# Cards Wake Round 3

## 1AC

#### Same as round 1.

## 2AC

### Risk

#### Pragmatism is the best way to prescribe good action even despite a flawed epistemology.

Wight, University of Exeter School of Humanities and social sciences politics department, ‘7

[Colin, “Inside the epistemological cave all bets are off” <http://www.ciaonet.org/olj/jird/jird_200703_v10n1_d.pdf>, p.43-46, accessed 10-22-11, TAP]

In some respects, this might seem to place me close to the position that Kratochwil suggests is absurd. For is not my position a form of ‘anything goes’? Well, again agreeing with Kratochwil that we should reject traditional logic and its associated yes or no answers, I will reply both yes and no. 10 Yes, it is an ‘anything goes’ position insofar as I reject outright that we need to commit ourselves to any particular epistemological position in advance of making or judging particular knowledge claims. I can see no good reason for giving any specific epistemological standpoint a position of a priori privilege. But I can also answer no because this position does not mean that we are unable to make informed judgements on the basis of the evidence for the claim. The fact that philosophers have been unable to provide secure foundations for one or other epistemological stance does not alter the fact that we continue to use these positions to get along in the world. In this respect, I agree completely with Kratochwil’s claim (2007: 11) that both absolute certainty and absolute doubt are impossible positions to hold, and that we ‘go on’in a situation located somewhere in between. It may be philosophically naıve of me to claim that if I wish to know how many cars are parked in my drive, then the easiest way is to probably go and look. But I can do this without needing philosophy to prove empiricism infallible. Equally, in certain circumstances I might be able to ascertain how many cars are in my drive without looking; if, for example, I know that at time T1 that there were three cars and that one went away at time T2, then, if asked at time T3 (assuming these events are sequential), I have a legitimate case to say ‘two’. Of course, in either case, I could still be wrong but the point is that the claim about the existence of a certain number of cars can justifiably be supported on various epistemological grounds and we do not know in advance which will be the most appropriate. Hence the context in which the claim emerges is also an important aspect of its validity. In both cases, there is no doubt that observation or the process of rational deduction is theoretically laden, but to say that our concepts help carve up the world in certain ways is not to accept that they either determine the physicality of what exists or can, in all cases, stop an object from existing. 11 Again, in some respects, my position might appear to be quite close to Kratochwil’s pragmatist alternative. After all, pragmatists generally argue that we should do what works. There are certainly aspects of Kratochwil’s position that do suggest some affinities with my notion of epistemological opportunism. Thus, for example, he argues that ‘each science provides its own court and judges the appropriateness of its own methods and practices’(Kratochwil 2007: 12). This is, indeed, the position scientific realists adopt in relation to epistemological and methodological matters, although Kratochwil seems to reject that scientific realism out of hand. 12 But it is not clear why each science would need to judge the appropriateness of its own methods and practices unless there are some fundamental ontological differences that distinguish the object of study; which is exactly why scientific realists insist that ontology forms the starting point of all enquiry, not the a priori commitment to a set of scientific methods. According to the positivist view of science, there is a general set of rules, procedures and axioms which, when taken together, constitute the ‘scientific method’. Although the various strands of positivism disagree over the exact form of these axioms, the need to define them is common to all versions (Halfpenny 1982). For scientific realists, on the other hand, there can be no ‘scientific method’because differing phenomena will require differing modes of investigation and perhaps different models of explanation. This argument is embedded in the differing ontological domains that concern the individual sciences. Hence there can be no scientific method as such, since differing object domains will require methods appropriate to their study and a range of epistemological supports. Kratochwil’s position is very different. He accepts that we have to ‘search for viable criteria of assessment of our theories’(Kratochwil 2007: 1), but exactly which criteria does he suggest? First, he explicitly rejects the notion that the world itself will play any role, arguing that ‘if we recognize the constitutive nature of our concepts then we have to accept that we never ‘‘test’’ against the ‘‘real world’’ but only against other more or less-articulated theories’ (Kratochwil 2007: 3). The use of ‘never’is a very strong statement and seems to rule out any role for empirical research. 13 Of course, Kratochwil may argue that by ‘real world’he does not mean the world of experience but some Platonic realm beyond experience. But, in so doing, he would be aligning himself with the positivists who also denied the possibility of accessing reality beyond that which can be experienced. Equally, of course, the empirical is part of the real world even if it does not exhaust it. Ultimately I think Kratochwil, like the positivists, does treat the world as the ‘world of experience’. This means that he has a very philosophically idealist notion of the real world, which also means that rather than transcending the materialist/idealist dichotomy, he is clearly on one side of it. 14 There is, however, some confusion regarding this issue. For example, despite claiming that the objects of experience are the result of our constructions and interests, he also argues that no one really contests the claim that there is a common substratum to these objects (Kratochwil 2007: 6). Equally in previous work he has claimed that no one seriously doubts the existence of an independent world (Kratochwil 2000: 91). Given these claims, it seems that the point he is trying to make is the relatively uncontested idea that we describe the world in certain ways and that those descriptions play a role, perhaps even determine, in how we interact with the world. I know of no one who would object to this, but this is a long way from the claim that we construct objects in a physical sense, by describing them in particular ways, or that the world plays no role in terms of the assessment of our claims. To illustrate this issue he uses the example of a table, which he claims is something entirely different to a ‘physicist, the chemist, the cabinet maker, the user, or the art historian’(Kratochwil 2007: 6). Now, of course, how we use a table, or how we describe it is almost exclusively a matter of our discourses and interests. No one doubts this. Nor does anyone doubt that objects can be described in a number of differing ways. Yet the fact still remains that in order for any object to function as a table it needs to have a set of properties such that it can fulfill that role. Hence, we construct tables out of materials, such as wood, that have the properties of being able to support objects placed on them. No matter how creative we are within our community of rule-following scientists, we are not yet able to construct tables out of water. 15 Thus, the world itself simply cannot be discarded in the manner Kratochwil suggests. One can think of many such examples where the world does in a very real and important sense talk to us: penalizing any attempt to put out fires using petrol rather than water for example; attempting to run our cars by packing them with environmental waste; or attempting to feed the starving of the world on fresh air as opposed to substances that provide nutritional value. 16 If Kratochwil’s idealist metaphysics were correct, all of these should be possible as long as we have an interest in achieving them, and providing enough of a given community followed the rules governing this process. The nature of matter itself, however, seems to block this move, which, because we continuously interact with the material world, cannot be simply described, as Kratochwil does, as ‘irrelevant’(Kratochwil 2007: 6). In a very meaningful and practical sense the world does communicate with us, accepting or rejecting our attempts to fashion it in ways to suit our interests on the basis of its specific modes of being (Pickering 1995). Likewise, when physicists or chemists interact with a table they generally do so in terms of it being a table, to place computers on, etc. 17 Similarly, art historians also relate to tables as tables and only treat particular tables with additional properties as ‘art objects’. And it is not just any table that can function as a work of art, but only a table that does indeed possess certain properties that match it to the rules that determine what constitutes an ‘art object’. Without this, just about any table would do and the notion of forgery in art would be redundant. Of course, these issues are infinitely more complicated in the social world where existence is dependent upon language and concepts. 18 Nonetheless, even in this realm existential claims made by theorists in academia are not a necessary, or sufficient, element to bring social objects into being, and nor do academic claims to the contrary stop particular social objects from existing. Social objects existed long before institutionally located social scientists attempted to describe them. Equally, in order to transcend the materialism/idealism dichotomy, we should be wary of embracing too sharp a distinction between natural and social processes. Accordingly, it is the case that human patterns of behaviour are impacting on global environmental processes in ways we have yet to fully understand and these processes will continue irrespective of whether we reach an intersubjective agreement on what they mean. And, of course, these same human-influenced processes will react back on social life in unforeseen ways, again often irrespective of our descriptions of them. 19

#### Our description of international relations is true and ethical – game-theory proves that liberal internationalism emphasizes cooperation in protection of global goods.

Recchia and Doyle, ‘11

[Stefano (Assistant Professor in International Relations at the University of Cambridge) and Michael (Harold Brown Professor of International Affairs, Law and Political Science at Columbia University), “Liberalism in International Relations”, In: Bertrand Badie, Dirk Berg-Schlosser, and Leonardo Morlino, eds., International Encyclopedia of Political Science (Sage, 2011), pp. 1434-1439, RSR]

Relying on new insights from game theory, ¶ scholars during the 1980s and 1990s emphasized ¶ that so-called international regimes, consisting of ¶ agreed-on international norms, rules, and decision-making procedures, can help states effectively coordinate their policies and collaborate in ¶ the production of international public goods, such ¶ as free trade, arms control, and environmental ¶ protection. Especially, if embedded in formal multilateral institutions, such as the World Trade ¶ Organization (WTO) or North American Free ¶ Trade Agreement (NAFT A), regimes crucially ¶ improve the availability of information among ¶ states in a given issue area, thereby promoting ¶ reciprocity and enhancing the reputational costs ¶ of noncompliance. As noted by Robert Keohane, ¶ institutionalized multilateralism also reduces strategic competition over relative gains and thus ¶ further advances international cooperation. ¶ Most international regime theorists accepted ¶ Kenneth Waltz's (1979) neorealist assurription of ¶ states as black boxes-that is, unitary and rational ¶ actors with given interests. Little or no attention ¶ was paid to the impact on international cooperation of domestic political processes and dynamics. ¶ Likewise, regime scholarship largely disregarded ¶ the arguably crucial question of whether prolonged interaction in an institutionalized international setting can fundamentally change states' ¶ interests or preferences over outcomes (as opposed ¶ to preferences over strategies), thus engendering ¶ positive feedback loops of increased overall cooperation. For these reasons, international regime ¶ theory is not, properly speaking, liberal, and the ¶ term neoliberal institutionalism frequently used to ¶ identify it is somewhat misleading. ¶ It is only over the past decade or so that liberal ¶ international relations theorists have begun to systematically study the relationship between domestic politics and institutionalized international cooperation or global governance. This new scholarship ¶ seeks to explain in particular the close interna tional ¶ cooperation among liberal democracies as well as ¶ higher-than-average levels of delegation b)' democracies to complex multilateral bodies, such as the ¶ \ ¶ Liberalism in International Relations 1437 ¶ European Union (EU), North Atlantic Treaty ¶ Organization (NATO), NAFTA, and the WTO ¶ (see, e.g., John Ikenberry, 2001; Helen Milner & ¶ Andrew Moravcsik, 2009). The reasons that make ¶ liberal democracies particularly enthusiastic about ¶ international cooperation are manifold: First, ¶ transnational actors such as nongovernmental ¶ organizations and private corporations thrive in ¶ liberal democracies, and they frequently advocate ¶ increased international cooperation; second, ¶ elected democratic officials rely on delegation to ¶ multilateral bodies such as the WTO or the EU to ¶ commit to a stable policy line and to internationally lock in fragile domestic policies and constitutional arrangements; and finally, powerful liberal ¶ democracies, such as the United States and its ¶ allies, voluntarily bind themselves into complex ¶ global governance arrangements to demonstrate ¶ strategic restraint and create incentives for other ¶ states to cooperate, thereby reducing the costs for ¶ maintaining international order. ¶ Recent scholarship, such as that of Charles ¶ Boehmer and colleagues, has also confirmed the ¶ classical liberal intuition that formal international ¶ institutions, such as the United Nations (UN) or ¶ NATO, independently contribute to peace, especially when they are endowed with sophisticated ¶ administrative structures and information-gathering ¶ capacities. In short, research on global governance ¶ and especially on the relationship between democracy and international cooperation is thriving, and ¶ it usefully complements liberal scholarship on the ¶ democratic peace.

#### **Terrorism is predictable and we can prevent large scale instances of it**

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When you look back at some of the events leading up to the attacks of September 11, 2001, the attacks themselves can seem almost inevitable. As Silver notes, “there had been at least a dozen warnings about the potential for aircraft to be used as weapons, including a 1994 threat by Algerian terrorists to crash a hijacked jet into the Eiffel Tower, and a 1998 plot by a group linked to Al Qaeda to crash an explosives-laden airplane into the World Trade Center; The World Trade Center had been targeted by terrorists before…; Al Qaeda was known to be an exceptionally dangerous and inventive terrorist organization…; Secretary of State Condoleezza Rice had been warned in July 2001 about heightened Al Qaeda activity—and that the group was shifting its focus from foreign targets to the United States itself…; An Islamic fundamentalist named Zacarias Moussaoui had been arrested on August 16, 2001, less than a month before the attacks, after an instructor at a flight training school in Minnesota reported he was behaving suspiciously. Moussaoui, despite having barely more than 50 hours of training and having never flown solo, had sought training in a Boeing 747 simulator, an unusual request for someone who was nowhere near obtaining his pilot’s license” (loc. 7098).¶ Again, all of these events can make the 9/11 attacks seem almost inevitable. And indeed, at least some are convinced that these signs are so clear that the U.S. government must have known about the attacks beforehand; and therefore, must somehow have been involved in them (loc. 7009). The fact of the matter is, though, that events like this often seem predictable after the fact because we know exactly what to look for, whereas beforehand the signals are lost in a sea of noise (loc. 7017). As Silver notes, “our national security agencies have to sort through literally tens of thousands or even hundreds of thousands of potential warnings to find useful nuggets of information. Most of them amount to nothing” (loc. 7102).¶ Still, it is worth asking whether the U.S. government might have been better prepared for the attacks, and to what degree we can prepare ourselves for future ones. With regards to the former question, the answer would appear to be a resounding ‘yes’. To begin with, it was later determined (by the 9/11 Commission Report) that a major reason why the attacks were able to come off as ‘successful’ as they were, was because the American government had lacked the imagination to consider an attack of the kind and scope as that which occurred (loc. 7109). Indeed, as Silver points out, “the North American Aerospace Defense Command (NORAD) had actually proposed running a war game in which a hijacked airliner crashed into the Pentagon. But the idea was dismissed as being ‘too unrealistic’” (loc. 7113).¶ Now, it is one thing to fail to imagine something that is entirely without precedent, or evidence to indicate that it may occur, but neither of these can be said regarding the September 11 attacks. To begin with, while the FAA recognized the possibility of a terrorist hijacking an airplane, its protocols centered on a scenario whereby there would be a prolonged and tense standoff (loc. 7116). Meanwhile, suicide attacks by this time already had a long and storied history (loc. 7119), and they “had become much more common in the years immediately preceding September 11; one database of terrorist incidents documented thirty-nine of them in 2000 alone… up from thirty one in the 1980s” (loc. 7124). What’s more, as mentioned above, plots to use airplanes to crash into buildings had already been uncovered.¶ As for size of the September 11 attacks, it is true that a terrorist attack of this size had never been successfully executed, but the statistics indicated that it was a clear possibility. This is because terrorist attacks have actually been found to follow a very distinct statistical power-law known as a double-logarithmic scale (loc. 7227). When it comes to terrorist attacks, the power law draws a relationship between the size of a terrorist attack and its relative frequency. Given that this is the case, the size and frequency of previous attacks can be used to predict how often a terrorist attack of a particular size will occur in the future. When it comes to an attack of the size of 9/11, the power-law predicted (even before the attack ever occurred) that we could expect to see one “about once every eighty years in a NATO country, or roughly once in our lifetimes” (loc. 7243). In other words, “what this data does suggest is that an attack on the scale of September 11 should not have been unimaginable” (loc. 7247).¶ But if the data suggests that a terrorist attack that kills thousands of people should not be considered unimaginable, what of attacks on an even larger scale? Frighteningly, the power law distribution of terrorist attacks “gives us reason to believe that attacks that might kill tens of thousands or hundreds of thousands of people are a possibility to contemplate as well” (loc. 7251). And, of course, we can well imagine the means through which an attack of this size would be accomplished: weapons of mass destruction, particularly nuclear and biological weapons (loc. 7253, 7335).¶ Nevertheless, the good news is that terrorist attacks can be curbed through human intervention, and there is reason to believe that prudent intervention can buck the power-law trend. The evidence comes out of Israel, where terrorism is much more a part of everyday life than it is in America. As Silver explains, Israel takes a unique approach to terrorism whereby prevention is aimed primarily at large-scale attacks: “small-scale terrorism is treated more like crime than an existential threat. What Israel certainly does not tolerate is the potential for large-scale terrorism (as might be made more likely, for instance, by one of their neighbors acquiring weapons of mass destruction)” (loc. 7429).¶ And the evidence that the approach is working is clear. As Silver explains, “Israel is the one country that has been able to bend Clauset’s curve. if we plot the fatality tolls from terrorist incidents in Israel using the power-law method, we find that there have been significantly fewer large-scale terror attacks than the power-law would predict; no incident since 1979 has killed more than two hundred people” (loc. 7432). This is extremely significant, for it suggests that the power-law is not cast in stone, and that “our strategic choices do make some difference” (loc. 7432).

#### Simulating high magnitude scenarios in security policy are an exercise in problem-based learning—it’s a unique venue where we can make mistakes and develop strategies to cope with info overload

Donohue, 13 [2013 Nation al Security Pedagogy: The Role of Simulations, Associate Professor of Law, Georgetown Law, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2172&context=facpub>]

V . T OTAL I MMERSION S IMULATION S The concept of simulations as an aspect of higher education, or in the law school environment, is not new . 162 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national s ecurity course that takes advantage of the doctrinal and experiential comp onents of law school education, and integrating the experience through a multi - day simulation. In 2009 I taught the first module based on this design at Stanford Law, which I develo ped the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full - scale Top Off icial (“TopOff”) exercises, used to train government officials to respond to domestic c r i s e s . 163 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specifi c legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. U nlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, t he Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one - day, and then a multi - day simulation. The course design an d simulation conti nues to evolve . It offers a one model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security l a w y e r s . 164 A . Course Design The central idea in structuring the course, which I refer to as National Security Law Simulation 2.0 (“ NSL Sim 2.0 ”) was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns . 165 The exercise itself is a form of problem - based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (i.e., directed and focused on certain areas of the law and legal education) and flexible (i.e., responsive to student input and decision - making). P erhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will in evitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple, and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation. 166 Additionally**,** while authenticity matters, it is worth noting that at some level, the fact that the incident does not take place in a real - world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes— without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Si m 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course f ocuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key part of the course design is in retaining both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive kn owle dge, and (3 ) critical thought. To be sure, a certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well - suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolut ion [1(d )], the simulation itself takes place over a multi - day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a mu lti - user virtual environment. The use of such technology is critical to creating more powerful, immersive s i m u l a t i o n s . 167 It also allow s for continual interaction between the players. Multi - user virtual environments have the further advantage in h elping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing p r a c t i c e s . 168 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require students to be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, two attorneys in practice, a media expert, six to eight former simulation students, and technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of the shifting authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional 44 respo nsibility. The two attorneys fro m practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. T hroughout the simulation, the C ontrol T eam is constantly reacting to student choices . Where unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and l eaking information to the media ). Unlike the more limited experiential tools of hypotheticals or doctrinal problems, a total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: i.e., factual chaos and information overload. The drivin g aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple injects relating to background noise. Thus, unlike hypotheticals , doct rinal problems, single - experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem - based, giving players agency in driving the evolution of the experience— thus addressing goal [2(c)]. This requires a real - time response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to push on different areas of the law and the s tudents’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal — i.e., the types of situations in which national security lawyers will find themselves . Particular emphasis is placed on nontraditional modes of communication : e.g., legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well a s during the last class ses sion . This is paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applic ations for search warrants under Title III, and administrative subpoenas such as National Securi ty Letters. In addition, students are required to prepare a paper prior to the simulation, outlining their legal authorities – and following the session, to deliver a 90 second oral briefing. To replicate the high - stakes, political environment at issue in goals (1) and (5), students are divided into political and legal roles, and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state officials, nongovernmental organizations, and the media. This req uires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of (many) different considerati ons that decisionmakers take into account in the national security domain. Scenarios are then selected with high consequence events in mind , to ensure that students recognize both the domestic and international dimensions of national security law . Further injects into the simulation provide for the broader political context — for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prom inent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast me dia, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercis e, in the course of which players may at times be required to appear before the camera. This media component thus helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decision s give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous injects from both the Control Team and the participants in the sim ulation itself. As aforementioned, one professor on the Control Team , and a practicing attorney who has previously gone through a simulation , focus on raising decision points that encourage students to consider ethical and professional considerations. Th roughout the Frameworkjudgment and leadership play a key role , directly impacting the players’ effectiveness , with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedb ack that players receive prior to, during, and following the simulation to help t hem to gauge their effectiveness. T he Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law . Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real - time feedback from both peers and professors . The Contr ol Team provides data points for player reflection — for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficientThe simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the si mulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mento ring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead - up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments . Judges , who are senior members of the bar in the field of national security law, observe player interaction s and provide additional debriefing . The simulation, moreover, is recorded through both the cyber portal and throu gh VNN, allowing students to go back and to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and issues that ar ose in the course of the simulation and with an aim towards developing frameworks for how to analyze uncertainty, tension with colleagues, mistakes, and successes in the future.B . Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security . It focuses on specific authorities that may be brought to bear in the course of a crisis . The decision of which areas to explore is made well in advance of the cour se. It is particularly helpful here to think about national security authorities on a continuum, as a way to press students on shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between c rime, drugs, terrorism and war. Another might push on the intersection of pandemic disease and biological weapons. A third could turn to cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal port ion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out what authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus , emine nt domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence - gathering. The critical areas can then be divided into the dominant constitutional authority, statut ory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The aut horities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional resp onsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storyl ines that push on the interstices between different areas of the law. The storylines are used to present a coherent, non - linear scenario that can adapt to student injects. Each scenario is mapped out in a three to seven page document, which is then check ed with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potentia l connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to push on the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation ( e.g., by someone who has traveled from overseas), but then for the storyline to move into the second realm (i.e., awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of pushing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and T itle 10/Title 32 questions would similarly arise — with the storyline designed to raise these questions. A third storyline might simply be (well developed) noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, with containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might prove the focus. The sixth storyline could be further noise in the system — loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather upda tes, private communications, and the like. The five to six storylines, prep ared by the Control Team in consultation with experts, becomes the basis for the preparation of scenario “injects”: i.e., newspaper articles, VNN 47 broadcasts, reports from NGOs, private communications between officials, classified information, government l eaks, etc., which , when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi - day period. All six scenarios are p laced on the same chart, in six columns, giving the Control Team a birds - eye view of the progression. C . How it Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often do not occur at convenient times and may well involve limited sleep and competing d e m a n d s . 169 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Student s at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team th e opportunity to converse in a “ classified ” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital A rchives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the cour se of play). Additional “ classified ” material — both general and SCI — has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting , may include face - to - face meetings), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released) . This time period provides a ramp - up to the third (or fourth) day of play, all owing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which m eetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a d ifferent area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assi gned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of POTUS, the Vice President, the President’s Chief of Staff, the Governor of a state, and public health officials. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well - experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurre d during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges (and formal observers) then offer reflections on the simulat ion and determine which teams performed most effectively**.** Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions t hat arose in regard to their grasp of the law, the types of decision - making processes that occurred , and the effectiveness or their — and other students’ — performance s . Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future . The course then c o n c l u d e s . 17V I .

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in **Fresh Perspectives on the ‘War on Terror**,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### Debating risk analysis is key to averting lashouts – we as debaters are key.

Langford 3 (Ian, Centre for Social and Economic Research on the Global Environment School of Environmental Sciences University of East Anglia and University College London, AN EXISTENTIAL APPROACH TO RISK PERCEPTION)

The above case studies show that other perspectives on risk perception can be gained by examining underlying existential anxieties, and existential analysis can provide a link between widely differing risk issues and across very different methodologies. Existential analysis is, of course, only one of a number of theoretical and practical approaches that can be taken towards risks, but it is potentially capable of transcending the difference between cultures and histories. Whilst the challenges and risks posed by living today in a techno-logically advanced society are very different from those faced a thousand years ago in the same geographical locations, the existential anxieties remain the same, as they are a common property of being human, although coping strategies may change somewhat. ‘Millenium anxiety’ in 1999 was not so different from that displayed in 999 AD.¶ Further, existential analysis can reflect on the societal challenges posed by ‘modern’ risks as well as the individual adaptations required in order to survive in the 21st century. Giddens (1991) links existential anxiety to loss of trust, and Beck (1999) comments on how the World Risk Society brings people together as well as separating them though the operation of the global political economy. There are winners and losers, but all are beginning to play on the same field. Although cross-cultural comparisons are not the focus of this paper, it is worth mentioning that from research conducted in the UK, and also in Greece (Kontogianni et al., 2001), it is possible to see the commonalities between at least these two cultures, as well as the differences. With regard to risks, respondents in the UK generally took a more individualistic ‘personal specialness’ approach, for example, in the research on perceptions of climate change, whilst in Greece respondents still held more belief in the divine order of things. Greek respondents often expressed a belief in θεοπρωνια (theo-pronia), which has no direct English translation, but can be interpreted as meaning that ‘if you do the right thing, God will give you luck’. So, for example, if you fish according to ‘natural laws’, God will make sure the fish don’t run out.……....in general, Greeks favoured the ‘ultimate rescuer’ defense.¶ In terms of the World Risk Society, and individual coping mechanisms, it appears that death anxiety is particularly prevalent when people consider their fears of the unknown and unknowable. The unknown is represented by uncertainties over the future, given the current rate of technological change, and conflicting messages received from the scientists, government and the media about a wide range of risk issues. The unknowable is represented by fear of the complexity of scientific knowledge, and its inaccessibility to lay people, as well as the complex and interwoven nature of many environmental and health risks. With many ‘20th century diseases’, such as allergic and immunocompetence conditions, traditional epidemiological methods of finding a single cause for a single disease fail because the 26 causes are multiple and synergistic, and the conditions ill-defined and variable between individuals.¶ Existential isolation anxiety is characterized by feelings of hopelessness and helplessness in the face of the global political economy, and the striving for ‘community’ or ‘togetherness’ is often founded on making joint protests or opting out of conventional lifestyles and discourses. This can sometimes lead to ‘idealistic tribalism’, which replaces ‘geographical tribalism’ via the sharing and reinforcement of common ideas amongst similar thinking people via the ease of modern day travel and information/communication technologies such as email and the internet. Alienation is often a matter of scale, with individuals feeling powerless in the face of world markets and international agreements. However, modern forms of communication and lifestyles and the social structures they support may themselves be alienating in containing little face-to-face human contact or ‘quality time’. Freedom and responsibility are again often framed in terms of not being subjugated by the global political economy or the discourses it promotes – the modern equivalent of Hiedegger’s impersonal ‘They-Self’. Individuals and groups can choose to opt out, give up, try their best, or carry on regardless – but it is always in opposition to or in collusion with political and economic forces seen as being at a scale beyond the individual’s power to change, and individual action is hence usually framed in terms of personal lifestyle choice to reduce risks, protect the environment or promote social equity.¶ Meaninglessness anxiety seems to be a common response in the World Risk Society. Identity and self-esteem are either maintained by small-scale successes, or reliance on being informed and using common sense, but pessimism, crusad-ism, nihilism and vegetativeness are all common responses to technological and environmental risks. Unfortunately, the great increase in information in techno-logical societies has created more confusion and, in the opinion of many people, devalued all information – leading to more reliance on ‘folklore’, lay epidemiology and ‘common sense’ to evaluate uncertain and ill-defined risks. Rebellion against political and institutional structures has often been reduced to stigmatization of particular organizations (such as the privatized water companies, see Langford et al., 1999a; Georgiou et al., 1998) or products (such as GM foods). This atomization of protest increases the sense of meaningless-ness, where one can only hope to achieve something small – and hence potentially meaningless – or else give up hope of things ever being different and merely find a comfortable way to survive the inevitable.¶ In conclusion, this paper has attempted, via theoretical argument, case studies and discussion, to present a different analysis of risk perception by individuals within social and political systems. Existential issues and anxieties, that are common to being human across space and time, have been explored whilst at the same time examining the relationship between humans and risk in contemporary post-industrial society. One conclusion that can be drawn from this analysis is that the range of individual and social responses to risk are symptomatic of far more global anxieties about the functioning and future of the world in general. Risk issues and conflicts are therefore not merely a product of a risk society, but an integral part of its operation. Only by providing people with a genuine chance to understand, have hope and believe in the possibility of instigating change, can risk managers provide risk communication strategies that actually communicate about risk. This is because of the complex and profound role that risk perception plays in structuring identities, defining discourses and bringing order and sense to the world. Otherwise, fear of the unknown, alienation, helplessness and reactions to these states of mind will always win the day.

#### Debating the law to teach us how to change things is key to help us produce useful scholarship.

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[Todd, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400]

¶ Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism.¶ A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project.¶ Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes:¶ I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59¶ A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge.¶ The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject.¶ [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62¶ Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity).¶ What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests.¶ Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany.¶ This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7¶ There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order.¶ Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities.¶ Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition:¶ In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80¶ Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82¶ It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them.¶ 4. Conclusion¶ Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law.¶ This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. But the denial of their legitimacy or possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

### Anthro

#### Our interpretation is that debate should be a question of the aff plan versus a competitive policy option.

#### This is key to ground and predictability – infinite number of possible kritik alternatives or things the negative could reject explodes the research burden. That’s a voting issue.

#### State engagement is a better method ---- refusal to engage in the methodical politics of democratic citizenship makes their impacts inevitable.

Dietz, Professor of Political Science and Gender Studies Program at Northwestern University, ‘94

[Mary, “’THE SLOW BORING OF HARD BOARDS’: METHODICAL THINKING AND THE WORK OF POLITICS”, American Political Science Review, Vol. 88, No. 4 December 1994, http://www.jstor.org/stable/pdfplus/2082713.pdf]

Earlier, in considering the means-end category in politics, I suggested that everything hinges upon the action context within which this mode of thinking takes place. I now want to suggest that there is a richer conceptual context-beyond utilitarian objectification, rational capitalist accumulation, and/or Leninism-within which to think about the category of means and ends. Weil offers this alternative in her account of methodical thinking as (1) problem- oriented, (2) directed toward enacting a plan or method (solutions) in response to problems identified, (3) attuned to intelligent mastery (not domination), and (4) purposeful but not driven by a single end or success. Although Weil did not even come close to doing this herself, we might derive from her account of methodical thinking an action concept of politics. Methodical politics is equally opposed to the ideological politics Hannah Arendt deplores, but it is also distinct in important respects from the theatrical politics she defends. Identifying a problem-or what the philosopher David Wiggins calls "the search for the **best specification** of what would honor or answer to relevant concerns" (1978, 145)-is where methodical politics begins.26 It continues (to extrapolate from Weil's image of the methodical builders) in the determination of a means-end sequel, or method, directed toward a political aim. It reaches its full realization in the actual undertaking of the plan of action, or method, itself. To read any of these action aspects as falling under technical rules or blueprints (as Arendt tends to do when dealing with means and ends) is to confuse problem solving with object making and something methodical with something ideological. By designating a problem orientation to political activity, methodical politics assigns value to the activity of constantly deploying "knowing and doing" on new situations or on new understandings of old ones. This is neither an ideological exercise in repetition nor the insistent redeployment of the same pattern onto shifting circumstances and events. The problem orientation that defines methodical politics rests upon a recognition of the political domain as a matrix of obstacles where it is impossible to secure an ideological fix or a single focus. In general, then, methodical politics is best under- stood from the perspective of "the fisherman battling 880 American Political Science Review Vol. 88, No. 4 against wind and waves in his little boat" (Weil 1973, 101) or perhaps as Michael Oakeshott puts it: "In political activity . . . men sail a boundless and bottomless sea; there is neither harbour for shelter nor floor for anchorage, neither starting-place nor ap- pointed destination" (1962, 127).27 Neither Weil's nor Oakeshott's is the perspective of the Platonist, who values chiefly the modeller who constructs his ship after pre-existing Forms or the pilot-philosopher who steers his craft to port by the light of immutable Forms fixed in a starry night. In both of the Platonic images (where the polis is either an artifact for use or a conveyance to safe harbor), a single and predictable end is already to hand. Neither Weil's nor Oakeshott's images admit any equivalent finality. The same is true of methodical politics, where political phenomena present to citizens-as the high sea presents to the sailor-challenges to be identified, demands to be met, and a context of circumstances to be engaged (without blueprints). Neither the assurance of finality nor the security of certainty attends this worldly activity. In his adamantly instrumental reading of politics in the ancient world, M.I. Finley makes a similar point and distinguishes between a problem orientation and patterned predictability by remarking upon the "iron compulsion" the Greeks and Romans were under "to be continuously inventive, as new and often unantic- ipated problems or difficulties arose that had to be resolved without the aid of precedents or models" (1983, 53). With this in mind, we might appreciate methodical politics as a mode of action oriented toward problems and solutions within a context of adventure and unfamiliarity. In this sense, it is compatible with Arendt's emancipatory concept of natality (or "new beginnings") and her appreciation of openness and unpredictability in the realm of human affairs. There are other neighborly affinities between methodical and theatrical politics as well. Both share a view of political actors as finite and fragile creatures who face an infinite range of possibilities, with only limited powers of control and imagination over the situations in which they are called upon to act. From both a methodical and a theatrical vantage point, this perpetual struggle that is politics, whatever its indeterminacy and flux, acquires meaning only when "knowing what to do and doing it" are united in the same performance (Arendt, 1958a, 223). Freedom, in other words, is realized when Plato's brilliant and devious conceptual maneuver is outwitted by a politics that opposes "the escape from action into rule" and reasserts human self-realization as the unification of thought-action in the world (pp. 223-25). In theatrical politics, however, the actual action content of citizen "knowing and doing" is **upstaged** by the spectacular appearance of personal identities courageously revealed in the public realm. Thus Plato's maneuver is outwitted in a bounded space where knowing what to do and doing it are disclosed in speech acts and deeds of self-revelation in the company of one's-fellow citizens. In contrast, methodical politics doggedly reminds us that **purposes themselves are what matter** in the end, and that citizen action is as much about obstinately pursuing them as it is about the courage to speak in performance. So, in methodical politics, the Platonic split between knowing and doing is overcome in a kind of boundless navigation that is realized in purposeful acts of collective self-determination. Spaces of appearances are indispensable in this context, but these spaces are not exactly akin to "islands in a sea or as oases in a desert" (Arendt 1970, 279). The parameters of methodical politics are more fluid than this, set less by identifiable boundaries than by the very activity through which citizens "let realities work upon" them with "inner concentration and calmness" (Weber 1946, 115). In this respect, methodical politics is not a context wherein courage takes eloquent respite from the face of life, danger (the sea, the desert), or death: it is a daily confrontation wherein obstacles or dangers (including the ultimate danger of death) are transformed into prob- lems, problems are rendered amenable to possible action, and action is undertaken with an aim toward solution. Indeed, in these very activities, or what Arendt sometimes pejoratively calls the in order to, we might find the perpetuation of what she praises as the for the sake of which, or the perpetuation of politics itself (1958a, 154). To appreciate the **emancipatory dimension** of this action concept of politics as methodical, we might now briefly return to the problem that Arendt and Weil think most vexes the modern world-the deformation of human beings and human affairs by forces of automatism. This is the complex manipulation of modern life that Havel describes as the situation in which everything "must be cossetted together as firmly as possible, **predetermined, regulated and controlled**" and "every aberration from the prescribed course of life is **treated as error, license and anarchy**" (1985, 83). Constructed against this symbolic animal laborans, Arendt's space of appearances is the agonistic opposite of the distorted counterfeit reality of automatism. The space of appearances is where individuality and personal identity are **snatched from the jaws of automatic processes** and recuperated in "the merciless glare" of the public realm (Arendt 1969, 86). Refigured in this fashion, Arendtian citizens counter reductive technological complexes in acts of individual speech revelation that powerfully proclaim, in collective effect, "This is who we are!" A politics in this key does indeed dramatically defy the objectifying processes of modern life-and perhaps even narratively transcends them by delivering up what is necessary for the reification of human remembrance in the "storybook of mankind" (Arendt 1958a, 95). But these are also its limits. For whatever else it involves, Arendtian politics cannot entail the practical confrontation of the situation that threatens the human condition most. Within the space of appearances, Arendt's citizens can neither search for the best specification of the problem before them nor, it seems, pursue solutions to the problem once it is identified, for such activities involve "the pursuit of a definite aim which can be set by practical considerations," and that is homo faber's prerogative and so in the province of "fabrication," well outside the space of appearances where means and ends are left behind (pp. 170-71). Consequently, automatism can be conceptualized as a "danger sign" in Arendt's theory, but it cannot be designated as a problem in Arendt's politics, a problem that citizens could cognitively counter and purposefully attempt to resolve or transform (p. 322). From the perspective of methodical politics, which begins with a **problem orientation, automatism can be specified and encountered within the particular spaces** or circumstances (schools, universities, hospitals, factories, corporations, prisons, laboratories, houses of finance, the home, public arenas, public agencies) upon which its technological processes intrude. Surely something like this is what Weil has in mind when she calls for "a sequence of mental efforts" in the drawing up of "an inventory of modern civilization" that begins by "**refusing** **to subordinate one's own destiny to the course of history**" (1973, 123-24). Freedom is immanent in such moments of cognitive inventory, in the **collective citizen-work** of "taking stock"-identifying problems and originating methods-and in the shared pursuit of purposes and objectives. This is simply what it means to think and act methodically in spaces of appearances. Nothing less, as Wiggins puts it, "can rescue and preserve civilization from the mounting irrationality of the public province, . . . from Oppression exercised in the name of Management (to borrow Simone Weil's prescient phrase)" (1978, 146).

#### Focus on proximate causes not root causes – causality can only be determined in specific instances not in the abstract – history proves you can’t manipulate root causes.

Hutchinson, CPA and MBA, Staff Writer for Renew America, ‘4

[Fred, 3-22-4, “American innovation and the culture war: A golden age of American innovation,” http://www.renewamerica.us/columns/hutchison/040322]

Reductionist ideas reduce (hu)man(s) to a simplistic caricature. When man looks in the mirror and sees something less than what is there, it has a depressing effect on his spirit and his mind. Deterministic ideas are the most powerfully compressing of the reductionist ideas. When man believes he is but a cog in a great machine, he feels crushed in a brutal and inhuman wine press. The most pitiless and repressive states are based on deterministic ideas — such as the Soviet regime under Stalin. When man is told that he is not created according to a design but was haphazardly evolved he is reduced to a subhuman status — an animal of no designed species but a beast-monstrosity of accidental origins. In some ways this is worse than being a cog in a machine. At least a cog has a design and an understandable purpose as an integral part of the great machine. Determinism is based upon the inflation of the principle of causation. Causation can be decisively established only for extremely simplified situations. In modern science, an experiment must be reduced to its simplest essentials before proof of causation is possible. But human nature and society is exceedingly complicated and contradictory. Reductionism in the pursuit of proof of causation is illusive because human nature is irreducibly complex. This goes through my mind whenever I hear a liberal speak of "root causes." The illusion that we can ferret out the root causes indicates a liberal who has never read the classics — and is profoundly ignorant about human nature. Our history of trying to manipulate root causes through social programs is a discouraging one — filled with the surprises of unintended consequences. Three Fatal Determinisms The three fatal determinisms of our age are economic determinism, cultural determinism, and biological determinism. Economic determinism is the belief that what we are and what we do is shaped by economic forces. This is an extremely radical reductionism if ever there was one. All the incredibly complicated things that combine in mysterious synergies to make up human nature are all to be explained by one single cause — economics. If ever their was a myth grounded in false confidence and the radical ignorance of tunnel vision — this is it. When liberals speak of the "root causes" of social problems, they typically are borrowing ideas from economic determinism. Root cause arguments obscure rather than enlighten. The poor are not responsible for their poverty because of root causes — we are told. Criminals are not responsible for crime because of root causes. Terrorists are not responsible for murder because of root causes. Such thinking rules out the idea of human conscience, and moral responsibility. When the belief in root causes relieves us of responsibility for our actions it also weakens the belief in the existence of free will. Nothing will destroy a golden age of innovation faster than a paralysis of the will. If we doubt we have a will because of a belief in the myth of root causes, the will becomes either paralyzed or undisciplined. We become ether zombies or maniacs — and return to adolescence.

#### Rejection of anthropocentrism undermines pragmatic attempts at environmental protection and makes their impacts inevitable because they can’t gain any political traction.

Light, Associate professor of philosophy and environmental policy, and director of the Center for Global Ethics at George Mason University, ‘2

[Andrew, ““Contemporary Environmental Ethics From Metaethics to Public Philosophy,” Metaphilosophy 33.4, Ebsco]

With this variety of views in the field, how should environmental ethics proceed? One answer would be that it will simply proceed, whether it should or not, as a new set of debates between the more traditional non anthropocentric views and the biocentric, anthropocentric, or other alternative views briefly mentioned at the end of the previous section. Many anthropocentric environmental ethicists seem determined to do just that (see Norton 1995 and Callicott 1996). There is, however, an alternative: in addition to continuing the tradition of most environmental ethics as philosophical sparring among philosophers, we could turn our attention to the question of how the work of environmental ethicists could be made more useful in taking on the environmental problems to which environmental ethics is addressed as those problems are undertaken in policy terms. The problems with contemporary environmental ethics are arguably more practical than philosophical, or at least their resolution in more practical terms is more important than their resolution in philosophical terms at the present time. For even though there are several dissenters from the dominant traditions in environmental ethics, the more important consideration is the fact that the world of natural-resource management (in which environmental ethicists should hope to have some influence, in the same way that medical ethicists have worked for influence over the medical professions) takes a predominantly anthropocentric approach to assessing natural value, as do most other humans (more on this point in the next section). Environmental ethics appears more concerned with overcoming human interests than redirecting them toward environmental concerns. As a consequence, a nonanthropocentric form of ethics has limited appeal to such an audience, even if it were true that this literature provides the best reasons for why nature has value (de-Shalit 2000).9 And **not to appeal to such an audience arguably means that we are not having an effect either on the formation of better environmental polices or on the project of engendering public support for them**. As such, I would argue, environmental ethics is not living up to its promise as a field of philosophy attempting to help resolve environmental problems. It is instead evolving mostly as a field of intramural philosophical debate. To demonstrate better how the dominant framework of environmental ethics is hindering our ability to help address environmental problems, let us examine a more specific case where the narrow rejection of anthropocentrism has hindered a more effective philosophical contribution to debates in environmental policy.

#### Permutation do both.

#### The perm solves- reflexive anthropocentrism allows us to avoid it’s excesses.

Barry, Director of the Institute of Governance, Public Policy and Social Research at Queens University, ‘99

[John, Rethinking Green Politics, p. 7-8]

Ecological stewardship, unlike ecocentrism, seeks to emphasize a self-reflexive, long-term anthropocentrism, as opposed to an ‘arrogant’ or ‘strong’ anthropocentrism, can secure many of the policy objectives of ecocentrism, in terms of environmental preservation and conservation. As argued in Chapter 3, a reformed, reflexive anthropocentrism is premised on critically evaluating human uses of the non-human world, and distinguishing ‘permissible’ from ‘impermissible’ uses. That is, an ‘ethics of use’, though anthropocentric and rooted in human interests, seeks to regulate human interaction with the environment by distinguishing legitimate ‘use’ from unjustified ‘abuse’. The premise for this defense of anthropocentric moral reasoning is that an immanent critique of ‘arrogant humanism’ is a much more defensible and effective way to express green moral concerns than rejecting anthropocentrism and developing a ‘new ecocentric ethic. As discussed in Chapters 2 and 3, ecocentric demands are premised on an over-hasty dismissal of anthropocentrism which precludes a recognition of the positive resources within anthropocentrism for developing an appropriate and practicable moral idiom to cover social-environmental interaction.

#### **Legal positivism is the best methodology – refined by the moral sentiment of the community.**

Finnis, Professor of Law at University College, Oxford and at the University of Notre Dame, ‘96

[John, “The Truth in Legal Positivism,” in The Autonomy of Law, ed. Robert P. George. Oxford: Clarendon Press, pp. 195-214, RSR]

‘There is a necessary or conceptual connection between law and morality.’ True, for the reasons people have for establishing systems of positive law (with power to override immemorial custom), and for maintaining them (against the pull of strong passions and individual self-interest), and for reforming and restoring them when they decay or collapse, include certain moral reasons, on which many of those people often act. And only those moral reasons suffice to explain why such people’s undertaking takes the shape it does, giving legal systems the many defining features they have – features which a careful descriptive account such as H. L. A. Hart’s identifies as characteristic of the central case of positive law and the focal meaning of ‘law’, and which therefore have a place in an adequate concept (understanding and account) of positive law ‘The identification of the existence and content of law does not require resort to any moral argument’. True, for how else could one identify wicked laws such as Israel’s prophet denounced in words so often quoted by Aquinas: ‘Woe to those who make unfair laws [*leges iniquas]*, who draw up instruments imposing injustice [*iniustitiam]*, and who give judgments oppressing the poor’? And since the whole of a human community’s existing law, however completely just and decent, is positive, somehow humanly posited, why deny and then facts which are referred to as ‘human positing’ – custom, legislation, judgments-can all be identified by lawyerly historical methods, without ‘moral argument’?¶ The identification of one’s legal duty as a judge or other subject of the law sometimes requires resort to moral argument, and is always a matter of moral responsibility (both as to the identifying and as to the carrying out) which derives, in one way or another, from the bearing of moral principles and norms on the positive law of one’s community.’ True, for constitution-makers have a moral responsibility to establish sources of law which can be identified without resort to moral argument, and judges and other subjects have a moral responsibility to defer (within limits) to such sources. When the sources yield no determinate solution, all concerned have the responsibility of supplementing the sources to fill the gap by a choice guided by standards of fairness and other morally true principles and norms, where possible by standards which already have currency in the community and lend moral force to those parts of its positive law which are morally acceptable.¶

#### Alt fails – they can’t convince people to not be anthropocentric.

Lee, Philosophy Professor at Bloomsburg, ‘9

[Wendy, Spring, “Restoring Human-Centerednes to Environmental Conscience: The Ecocentrist's Dilemma, the Role of Heterosexualized Anthropomorphizing, and the Significance of Language to Ecological Feminism” Ethics and the Environment, Vol 14 No 1, Project Muse]

Bender undertakes this task in the course of promoting his specific version of ecocen trism that he calls "nondualism" but it is telling that, instead of offering an argument that provides grounds for rejecting the "dualism" of experiencing subject and experienced object, he resorts to an experience of "nonduality": I start out…in ordinary, dualistic, waking consciousness, feeling myself a subject amidst myriad objects around me, each experienced as other. I discover I do not exist independently, but am like a node in a web, through which diverse kinds of energy flow. For example, I [End Page 35] take in the Sun's warmth, the in-breath, food, water, human speech, and so on. Meanwhile, I expel many kinds of energy. Like the out-breath, speech, bodily movements, and excreta. The energy I take in and expel circulates everywhere on Earth, passing through others as through myself. Thus I discover my connectedness to all other beings, such that I, like they, am but one manifestation of this energy flow, of planet Earth…. Nonduality emerges as I realize further that natural phenomena are Earth transiently manifest, empty of substantive selfhood (objectivity), since everything is dependently co-originated. Thus, though I am precisely emptiness of substantive or independent selfhood; even so, as one particular manifold of relations, I am unique. (2003, 435) The difficulties here are three-fold: First, this isn't an argument, but rather an experiential narrative, hence it would be folly to think it could establish anything other than that someone can have such an experience. But since such could be motivated by, say, exhaustion, illness, or the use of narcotics, it hardly establishes any metaphysical claim about the nature of identity or being—much less about any capacity to dissociate oneself from "substantive selfhood." Second, however much he may feel himself to be "empty of substantive selfhood" Bender's use of "I' suggests that he confuses the capacity to conceive with the capacity to actually be so emptied. It's one thing to conceive of myself as connected to all other beings—indeed I do so conceive myself, I know this in the abstract to be true and I know of no evidence that contradicts it. It is, however, quite another thing to experience myself as emptied of selfhood. Moreover, it is simply false that what I can conceive, imagine, think, or even describe is necessarily something I can experience per se. Third, although Bender's appeals to intuition, mystical insight, Spinoza's notion of particulars as manifestations of nature (2003, 434–5), or Buddhist inspired meditation (2003, 436–7) might be compelling for someone already convinced that so-called nondualist identification with nonhuman nature is possible, these hardly suffice as an argument convincing to the skeptic who may not share the necessary presuppositions or traditions. Here too, then, Bender's account is unconvincing—the ethical norm he derives from it (among others), "Form one body with all beings!" is likely to be mystifying to anyone unconvinced we can make this leap of faith from centeredness to "one body" or (as the moral dictum requires) from the "I" of subject-object dualism to the disavowal of my body. [End Page 36] Moreover, if I am right that there are good reasons to take the specifically embodied configuration of capacities and limitations that describe human being seriously, no such dissociation from "I" is possible—in fact, it intimates precisely the dualism Bender rejects. However deep my feelings (spiritual sensibilities, affectionate sentiments, desires to connect) go with respect to my appreciation of natural objects and phenomena, I nonetheless remain at the center of my embodied consciousness—and cannot be/do otherwise. Hence, one more version of the ecocentrist's dilemma: the dissociation of self demanded by the moral maxim "form one body with all things" assumes that I can dissociate my consciousness from my body—what else to call this but dualism? The notion that I could dissociate myself without dissociating myself from my situated body to be "one with all things" is comprehensible only if I am not (at least essentially) my body, but rather a consciousness that, even if not fully independent, is capable of not merely conceiving but experiencing "my" body as something other than bound by my own skin, that is, as not my body. Hence I must be dual—a "mind" that, in virtue of its capacity to empty itself of its "substantive selfhood," is merely in a dissociable body. No doubt, Bender would find this objection to his view onerous. However, when he advises us to try to expand our selves through, for example, meditation or to encompass an ever-wider set of relations with and to human and nonhuman others (2003, 423–4), it is hard to see how his view does not fit the dualist shoe. He writes that "[s]uch a practice, over time, should transform your sense of who you are as you discover you are not the separate skin-encapsulated individual you once thought you were, but that you belong to all other living beings, and that other beings are not really other, and that you yourself are not really the center of concern." (2003, 424, my emphasis) Again, Bender confuses what I can conceive with what I can experience—I can conceive myself as "not the center of concern," but not an iota of this moral recognition either requires or makes possible an experience of myself as anything other than "skin encapsulated." Bender hasn't, moreover, the luxury of trading in his metaphysical commitments for the option that he's speaking "merely" phenomenologically or metaphorically. For neither the environmental pragmatist, who would likely deny the need to undertake such a practice in order to have a stake in the future of human [End Page 37] consciousness, nor those who engage in such practices without a smidgeon of the environmental activism Bender hopes will follow, are likely to be moved by anything but an argument for nondualism—and this Bender does not provide.

## 1AR

#### No cards. Michelle is too slow.