exploit and subjugate these cultures, but they have offered themselves the luxury of mystifying us. (Transparency, 136) But if the Other is unintelligible and inscrutable, as Baudrillard constantly reminds us, then how does he know that it scoffs at us, that it shows an 'immense condescension' towards us, that it is deliberately engaged in 'mystifying' us? Baudrillard tells us that the otherness of primitive cultures is not recuperable and that they 'live on the basis of their own singularity, their own exceptionality, on the irreducibility oftheir own rites and values' (Transparency 132). But if these primitive cultures are absolutely singular, exceptional, and irreducible, then what Baudrillard says about them cannot be true, since to be comprehended and described as such would be to have their singularity generalized, their exceptionality made into an example and their irreducibility reduced to so many adjectives. Baudrillard's paradoxical knowledge of the radical incomprehensibility of the primitive Other reaches a dangerous point when he argues that South American Indians chose to die rather than surrender the secret of their otherness to the Spanish conquistadores: When they [the Indians] found themselves obliged to become part of an otherness no longer radical, but negotiable under the aegis of the universal concept, they preferred mass self-immolation - whence the fervour with which they, for their part, allowed themselves to die: a counterpart to the Spaniard's mad urge to kill. The Indians' strange collusion in their own extermination represented their only way of keeping the secret of otherness. (Transparency 133) Apart from the moral and factual dubiousness of Baudrillard's argument (it would be interesting to see what contemporary South American Indians make of Baudrillard's description of their ancestors' 'mass self-immolation'), there is the epistemological question of how Baudrillard can know the intention behind the Indians' actions when these actions were precisely designed to preserve the secret of their otherness. If the South American Indians were that radically Other, then how can Baudrillard so confidently know what they were up to? The answer to this paradox lies in the realization that despite Baudrillard's critique of Western epistemology, he is not really concerned with epistemology at all. Though he may use historical and ethnographic accounts to illustrate his theory of radical otherness, his theory does not require the actual, living presence of the primitive Other since the Other is needed only as a discursive element of rupture, a structural antithesis to Western thought. This is why Baudrillard is not bothered by criticism, such as Hefner's, that his generalizations lack ethnographic evidence, or troubled by the aporia of describing an Other he is not supposed to know. The primitive Other functions primarily as a discursive proxy or theoretical place-holder and the secondary question of its phenomenological or material actuality may in fact interfere with or muddy its primary function. The real live 'primitive' can complicate matters with his behaviour, whereas the discursive proxy can't. We can now see why to Baudrillard the extinction or imminent disappearance of the primitive Other can be turned into a theoretical advantage. The dead or disappearing Indian becomes a pure and perfect example of the Other; through his physical death, the Indian gains theoretical immortality. We have here an instance of a 'pataphysical' logic that Baudrillard elsewhere illustrates through the example of AlfredJarry's dead cyclist who carries on cycling: 'Rigor mortis is replaced by mobilitas mortis, and the dead rider pedals on indefinitely, even accelerating, as a function of inertia. The energy released is boosted by the inertia of the dead' (Transparency 102; also see America 115). Similarly, the primitive Other's death confers on it a greater power to 'destabilize Western rule.' The dead primitive returns powerfully as a 'phantom presence,' its 'viral, spectral presence ... [infecting] the synapses of our [Western] brains' (Transparency 137). Baudrillard's neo-primitivism thus exemplifies a bizarre logic in which the primitive dies as a presence to serve as an irreducible, internalized idea.

#### Baudrillard privileges value in comparison to Eurocentric notions of a western and wealthy nation

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This is why he viewed the terrorist attacks of 9/11/2001 as putting an end to the event strike that began in the 1990s after the end of the Cold War and the collapse of the Soviet Union.44 Depending on which conflicts you choose to focus on, and how you define them, history tells a different story. For example, if you define the Cold War as a conflict between capitalism and communism, you end up Theory in Action 31 with the historical narrative that most Americans are familiar with and were taught in school. But, if you define the Cold War as a conflict between two different kinds of capitalism, free-market capitalism in the US versus bureaucratic state capitalism in the USSR, then you get a different historical narrative.45 This seems to me very convincing, and it is important to interrogate competing narratives for ideological corruption and manipulation. But Baudrillard is not interested in considering various historical narratives; let us not forget that he went so far as to say that “the Gulf War did not take place.” We may not know what happened there, whatever happened may have indeed left Hussein in power and major geopolitical relations unchanged (as discussed above), and the story was surely told in various conflicting ways, but to deny any possible narrative of the war is irreconcilable with all of the corpses and wreckage. Baudrillard would perhaps not deny the physical, human costs of war, but it is worth noting that these brutal details are almost always conspicuously, and I would say egregiously, left out of his discussions of the Gulf War and more recent essays on 9/11. Considerations on the signification of architecture tend to take the place of bodies engulfed in flames. If Baudrillard is a revisionist, carnage is surely one of the things he has taken out. To be fair, Baudrillard has expressed concern about the dangerous assumptions of a Eurocentric point of view. Politically, in fact, he tends to view the impoverished regions of the world, those countries often viewed as the “global south,” for example, as possessing better opportunities for meaningful struggles, for uncompromising assertions of their singularity against homogenizing globalism, and for their own survival. His critique of “the West” is particularly sharp in Paroxysm. There, he says, “At all events, we have to look to other worlds than the Western. The underdeveloped or developing societies are no longer what they were, since the very concept of development has been a damp squib. Precisely in their inability to achieve a coherent democratic (economic and political) principle, these societies are perhaps the foreshadowing of a later state of events, in which all societies, including our own, will have to confront the collapse of all these fine rational principles (but the ‘advanced’ societies have hardly achieved such a coherent democratic principle themselves, and what they have handed on to the rest of the world has been the failed, caricatured version of the model). This fateful situation is perhaps an opportunity, then. And in this sense, it is those societies, in their very confusion, which are in the van, not our Western societies, which are so Richard Gilman-Opalsky 32 proud of their technological lead and so full also of a fierce and bien-pensant evolutionism which prevents them from thinking anything but the world supremacy of their model. That supremacy is merely virtual…”46 In this remarkable passage, Baudrillard completely inverts the unilinear evolutionary logic of Western capitalism (particularly neoliberalism) and also, of Marx’s own prediction in Capital that the most “developed” countries were showing to the poorer “developing” ones a picture of their own future. Here, Baudrillard suggests just the opposite—that the poorer so-called “developing” countries are now showing the wealthy West a picture of its future, a future that the Western world is not equipped to manage with any supremacy, if it could even survive the transformation. But this very thought, of the inversion of the logic of “development,” is imperceptible to Western societies that are not even capable of seeing their own democratic deficits and caricatured principles, let alone the decimation of their known lifeworlds (although the economic crisis in 2008-2009 perhaps gave some in the West a sense of such a possibility). This is why, when we think of opportunities, we must “look to other worlds than the Western.” Despite his occasional powerful rebukes of Eurocentrism (and the example above is one of the best), Baudrillard’s views on history tend to be grossly Eurocentric. When it comes to history, Baudrillard only calls those conflicts that afflict the richest countries of the world “historical.” How else could he declare that events went on strike in the 1990s, an implosion of history punctuated by the end of the Cold War and 9/11/2001? In fact, this very framing seems to be worse than Eurocentric for it turns the geopolitical stature of the US into the defining signposts. Certainly, it is true that the rich countries of the West (and the US in particular) have determined the balance of power globally for some time, and this does perhaps justify a differential of critical attention. However, Baudrillard’s evacuation of history entails a radical, sweeping thesis that diminishes and even denies eventuality; in Baudrillard’s work, it renders the lives of others elsewhere as historically significant only in terms of their relationship with the wealthy countries of the West.

#### Baudrillard’s analysis of violence papers over settler sovereignty by denying a “true” west, erasing indigenous land claims – that prevents place based critiques and perpetuates settler violence.

Young and Veracini 17(Alex Trimble, honors faculty fellow in the Barrett Honors College at Arizona State University, Lorenzo, Professor at Swinburne University, Alex Trimble Young and Lorenzo Veracini, “"If I am native to anything" Settler Colonial Studies and Western American Literature”, Project Muse, Western American Literature Volume 52, Number 1, Spring 2017, 10-12-2017) KLu

The field of western American literary studies emerged in the 1960s and ’70s as a regionalist critique that imagined a western ethics of place against the Turnerian consensus that then dominated American studies. Working in tandem with historical critiques that were recasting the frontier as a site of imperial, patriarchal, and ecological violence, the critique offered by western literary regionalism hinged on an effort to decouple the frontier from the West. By imagining a regional identifi cation that would work in opposition to the logic of Turner’s frontier, this critique has reimagined the West as a potential emancipatory place for the staging of environmentalist, feminist, queer, and antiracist challenges to American political and cultural norms (Comer 161). This tradition of place- based (and often bioregional) western literary studies met a challenge from a new generation of critics beginning in the 1990s. Th e “postwestern” critics, informed by poststructuralist theory, followed Turner to the extent that they understand the West more as a “form of society” than as a defi nable geographical space. Rejecting the place- centered critique as infl ected with lingering patriarchal and nationalist politics, the postwestern critics worked to extricate “westness” as a social construct from the nationalist constraints that Turner imagined. In postwestern critique, there is no “authentic” frontier or “true” West, whether critical or celebratory, to which we have recourse to explain “westness.” “Westness” is reconceived as something between (in postwestern critique’s more Baudrillardean mode) the totalizing simulacrum of the “hyperreal West” or (in its more Deleuzean mode) a transnational form of potentiality.1 Postwestern scholarship has, however, curiously hedged in its commitment to the poststructuralist bent of its critique of placebased scholarship. In a 2005 roundup review of several infl uential works of postwestern literary scholarship, Nina Baym notes a curious ambivalence about the postmodernist and poststructuralist thought that put the “post” in “postwestern”: [W]hether they off er an uncomplicated materialism or an advanced postmodernism, [these works] insist, sometimes against their own inclinations, that western stories have some connection to places that really exist. To the extent that postmodernism denies the category of the real altogether, [these works] cannot follow; they are western. All of them can be thought about therefore as implicit interrogations of the use of postmodernism to place- grounded projects. (819) Even as postwestern scholars have argued for understanding the West as a social construct, Baym suggests, they have insisted on “the West” as a category with a very real social meaning, a concept that cannot be dismissed as a free- fl oating signifi er. Th e fi eld of settler colonial studies— a comparative interdisciplinary project that has engaged in its own reassessment of Turner— has been marked by a similar ambivalence vis- à- vis poststructuralism’s critique of the real. Th e late scholar Patrick Wolfe was fond of opening his talks by invoking the familiar slogan “race is a social construct.” After acknowledging its insight, Wolfe would warn that scholars too often accept this truism as a conclusion rather than as a starting point. In fact, Wolfe argued, this insight demands a series of questions that are too often left unanswered: to what end is race constructed? What are the forces that shape its construction? How does this construction change over time and space?2 In Wolfe’s work the insights of thinkers like Foucault (the poststructuralist theorist to whom Wolfe’s work is perhaps most indebted) were not dogmas but building blocks. In a career dedicated to the structural analysis of racial formation under settler colonialism, Wolfe was not reverting to a structuralist antecedent, but rather exploiting the full potential of his poststructuralist training. Th e structure of settler colonialism is engaged as a social construct, but one with meaningful consequences.3 Of course settler colonial studies has much more in common with the study of the western American literature than this point of epistemological nuance. Understanding this shared ambivalence, however, off ers a crucial inroad into thinking about how the two fi elds might come into closer conversation. Th e term settler colonialism describes a mode of colonial domination with which the American West is all too familiar. Settlers are colonists who come to stay. Th eir primary aim is to dispossess, displace, and destroy Indigenous peoples rather than to exploit them for their labor. Settler social orders are established via logics of elimination and exclusion, dispossessing Natives and then attempting to police the racial, gender, and class boundaries of the settler polity. It is these dual modes of violence that establish dispossessed Native land as “free.” Settler colonial studies’ focus on this structure of violence overlaps with western regionalism’s attention to “the legacy of conquest.” Perhaps more than scholars in any other fi eld of US literary studies outside of ethnic and Indigenous studies, western literary scholars have attended to the myriad ways in which the settlers’ genocidal (non)relation with Indigenous peoples has been shaped, questioned, and challenged by cultural production. Th e conversation between western American literary studies and transnational settler colonial studies is already underway, and has revealed an enormous potential for further exchange.4 And yet this conversation is more belated than one might expect, considering both the broad impact transnational settler colonial studies has made on American studies writ large and the similar conversation that was conducted in Commonwealth literary studies in the 1990s (Ashcroft et al. 1– 11). A large part of this belatedness can be attributed to settler colonial studies’ engagement with the frontier, a category toward which western American literary studies has a long- seated antipathy. In the structural analysis of settler colonialism as it has emerged in the work of Wolfe and other scholars outside the United States, the frontier, understood as a conceptual and spatiotemporal zone that exists in the interstices between Indigenous and settler sovereignty, is an important keyword. Th is is where understanding settler colonial studies’ and postwestern studies’ ambivalent relationship with poststructuralist thought is invaluable. In Wolfe’s work, the frontier, like race, is recognized as a social fi ction, but a crucial one, and one with ongoing consequences. As he puts it, “the point is not simply that the idea of the frontier was misleading. What matters is that it was a performative representation— it helped the invasion to occur” (Settler Colonialism 165). Wolfe’s critique of settler sovereignty thus demands a critical perspective that works to uncover the role of the frontier binary in shaping the structure of settler colonialism rather than one that rejects the frontier as an object of analysis.

#### **The alternative is a commitment to disrupting settler subjectivity. Our affective intervention is essential to destabilize the settler psyche that otherwise coheres itself by pushing this violence out of the picture .**

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Facing assertive indigenous presences within settler colonial spaces, settlers must answer the legitimate charge that their daily life – in all its banality – is predicated upon the privileges produced by ongoing genocide. The jarring nature of such charges offers an irreconcilable challenge to settlers qua settlers.64 Should these charges become impossible to ignore, they threaten to explode the imago of settler colonialism, which had hitherto operated within the settler psyche in a relatively smooth and benign manner. This explosion is potentiated by the revelation of even a portion of the violence that is required to make settler life possible. If, for example, settlers are forced to see ‘their’ beach as a site of murder and ongoing colonization, it becomes more difficult to sustain it within the imaginary as a site of frivolity.65 As Brown writes, in the ‘loss of horizons, order, and identity’ the subject experiences a sense of enormous vulnerability.66 Threatened with this ‘loss of containment', the settler subject embarks down the road to psychosis.67 Thus, to parlay Brown's thesis to the settler colonial context, the uncontrollable rage that indigenous presences induce within the settler is not evidence of the strength of settlers, but rather of a subject lashing out on the brink of its own dissolution. This panic – this rabid and insatiable anger – is always already at the core of the settler as a subject. As Lorenzo Veracini observes, the settler necessarily remains in a disposition of aggression ‘even after indigenous alterities have ceased to be threatening'.68 This disposition results from the precarity inherent in the maintenance of settler colonialism's imago, wherein any and all indigenous presences threaten subjective dissolution of the settler as such. Trapped in a Gordian Knot, the very thing that provides a balm to the settler subject – further development and entrenchment of the settler colonial imago – is also what panics the subject when it is inevitably contravened.69 We might think of this as a process of hardening that leaves the imago brittle and more susceptible to breakage. Their desire to produce a firm imago means that settlers are also always already in a psychically defensive position – that is, the settler's offensive position on occupied land is sustained through a defensive posture. For while settlers desire the total erasure of indigenous populations, the attendant desire to disappear their own identity as settlers necessitates the suppression of both desires, if the subject's reliance on settler colonial power structure is to be psychically naturalized. Settlers’ reactions to indigenous peoples fit, almost universally, with the two ego defense responses that Sigmund Freud observed. The first of these defenses is to attempt a complete conversion of the suppressed desire into a new idea. In settler colonial contexts, this requires averting attention from the violence of dispossession; as such, settlers often suggest that they aim to create a ‘city on the hill’.70 Freud noted that the conversion defense mechanism does suppress the anxiety-inducing desire, but it also leads to ‘periodic hysterical outbursts'. Such is the case when settlers’ utopic visions are forced to confront the reality that the gentile community they imagine is founded in and perpetuates irredeemable suffering. A second type of defense is to channel the original desire's energy into an obsession or a phobia. The effects of this defense are seen in the preoccupation that settler colonialism has with purity of blood or of community.71 As we have already seen, this obsession at once solidifies the power of the settler state, thereby naturalizing the settler and simultaneously perpetuating the processes of erasing indigenous peoples. Psychic defenses are intended to secure the subject from pain, and whether that pain originates inside or outside the psyche is inconsequential. Because of the threat that indigeneity presents to the phantasmatic wholeness of settler colonialism, settlers must always remain suspended in a state of arrested development between these defensive positions. Despite any pretensions to the contrary, the settler is necessarily a parochial subject who continuously coils, reacts, disavows, and lashes out, when confronted with his dependency on indigenous peoples and their territory. This psychic precarity exists at the core of the settler subject because of the unending fear of its own dissolution, should indigenous sovereignty be recognized.72 Goeman writes as an explicit challenge to other indigenous peoples, but this holds true to settler-allies as well, that decolonization must include an analysis of the dominant ‘self-disciplining colonial subject’.73 However, as this discussion of subjective precarity demonstrates, the degree of to which these disciplinary or phenomenological processes are complete should not be overstated. For settler-allies must also examine and cultivate the ways in which settler subjects fail to be totally disciplined. Evidence of this incompletion is apparent in the subject's arrested state of development. Discovering the instability at the core of the settler subject, indeed of all subjects, is the central conceit of psychoanalysis. This exception of at least partial failure to fully subjectivize the settler is also what sets my account apart from Rifkin's. His phenomenology falls into the trap that Jacqueline Rose observes within many sociological accounts of the subject: that of assuming a successful internalization of norms. From the psychoanalytical perspective, the ‘unconscious constantly reveals the “failure”’ of internalization.74 As we have seen, within settler subjects this can be expressed as an irrational anxiety that expresses itself whenever a settler is confronted with the facts regarding their colonizing status. Under conditions of total subjectification, such charges ought to be unintelligible to the settler. Thus, the process of subject formation is always in slippage and never totalized as others might suggest.75 Because of this precarity, the settler subject is prone to violence and lashing out; but the subject in slippage also provides an avenue by which the process of settler colonialism can be subverted – creating cracks in a phantasmatic wholeness which can be opened wider. Breakages of this sort offer an opportunity to pursue what Paulette Regan calls a ‘restorying’ of settler colonial history and culture, to decenter settler mythologies built upon and within the dispossession of indigenous peoples.76 The cultivation of these cracks is a necessary part of decolonizing work, as it continues to panic and thus to destabilize settler subjects. Resistance to settler colonialism does not occur only in highly visible moments like the famous conflict at Kanesatake and Kahnawake,77 it also occurs in reiterative and disruptive practices, presences, and speech acts. Goeman correctly observes that the ‘repetitive practices of everyday life’ are what give settler spaces their meaning, as they provide a degree of naturalness to the settler imago and its psychic investments.78 As such, to disrupt the ease of these repetitions is at once to striate radically the otherwise smooth spaces of settler colonialism and also to disrupt the easy (re)production of the settler subject. Goeman calls these subversive acts the ‘micro-politics of resistance', which historically took the form of ‘moving fences, not cooperating with census enumerators, sometimes disrupting survey parties’ amongst other process.79 These acts panic the subject that is disciplined as a product of settler colonial power, by forcing encounters with the sovereign indigenous peoples that were imagined to be gone. This reveals to the settler, if only fleetingly, the violence that founds and sustains the settler colonial relationship. While such practices may not overthrow the settler colonial system, they do subvert its logics by insistently drawing attention to the ongoing presence of indigenous peoples who refuse erasure.

## 2

### 1NC – OFF

#### Interpretation: Topical affirmatives may only garner offense from the hypothetical implementation by governments that The appropriation of outer space by private entities is unjust

#### Resolved requires policy action

Louisiana State Legislature (<https://www.legis.la.gov/legis/Glossary.aspx>) Ngong

**Resolution**

**A legislative instrument** that generally is **used for** making declarations, **stating policies**, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution **uses the term "resolved".** Not subject to a time limit for introduction nor to governor's veto. ( Const. Art. III, §17(B) and House Rules 8.11 , 13.1 , 6.8 , and 7.4 and Senate Rules 10.9, 13.5 and 15.1)

#### Appropriation

TIMOTHY JUSTIN TRAPP, JD Candidate @ UIUC Law, ’13, TAKING UP SPACE BY ANY OTHER MEANS: COMING TO TERMS WITH THE NONAPPROPRIATION ARTICLE OF THE OUTER SPACE TREATY UNIVERSITY OF ILLINOIS LAW REVIEW [Vol. 2013 No. 4]

The issues presented in relation to the nonappropriation article of the Outer Space Treaty should be clear.214 The ITU has, quite blatantly, created something akin to “property interests in outer space.”215 It allows nations to exclude others from their orbital slots, even when the nation is not currently using that slot.216 This is directly in line with at least one definition of outer-space appropriation.217 [\*\*Start Footnote 217\*\*Id. at 236 (“Appropriation of outer space, therefore, is ‘the exercise of exclusive control or exclusive use’ with a sense of permanence, which limits other nations’ access to it.”) (quoting Milton L. Smith, The Role of the ITU in the Development of Space Law, 17 ANNALS AIR & SPACE L. 157, 165 (1992)). \*\*End Footnote 217\*\*]The ITU even allows nations with unused slots to devise them to other entities, creating a market for the property rights set up by this regulation.218 In some aspects, this seems to effect exactly what those signatory nations of the Bogotá Declaration were trying to accomplish, albeit through different means.219

Violation—they don’t—they affirm appropriation of a TV show by a billionaire

#### Topicality is key to limits and ground---redefining portions of the resolution permits endless reclarification AND creates incentives for avoidance---only aligning research with agent and mechanism solves.

#### Two impacts:

#### 1---Fairness---an unlimited, unpredictable topic disparately raises the research burden for the negative -- treat this is a sufficient win condition because fairness is the logical structure that undergirds all impacts AND controls any benefit to debate.

**Dascal and Knoll** ’**11** [Marcelo and Amnon; May 18th; former Professor of Philosophy at Tel Aviv University, B.A. in Philosophy from the University of Sao Paulo; former Professor of Philosophy at Tel Aviv University; Argumentation: Cognition and Community, "'Cognitive systemic dichotomization' in public argumentation and controversies," p. 20-25]

He opposes positions whose ‘exclusionist’ outlook rejects the normative approach to the political sphere on the grounds that “normative statements can never be subjected to a reasonable discussion” (ibid.: 2), because—he argues—the discussion of politics “is an area of vital interest to all of us and should clearly not be excluded from argumentative reasonableness” (ibid.: 3)—a view with which we are prone to agree. Nevertheless, he admits that in the present situation critical discussion is far from being systematically and successfully applied to that vital area: “In representative democracies, however, the out-comes of the political process tend to be predominantly the product of negotiations be-tween political leaders rather than the result of a universal and mutual process of deliberative disputation” (ibid.). Political debates, therefore, are ‘quasi-discussions’, i.e., “monologues calculated only to win the audience’s consent to one’s own views”, rather than ‘genuine discussions’, i.e., serious attempts to have an intellectual exchange, which is typical of critical discussions (ibid.). In order to overcome this situation, “democracy should always have promoted such a critical discussion of standpoints as a central aim. Only if this is the case can stimulating participation in political discourse enhance the quality of democracy" (ibid.). This can be achieved, however, only by following “the dialectical rules for argumentative discourse that make up a code of conduct for political discourse [and] are therefore of crucial importance to giving substance to the ideal of participatory democracy” (ibid.: 4); thereby fully acknowledging that “education in processing argumentation in a critical discussion is indispensable for a democratic society (van Eemeren 1995: 145-146).

The reasons provided for the failure of the adoption of the critical discussion model in reality ranges from a general allusion to human nature (“in real-life contexts, it has to be taken into account that human interaction is not always automatically 'naturally' and fully oriented toward the ideal of dialectical reasonableness "; van Eemeren 2010: 4) to specific political sphere argumentation handicaps (unwillingness of people “to subject their thinking to critical scrutiny”; “vested interest in particular outcome”; “inequality in power and resources; “different levels of critical skills”; and “a practical demand for an immediate settlement”; van Eemeren 2010: 4). Although these causes may have some explanatory value in some cases, in our opinion their modus operandi is not accounted for and, what is more important, they do not cover the full spectrum of challenges that the successful use of critical discussion in the public and political spheres must face, as we have seen (cf. sections 2 and 3).

No wonder that van Eemeren himself raises the question “whether maintaining the dialectical ideal of critical discussion in political and other real-life contexts is not utopian” (ibid.), to which he replies by admitting that "[t]he ideal of a critical discussion is by definition not a description of any kind of reality but sets a theoretical standard that can be used for heuristic, analytic and evaluative purpose” (ibid.). This ideal seems to be so inspiring that it remains valid as a pure theoretical ideal, “even if the argumentative discourse falls short of the dialectical ideal” (ibid.).

In the light of the substantial gap between the normative ideal and the actual practices of public and political argumentation that PD’s description and explanation provides, a number of doubts arise: Are there structural, rather than merely contingent obstacles in idealized critical discussion that prevents even its approximate use in the public sphere? Can a theory that claims to be a praxis based normative system fulfill its promise if it sets up a threshold that no one who tries to apply it to the public sphere can reach? Doesn’t the very fact that argumentation is excessively idealized in the model PD proposes cause the gap by distancing people concerned by public issues from argumentation at all? All these doubts suggest that a powerful structural phenomenon like the existence of CSDs in the public sphere is perhaps overlooked by PD and requires, for its overcoming, a radically different approach.

4.2 Discrepancies between the PD approach and reasonable argumentation in the public sphere

The discrepancies in question have to do with basic parameters relevant to every argumentative process, namely:

(A) The discussants’ goals and targets: what do they expect to achieve through the argumentation process and what is it capable of providing.

(B) The preconditions for initiating a critical discussion: what are the discussants presumed to know and accept of these preconditions.

(C) The argumentative process that is supposed to lead to the achievement of the discussants’ goals.

(D) The influence of context and agents on the argumentative process.

4.2.1 Goals

Assuming that argumentation is a voluntary endeavor, the parties are presumed to engage in it if and only if: (i) the process will serve their goals; (ii) these goals cannot be achieved by different, better means.

PD describes as follows the aim of engaging in an argumentative process:

Argumentation is basically aimed at resolving a difference of opinion about the acceptability of a standpoint by making an appeal to the other party's reasonableness. (van Eemeren 2010: 1, with reference to van Eemeren & Grootendorst 2004: 11-18)

The difference of opinion is resolved when the antagonist accepts the protagonist's viewpoint on the basis of the arguments advanced or when the protagonist abandons his viewpoint as a result of the critical responses of the antagonist. (van Eemeren 2010: 33)

Simply put, the basic assumption is that a critical discussion’s aim consists in putting forth a certain position by one of the parties for the critical examination of the other, who calls it into question. The latter undertakes to refute the former’s position, while its proponent is committed to defend it. Four stages (see below) are supposed to ensure a valid performance of the refutation and defense tasks. The essential point is that at the end of the four stages the parties clearly agree whether the proponent’s position has been refuted or not and, accordingly, change their position (either retracting it or withdrawing from his questioning). In ‘mixed’ disagreements, in which the antagonist not only questions but also puts forth an opposed position, the same process takes place sequentially, i.e., at first one side (A) attacks trying to refute the other’s (B) position, and after this stage is concluded, they switch roles and the second side (B) proceeds to attack the first (A) in the same fashion.

Regardless of whether the described process is indeed capable to yield a conclusive decision about the refutation of a position, and of whether the linearity of the refutation process makes sense, it is obvious that debates in the public sphere are for the most part ‘mixed’. Furthermore, in so far as these debates involve dichotomous positions (rather than just opposed ones), it is necessary that at the end of the PD process one of the parties accept the position of the other.

It is also worth noticing that, contrary to deliberative democracy approaches, which in some cases approve the attempt to reach agreement in a (public) debate as a form of justification of political systems, PD claims that it is not a consensus theory at all. Instead, it conceives itself as a theory based on Popper’s critical rationality, i.e., as having as its principal goal to provide each party with the means—i.e., refutation attempts—to test critically its position:

[T]he conception of reasonableness upheld in pragma-dialectics insights from critical rationalist epistemology and utilitarian ethics conjoin … The intersubjective acceptability we attribute to the procedure, which is eventually expected to lend conventional validity to the procedure, is primarily based on its instrumentality in doing the job it is intended to do: re-solving a difference of opinion. … This means that, philosophically speaking, the rationale for accepting the pragma-dialectical procedure is pragmatic—more precisely, utilitarian [italics in quoted text]. … However, based on Popper's falsification idea, this is a ‘negative’ and not ‘positive’, utilitarianism. … Rather than maximization of agreement, minimization of disagreement is to be aimed for. (van Eemeren 2010: 34)

The distinction between maximization of agreement and minimization of disagreement purports to stress that PD doesn’t view agreement as the suitable end of the process, but just as “an intermediate step on the way to new, and more advanced, disagreements” (van Eemeren 2010: 26n). Nevertheless, no explanation is given of how these “more advanced disagreements” are engendered as a part of the dynamics of the critical process, nor what is the role or value of such disagreements in the public sphere or elsewhere. This may be due to the fact that PD’s ‘critical discussion’ is not tuned to the generation of new positions or ideas but only to the testing of extant ones, thus echoing once again Popper, now in his focus on the justification rather than on the discovery of theories (see sections 4.2.4 and 5).

In any case, it is quite clear that the only practical result of the critical discussion à la PD of opposed positions on a public issue is to determine whether one discussant succeeded in refuting the other’s position, thus obtaining the adversary’s agreement, who will then share his/her position, at least for some time. In this respect, PD’s critical discussion is close to Habermas’s ‘reasonable argumentation’, whose aim is to reach consensus.15 In spite of the apparent difference between a critical examination of a position aiming at its refutation or at its acceptance, even van Eemeren admits, to some extent, their similarity. He points out that “the pragma-dialectical procedure deals only with ‘first order’ conditions for resolving differences of opinion on the merits by means of critical discussion” (van Eemeren 2010: 34), and stresses that there are ‘higher order’ conditions, ‘internal’ and ‘external’, that are “beyond the agent’s control”, conditions that are similar to Habermas’s “ideal speech conditions” (van Eemeren 2010: 35n). Anyhow, whether according to PD the main goal of the critical discussion process in the public alliance is to create the opportunity for refutation or for agreement (meaning that one of the discussants acknowledges that his position is wrong), the essential assumption of this process is that the participants in it in the public sphere (or elsewhere) must be aware that one of them holds a wrong position and will have to explicitly acknowledge this.

Is such a goal, especially when conceived as the ultimate aim of the proposed argumentative process, feasible and acceptable in the public sphere?

In our opinion, there are at least four reasons for arguing that it is a utopian, hence unacceptable goal, if one takes seriously what should be expected from argumentative practice and theory in the public sphere. First, because PD deserves a critique similar to the one leveled against the Popperian version of critical rationalism it espouses,16 which defends a theory of knowledge “without a knowing subject” (Popper 1972); obviously, such a-contextual position becomes even more problematic if applied to the public and political spheres, where it must operate in a context essentially involved with practical rationality. Second, due to its analogy with theories such as Habermas’s that were discussed in this section as well as in 2.2—an analogy that deserves additional criticism because, unlike Habermasianism, PD overlooks the relationship between the political and public context and argumentative practice. Third, because of PD’s total overlooking of the role of CSDs in public argumentation (cf. 4.2.2). And fourth, due to unilateral value judgments of positions in the public sphere, which lead to simplistic criteria of refutation or acceptance in a domain where complexity is the rule (cf. 2.1.1 and 4.2.3).

(ii) Let us admit, for the sake of argument, that the refutation goal as claimed by PD is central, feasible, acceptable, and useful in public argumentation. Aren’t there better ways to achieve this goal?

The refutation and defense moves stipulated by the PD critical discussion model include, on the one side, the antagonist’s critical remarks or demands and on the other, the proponent’s replies. We believe that it must be assumed that neither the critique nor the replies are previously known to the contenders, which is why they have an interest in engage in the argumentation process: presumably, the expression of both, counter-arguments and defensive-arguments, is good to both sides. In spite of its usefulness in certain situations, this kind of exchange does not amount to the full manifestation of the dialectical critical process, wherein the context and co-text of the dialectical exchange, as well as the cognitive interaction that takes place and evolves throughout the exchange, play a decisive role in the design and ‘inner’ justification of each of the participants’ moves. Argumentation strategies that take into account these resources and make full use of their potential are no doubt setting up another, broader span of goals for the argumentative process, and are more likely to achieve these goals more effectively than they certainly would achieve their PD more limited counterparts (cf. 4.2.4 and 5).

4.2.2 Preconditions

The ideal PD critical discussion can only be realized if some preconditions are satisfied. The most important ones are a) a clear-cut identification of the standpoint that provokes the disagreement, b) the decision of the parties to engage in a discussion, and c) the participants’ commitment to obey the procedural rules. As we shall see, these preconditions share a common assumption, which calls into question the feasibility of using critical discussion in the public sphere.

(A) This precondition assumes that it is possible to isolate rigorously the subject matter of a critical discussion, so as to conduct a focused discussion that makes use only of relevant arguments. This precondition is quite strict, for whenever both discussants defend contrary standpoints, their disagreement should be treated as two separate fully fledged discussions: “… if another discussion begins, it must go through the same stages again—from confrontation stage to concluding stage” (van Eemeren 2010: 10n).

(B) This precondition subordinates the decision to engage in the discussion to the evaluation that the discussants share enough common ground to pursue it adequately: “After the parties have decided that there is enough common ground to conduct a discussion …” (van Eemeren 2010: 33).

(C) This precondition stresses the ‘contractual’ character of a critical discussion, which requires explicit mutual commitments by the discussants. Its rationale is that without such commitments the aim of the critical discussion, i.e., the resolution of the difference of opinions, will not be achieved, which makes engaging in the discussion pointless: “There is no point in venturing to resolve a difference … if there is no mutual commitment to a common starting point, which may include procedural commitments as well as substantive agreement” (van Eemeren and Grootendorst 2004: 60).

These ‘first order’ preconditions, as they are labeled in PD (cf. van Eemeren 2010: 33), are the conditions that candidates to participate in a critical discussion must fulfill if they intend to do so and can afford it personally (a ‘second order’ condition) and politically (a ‘third order’ condition).17 In addition, the first order conditions demand from the prospective discussants a clear, distinct, and detailed picture of the scope of the discussion that they are about to engage in. This means not mixing up the various differences of opinion that the discussion may involve, and being able to separate them properly as the subject matter for independent discussions; a further requirement is the anticipated identification of the pieces of the ‘substantive agreement’ forming the starting point in order to ensure that they are sufficient for conducting the discussion up to a satisfactory closure.

#### 2---Clash---forfeiting government action sanctions retreat from controversy and forces the negative to concede solvency before winning a link -- clash is the necessary condition for distinguishing debate from discussion, but negation exists on a sliding scale -- that jumpstarts the process of critical thinking, reflexivity, and argument refinement.

#### 3---Movement Lawyering Skills – contingent, focused debates around locus points of difference are key to develop activists skills for political justice.

Archer 18, Deborah N. "Political Lawyering for the 21st Century." Denv. L. Rev. 96 (2018): 399. (Associate Professor of Clinical Law at NYU School of Law)//Elmer

Political justice lawyers must be able to break apart a systemic problem into manageable components. The complexity of social problems, can cause law students, and even experienced political lawyers, to become overwhelmed. In describing his work challenging United States military and economic interventions abroad, civil rights advocate and law professor Jules Lobel wrote of this process: “Our foreign-policy litigation became a sort of Sisyphean quest as we maneuvered through a hazy maze cluttered with gates. Each gate we unlocked led to yet another that blocked our path, with the elusive goal of judicial relief always shrouded in the twilight mist of the never-ending maze.”144 Pulling apart a larger, systemic problem into its smaller components can help elucidate options for advocacy. An instructive example is the use of excessive force by police officers against people of color. Every week seems to bring a new video featuring graphic police violence against Black men and women. Law students are frequently outraged by these incidents. But the sheer frequency of these videos and lack of repercussions for perpetrators overwhelm those students just as often. What can be done about a problem so big and so pervasive? To move toward justice, advocates must be able to break apart the forces that came together to lead to that moment: intentional discrimination, implicit bias, ineffective training, racial segregation, lack of economic opportunity, the over-policing of minority communities, and the failure to invest in non-criminal justice interventions that adequately respond to homelessness, mental illness, and drug addiction. None of these component problems are easily addressed, but breaking them apart is more manageable—and more realistic—than acting as though there is a single lever that will solve the problem. After identifying the component problems, advocates can select one and repeat the process of breaking down that problem until they get to a point of entry for their advocacy. 2. Identifying Advocacy Alternatives As discussed earlier, political justice lawyering embraces litigation, community organizing, interdisciplinary collaboration, legislative reform, public education, direct action, and other forms of advocacy to achieve social change. After parsing the underlying issues, lawyers need to identify what a lawyer can and should do on behalf of impacted communities and individuals, and this includes determining the most effective advocacy approach. Advocates must also strategize about what can be achieved in the short term versus the long term. The fight for justice is a marathon, not a sprint. Many law students experience frustration with advocacy because they expect immediate justice now. They have read the opinion in Brown v. Board of Education, but forget that the decision was the result of a decades-long advocacy strategy.145 Indeed, the decision itself was no magic wand, as the country continues to work to give full effect to the decision 70 years hence. Advocates cannot only fight for change they will see in their lifetime, they must also fight for the future.146 Change did not happen over night in Brown and lasting change cannot happen over night today. Small victories can be building blocks for systemic reform, and advocates must learn to see the benefit of short-term responsiveness as a component of long-term advocacy. Many lawyers subscribe to the American culture of success, with its uncompromising focus on immediate accomplishments and victories.147 However, those interested in social justice must adjust their expectations. Many pivotal civil rights victories were made possible by the seemingly hopeless cases that were brought, and lost, before them.148 In the fight for justice, “success inheres in the creation of a tradition, of a commitment to struggle, of a narrative of resistance that can inspire others similarly to resist.”149 Again, Professor Lobel’s words are instructive: “the current commitment of civil rights groups, women’s groups, and gay and lesbian groups to a legal discourse to legal activism to protect their rights stems in part from the willingness of activists in political and social movements in the nineteenth century to fight for rights, even when they realized the courts would be unsympathetic.”150 Professor Lobel also wrote about Helmuth James Von Moltke, who served as legal advisor to the German Armed Services until he was executed in 1945 by Nazis: “In battle after losing legal battle to protect the rights of Poles, to save Jews, and to oppose German troops’ war crimes, he made it clear that he struggled not just to win in the moment but to build a future.”151 3. Creating a Hierarchy of Values Advocates challenging complex social justice problems can find it difficult to identify the correct solution when one of their social justice values is in conflict with another. A simple example: a social justice lawyer’s demands for swift justice for the victim of police brutality may conflict with the lawyer’s belief in the officer’s fundamental right to due process and a fair trial. While social justice lawyers regularly face these dilemmas, law students are not often forced to struggle through them to resolution in real world scenarios—to make difficult decisions and manage the fallout from the choices they make in resolving the conflict. Engaging in complex cases can force students to work through conflicts, helping them to articulate and sharpen their beliefs and goals, forcing them to clearly define what justice means broadly and in the specific context presented. Lawyers advocating in the tradition of political lawyering anticipate the inevitable conflict between rights, and must seek to resolve these conflicts through a “hierarchy of values.”152 Moreover, in creating the hierarchy, the perspectives of those directly impacted and marginalized should be elevated “because it is in listening to and standing with the victims of injustice that the need for critical thinking and action become clear.”153 One articulation of a hierarchy of values asserts “people must be valued more than property. Human rights must be valued more than property rights. Minimum standards of living must be valued more than the privileged liberty of accumulated political, social and economic power. Finally, the goal of increasing the political, social, and economic power of those who are left out of the current arrangements must be valued more than the preservation of the existing order that created and maintains unjust privilege.”154 C. Rethinking the Role of the Clinical Law Professor: Moving From Expert to Colleague Law students can learn a new dimension of lawyering by watching their clinical law professor work through innovative social justice challenges alongside them, as colleagues. This is an opportunity not often presented in work on small cases where the clinical professor is so deeply steeped in the doctrine and process, the case is largely routine to her and she can predict what is to come and adjust supervision strategies accordingly.155 However, when engaged in political lawyering on complex and novel legal issues, both the student and the teacher may be on new ground that transforms the nature of the student-teacher relationship. A colleague often speaks about acknowledging the persona professors take on when they teach and how that persona embodies who they want to be in the classroom—essentially, whenever law professors teach they establish a character. The persona that a clinical professor adopts can have a profound effect on the students, because the character is the means by which the teacher subtly models for the student—without necessarily ever saying so— the professional the teacher holds herself to be and the student may yet become. In working on complex matters where the advocacy strategy is unclear, the clinical professor makes himself vulnerable by inviting students to witness his struggles as they work together to develop the most effective strategy. By making clear that he does not have all of the answers, partnering with his students to discover the answers, and sharing his own missteps along the way, a clinical law professor can reclaim opportunities to model how an experienced attorney acquires new knowledge and takes on new challenges that may be lost in smaller case representation.156 Clinical law faculty who wholeheartedly subscribe to the belief that professors fail to optimize student learning if students do not have primary control of a matter from beginning to end may view a decision to work in true partnership with students on a matter as a failure of clinical legal education. Indeed, this partnership model will inevitably impact student autonomy and ownership of the case.157 But, there is a unique value to a professor working with her student as a colleague and partner to navigate subject matter new to both student and professor.158 In this relationship, the professor can model how to exercise judgment and how to learn from practice: to independently learn new areas of law; to consult with outside colleagues, experts in the field, and community members without divulging confidential information; and to advise a client in the midst of ones own learning process.159 III. A Pedagogical Course Correction “If it offends your sense of justice, there’s a cause of action.” - Florence Roisman, Professor, Indiana University School of Law160 In response to the shifts in my students’ perspectives on racism and systemic discrimination, their reluctance to tackle systemic problems, their conditioned belief that strategic litigation should be a tool of last resort, and my own discomfort with reliance on small cases in my clinical teaching, I took a step back in my own practice. How could I better teach my students to be champions for justice even when they are overwhelmed by society’s injustice; to challenge the complex and systemic discrimination strangling minority communities, and to approach their work in the tradition of political lawyering. I reflected not only on my teaching, but also on my experiences as a civil rights litigator, to focus on what has helped me to continue doing the work despite the frustrations and difficulties. I realized I was spending too much time teaching my students foundational lawyering skills, and too little time focused on the broader array of skills I knew to be critical in the fight for racial justice. We regularly discussed systemic racism during my clinic seminars in order to place the students’ work on behalf of their clients within a larger context. But by relying on carefully curated small cases I was inadvertently desensitizing my students to a lawyer’s responsibility to challenge these systemic problems, and sending the message that the law operates independently from this background and context. I have an obligation to move beyond teaching my students to be “good soldiers for the status quo” to ensuring that the next generation is truly prepared to fight for justice.161 And, if my teaching methods are encouraging the reproduction of the status quo it is my obligation to develop new interventions.162 Jane Aiken’s work on “justice readiness” is instructive on this point. To graduate lawyers who better understand their role in advancing justice, Jane Aiken believes clinics should move beyond providing opportunities for students to have a social justice experience to promoting a desire and ability to do justice.163 She suggests creating disorienting moments by selecting cases where students have no outside authority on which to rely, requiring that they draw from their own knowledge base and values to develop a legal theory.164 Disorienting moments give students: experiences that surprise them because they did not expect to experience what they experienced. This can be as simple as learning that the maximum monthly welfare benefit for a family of four is about $350. Or they can read a [ ] Supreme Court case that upheld Charles Carlisle’s conviction because a wyer missed a deadline by one day even though the district court found there was insufficient evidence to prove his guilt. These facts are often disorienting. They require the student to step back and examine why they thought that the benefit amount would be so much more, or that innocence would always result in release. That is an amazing teaching moment. It is at this moment that we can ask students to examine their own privilege, how it has made them assume that the world operated differently, allowing them to be oblivious to the indignities and injustices that occur every day.165 Giving students an opportunity to “face the fact that they cannot rely on ‘the way things are’ and meet the needs of their clients” is a powerful approach to teaching and engaging students.166 But, complex problems call for larger and more sustained disorienting moments. Working with students on impact advocacy in the model of political lawyering provides a range of opportunities to immerse students in disorienting moments. A. Immersing Students in “Disorienting Moments”: Race, Poverty, and Pregnancy Today, I try to immerse my students in disorienting moments to make them justice ready and move them in the direction of political lawyering. My clinic docket has always included a small number of impact litigation matters. However, in the past these cases were carefully screened to ensure that they involved discrete legal issues and client groups. In addition, our representation always began after our outside co-counsel had already conducted an initial factual investigation, identified the core legal issues, and developed an overall advocacy strategy, freeing my students from these responsibilities. Now, my clinic takes on impact matters at earlier stages where the strategies are less clear and the legal questions are multifaceted and ill- defined. This mirrors the experiences of practicing social justice lawyers, who faced with an injustice, must discover the facts, identify the legal claims, develop strategy, cultivate allies, and ultimately determine what can be done—with the knowledge that “nothing” is not an option. This approach provides students with the space to wrestle with larger, systemic issues in a structured and supportive educational environment, taking on cases that seem difficult to resolve and working to bring some justice to that situation. They are also gaining experience in many of the fundamentals of political lawyering advocacy. Recently, my students began work on a new case. Several public and private hospitals in low-income New York City neighborhoods are drug testing pregnant women or new mothers without their knowledge or informed consent. This practice reflects a disturbing convergence between racial and economic disparities, and can have a profound impact on the lives of the poor women of color being tested at precisely the time when they are most in need of support. We began our work when a community organization reached out to the clinic and spoke to us about complaints that hospitals around New York City were regularly testing pregnant women—almost exclusively women of color—for drug use during prenatal check ups, during the chaos and stress of labor and delivery, or during post-delivery. The hospitals report positive test results to the City’s Administration for Children’s Services (“ACS”), which is responsible for protecting children from abuse and neglect, for further action.167 Most of the positive tests are for marijuana use. After a report is made, ACS commences an investigation to determine whether child abuse or neglect has taken place, and these investigations trigger inquiries into every aspect of a family’s life. They can lead to the institution of child neglect proceedings, and potentially to the temporary or permanent removal of children from the household. Even where that extreme result is avoided, an ACS investigation can open the door to the City’s continued, and potentially unwelcome, involvement in the lives of these families. These policies reflect deeply inequitable practices. Investigating a family after a positive drug test is not necessarily a bad thing. After all, ACS offers a number of supportive services that can help stabilize and strengthen vulnerable families. And of course, where children’s safety is at risk, removal may sometimes be the appropriate result. However, hospitals do not conduct regular drug tests of mothers in all New York City communities. Private hospitals in wealthy areas rarely test pregnant women or new mothers for drug misuse. In contrast, at hospitals serving poor women, drug testing is routine. Race and class should not determine whether such testing, and the consequences that result, take place. Investigating the New York City drug-testing program immersed the students in disorienting moments at every stage of their work. During our conversations, the students regularly expressed surprise and discomfort with the hospitals’ practices. They were disturbed that public hospitals— institutions on which poor women and women of color rely for something as essential as health care—would use these women’s pregnancy as a point of entry to control their lives.168 They struggled to explain how the simple act of seeking medical care from a hospital serving predominantly poor communities could deprive patients of the respect, privacy, and legal protections enjoyed by pregnant women in other parts of the City. And, they were shocked by the way institutions conditioned poor women to unquestioningly submit to authority.169 Many of the women did not know that they were drug tested until the hospital told them about the positive result and referred them to ACS. Still, these women were not surprised: that kind of disregard, marginalization, and lack of consent were a regular aspect of their lives as poor women of color. These women were more concerned about not upsetting ACS than they were about the drug testing. That so many of these women could be resigned to such a gross violation of their rights was entirely foreign to most of my students. B. Advocacy in the Face of Systemic Injustice Although the students are still in the early stages of their work, they have already engaged in many aspects of political justice lawyering. They approached their advocacy focused on the essence of political lawyering— enabling poor, pregnant women of color who enjoy little power or respect to claim and enjoy their rights, and altering the allocation of power from government agencies and institutions back into the hands of these women. They questioned whose interests these policies and practices were designed to serve, and have grounded their work in a vision of an alternative societal construct in which their clients and the community are respected and supported. The clinic students were given an opportunity to learn about social, legal, and administrative systems as they simultaneously explored opportunities to change those systems. The students worked to identify the short and long term goals of the impacted women as well the goals of the larger community, and to think strategically about the means best suited to accomplish these goals. And, importantly, while collaborating with partners from the community and legal advocacy organizations, the students always tried to keep these women centered in their advocacy. In breaking down the problem of drug testing poor women of color, the students worked through an issue that lives at the intersection of reproductive freedom, family law, racial justice, economic inequality, access to health care, and the war on drugs. In their factual investigation, which included interviews of impacted women, advocates, and hospital personnel, and the review of records obtained through Freedom of Information Law requests, the students began to break down this complex problem. They explored the disparate treatment of poor women and women of color by health care providers and government entities, implicit and explicit bias in healthcare, the disproportionate referral of women of color to ACS, the challenges of providing medical services to underserved communities, the meaning of informed consent, the diminished rights of people who rely on public services, and the criminalization of poverty. The students found that list almost as overwhelming as the initial problem itself, but identifying the components allowed the students to dig deeper and focus on possible avenues of challenge and advocacy. It was also critically important to make the invisible forces visible, even if the law currently does not provide a remedy. Working on this case also gave the students and me the opportunity to work through more nuanced applications of some of the lawyering concepts that were introduced in their smaller cases, including client-centered lawyering when working on behalf of the community; large-scale fact investigation; transferring their “social justice knowledge” to different contexts; crafting legal and factual narratives that are not only true to the communities’ experience, but can persuade and influence others; and how to develop an integrated advocacy plan. The students frequently asked whether we should even pursue the matter, questioning whether this work was client- centered when it was no longer the most pressing concern for many of the women we met. These doubts opened the door to many rich discussions: can we achieve meaningful social change if we only address immediate crises; can we progress on larger social justice issues without challenging their root causes; how do we recognize and address assumptions advocates may have about what is best for a client; and how can we keep past, present, and future victims centered in our advocacy? The work on the case also forced the clinic students to work through their own understanding of a hierarchy of values. They struggled with their desire to support these community hospitals and the public servants who work there under difficult circumstances on the one hand, and their desire to protect women, potentially through litigation, from discriminatory practices. They also struggled to reconcile their belief that hospitals should take all reasonable steps to protect the health and safety of children, as well as their emotional reaction to pregnant mothers putting their unborn children in harms way by using illegal drugs against the privacy rights of poor and marginalized women. They were forced to pause and think deeply about what justice would look like for those mothers, children, and communities. CONCLUSION America continues to grapple with systemic injustice. Political justice lawyering offers powerful strategies to advance the cause of justice—through integrated advocacy comprising the full array of tools available to social justice advocates, including strategic systemic reform litigation. It is the job of legal education to prepare law students to become effective lawyers. For those aspiring to social justice that should include training students to utilize the tools of political justice lawyers. Clinical legal offers a tremendous opportunity to teach the next generation of racial and social justice advocates how to advance equality in the face of structural inequality, if only it will embrace the full array of available tools to do so. In doing so, clinical legal education will not only prepare lawyers to enact social change, they can inspire lawyers overwhelmed by the challenges of change. In order to provide transformative learning experiences, clinical education must supplement traditional pedagogical tools and should consider political lawyering’s potential to empower law students and communities.

#### They don’t get to weigh the aff – it’s just as likely that they’re winning it because we weren’t able to effectively prepare to defeat it. Reject arguments written by former debaters—

#### Filter their offense through truth testing – if it’s true their opaque, then there’s no way to gauge whether their strategy is good absent just trusting them. Proves absent contestation you vote neg on presumption because the aff could be equally a good or bad idea.

#### TVA---States ought to ban appropriation of outer space by private actors--The Advantage is Cosmic Colonialism.

#### Private appropriation of outer space expands corporate colonialism.

Shammas and Holen 19 [(Victor L, a sociologist working at the Department of Sociology and Human Geography, University of Oslo; Tomas B., independent scholar in Oslo, Norway) “One giant leap for capitalistkind: private enterprise in outer space,” 1-29-2019, pg. 3-5] TDI

The 2010s may very well be remembered as the ‘Age of NewSpace', the decade when outer space was turned into a capitalist space, when private corporations pushed the price of launches, satellites, and space infrastructure downwards, exerting what industry insiders call the ‘SpaceX effect' (Henry, 2018), centered on the technological achievement of ‘reusability', recovering used rocket boosters for additional launches, promising to drastically reduce the price of going to space (Morring, 2016). As one report observes, ‘Not only has the number of private companies engaged in space exploration grown remarkably in recent years, these companies are quickly besting their government-sponsored competitors' (Houser, 2017). What the rockets, shuttles, ships, and landing pods will carry beneath their payload fairing or in their cargo hold, however, along with supplies and satellites, is the capitalist worldview, a particular ideology—just as Robinson Crusoe, in Marx’s ironic retelling in Capital, ‘having saved a watch, ledger, ink and pen from the shipwreck… soon begins, like a good Englishman, to keep a set of books' (Marx, 1976, p. 170), brings with him English political economy—'Freedom, Equality, Property and Bentham', as Marx (1976, p. 280) says elsewhere— to his desert island.

In early 2018, astronomers across the world learned that a New Zealand start-up, Rocket Lab, which aimed to launch thousands of miniature satellites into orbit around Earth (so-called ‘smallsats'), had planned to launch a giant, shining ‘disco ball'—the ‘Humanity Star'—into orbit around Earth. It was an elaborate marketing stunt masked by humanistic idealism. ‘No matter where you are in the world, or what is happening in your life', said Rocket Lab CEO Peter Beck, ‘everyone will be able to see the Humanity Star in the night sky' (Amos, 2018). Many astronomers expressed outrage at these plans, fearing that the light from the Human Star would threaten their ability to carry out scientific observations. But while these astronomers were incensed by the idea of a bright geodesic object disrupting their ability to carry out observations, concerns with the effects of the arrival of capitalistkind on their ability to collect data were non-existent. The astronomical community was angered by the idea of a material, concrete, visible object polluting “pure” scientific data, but it paid less attention to the (invisible and abstract) recuperation of the night sky as it was brought into the fold of capitalism.

In an interview, Beck was quizzed about the Humanity Star and asked by a reporter about the difficulties of generating profits in space (Tucker, 2018). To this Beck replied, ‘It has always been a government domain, but we’re witnessing the democratization of it…[I]t [is] turning into a commercially dominated domain'. Beck established an equivalence established between the dissolution of space as the rightful domain of states and the advent of profitmaking ventures as signs of ‘democratization'. In space, according to Beck’s logic, democratization involves the disappearance of the state and the rise of capital. The argument, of course, is impeccably post-statist: on this account, states are monolithic, conservative Leviathans beyond the reach of popular control; corporations, on the other hand, are in principle representatives of the everyman: in the age of the start-up, any humble citizen could in theory become an agent of disruption, a force for change, an explorer of space, and a potential member of the cadre of capitalistkind. Following this logic, the question for the entrepreneurs of NewSpace is how to monetize outer space, which means turning space into a space for capital; their question is how they can deplanetarize capital and universalize it, literally speaking, that is, turn the Universe into a universe for capital. In this light, Peter Beck’s distortion of democratic ideals appears eminently sensible, equating democratization with monetization, that is, capital liberated from its earthly tethers.

Emblematic of this capitalist turn in space was the founding of Moon Express in 2011, composed of a ‘team of prominent Silicon Valley entrepreneurs…shooting for the moon with a new private venture aimed at scouring the lunar surface for precious metals and rare metallic elements' (Hennigan, 2011). Following Google’s Lunar XPRIZE—an intertwining of Silicon Valley and NewSpace’s capitalistkind—which promised a $20 million prize for the first private company to land a spacecraft on the Moon, travel 500 meters, and transmit high-definition images back to Earth, all by March 2018,9 Moon Express claimed that it would be capable of landing on the lunar surface and earn the cash prize. Their stated goal was twofold: first, to mine rare resource like Helium-3 (a steadily dwindling scarce resources on Earth), gold, platinum group metals, and water, and, second, to carry out scientific work that would ‘help researchers develop human space colonies for future generations' (Ioannou, 2017). The ordering is telling: first profits, then humanity. These were the hollow, insubstantial promises of a venture-capitalized NewSpace enterprise: in early 2018, Google announced that none of the five teams competing for the Lunar XPRIZE, including Moon Express, would reach their stated objectives by the 31 March deadline and they were taking their money back (Grush, 2018). In this sense, it was typical for NewSpace in its formative years: a corporate field populated by (overly exuberant) private enterprises who promised more than they could deliver. But the belief in NewSpace is real enough. In a tome bursting with the optimism of NewSpace, Wohlforth and Hendrix claim that ‘the commercial spaceflight industry is transforming our sense of possibility. Using Silicon Valley’s money and innovative confidence, it will soon bring mass space products to the market' (2016, p. 7).

The trope of humanity plays a key role in the rhetoric of the adherents of NewSpace. To fulfill the objectives of NewSpace, including profit maximization and the exploitation of celestial bodies, the symbolic figure of a shared humanity serves a useful purpose, camouflaging the conquest of space by capitalism with a dream of humanity boldly venturing forth into the dark unknown, thereby also providing the legitimacy and enthusiasm needed to support bolster the legitimacy of NewSpace. So long as the stargazers and SpaceX watchers are permitted their fill of ‘collective effervescence', to use Durkheim’s (1995, p. 228) concept, capitalist entrepreneurs will be able to pursue their business interests more or less as they please. The spectacle of outer space is crucial in this regard.

Crucially, however, and despite this spectacle, SpaceX’s technology might not necessarily be more sophisticated than its competitors or predecessors. Some industry insiders have rebuffed some of the more the spectacular claims of NewSpace’s proponents, arguing that launch vehicle reusability requires a (perhaps prohibitively) expensive refurbishing of the rocket engines involved in launches: ‘The economics will depend on how many times a booster can be flown, and how much the individual expense will be to refurbish the booster…each time' (Chang, 2017). Reusability may be a technological dead-end because of the inherently stressful effects of a rocket launch on the launch vehicle’s components, with extreme limitations on reusability beyond second-use as well as added risks of malfunctions that customers and insurers are likely to wish to avoid. Furthermore, the Falcon Heavy still has not matched the power and payload capacity of NASA’s Saturn V, a product of 1960s military-industrial engineering and Fordist state spending programs. What SpaceX and other NewSpace corporations do with great ingenuity, however, is to manage the spectacle of outer space, producing outpourings of public fervor, aided by a widespread adherence to the ‘Californian Ideology' (Barbrook and Cameron, 1996), or post-statist techno-utopianism, in many postindustrialized societies.

The very centrality of these maneuvers has initiated a new phase in the history of capitalist relations, that of ‘charismatic accumulation'—certainly not in the sense of any ‘objective' or inherent charismatic authority, but with a form of illusio, to speak with Bourdieu, vested in the members of capitalistkind by their uncanny ability to spin mythologizing self-narratives. This has always been part of the capitalist game, from Henry Ford and onwards, but the charismatic mission gains a special potency in the grandiose designs of NewSpace’s entrepreneurs. Every SpaceX launch is a quasi-religious spectacle, observed by millions capable of producing a real sense of wonder in a condition of (legitimizing) collective effervescence.

Outer space necessarily reduces inter-human difference to a common denominator or a shared species-being. An important leitmotiv in many Hollywood science fiction movies, including Arrival (2016), is that a first encounter with an alien species of intelligent beings tends to flatten all human difference (including ethnoracial and national categories), thereby restoring humankind to its proper universality (see also Novoa, 2016). Ambassadors of Earth as a whole, not representatives of particular nations, step forth to meet alien emissaries. But even in the absence of such an encounter, the search for habitable domains (or rather, profitable locales) beyond Earth will necessarily forge a shared conception of the human condition, initiated with the Pale Blue Dot photograph in 1990. Typical of this sentiment are the words of the astronomer Carl Sagan, who famously observed of this photograph: ‘On it everyone you love, everyone you know, everyone you ever heard of, every human being who ever was, lived out their lives'.

This naïvely humanistic vision has been one of the dominant tropes in the discourse on space since the 1950s, and it remains strong today, as with the claims of the United Nations Office for Outer Space Affairs (UNOOSA) that their task is to ‘uphold the vision of a more equitable future for all humankind through shared achievements in space'. This representational tendency mobilizes humanism to generate enthusiasm about space-related activities. But such representations are increasingly being recuperated by capitalist enterprise, so that it is not humankind but its modulation by space capitalists that will launch into the dark unknown. It is not humankind but capitalistkind that ventures forth. In early 2018, NASA was set to request $150 million in its 2019 budget to ‘enable the development and maturation of commercial entities and capabilities which will ensure that commercial successors to the ISS…are operational when they are needed', only one of many signs that space is becoming a space for capitalism. According to one estimate, the value of just one single asteroid would be more than $20 trillion in rare earth and platinum-group metals (Lewis, 1996), a precious prize indeed for profit-hungry corporations.10 Even the UNOOSA spoke vociferously in favor of the commercialization of space, appealing variously to the ‘industry and private sector' and elevating the ‘space economy' to a central pillar in its Space2030 Agenda (including the ‘use of resources that create and provide value and benefits to the world population in the course of exploring, understanding and utilizing space'), even as the UN agency falls back on a humanistic, almost social-democratic vision of the equitable distribution of benefits (and profits) from space mining, exploration, and colonization (UNOOSA, 2018).

We find evidence of this strategic humanism in all manner of pronouncements from NewSpace entrepreneurs. To take but one example: Naveen Jain, the chairman and co-founder of MoonEx, a lunar commercialization firm, has claimed that ‘from an entrepreneur’s perspective, the moon has never truly been explored'. The moon, Jain has claimed, ‘could hold resources that benefit Earth and all humanity' (Hennigan, 2011). We should note the recourse to the trope of all of humanity by this NewSpace entrepreneur, mimicked in the 1979 Moon Agreement, a UN treaty, which also held that the Moon’s resources are ‘the common heritage of mankind' (Tronchetti, 2013, p. 13).11 In a purely factual sense, of course, Jain is wrong: Google Moon offers high-resolution images of the lunar surface,12 and the moon has already been explored, in the sense of being mapped, albeit rudimentarily and with room for further data collection. Crucially, however, these cartographic techniques have not been put to capitalist uses: mapping minerals, for instance, or producing detailed schemata that might one day turn the Moon into a ‘gas station' for commercial space ventures, as Wilbur Ross, Trump’s Secretary of Commerce, has proposed (Bryan, 2018). What is lacking, in short, are capitalist maps of the Moon, i.e., a cartography for capital. But as Klinger (2017: 199) notes, even though no one is ‘actively mining the Moon' at present, at least ‘six national space programs, fifty private firms, and one graduate engineering program, are intent on figuring out how to do so'; furthermore, Klinger draws attention to mapping efforts that have revealed high an abundance of rare earth metals, thorium, and iron in the Moon’s ‘Mare Procellarum KREEP' region (Klinger, 2017, p. 203).

We have already noted that it is not humanity, conceived as species-being, a Gattungswesen, that makes its way into space. The term Gattungswesen, of course, has a long intellectual pedigree, harking back to Hegel, Feuerbach, Marx, and others. The term can ‘be naturally applied both to the individual human being and to the common nature or essence which resides in every individual man and woman', Allan Wood (2004, p. 17) writes, as well as ‘to the entire human race, referring to humanity as a single collective entity or else to the essential property which characterizes this entity and makes it a single distinctive thing in its own right'. Significantly, the adherents of NewSpace often resort to the idea of humanity in its broad universality (e.g., Musk, 2017), but this denies and distorts the modulation of humanity by its imbrication with the project of global (and post-global, i.e., space-bound) capitalism. It is precisely the sort of false universality implied in the humanism of the supporters of NewSpace that Marx subjected to a scathing critique in the sixth of his Theses on Feuerbach. Here Marx noted that the human essence is not made up of some ‘abstraction inherent in each single individual' (1998, p. 570). Instead, humans are defined by the ‘ensemble of social relations' in which they are enmeshed. Under NewSpace, it is not humanity, plain and simple, that ventures forth, but a specific set of capitalist entrepreneurs, carrying a particular ideological payload, alongside their satellites, instruments, and supplies, a point noted by other sociologists of outer space, or ‘astrosociologists' (Dickens and Ormrod, 2007a, 2007b).

Switch side debate solves all of their offense—there’s no specific reason why their arguments have to be read on the aff—that solves predictability and accesses their education impact turns because plans on the aff and Ks on the neg can challenge perspectives, stances, representations, and epistemologies

## Case

#### 1] Framework – the role of the judge and ballot is to vote for the better debater—anything else is arbitrary and self-serving.

#### A] Don’t let them weigh the sum total of their impact—they only get to weigh the unique amount solved by the affirmative. Filter the debate through scope of solvency—there’s no impact to root cause if they don’t solve it

#### B] No performative or methodological offense, only offense from the plan—reject it cuz it explodes predictable limits, spiking out of neg ground making any discussion qualitatively worse

#### 2- Vote neg on presumption

#### B- They have no intrinsic benefit to specifically reading the aff within the debate space and thus no reason to affirm their strategy

#### B- Movements don’t spill up – competition means you ally yourself with people who vote for you and alienate those who are forced to debate you ensuring the failure of the movement

#### C- The regurgitation of knowledge from the 1ac proves that it is not a departure from the status quo, but rather gets coopted by academia

#### Their attempt to occupy the position of radical alterity is a double turn with their criticism of a systems-based method. Rather than escape the simulation, they merely simulate the more-radical-than-Thou archetype we’ve seen for years.

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Of course it is worth noting that there is nothing particularly original in these strategies per se, which can be found in thinkers like Pascal, Lichtenberg, Kierkegaard, Nietzsche, Wittgenstein and Lyotard. Each, in their own way, also chose these forms to explore the effects of a radical alterity which cannot be spoken of directly. However, unlike the tendency of these thinkers to put everything on the side of subjectivity Baudrillard insists on the ‘Object’ as the final figure of otherness (1993: 172). The Object is not present as such but functions as a ‘vanishing point’, and the role of theory is to mimic the challenge of the Object (1993: 173). Despite this difference the manoeuvre is fundamentally similar, and perhaps even closer to his contemporaries like Lévinas and Derrida. A radically fragmentary writing attests, through its fragmentation, gaps, and absences, to the ‘strange attractor’ that is the Object. The risk in this invocation of absolute alterity is that something will be lost: Baudrillard’s concrete tracing of the effects of simulation and alterity in the mediascape. For all its fictionality and Baudrillard’s studious avoidance of the scholarship of media studies his extreme thinking always anchored itself in the actuality of the present. In his choice of conventionally unconventional writing strategies and a conventionally unconventional thought of the Other this threatens to disappear in an unspecific and generalised invocation of absolute alterity. In the terminology of Alain Badiou, we might locate Baudrillard as part of the dissident tradition of ‘anti-philosophy’ (see Hallward, 2003: 20-23). According to Badiou this ‘tradition’ poses an ineffable transcendent meaning against philosophy, and often does so in fragmentary anti-systematic forms. Although he does not deign to mention Baudrillard his list of anti-philosophers includes most of the figures mentioned above. Identifying unequivocally with philosophy, in a new rationalist form, Badiou argues that the fundamental orientation of anti-philosophy is theological. Lurking behind the transcendent meaning or figure of radical alterity is God. From this point of view Baudrillard’s ‘criminal thought’ would be another attenuated religiosity, searching for an ever-receding mystical intuition of the ‘Object’. Now Baudrillard himself, in Simulacra and Simulation, realised the danger of the ‘anti-‘position of simply being opposed to an existing form or discourse (1994: 19). In precisely the terms I have been discussing the ‘anti-‘ position is one of simulated alterity, by means of which dead forms sustain themselves. Instead of destroying what it opposes, the pose of opposition supports and sustains it. The irony is that Baudrillard and Ballard’s invocation of the extreme crime might all too easily sustain the system of simulation they are subjecting to hypercriticism. Rather than out-bidding and accelerating simulated alterity the danger is providing a new form of simulated alterity. They are both transfixed by the possibility of a truly authentic criminal act always just out of reach. This is made even more ironic by the media fascination with ‘true crime’ – from CCTV footage of criminal acts to the fascinated horror of accounts of the activities of serial killers. Therefore I am suggesting that Baudrillard’s ‘criminal and inhumane kind of thought’ is not criminal and inhumane enough. Isn’t the problem that this criticism simply leaves us in the position, so often made by critics of Baudrillard, of an absolute pessimism in the face of inescapable systems? ‘Criminal thought’ is a failure and so we have no escape from the reign of simulated alterity, other than a quite literal faith in the Other. I want to take another line of thought developed by Baudrillard as a line of flight out of this impasse of obsession with the radical crime. His earlier text In the Shadow of the Silent Majorities (1983) avoids the language of radical alterity and the Other. Instead Baudrillard explores how the masses, the ‘silent majorities’, offer ‘the strength of inertia, the strength of the neutral’ (1983: 2). Rather than the masses incarnating any sort of excessive energy or reservoir of transgressive alterity it is their very muteness which threatens. The text makes an explicit break with sociology, including media sociology, by refusing the operation of the ascription of meaning. This refusal is undertaken in the name of the masses, which, like the new theorist (or post-theorist) are indifferent to meaning. Here we can see a strange connection traced between the indifference of the masses and the indifference of the theorist. Not that Baudrillard simply falls into the trap of being the spokesperson for this indifference, which would immediately nullify it. Instead the masses indicate the way forward for theory through passivity and inertia that refuses to respond to the relentless incitement of the media: ‘Bombarded with stimuli, messages and tests, the masses are simply an opaque, blind stratum’ (1983: 21). What is also different is the mode of challenge they offer. They do not exacerbate alterity through a further crime, or excessive violence, instead they follow the fatal strategy of hyperconformity. As Baudrillard puts it ‘You want us to consume – O.K., let’s consume always more, and anything whatsoever; for any useless and absurd purpose’ (1983: 46). Let’s take the previous example I used of new extreme horror films. They seem to incarnate a logic of simulated alterity and invite either horrified disgust or perverse celebration, both operations of giving meaning to them. What about those spectators who take the films precisely as it often seem they are intended, as a game? The game is ‘what have you got to show me?’, ‘how far will you go?’, but rather than a perverse logic of escalation or desensitisation, it is a matter of indifference. Instead of searching for an alterity that would push beyond the screen, or even the viral return of the alterity, say in forms of mimicking of the violence shown, we simply have a passive response to it as a game. There is no alterity here, but only play. One of the so-called ‘video nasties’ of the 1970s, Wes Craven’s Last House on the Left (1972), had the tagline ‘To avoid fainting, keep repeating “It’s only a movie … It’s only a movie…”‘. The playful assumption of the tagline is that the audience will identify so much with what they are watching that they will be overcome unless they remind themselves that they are only watching a film. This sense of identification with the film has also been a common assumption in film theory, especially in its psychoanalytic forms [1]. However, what if the audience does not have to keep repeating ‘it’s only a movie’ to avoid fainting? What if they recognise this simulated alterity as what it is and hyperconform to it? They play a game with the film by not treating it as real, but at the same time conforming to its effects of horror. This does not involve a simple fascination with finding an authentic transgressive excess but rather a blank passivity. In some senses it might be suggested that the increasingly extremity of recent horror films responds to this audience inertia; as this over-involvement absorbs simulated alterity the filmmakers must ‘up the stakes’, only to encounter another level of inertia. Certainly these are my own highly speculative suggestions, but I think they indicate something that Baudrillard’s own recent invocations of criminal thought and radical alterity step-back from in his own work. What is being avoided is banality in favour of the transgressive crime. This argument for the banality of the media and the hyperconformity of the masses to this banality has implications for our strategies of response that have not fully been exhausted. Within academia it is a familiar accusation that media studies is banal. In that most directly Baudrillardian of novels White Noise (1984) the character Murray, a lecturer on ‘living icons’, remarks ‘I understand music, I understand the movies, I even see how comic books can tell us things. But there are full professors in the place who read nothing but cereal boxes'; his friend replies ‘It’s the only avant-garde we’ve got’ (1999: 10). This exchange indicates something interesting, with a remark about the banality of the object being answered with the suggestion that this is our avant-garde. It identifies one of the key modes by which media studies has often justified itself: as an avant-garde political gesture. Therefore against the supposed banality of the object the media studies scholar replies by finding within that object, or more exactly in its use by the consumer, strategies of transgression or its synonyms (subversion, resistance, alterity, etc.). In this way the banality of the object is redeemed through its association with political or cultural transgression. At the same time the activity of the scholar is also redeemed from banality due to its political import, which is revealed by the superior insight of the critic. On the other side, that of cultural producers, the game of transgression is also played to elevate their own products to the status of transgressive objects. In this way academia and cultural producers position themselves with a self-confirming loop of transgression. The ‘criminal’ gesture of Baudrillard and Ballard could easily be regarded as simply a hyperbolic extension of this line of argument. They claim that although the kind of everyday transgressions identified by media scholars or practiced by cultural producers are part of the society of simulated alterity there is still a radical alterity beyond representation. This might appear to be a radical ‘out-bidding’ but it falls within the same ‘avant-garde’ logic, as well as drawing radical alterity back into representation. In a sense it retains a faith in a pure product of transgression in relation to which every actual gesture of transgression, whether critical or artistic, must necessarily fall short. The alternative I am suggesting is to reply to the critic of the banality of the media in the mode of hyperconformity: ‘You accuse the media of being banal? O.K. what I do as a critic or producer is banal, more banal and useless than you could ever know!’. The advantage of this hyperconformist response lies not simply in disarming the critic. It refuses to justify the media object in other terms (political or artistic, for example) and it refuses the frantic invocation of transgression. The account that Baudrillard and Ballard give of simulated alterity suggests that transgression is not actually transgressive; it is rather that transgression is boring. Although de Sade is often regarded as the original thinker of transgression he already came to this insight in his account of the final apathy of the libertine (see Klossowski, 1992: 28-34). To play the game of transgression is to fall within an unacknowledged banality, as well as to continue to sustain the dead forms of contemporary culture. Therefore it is a matter of pushing through and completing the banality of transgression. Of course this hyper-conformity can easily fall back into plain conformity, such as with the American artist Jeff Koons in his ‘Banality’ show of 1988. As he put it ‘[m]y work tries to present itself as the underdog. It takes a position that people must embrace everything’ (in Muthesius (ed.), 1992: 107). However, the withdrawal that I am tracing is not quiescent, but the refusal of the immediate equation of certain content with transgression and the refusal of the conformity of transgression itself. It is an attention to the politics of form. In particular it is an attention to that banality that Ballard accessed through science-fiction. As he stated in 1971: The subject matter of SF is the subject matter of everyday life: the gleam on refrigerator cabinets, the contours of a wife’s or husband’s thighs passing the newsreel images on a color TV set, the conjuncture of musculature and chromium artifact within an automobile interior, the unique postures of passengers on an airport escalator (1984: 100). Even, we might add, a cereal box. What is produced in Ballard’s work on the 1970s, and partly what attracted Baudrillard to it, is the refusal of the ascription of meaning and a free-floating attention to the ‘invisible literature’ that shapes our cultural landscapes. In Baudrillard’s reading of Crash precisely what he refused was Ballard’s positioning of the novel as traditional criticism, or his enclosing it within the logic of perversion (Baudrillard, 1994: 113). Instead of a world of transgression we have world ‘without desire’ (Baudrillard, 1994: 118). I want to suggest then that their more recent work functions still as a diagnostic but risks regression to a fascination with transgression rather than what Baudrillard calls the ‘dull splendor of banality or of violence’ (1994: 119). The return to those previous positions is then a matter of rethinking the exacerbative possibilities of form without conceding to a fixing of the form of alterity in the absolute crime or the totally Other. Contrary to the desire to find a real future crime we might follow Baudrillard’s previous suggestion for a fatal strategy: becoming-banal.