# 1AC

#### Same as rounds 1, 3, and 6

#### Cyber with arms race and alliance

# 2AC

## T - Prohibit

#### Restrict and regulate are synonymous

Paust ’08 (Mike & Teresa Baker Law Center Professor, University of Houston)

Jordan 14 U.C. Davis J. Int'l L. & Pol'y 205

The primacy of customary international law is also evident in an opinion by Justice Chase in 1800. In Bas v. Tingy, Justice Chase recognized that "if a general war is declared [by Congress], its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations ... ." n47 Therefore, the law of nations (and, in particular, the law of war) necessarily restricts and regulates congressional authorization of war's extent and operations. n48 In 1798, Albert Gallatin had recognized similarly: "By virtue of ... [the war power], Congress could ... [act], provided it be according to the laws of nations and to treaties." n49 And in 1804, counsel had argued before the Supreme Court that "as far as Congress have thought proper to legislate us into a state of war, the law of nations in war is to apply." n50 The restrictive role of the laws of war [\*221] apparently formed the basis for Justice Story's statement in 1814 that conduct under a relevant act of Congress "was absorbed in the more general operation of the law of war" and was permissible "under the jus gentium" or law of nations. n51 Although there was no clash between the act and the laws of war, the laws of war recognizably had a higher, "more general" absorbing effect.

#### Counter-interp: Statutory restrictions are legislative limits

Law dictionary No Date

http://thelawdictionary.org/statutory-restriction/

STATUTORY RESTRICTION?

Limits or controls that have been place on activities by its ruling legislation

#### Neg interp impossible: Congress CANNOT prohibit

Colella ‘88

Frank SPRING, 1988 54 Brooklyn L. Rev. 131

Because the subsequent versions of the amendment sought to deny the executive any latitude in supporting the Contras, they seem to be examples of congressional overreaching. Congress may regulate aspects of "foreign covert action," but it cannot totally bar the president from carrying them out. n151 One commentator incisively observes, "[C]ongress cannot deny the President the capacity to function effectively in this area any more than it could deny the courts the capacity to carry out their independent constitutional duties." n152 The restrictions contained in later versions of the amendments n153 make it apparent that Congress prevented effective execution of the president's policy objectives.

## Exec v Exec CP

#### E. Doesn’t solve modeling

Rothschild 13 (Matthew, Feb 4, "The Danger's of Obama's Cyber War Power Grab," [www.progressive.org/dangers-of-obama-cyber-war-power-grab](http://www.progressive.org/dangers-of-obama-cyber-war-power-grab))

When our **founders** were drafting the Constitution, they **went out of their way to give warmaking powers to Congress, not the President.**¶ **They understood that if the President could make war on his own, he’d be no different than a king.**¶ And they also understood, as James Madison said, that such power “would be too much temptation” for one man.¶ And so they vested that power in Congress.¶ But since World War II, one President after another has usurped that power.¶ The latest usurper is President Obama, who did so in Libya, and with drones, and now is prepared to do so in cyberspace.¶ According to The New York Times, **the Obama Administration has concluded that the President has the authority to launch preemptive cyberattacks.**¶ **This is a** very **dangerous**, and very undemocratic **power grab.**¶ **There are no checks** or balances **when the President, alone, decides when to engage in an act of war.**¶ And **this** new aggressive stance **will lead to a cyber arms race.** The United States has evidently already used cyber weapons against Iran, and so many **other countries will assume** that **cyber warfare is** an **acceptable** tool **and** will try to **use it themselves.**¶ **Most troubling, U.S. cybersupremacy—and that is Pentagon doctrine—will also raise fears among nuclear powers like Russia, China, and North Korea that the United States may use a cyberattack as the opening move in a nuclear attack.**¶ For **if the United States can knock out the command and control structure of an enemy’s nuclear arsenal, it can then launch an all-out nuclear attack on that enemy with impunity. This would make such nuclear powers more ready to launch their nuc**lear weapon**s preemptively for fear that they would be rendered useless.** So **we’ve just moved a little closer to midnight**.¶ Now, I don’t think Obama would use cyberwafare as a first strike in a nuclear war. But **our adversaries may not be so sure, either about Obama or his successors.**¶ **They, too, worry about the temptations of a President**.

#### 3. CP is a rubber stamp – only the aff can solve perception

Somin, George Mason Law Prof, 13 (Ilya, 4-23-13, “Hearing on ‘Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing’: Testimony before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights,” accessed 10-2-13,<http://www.law.gmu.edu/assets/files/faculty/Somin_DroneWarfare_April2013.pdf>, hec)

Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center. But any internal executive process has the flaw that it could always be overridden by the president, and possibly other high-ranking executive branch officials. Moreover, lower-level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

#### 4. Links to politics – congress wants to be involved

Sasso 2012

(Brandon Sasso, December 21, 2012, “House Republicans urge Obama not to issue cybersecurity order,” The Hill, http://thehill.com/blogs/hillicon-valley/technology/274391-house-republicans-urge-obama-not-to-issue-cybersecurity-order)

A group of 46 House Republicans, led by Reps. Marsha Blackburn (Tenn.) and Steve Scalise (La.), sent President Obama a letter on Friday urging him not to issue an executive order on cybersecurity.¶ "Instead of preempting Congress' will and pushing a top-down regulatory framework, your administration should engage Congress in an open and constructive manner to help address the serious cybersecurity challenges facing our country," the lawmakers wrote. ¶ The White House is currently drafting an executive order that would encourage operators of critical infrastructure, such as banks and electric grids, to meet cybersecurity standards. ¶ The administration says the order, which could come as early as January, is necessary to protect vital systems from hackers.¶ The White House began working on the order after Senate Republicans blocked the Democrats' preferred cybersecurity bill.¶ But in their letter, the House Republicans urged the administration to continue working with Congress.

## Immigration DA

#### The GOP is literally laughing at the prospect of immigration – it won’t pass

Benen 10-18

Steve Benen, MSNBC, “GOP already balking at new immigration push,” 10/18/13, <http://www.msnbc.com/rachel-maddow-show/gop-already-balking-new-immigration-push> SJE

CNN’s Dana Bash asked several House GOP lawmakers yesterday about the prospect for passing a reform bill. One sent back an email that read, “Hahahahaha.” Another said the odds of success are “zero.” Dave Weigel added: When I asked South Carolina Sen. Lindsey Graham, one of the “Gang of Eight” behind the bill, what the impasse and resolution meant for immigration reform, he chuckled, then said it didn’t make him optimistic, exactly. Yesterday, when asked by Breitbart.com whether immigration policy might return to the agenda, former House immigration reformer Raul Labrador did more then chuckle. “Absolutely not,” said Labrador. “I think it would be crazy for the House leadership to enter into negotiations with him. He’s trying to destroy the Republican Party, not to get good policies. I don’t see how he would in good faith negotiate with us on immigration.”

#### Budget poisons immigration reform

Tamba Bay Express, 10-17, 13, http://www.tampabay.com/blogs/the-buzz-florida-politics/obama-wants-immigration-reform-back-on-track-but-budget-issues-eat-up-clock/2147766

With the shutdown crisis lifted for now, President Obama urged Congress to get working again and made an appeal for immigration reform.¶ "There's already a broad coalition across America that’s behind this effort of comprehensive immigration reform -- from business leaders to faith leaders to law enforcement," Obama said earlier today, noting the Senate had passed a bill with bipartisan support but that the issue is dormant in the more conservative House. "Now, if the House has ideas on how to improve the Senate bill, let's hear them. Let's start the negotiations. But let's not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year."¶ But the deal to end the shutdown could only make that harder. By punting the fight over the budget and the debt ceiling, Congress has ensured those issues will remain dominant.¶ "The biggest threat to getting immigration reform done is time," said Florida Rep. Mario Diaz-Balart, R-Miami, who has tried to get his chamber moving on the issue. "We're still working and that's good. (But) if we have another shutdown or (a Syria like crisis) that takes over for two weeks, all that does is impact us negatively. Time is our biggest problem."¶ The issue could spill over to next year but then election-year politics make it less likely House Republicans will want to do something.

#### Obama will pass immigration reform by XO

Mike Lillis, 2/16/2013 (staff writer, “Dems: Obama can act unilaterally on immigration reform,” <http://thehill.com/blogs/regwatch/administration/283583-dems-recognize-that-obama-can-act-unilaterally-on-immigration-reform>, Accessed 2/21/2013, rwg)

President Obama can – and will – take steps on immigration reform in the event Congress doesn't reach a comprehensive deal this year, according to several House Democratic leaders.¶ While the Democrats are hoping Congress will preclude any executive action by enacting reforms legislatively, they say the administration has the tools to move unilaterally if the bipartisan talks on Capitol Hill break down. Furthermore, they say, Obama stands poised to use them.¶ "I don't think the president will be hands off on immigration for any moment in time," Rep. Xavier Becerra (D-Calif.), the head of the House Democratic Caucus, told reporters this week. "He's ready to move forward if we're not."

#### Forcing controversial fights key to Obama’s agenda—the alt is gridlock

John Dickerson, Slate, 1/18/13, Go for the Throat!, [www.slate.com/articles/news\_and\_politics/politics/2013/01/barack\_obama\_s\_second\_inaugural\_address\_the\_president\_should\_declare\_war.single.html](http://www.slate.com/articles/news_and_politics/politics/2013/01/barack_obama_s_second_inaugural_address_the_president_should_declare_war.single.html), CMR

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon. Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day. But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That bipartisan bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country. The challenge for President Obama’s speech is the challenge of his second term: how to be great when the environment stinks. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s partisan rancor, the size of the problems facing government, and the limited amount of time before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about bipartisanship and cooperation can only cement his legacy if he destroys the GOP. If he wants to transform American politics, he must go for the throat. President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker. How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too. That's the old way. He has abandoned that. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name. Obama’s only remaining option is to pulverize. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of clarifying fights over controversial issues, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

#### No link — the plan’s not controversial

**Perera 6/26**, SACS calls for new oversight of Cyber Command, David Perera is executive editor of the FierceMarkets Government Group, which includes FierceGovernment, FierceGovernmentIT, FierceHomelandSecurity, and FierceMobileGovernment. He has reported on all things federal since January 2004 and is co-author of [Inside Guide to the Federal IT Market](http://store.brightkey.net/mconcepts_ebiz/OnlineStore/ProductDetail.aspx?ProductId=201530), a book published in October 2012., <http://www.fiercegovernmentit.com/story/sasc-calls-new-oversight-cyber-command/2013-06-26>

The Senate Armed Services Committee says it has concerns that oversight of Cyber Command and the cyber mission within the Defense Departments "is fragmented and weak," calling for creation of a Senate-confirmed position within the undersecretary of defense for policy to supervise and manage the funds of offensive cyber forces.

**The Senate committee voted 23-3** on June 14 to report its version of the fiscal 2014 national defense authorization act ([S. 1197](http://hdl.loc.gov/loc.uscongress/legislation.113s1197)), detailing its intentions in a newly released legislative [report](http://www.gpo.gov/fdsys/pkg/CRPT-113srpt44/pdf/CRPT-113srpt44.pdf)(.pdf).

#### Plan’s super popular

**Bradbury 11**, Steven G. Bradbury is an attorney at the Washington, D.C office of [Dechert LLP](http://en.wikipedia.org/wiki/Dechert_LLP).

Bradbury was head of the [Office of Legal Counsel](http://en.wikipedia.org/wiki/Office_of_Legal_Counsel) (OLC) in the [United States Department of Justice](http://en.wikipedia.org/wiki/United_States_Department_of_Justice) during the [George W. Bush administration](http://en.wikipedia.org/wiki/George_W._Bush_administration), 2005-January 2009. Appointed the Principal Deputy Assistant Attorney General for OLC in April 2004, he became the Acting Assistant Attorney General in 2005. He was nominated by President [George W. Bush](http://en.wikipedia.org/wiki/George_W._Bush) to be the Assistant Attorney General for OLC in June 2005. His nomination was approved by the [Senate Judiciary Committee](http://en.wikipedia.org/wiki/Senate_Judiciary_Committee) in November 2005 but was never voted on by the full Senate, The Developing Legal Framework for Defensive and Offensive Cyber Operations, This speech was the Keynote address at the Harvard National Security Journal Symposium, <http://harvardnsj.org/wp-content/uploads/2011/02/Vol.-2_Bradbury_Final1.pdf>

Congressional reporting. The National Security Act also ¶ requires the President and DNI to ensure that the Intelligence Committees ¶ of the House and Senate are fully and currently informed of all intelligence ¶ and counterintelligence activities, to the extent consistent with the ¶ protection of sensitive sources and methods or other exceptionally sensitive ¶ matters.10¶ With respect to covert actions, the Act requires the President to ¶ report presidential findings supporting covert actions to the Intelligence ¶ Committees, but where the President determines that it’s essential because ¶ of “extraordinary circumstances affecting vital interests of the United ¶ States,” the President may limit access to the so-called “Gang of Eight” —¶ the chairs and ranking members of the two Intelligence Committees, the ¶ Speaker and minority leader of the House, and the majority and minority ¶ leaders of the Senate, along with whatever other congressional leaders the ¶ President chooses to include.11¶ The **committee chairs hate when briefings are limited to the Gang of Eight, because they catch hell from the members** of their committees who ¶ are outside the circle. So when former-Senator Obama first became President, there was hope among some in Congress that he would eliminate the Gang of Eight briefings. But when Congress proposed an Intelligence ¶ Authorization bill that would do just that, President **Obama threatened to veto** it. Once he became head of the Executive Branch, he clearly ¶ understood the importance of being able to limit the scope of briefings for ¶ the most sensitive matters. So the statute still allows for Gang of Eight ¶ briefings In contrast to these title 50 intelligence activities, military operations conducted under title 10 authorities are subject to oversight by the Armed Services Committees of Congress. (Title 10 of the U.S. Code governs DoD’s ¶ military authorities and the military command structure; title 50 governs the ¶ Intelligence Community and intelligence activities.)¶ And make no mistake, in the world of Washington, it really does ¶ matter whether an activity is characterized as covert action or a traditional ¶ military action because different Executive Branch departments or agencies ¶ will have ownership of the operation and different committees of Congress ¶ will have oversight jurisdiction, and they all jealously guard their respective ¶ domains.

#### A. No impact to econ decline

Miller 2k

(Morris, economist, adjunct professor in the University of Ottawa’s Faculty of Administration, consultant on international development issues, former Executive Director and Senior Economist at the World Bank, Winter, Interdisciplinary Science Reviews, Vol. 25, Iss. 4, “Poverty as a cause of wars?” p. Proquest)

The question may be reformulated. Do wars spring from a popular reaction to a sudden economic crisis that exacerbates poverty and growing disparities in wealth and incomes? Perhaps one could argue, as some scholars do, that it is some dramatic event or sequence of such events leading to the exacerbation of poverty that, in turn, leads to this deplorable denouement. This exogenous factor might act as a catalyst for a violent reaction on the part of the people or on the part of the political leadership who would then possibly be tempted to seek a diversion by finding or, if need be, fabricating an enemy and setting in train the process leading to war. According to a study undertaken by Minxin Pei and Ariel Adesnik of the Carnegie Endowment for International Peace, there would not appear to be any merit in this hypothesis. After studying ninety-three episodes of economic crisis in twenty-two countries in Latin America and Asia in the years since the Second World War theyconcluded that:19 Much of the conventional wisdom about the political impact of economic crises may be wrong ... The severity of economic crisis - as measured in terms of inflation and negative growth - bore no relationship to the collapse of regimes ... (or, in democratic states, rarely) **to** an outbreak of violence ... In the cases of dictatorships and semidemocracies, the ruling elites responded to crises by increasing repression (thereby using one form of violence to abort another).

## Legalism K

**2. a. Life should be valued as apriori – it precedes the ability to value anything else**

Amien **Kacou. 2008**. WHY EVEN MIND? On The A Priori Value Of “Life”, Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) cosmosandhistory.org/index.php/journal/article/view/92/184

Furthermore, that manner of **finding things good** that is in pleasure **can certainly not exist in any world without consciousness (i.e., without “life,”** as we now understand the word)—slight analogies put aside. In fact, we can begin to develop a more sophisticated definition of the concept of “pleasure,” in the broadest possible sense of the word, as follows: it is the common psychological element in all psychological experience of goodness (be it in joy, admiration, or whatever else). In this sense, pleasure can always be pictured to “mediate” all awareness or perception or judgment of goodness: there is pleasure in all consciousness of things good; pleasure is the common element of all conscious satisfaction. In short, it is simply the very experience of liking things, or the liking of experience, in general. In this sense, **pleasure is, not only uniquely characteristic of life but also, the core expression of goodness in life—the most general sign or phenomenon for favorable conscious valuation**, in other words. This does not mean that “good” is absolutely synonymous with “pleasant”—what we value may well go beyond pleasure. (The fact that we value things needs not be reduced to the experience of liking things.) However, what we value beyond pleasure remains a matter of speculation or theory. Moreover, we note that a variety of things that may seem otherwise unrelated are correlated with pleasure—some more strongly than others. In other words, there are many things the experience of which we like. For example: the admiration of others; sex; or rock-paper-scissors. But, again, what they are is irrelevant in an inquiry on a priori value—what gives us pleasure is a matter for empirical investigation. Thus, we can see now that, in general, **something primitively valuable is attainable in living—that is, pleasure itself.** And it seems equally clear that we have a priori logical reason to pay attention to the world in any world where pleasure exists. Moreover, **we can now also articulate a foundation for a security interest in our life: since the good of pleasure can be found in living** (to the extent pleasure remains attainable),[17] **and only in living, therefore, a priori, life ought to be continuously (and indefinitely) pursued at least for the sake of preserving the possibility of finding that good.** However, this platitude about the value that can be found in life turns out to be, at this point, insufficient for our purposes. It seems to amount to very little more than recognizing that our subjective desire for life in and of itself shows that life has some objective value. For what difference is there between saying, “living is unique in benefiting something I value (namely, my pleasure); therefore, I should desire to go on living,” and saying, “I have a unique desire to go on living; therefore I should have a desire to go on living,” whereas the latter proposition immediately seems senseless? In other words, “life gives me pleasure,” says little more than, “I like life.” Thus, we seem to have arrived at the conclusion that **the fact that we already have some (subjective) desire for life shows life to have some (objective) value.** But, if that is the most we can say, then it seems our enterprise of justification was quite superficial, and the subjective/objective distinction was useless—for all we have really done is highlight the correspondence between value and desire. Perhaps, our inquiry should be a bit more complex.

**b. Our impacts o/w the K, cross apply my analysis done on case.**

#### 3. Debating about specific policies is essential to promote more ethical and accountable policymaking – their abstract politics promotes disengagement and poor argumentation skills

 David Chandler. 2007. Centre for the Study of Democracy, Westminster, Area, Vol. 39, No. 1, p. 118-119

This disjunction between the human/ethical/global causes of post-territorial political activism and the capacity to 'make a difference' is what makes these individuated claims immediately abstract and metaphysical – there is no specific demand or programme or attempt to build a collective project. This is the politics of symbolism. The rise of symbolic activism is highlighted in the increasingly popular framework of 'raising awareness'– here there is no longer even a formal connection between ethical activity and intended outcomes (Pupavac 2 006). Raising awareness about issues has replaced even the pretense of taking responsibility for engaging with the world – the act is ethical in-itself. Probably the most high profile example of awareness raising is the shift from Live Aid, which at least attempted to measure its consequences in fund-raising terms, to Live 8 whose goal was solely that of raising an 'awareness of poverty'. The struggle for 'awareness' makes it clear that the focus of symbolic politics is the individual and their desire to elaborate upon their identity – to make us aware of their 'awareness', rather than to engage us in an instrumental project of changing or engaging with the outside world. It would appear that in freeing politics from the constraints of territorial political community there is a danger that political activity is freed from any constraints of social mediation (see further, Chandler 2004a). Without being forced to test and hone our arguments, or even to clearly articulate them, we can rest on the radical 'incommunicability' of our personal identities and claims – you are 'either with us or against us'; engaging with those who disagree is no longer possible or even desirable. It is this lack of desire to engage which most distinguishes the unmediated activism of post-territorial political actors from the old politics of territorial communities, founded on struggles of collective interests (Chandler 2004b). The clearest example is old representational politics – this forced engagement in order to win the votes of people necessary for political parties to assume political power. Individuals with a belief in a collective programme knocked on strangers' doors and were willing to engage with them, not on the basis of personal feelings but on what they understood were their potential shared interests. Few people would engage in this type of campaigning today; engaging with people who do not share our views, in an attempt to change their minds, is increasingly anathema and most people would rather share their individual vulnerabilities or express their identities in protest than attempt to argue with a peer.This paper is not intended to be a nostalgic paean to the old world of collective subjects and national interests or a call for a revival of territorial state-based politics or even to reject global aspirations: quite the reverse. Today, politics has been 'freed' from the constraints of territorial political community – governments without coherent policy programmes do not face the constraints of failure or the constraints of the electorate in any meaningful way; activists, without any collective opposition to relate to, are free to choose their causes and ethical identities; protest, from Al Qaeda, to anti-war demonstrations, to the riots in France, is inchoate and atomized. When attempts are made to formally organize opposition, the ephemeral and incoherent character of protest is immediately apparent.

#### 4. Perm – do both. Social movements must work with and along-side legal institutions. Rejection of the law kills solvency.

Peter Gabel, former President and Professor of Law at New College of California, 2009 (“LAW AND ECONOMICS, CRITICAL LEGAL STUDIES, AND THE HIGHER LAW: CRITICAL LEGAL STUDIES AS A SPIRITUAL PRACTICE.” 36 Pepp. L. Rev. 515. Lexis )

This calls not for a rejection of past CLS work, but for a reclaiming of the spiritual dimension of that work. And this in turn requires a reunderstanding of the indeterminacy critique as being merely an analytical moment within the synthesis of a moral critique, as a kind of analytical insight that indicates that the world is open-textured but not going nowhere, and that legal reasoning's claims that would fix the world in idealized, reified abstractions legitimizing injustice and alienation are actually a passivizing defense against the freedom and creative challenge of social vulnerability and uncharted possibility. [\*530] But this also requires a new agenda for our movement that cooperates with the world-wide spiritual-political initiatives that have sprung up since the post-'60s era from which CLS first emerged, and that would be tremendously supportive of our efforts. These spiritual-political initiatives include the religious renewal movements that are linking the spiritual ideal of the beloved community to social action and social change; spiritually informed secular movements like the Network of Spiritual Progressives that are trying to invent new forms of spiritual activism while rethinking foreign and domestic social policy reforms to emphasize spiritual transformation rather than merely liberal redistribution of resources and rights; 31 and the efforts of the environmental and ecology movements to link the redemption of the planet with social healing and sustainable, cooperative economies. All of these efforts require a new legal culture that links justice with explicitly spiritual outcomes - outcomes that foster empathy, compassion, and social connection rather than the vindication of liberal rights in a legal order founded upon the fear-based separation of self and other. One lesson that CLS scholarship itself has taught is that it is impossible for a social transformation movement to be successful without an ability to express its own ideals as also ideals of justice that can achieve legitimate political expression through legal culture. Without that, as Karl Klare, Alan Freeman, and many others have shown, 32 the movement's radical ideals will be recast and stolen away by the liberal interpretations those movements will suffer through the prism of legal assumptions that actually contradict them. Thus while the movement must create the "parallel universe" that can affirm the ontological/epistemological validity of the possibility of a society based on love and mutual recognition, the movement also requires a legal expression of itself that declares this same realization of love and mutual recognition to be indispensable to just outcomes of social conflicts. Such a parallel justice system has already begun to sprout up across the legal landscape, alongside the antagonism of self and other, presupposed and reinforced by the mainstream's adversary system. Among its manifestations are the truly remarkable restorative justice movement, which understands crime and social violence as expressive of a breakdown in community and aspires to apology and forgiveness through direct encounters between victims and offenders as a means of restoration of the communal fabric; 33 the transformative and understanding-based mediation movements that make compassion a central objective to the resolution of civil conflicts; 34 the new [\*531] forms of spiritually-informed law practice that are redefining the lawyer-client relationship as a non-technical, holistic relationship in which lawyers bring a substantive moral and healing vision to bear on the client's perception of his or her "interests," and the relation of those interests to the well-being of the larger community; 35 and the transformation of legal education away from a focus on the mere manipulation of existing rules and doctrine, toward a more humane and spiritually integrated conception of law and justice. What these new efforts need from a revitalized critical legal studies movement is a scholarship and pedagogy that provides in every field a critique of existing law and legal culture that reveals the limitations of the liberal world-view out of which the existing order was constructed in the centuries since the Enlightenment, and that points toward the socially connected community that ought to be its successor. It is this intellectual piece of the puzzle that is lacking from all of the recent efforts to transform legal practice in the ways I have just described; all of these efforts without exception, as far as I know, challenge the individualized, antagonistic, and despiritualized character of the adversary system without challenging the substantive content of existing law or the analytical thought process of legal reasoning. Both of these elements of legal culture - the critique of the substance of legal rules and doctrine, and the critique of detached, analytical rule-application through abstract, logical technique resting on a normative foundation - require a cadre of intellectuals to help disassemble what is and point to what ought to be, as a "moment" in the transformation from the individualistic, liberal world we inhabit to a post-liberal socially connected, loving, and compassionate world to which we aspire. So, for example, a CLS course in Contracts should subordinate its use of the indeterminacy critique to a meaning-centered critique emphasizing how the rules presupposing the legitimacy and desirability of individualistic, self-interested bargains (adjusted by a touch of concern for "the reliance interest") among an infinite number of socially disconnected strangers bound by no common moral purpose or spiritually bonded social community outside their respective blood relatives are rapidly destroying the planet, in part, by making use of liberal abstractions like freedom of choice that make it appear that this lonely destiny is what people really want. Or a course in [\*532] Torts should make it clear to students that there is more to the obligations born of our essential connection to each other as social beings than the duty to not pull chairs out from under each other as we are about to sit down to dinner, or not to smash into each others' cars, or injure each other with exploding Coke bottles - that the bond of recognition itself, and what Emmanuel Levinas calls the ethical demand of the face of the Other, 36 means we have a duty to "rescue" each other, that we must take care of each other, including the poor, the homeless, and those who lack health care. CLS scholars and teachers should extend - and in many instances already have extended - this kind of critical analysis to every area of law, including developing a critical reflection on the Constitution as a liberal and individualistic document that was a great advance in its time but now must be transformed to embrace a newly evolving vision of spiritual community that was not even conceived of as a universal necessity in the late eighteenth century when it was drafted. Concomitant with the transformation of doctrine must come a transformation of remedy, beyond money damages passed between socially separated litigants conceived as interested only in material outcomes, and beyond a due process model of civil and criminal procedure that links justice to merely the vindication of rights through the dutiful monitoring of a fact-based public hearing that leaves the parties as disconnected or more disconnected than when their legal process began. And finally, supporting such a re-visioning of doctrine, remedy, and process must be a rethinking of legal reasoning itself that goes beyond the normative circularity of the application of indeterminate rules presupposing the legitimacy of the secular liberal order toward a morally grounded reflection anchored in the common effort to realize the values of love, compassion, and mutual concern and well-being that are being carried forward by the movement itself as it tries to link the transformative element of its own social being with a new legal knowledge that would be expressive of it. If CLS would embrace the moral and spiritual agenda that I'm proposing here, it would instantly revitalize itself. Everywhere today there are law students and young legal scholars trying to figure out how to devote their lives and work to addressing the problems of global warming and the destruction of the environment, to overcoming the social violence and irrationality of religious fundamentalism and pathological, secular nationalism, and to challenging the human indifference of corporate globalization and its blind and reeling world markets. But Marxist materialism can no longer speak to these new generations of potential activists who have become aware that these problems require a spiritually grounded solution, and after a thirty-year assault by the New Right, no one [\*533] believes any longer in the model of regulatory government as morally capable of containing and altering a civil society founded upon Fear of the Other and private self-interest. A new spiritual activism actually connecting Self and Other is clearly what is needed, and it is already coming into being in hundreds of hopeful incarnations. If CLS were to rediscover itself as the legal-intellectual expression of that world-wide effort, it could once again challenge legal education and legal scholarship to become vehicles of the creation of a better world, connecting the worthwhile body of work already produced by its older generations with new, more spiritually confident work yet to be written by the young.

#### 5. Critical legal philosophy is non-empirical, cherry-picked garbage

John Stick 86, Assistant Professor of Law at Tulane University School of Law, “Can Nihilism Be Pragmatic?”, Harvard Law Review, Vol. 100, No. 2 (Dec., 1986), pp. 332-401, JSTOR

This Article examines the relationship between the critical legal nihilists and the philosophers they rely upon for support. The nihilists' use of philosophy is important, because their critique is at bottom conceptual and not empirical. Legal nihilists do not study the work of large numbers of practicing attorneys or judges to discover the extent of agreement about whether particular legal arguments are valid. Instead, they parse the words of theorists and appellate judges to discover contradictions and opposed values. This selective parsing of the language of a few theorists and judges (neglecting the hundreds of thousands of practicing attorneys) is itself far from adequate empirical technique. More important, the nihilists' leap from the general inconsistencies they discover to a claim that law does not follow standards of rationality is unconvincing without philosophical argument. Nihilists rarely attempt to supply that argument themselves; if they feel any need of further discussion they usually rely upon theorists outside the discipline of law.9 ¶ This Article demonstrates that the nihilists misuse much of the philosophy they attempt to appropriate. In order to focus the discussion, this Article concentrates on one comprehensive statement of nihilism and the major intellectual influences upon it. The best and most complete exposition of the nihilist critique of law was written by Joseph Singer in a recent article in the Yale Law Journal.10 His article is the most philosophically sophisticated and judicious work to date. Singer states that he relies heavily on the analysis of the philosophers Richard Bernstein, Michael Sandel, and Roberto Unger,11 but he acknowledges that he owes his greatest intellectual debt to Richard Rorty, 12 a scholar who identifies his own position with pragmatism. 13 I focus on the relationship between Singer and Rorty not only because Singer claims that Rorty has had the greatest influence on his thought, but also because Rorty is the closest in spirit to Singer.14 For example, Bernstein,15 Sandel,16 and Unger17 all allow rationality and shared values larger roles in political and moral argument than does Rorty. If Singer is too much of an irrationalist for Rorty, then a fortiori Singer is too much of an irrationalist for the others.