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### 1

#### Interpretation: Affirmatives must defend the immediate hypothetical enactment of the plan. Should means immediate

Summer 94 (Justice, Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14>)

The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 Theanswer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 Nisi prius orders should be so construed as to give effect to every words and every part of the text, with a view to carrying out the evident intent of the judge's direction.17 The order's language ought not to be considered abstractly. The actual meaning intended by the document's signatory should be derived from the context in which the phrase to be interpreted is used.18 When applied to the May 18 memorial, these told canons impel my conclusion that the judge doubtless intended his ruling as an in praesenti resolution of Dollarsaver's quest for judgment n.o.v. Approval of all counsel plainly appears on the face of the critical May 18 entry which is [885 P.2d 1358] signed by the judge.19 True minutes20 of a court neither call for nor bear the approval of the parties' counsel nor the judge's signature. To reject out of hand the view that in this context "should" is impliedly followed by the customary, "and the same hereby is", makes the court once again revert to medieval notions of ritualistic formalism now so thoroughly condemned in national jurisprudence and long abandoned by the statutory policy of this State. IV CONCLUSION Nisi prius judgments and orders should be construed in a manner which gives effect and meaning to the complete substance of the memorial. When a judge-signed direction is capable of two interpretations, one of which would make it a valid part of the record proper and the other would render it a meaningless exercise in futility, the adoption of the former interpretation is this court's due. A rule - that on direct appeal views as fatal to the order's efficacy the mere omission from the journal entry of a long and customarily implied phrase, i.e., "and the same hereby is" - is soon likely to drift into the body of principles which govern the facial validity of judgments. This development would make judicial acts acutely vulnerable to collateral attack for the most trivial of reasons and tend to undermine the stability of titles or other adjudicated rights. It is obvious the trial judge intended his May 18 memorial to be an in praesenti order overruling Dollarsaver's motion for judgment n.o.v. It is hence that memorial, and not the later June 2 entry, which triggered appeal time in this case. Because the petition. in error was not filed within 30 days of May 18, the appeal is untimely. I would hence sustain the appellee's motion to dismiss.21 Footnotes: 1 The pertinent terms of the memorial of May 18, 1993 are: IN THE DISTRICT COURT OF BRYAN COUNTY, STATE OF OKLAHOMA COURT MINUTE 5/18/93 No. C-91-223 After having heard and considered arguments of counsel in support of and in opposition to the motions of the Defendant for judgment N.O.V. and a new trial, the Court finds that the motions should be overruled. Approved as to form: /s/ Ken Rainbolt /s/ Austin R. Deaton, Jr. /s/ Don Michael Haggerty /s/ Rocky L. Powers Judge 2 The turgid phrase - "should be and the same hereby is" - is a tautological absurdity. This is so because "should" is synonymous with ought or must and is in itself sufficient to effect an inpraesenti ruling - one that is couched in "a present indicative synonymous with ought." See infra note 15. 3 Carter v. Carter, Okl., 783 P.2d 969, 970 (1989); Horizons, Inc. v. Keo Leasing Co., Okl., 681 P.2d 757, 759 (1984); Amarex, Inc. v. Baker, Okl., 655 P.2d 1040, 1043 (1983); Knell v. Burnes, Okl., 645 P.2d 471, 473 (1982); Prock v. District Court of Pittsburgh County, Okl., 630 P.2d 772, 775 (1981); Harry v. Hertzler, 185 Okl. 151, 90 P.2d 656, 659 (1939); Ginn v. Knight, 106 Okl. 4, 232 P. 936, 937 (1925). 4 "Recordable" means that by force of 12 O.S. 1991 § 24 an instrument meeting that section's criteria must be entered on or "recorded" in the court's journal. The clerk may "enter" only that which is "on file." The pertinent terms of 12 O.S. 1991 § 24 are: "Upon the journal record required to be kept by the clerk of the district court in civil cases . . . shall be entered copies of the following instruments on file: 1. All items of process by which the court acquired jurisdiction of the person of each defendant in the case; and 2. All instruments filed in the case that bear the signature of the and judge and specify clearly the relief granted or order made." [Emphasis added.] 5 See 12 O.S. 1991 § 1116 which states in pertinent part: "Every direction of a court or judge made or entered in writing, and not included in a judgment is an order." [Emphasis added.] 6 The pertinent terms of 12 O.S. 1993 § 696.3 , effective October 1, 1993, are: "A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain: 1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument; 2. A statement of the disposition of the action, proceeding, or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties; 3. The signature and title of the court; . . ." 7 The court holds that the May 18 memorial's recital that "the Court finds that the motions should be overruled" is a "finding" and not a ruling. In its pure form, a finding is generally not effective as an order or judgment. See, e.g., Tillman v. Tillman, 199 Okl. 130, 184 P.2d 784 (1947), cited in the court's opinion. 8 When ruling upon a motion for judgment n.o.v. the court must take into account all the evidence favorable to the party against whom the motion is directed and disregard all conflicting evidence favorable to the movant. If the court should conclude the motion is sustainable, it must hold, as a matter of law, that there is an entire absence of proof tending to show a right to recover. See Austin v. Wilkerson, Inc., Okl., 519 P.2d 899, 903 (1974). 9 See Bullard v. Grisham Const. Co., Okl., 660 P.2d 1045, 1047 (1983), where this court reviewed a trial judge's "findings of fact", perceived as a basis for his ruling on a motion for judgment n.o.v. (in the face of a defendant's reliance on plaintiff's contributory negligence). These judicial findings were held impermissible as an invasion of the providence of the jury and proscribed by OKLA. CONST. ART, 23, § 6 . Id. at 1048. 10 Everyday courthouse parlance does not always distinguish between a judge's "finding", which denotes nisi prius resolution of fact issues, and "ruling" or "conclusion of law". The latter resolves disputed issues of law. In practice usage members of the bench and bar often confuse what the judge "finds" with what that official "concludes", i.e., resolves as a legal matter. 11 See Fowler v. Thomsen, 68 Neb. 578, 94 N.W. 810, 811-12 (1903), where the court determined a ruling that "[1] find from the bill of particulars that there is due the plaintiff the sum of . . ." was a judgment and not a finding. In reaching its conclusion the court reasoned that "[e]ffect must be given to the entire in the docket according to the manifest intention of the justice in making them." Id., 94 N.W. at 811. 12 When the language of a judgment is susceptible of two interpretations, that which makes it correct and valid is preferred to one that would render it erroneous. Hale v. Independent Powder Co., 46 Okl. 135, 148 P. 715, 716 (1915); Sharp v. McColm, 79 Kan. 772, 101 P. 659, 662 (1909); Clay v. Hildebrand, 34 Kan. 694, 9 P. 466, 470 (1886); see also 1 A.C. FREEMAN LAW OF JUDGMENTS § 76 (5th ed. 1925). 13 "Should" not only is used as a "present indicative" synonymous with ought but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an obligation and to be more than advisory); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an obligation to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future [in futurol]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### This is the same as a delay aff – timeframe fiat is a voting issue

#### They eliminate any possible ground we could have against the plan. Their interpretation creates a sequencing effect where the plan only happens AFTER the movement – this is uniquely bad because there is no evidence contextualizing WHEN the movement is done or what it has to do before the plan occurs.

#### Kills ability to get unique links – they can postpone the plan until our uniqueness becomes irrelevant

#### Key to relevant debate – timeframe affs mean we don’t debate about issues relevant to the current political climate

### 2

#### Interpretation- the aff cannot claim advantages not tied to the implementation of the plan

#### Key to predictable limits- infinite number of benefits the aff could claim to their speech act our discourse- impossible to get offense against.

#### Key to education- can’t clash with portions off the aff that aren’t predicated off of affirming the resolution- clash is key to two way education

#### Voting issue for fairness and education

### 3

#### THEIR cede the political theory ROMANTIciZES THE WESTERN POLITICAL TRADITION ABANDONING THE VICTIMS OF THE HISTORICAL VIOLENCE OF THE DEMOCRATIC culture WHICH IS THE CAUSE OF DEPOLITICIZION; the plan straight turns their anti-poltics impacts.

CHAPUT 2K2

[CATHERINE, ass. Prof Rhetoric and Politics@ UNR, REVIEW OF CARL BOGGS’ THE END OF POLITICS”, WORKPLACE, 7:1, LOUISVILLE.EDU,]

Before proceeding, it will be helpful to review the major terms of this argument and how Boggs defines these terms. The major terms I find are: public sphere, politics, depoliticization, anti-politics, and corporatization. Boggs understands politics to be a tradition derived from the ancient Greeks and intimately related to individual self-fulfillment. Relying on Aristotle, Boggs argues that "politics constitutes a unique public sphere in which people come together, interact, make decisions, forge citizen bonds, carry out the imperatives of social change, and ultimately search for the good society" (7). More importantly, politics is the "source of broad human governance that is indispensable to the pursuit of meaning, direction, and purpose in life" (7). According to Boggs, "it is precisely this visionary and empowering sense of politics that seems to have vanished from the American landscape" (8). In its place lies a pervasively depoliticized culture. Depoliticization, or the process of corporatization resulting in an anti-political climate, occurs when individual interests and the individual good supercede the collective good. 3. Instead of a politics inspired by public dialogue and a sense of the collective good, Boggs contends that the disengaged public sphere operates under an ethos of anti-politics resulting from feelings of powerlessness, cynicism, and alienation. Within this ethos, political activity is devalued and private activity takes its place. The 1970s roughly mark the transformation from politics to anti-politics. Boggs states that the "precarious social and political space won through hard battles has progressively narrowed since the late 1970s, when the public sphere became increasingly subject to the ravages of corporate colonization" (14). It is at this historical moment that corporate and state power increasingly begin to transfer "public anger and frustration outside the political terrain, toward more immediate micro, psychologically gratifying, and typically privatized modes of resistance" (14). The process whereby this transformation takes place can be best understood as the corporatization of the public sphere. For Boggs, corporatization refers to "'corporations' very growing presence in the economy, their extensive lobbies and influence over legislative activity, their ownership and control of the mass media, their preponderant influence over election campaigns, their capacity to secure relief from myriad regulatory controls, their massive public relations apparatus, their general subsidies to the two major parties and the convention process, and so forth" (9). Corporatization erodes the public sphere by focusing on the individual rather than the social and emphasizing private, corporate interests rather than the general, public good. Thus, corporatization causes the depoliticization of the public sphere because it promotes private consumption, emphasizes individualism, and ignores the social good. Finally, according to Boggs, the public sphere includes electoral activity as well as the space in which diverse social movements form and constitute the terrain of public life; the public sphere is the glue that cements individual and social concerns to administrative regimes like the state or corporations. Corporatization, depoliticization, and anti-politics have thrown the public sphere into deep crisis; it is this crisis that lies at the heart of Boggs's analyses. 4. Yet perhaps Boggs's critique of corporate depoliticization relies on an overly romantic historical narrative of the Western democratic political tradition. He claims that "the special tradition of politics that goes back to the ancient Greeks also embodies much of what is noble, creative, and transformative in the human experience" (95). And further argues that "the Greeks upheld the supreme virtue of a uniquely 'civic' or 'popular' life in which it would be possible to build community and citizenship in a world of evolving shared involvements" (95). His historical narrative moves from Plato and Aristotle through Rousseau and eventually to the United States in political figures such as Alexis de Tocqueville, Thomas Jefferson, and Thomas Paine. Valorizing these figures and the tradition they represent, Boggs argues that "the emergence of the nation-state in the late-eighteenth century produced near universal norms of citizenship, consensual governance, political rights, and national identity" (97). Although late-eighteenth century democracy failed to include women, slaves, and many non-white citizens, he claims that this democratic tradition produced "a further broadening of citizenship as [these] previously excluded groups" gained suffrage and representation (97). According to his narrative, the US was once a space where "civic associations flourished and the sense of citizen obligation, while clearly limited, was taken far more seriously than in most European countries" (42). In other words, there was once a public sphere in which citizens were encouraged to participate and a sense that such participation had meaning. It should be noted, however, that this enthusiastic historical account runs the risk of erasing the concrete connections between the spread of democracy and the expansion of the capitalist marketplace.

#### CALLING ON THE LEFT TO ENGAGE IN A CONTEST TO WREST POWER FROM THE RIGHT ONLY REINSTANTIATES THE ANTI-BLACK SEMIOTIC FIELD OF CIVIL SOCIETY. The only alternative is unflinching paradigmatic rejection of civil society.

**Wilderson 2003** Wilderson, PHD Rhetoric, Berkeley, Gramsci’s Black Marx: Whither the Slave in Civil Society?, Social Identities, Volume 9, Number 2, 2003

It is true that Gramsci acknowledges no organic division between political society and civil society. He makes the division for methodological purposes. There is one organism, ‘the modern bourgeois-liberal state’ (Buttigieg, 1995, p. 28), but there are two qualitatively different kinds of apparatuses: on the one hand, the ensemble of so-called private associations and ideological invitations to participate in a wide and varied play of consensus-making strategies (civil society), and on the other hand, a set of enforcement structures which kick in when that ensemble is regressive or can no longer lead (political society). But Gramsci would have us believe not that white positionality emerges and is elaborated on the terrain of civil society and encounters coercion when civil society is not expansive enough to embrace the idea of freedom for all, but that all positionalities emerge and are elaborated on the terrain of civil society. Gramsci does not racialise this birth, elaboration, and stunting, or re-emerg- ence, of human subjectivity — because **civil society, supposedly, elaborates all subjectivity and so there is no need for such speciﬁcity.** Anglo-American Gramscians, like Buttigieg and Sassoon, and **US activists** in the anti-globalisation movement whose unspoken grammar is predicated on Gramsci’s assumptive logic, **continue this tradition of unraced positionality which allows them to posit the valency of Wars of Position for blacks and whites alike. They assume that all subjects are positioned in such a way as to have their consent solicited and to be able to extend their consent ‘spontaneously’**. This is profoundly problematic if only — leaving revolution aside for the moment — at the level of analysis; for it assumes that hegemony with its three constituent elements (inﬂuence, leadership, consent) is the modality which must be either inculcated or breached, if one is to either avoid or incur, respectively, the violence of the state. However, one of the primary claims of this essay is that, **whereas the consent of black people may seem to be called upon, its withdrawal does not precipitate a ‘crisis in authority’. Put another way, the transformation of black people’s acquiescent ‘common sense’ into revolutionary ‘good sense’ is an extenuating circumstance, but not the catalyst, of State violence against black people. State violence against the black body,** as Martinot and Sexton suggest in their introduction, is not contingent, it is structural and, above all, gratuitous. Therefore, Gramscian wisdom cannot imagine the emergence, elaboration, and stunting of a subject by way, not of the contingency of violence resulting in a ‘crisis of authority’, but by way of direct relations of force. This is remarkable, and unfortunate, given the fact that the emergence of the slave, the subject- effect of an ensemble of direct relations of force, marks the emergence of capitalism itself. Let us put a ﬁner point on it: **violence towards the black body is the precondition for the existence of** Gramsci’s single entity **‘the modern bourgeois-state’ with its divided apparatus, political society and civil society**. This is to say **violence against black people is ontological and gratuitous as opposed to merely ideological and contingent**.2 Furthermore, no magical mo- ment (i.e., 1865) transformed paradigmatically the black body’s relation to this entity.3 In this regard, **the hegemonic advances within civil society by the Left hold out no more possibility for black life than the coercive backlash of political society**. What many political theorists have either missed or ignored is that **a crisis of authority that might take place by way of a Left expansion of civil society, further instantiates, rather than dismantles, the authority of whiteness. Black death is the modern bourgeois-state’s recreational pastime, but the hunting season is not confined to the time (and place) of political society; blacks are fair game as a result of a progressively expanding civil society** as well. Civil Death in Civil Society Capital was kick-started by the rape of the African continent. This phenomenon is central to neither Gramsci nor Marx. The theoretical importance of emphasis- ing this in the early twenty-ﬁrst century is two-fold: ﬁrst, ‘the socio-political order of the New World’ (Spillers, 1987, p. 67) was kick-started by approaching a particular body (a black body) with direct relations of force, not by approach- ing a white body with variable capital. Thus, one could say that slavery — the ‘accumulation’ of black bodies regardless of their utility as labourers (Hartman; 230 Frank Wilderson, III Johnson) through an idiom of despotic power (Patterson) — is closer to capital’s primal desire than is waged oppression — the ‘exploitation’ of unraced bodies (Marx, Lenin, Gramsci) that labour through an idiom of rational/symbolic (the wage) power: A relation of terror as opposed to a relation of hegemony.4 Secondly, today, late capital is imposing a renaissance of this original desire, direct relations of force (the prison industrial complex), the despotism of the unwaged relation: and this Renaissance of slavery has, once again, as its structuring image in libidinal economy, and its primary target in political economy, the black body. The value of reintroducing the unthought category of the slave, by way of noting the absence of the black subject, lies in the black subject’s potential for extending the demand placed on state/capital formations because its re-intro- duction into the discourse expands the intensity of the antagonism. In other words, the slave makes a demand, which is in excess of the demand made by the worker. The worker demands that productivity be fair and democratic (Gramsci’s new hegemony, Lenin’s dictatorship of the proletariat), the slave, on the other hand, demands that production stop; stop without recourse to its ultimate democratisation. Work is not an organic principle for the slave. The absence of black subjectivity from the crux of marxist discourse is symptomatic of the discourse’s inability to cope with the possibility that the generative subject of capitalism, the black body of the ﬁfteenth and sixteenth centuries, and the generative subject that resolves late-capital’s over-accumulation crisis, the black (incarcerated) body of the twentieth and twenty-ﬁrst centuries, do not reify the basic categories which structure marxist conﬂict: the categories of work, production, exploitation, historical self-awareness and, above all, hege- mony. If, by way of the black subject, we consider the underlying grammar of the question ‘What does it mean to be free?’ that grammar being the question ‘What does it mean to suffer?’ then we come up against a grammar of suffering not only in excess of any semiotics of exploitation, but a grammar of suffering beyond signiﬁcation itself, a suffering that cannot be spoken because the gratuitous terror of white supremacy is as much contingent upon the irrationality of white fantasies and shared pleasures as it is upon a logic — the logic of capital. It extends beyond texualisation. When talking about this terror, Cornel West uses the term ‘black invisibility and namelessness’ to designate, at the level of ontology, what we are calling a scandal at the level of discourse. He writes: [America’s] unrelenting assault on black humanity produced the funda- mental condition of black culture — that of black invisibility and namelessness. On the crucial existential level relating to black invisibility and namelessness, the ﬁrst difﬁcult challenge and demanding discipline is to ward off madness and discredit suicide as a desirable option. A central preoccupation of black culture is that of confronting candidly the ontological wounds, psychic scars, and existential bruises of black peo- ple while fending off insanity and self-annihilation. This is why the ‘ur-text’ of black culture is neither a word nor a book, not an architectural monument or a legal brief. Instead, it is a guttural cry and a wrenching moan — a cry not so much for help as for home, a moan less out of complaint than for recognition. (1996, pp. 80–81). Thus, **the black subject position in America is an antagonism, a demand that can not be satisﬁed through a transfer of ownership/organisation of existing rubrics;** whereas the Gramscian subject, the worker, represents a demand that can indeed be satisﬁed by way of a successful War of Position, which brings about the end of exploitation. The worker calls into question the legitimacy of productive practices, the slave calls into question the legitimacy of productivity itself. From the positionality of the worker the question, ‘What does it mean to be free?’ is raised. But the question hides the process by which the discourse assumes a hidden grammar which has already posed and answered the question, ‘What does it mean to suffer?’

And that grammar is organised around the categories of exploitation (unfair labour relations or wage slavery). Thus, exploitation (wage slavery) is the only category of oppression which concerns Gramsci: society, Western society, thrives on the exploitation of the Gramscian subject. Full stop. Again, this is inadequate, because it would call white supremacy ‘racism’ and articulate it as a derivative phenomenon of the capitalist matrix, rather than incorporating white supremacy as a matrix constituent to the base, if not the base itself. What I am saying is that **the insatiability of the slave demand upon existing structures means that it cannot ﬁnd its articulation within the modality of hegemony (inﬂuence, leadership, consent) — the black body cannot give its consent because ‘generalised trust’, the precondition for the solicitation of consent, ‘equals racialised whiteness’** (Barrett). Furthermore, as Patterson points out, slavery is natal alienation by way of social death, which is to say that a slave has no symbolic currency or material labour power to exchange: a slave does not enter into a transaction of value (however asymmetrical) but is subsumed by direct relations of force, which is to say that **a slave is an articulation of a despotic irrationality** whereas the worker is an articulation of a symbolic rationality. **White supremacy’s despotic irrationality is** as **foundational to American institutionality** as capitalism’s symbolic rationality because, as West writes, **it dictates the limits of the operation of American democracy — with black folk the indispensable sacriﬁcial lamb vital to its sustenance. Hence black subordination constitutes the necessary condition for the ﬂourishing of American democracy**, **the tragic prerequisite for America itself.** This is, in part, what Richard Wright meant when he noted**, ‘The Negro is America’s metaphor’**. (1996, p. 72) And it is well known **that** a metaphor **comes into being through a violence that kills, rather than merely exploits, the object so that the concept might live**. West’s interventions help us see how marxism can only come to grips with America’s structuring rationality — what it calls capitalism, or political economy; but cannot come to grips with **America’s structuring irrationality: the libidinal economy of white supremacy, and its hyper-discursive violence** that **kills the black subject so that the concept, civil society, may live. In other words, from the incoherence of black death, America generates the coherence of white life**. This is important when considering **the** Gramscian **paradigm** (and its progenitors in the world **of** **US social movements** today**) which is so dependent on the empirical status of hegemony and civil society: struggles over hegemony are seldom, if ever, asignifying — at some point they require coherence, they require categories for the record — which means they contain the seeds of anti-blackness.**

#### The US court system is racist at every step of the way. Evidence collection, jury selection, the trial system itself – all of these components of the legal system are steeped in racism. Putting prisoners through the trial system will NOT lead to reform – we need massive jarring shocks to the system which only the counterplan can solve.

Quigley 2010 (Bill, Legal Director @ Center for Constitutional Rights and Professor at Loyola New Orleans. "Fourteen Examples of Racism in Criminal Justice System" http://www.huffingtonpost.com/bill-quigley/fourteen-examples-of-raci\_b\_658947.html)

The biggest crime in the U.S. criminal justice system is that it is a race-based institution where African-Americans are directly targeted and punished in a much more aggressive way than white people. Saying the US criminal system is racist may be politically controversial in some circles. But the facts are overwhelming. No real debate about that. Below I set out numerous examples of these facts. The question is - are these facts the mistakes of an otherwise good system, or are they evidence that the racist criminal justice system is working exactly as intended? Is the US criminal justice system operated to marginalize and control millions of African Americans? Information on race is available for each step of the criminal justice system - from the use of drugs, police stops, arrests, getting out on bail, legal representation, jury selection, trial, sentencing, prison, parole and freedom. Look what these facts show. One. The US has seen a surge in arrests and putting people in jail over the last four decades. Most of the reason is the war on drugs. Yet whites and blacks engage in drug offenses, possession and sales, at roughly comparable rates - according to a report on race and drug enforcement published by Human Rights Watch in May 2008. While African Americans comprise 13% of the US population and 14% of monthly drug users they are 37% of the people arrested for drug offenses - according to 2009 Congressional testimony by Marc Mauer of The Sentencing Project. Two. The police stop blacks and Latinos at rates that are much higher than whites. In New York City, where people of color make up about half of the population, 80% of the NYPD stops were of blacks and Latinos. When whites were stopped, only 8% were frisked. When blacks and Latinos are stopped 85% were frisked according to information provided by the NYPD. The same is true most other places as well. In a California study, the ACLU found blacks are three times more likely to be stopped than whites. Three. Since 1970, drug arrests have skyrocketed rising from 320,000 to close to 1.6 million according to the Bureau of Justice Statistics of the U.S. Department of Justice. African Americans are arrested for drug offenses at rates 2 to 11 times higher than the rate for whites - according to a May 2009 report on disparity in drug arrests by Human Rights Watch. Four. Once arrested, blacks are more likely to remain in prison awaiting trial than whites. For example, the New York state division of criminal justice did a 1995 review of disparities in processing felony arrests and found that in some parts of New York blacks are 33% more likely to be detained awaiting felony trials than whites facing felony trials. Five. Once arrested, 80% of the people in the criminal justice system get a public defender for their lawyer. Race plays a big role here as well. Stop in any urban courtroom and look at the color of the people who are waiting for public defenders. Despite often heroic efforts by public defenders the system gives them much more work and much less money than the prosecution. The American Bar Association, not a radical bunch, reviewed the US public defender system in 2004 and concluded "All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring...The fundamental right to a lawyer that America assumes applies to everyone accused of criminal conduct effectively does not exist in practice for countless people across the US." Six. African Americans are frequently illegally excluded from criminal jury service according to a June 2010 study released by the Equal Justice Initiative. For example in Houston County, Alabama, 8 out of 10 African Americans qualified for jury service have been struck by prosecutors from serving on death penalty cases. Seven. Trials are rare. Only 3 to 5 percent of criminal cases go to trial - the rest are plea bargained. Most African Americans defendants never get a trial. Most plea bargains consist of promise of a longer sentence if a person exercises their constitutional right to trial. As a result, people caught up in the system, as the American Bar Association points out, plead guilty even when innocent. Why? As one young man told me recently, "Who wouldn't rather do three years for a crime they didn't commit than risk twenty-five years for a crime they didn't do?" Eight. The U.S. Sentencing Commission reported in March 2010 that in the federal system black offenders receive sentences that are 10% longer than white offenders for the same crimes. Marc Mauer of the Sentencing Project reports African Americans are 21% more likely to receive mandatory minimum sentences than white defendants and 20% more like to be sentenced to prison than white drug defendants. Nine. The longer the sentence, the more likely it is that non-white people will be the ones getting it. A July 2009 report by the Sentencing Project found that two-thirds of the people in the US with life sentences are non-white. In New York, it is 83%. Ten. As a result, African Americans, who are 13% of the population and 14% of drug users, are not only 37% of the people arrested for drugs but 56% of the people in state prisons for drug offenses. Marc Mauer May 2009 Congressional Testimony for The Sentencing Project. Eleven. The US Bureau of Justice Statistics concludes that the chance of a black male born in 2001 of going to jail is 32% or 1 in three. Latino males have a 17% chance and white males have a 6% chance. Thus black boys are five times and Latino boys nearly three times as likely as white boys to go to jail. Twelve. So, while African American juvenile youth is but 16% of the population, they are 28% of juvenile arrests, 37% of the youth in juvenile jails and 58% of the youth sent to adult prisons. 2009 Criminal Justice Primer, The Sentencing Project. Thirteen. Remember that the US leads the world in putting our own people into jail and prison. The New York Times reported in 2008 that the US has five percent of the world's population but a quarter of the world's prisoners, over 2.3 million people behind bars, dwarfing other nations. The US rate of incarceration is five to eight times higher than other highly developed countries and black males are the largest percentage of inmates according to ABC News. Fourteen. Even when released from prison, race continues to dominate. A study by Professor Devah Pager of the University of Wisconsin found that 17% of white job applicants with criminal records received call backs from employers while only 5% of black job applicants with criminal records received call backs. Race is so prominent in that study that whites with criminal records actually received better treatment than blacks without criminal records! So, what conclusions do these facts lead to? The criminal justice system, from start to finish, is seriously racist. Professor Michelle Alexander concludes that it is no coincidence that the criminal justice system ramped up its processing of African Americans just as the Jim Crow laws enforced since the age of slavery ended. Her book, The New Jim Crow: Mass Incarceration in the Age of Colorblindness sees these facts as evidence of the new way the US has decided to control African Americans - a racialized system of social control. The stigma of criminality functions in much the same way as Jim Crow - creating legal boundaries between them and us, allowing legal discrimination against them, removing the right to vote from millions, and essentially warehousing a disposable population of unwanted people. She calls it a new caste system. Poor whites and people of other ethnicity are also subjected to this system of social control. Because if poor whites or others get out of line, they will be given the worst possible treatment, they will be treated just like poor blacks. Other critics like Professor Dylan Rodriguez see the criminal justice system as a key part of what he calls the domestic war on the marginalized. Because of globalization, he argues in his book Forced Passages, there is an excess of people in the US and elsewhere. "These people", whether they are in Guantanamo or Abu Ghraib or US jails and prisons, are not productive, are not needed, are not wanted and are not really entitled to the same human rights as the productive ones. They must be controlled and dominated for the safety of the productive. They must be intimidated into accepting their inferiority or they must be removed from the society of the productive. This domestic war relies on the same technology that the US uses internationally. More and more we see the militarization of this country's police. Likewise, the goals of the US justice system are the same as the US war on terror - domination and control by capture, immobilization, punishment and liquidation.What to do? Martin Luther King Jr., said we as a nation must undergo a radical revolution of values. A radical approach to the US criminal justice system means we must go to the root of the problem. Not reform. Not better beds in better prisons. We are not called to only trim the leaves or prune the branches, but rip up this unjust system by its roots. We are all entitled to safety. That is a human right everyone has a right to expect. But do we really think that continuing with a deeply racist system leading the world in incarcerating our children is making us safer? It is time for every person interested in justice and safety to join in and dismantle this racist system. Should the US decriminalize drugs like marijuana? Should prisons be abolished? Should we expand the use of restorative justice? Can we create fair educational, medical and employment systems? All these questions and many more have to be seriously explored. Join a group like INCITE, Critical Resistance, the Center for Community Alternatives, Thousand Kites, or the California Prison Moratorium and work on it. As Professor Alexander says "Nothing short of a major social movement can dismantle this new caste system."

### 4

#### DEBATE NEUTRALIZES ANY EFFICACY OF COUNTER-HEGEMONIC STRATEGIES BY PASSIFYING RESISTANCE. THERE IS NO HOPE FOR OVERCOMING THE INEVITABLE CO-OPTION OF OPPOSITIONAL POLITICS IN THE CONTEXT OF DEBATE, VOTE NEGATIVE ON PRESUMPTION.

Occupied UC Berkeley 2k9
[http://anticapitalprojects.wordpress.com/2009/11/19/the-necrosocial/, the necrosocial: civic life, social death, and the UC, nov. 19,]¶ Yes, very much a cemetery. Only here there are no dirges, no prayers, only the repeated testing of our threshold for anxiety, humiliation, and debt. **The classroom just like the workplace just like the university just like the state just like the economy manages our social death, translating what we once knew from high school, from work, from our family life into academic parlance, into acceptable forms of social conflict. Who knew that behind so much civic life** (electoral campaigns, student body representatives, bureaucratic administrators, public relations officials, Peace and Conflict Studies, ad nauseam) **was so much social death? What postures we maintain to claim representation, what limits we assume, what desires we dismiss**? ¶ And in this moment of crisis they ask us to twist ourselves in a way that they can hear. Petitions to Sacramento, phone calls to Congressmen—**even the chancellor** patronizingly **congratulates** **our** September 24th **student strike,** shaping the meaning and the force of the movement as a movement against the policies of Sacramento. **He expands his institutional authority to encompass the movement.** When students begin to hold libraries over night, beginning to take our first baby step as an autonomous movement he reins us in by serendipitously announcing library money. **He manages movement, he kills movement by funneling it into the electoral process. He manages our social death. He looks forward to these battles on his terrain, to eulogize a proposition, to win this or that—he and his look forward to exhausting us**. ¶ **He and his look forward to a reproduction of the logic of representative governance, the release valve of the university plunges us into an abyss where ideas are wisps of ether**—that is, **meaning is ripped from action. Let’s talk about the fight endlessly, but always only in its managed form: to perpetually deliberate, the endless fleshing-out-of. When we push the boundaries of this form they are quick to reconfigure themselves to contain us:** the chancellor’s congratulations, the reopening of the libraries, the managed general assembly—**there is no fight against the administration here, only its own extension. ¶ Each day passes in this way, the administration on the look out to shape student discourse—it happens without pause, we don’t notice nor do we care to. It becomes banal, thoughtless. So much so that we see we are accumulating days: one semester, two, how close to being this or that, how far? This accumulation is our shared history.** This **accumulation**—**every once in a while interrupted, violated by a riot, a wild protest, unforgettable fucking, the overwhelming joy of love, life shattering heartbreak—is a muted, but desirous life. A dead but restless and desirous life.**

#### THEIR SOLVENCY CLAIMS PERFORMATIVELY REDUCES SCHOLARSHIP TO POLITICAL AGENCY. THIS PRODUCES OBLIVIOUSNESS AS TO THE STRUCTURAL ANTAGONISMS WHICH CONSTITUTE ACADEMIC WORK MEANING THEIR ATTEMPTS TO TRANSCEND THE QUAGMIRE OF THEORY AND PRAXIS ARE LINKS TO OUR CRITICISM.

Welsch 12

[scott, “coming to terms with the antagonism between rhetorical reflection and political agency”, vol 45., no. 1, 1-23, prof. communications, appallacia state university]

What does it mean to say rhetoric scholarship should be relevant to democratic¶ practice? A prevailing answer to this question insists that rhetoric scholars are participants¶ in the democratic contest for power just like all other citizens, no more¶ and no less. Drawing on the work of Slavoj Žižek, the argument of this essay is that¶ reducing scholarship to a mode of political agency not only produces an increasingly¶ uninhabitable academic identity but also draws our attention away from producing¶ results of rhetorical inquiry designed to be useful to citizens in democracy. Clinging¶ to the idea that academic practice is a mode of political action produces a fantastic¶ ~~blindness~~ [thoughtlessness] to the antagonism between scholarly reflection and political agency that¶ structures academic purpose. While empirical barriers to the production of rhetorical¶ resources suitable for democratic appropriation undoubtedly exist, ignoring the¶ self-frustrating character of academic desire is no less of an impediment to the¶ production of democratically consequential rhetoric scholarship.¶ Now over a decade since the publication of John Michael’s Anxious Intellects¶ (2000), many rhetoric scholars are no less anxious about the relevance of¶ scholarship to public affairs. Recent exchanges concerning rhetorical criticism,¶ public intellectualism, and academic engagement continue to provide¶ evidence of a prominent felt need to prove public relevance, explain away¶ the lack of readily apparent public engagement, or adopt a more activist¶ posture. That academic work should have political consequences is broadly¶ assumed within a dominant strain of rhetorical scholarship owing to what¶ is doubtless an incontrovertible feature of reality—words have political¶ consequences. From this fact, many rhetoric scholars reason that because¶ our academic words have political consequences, even if we do not intend¶ for them to, we should deliberately pursue the consequences we most desire¶ and seek their victory in political contest.¶ Questions as to the logic underlying this relationship of fact and¶ assertion¶ aside, this article is perhaps partly reducible to the claim that¶ arguments concerning the consequences of scholarship have uncritically¶ referenced such facts. Facts, as many of the same scholars would be quick¶ to point out, do not mean anything apart from the contours our ideological¶ lenses project on them. As Kenneth Burke notes, if a martyr can find joy in¶ the receiving of torturous blows, we should expect the meanings projected¶ onto facts to range widely (1984b, 35). With this in mind, we should be no¶ less concerned with the ways, in the words of Slavoj Žižek, that we “look¶ awry” so as to notice particular facts and invest them with the meaning we¶ do (1991, 8–12).¶ What Žižek adds to Burke’s observation regarding the projection of¶ meaning onto selected events is that this act of projection occurs at the¶ intersection of subjectivity and desire. Beyond charting relationships¶ between terms that constitute an ideology in order to map rhetorically constituted¶ motives, Žižek insists that action is propelled by the insufficiency of¶ those very rhetorical relationships (2008, 103–6). Inseparable from ideology,¶ every identity is constantly haunted by the lurking antagonisms between¶ the terms that structure it. The subject’s desire circulates around the dominant¶ tensions within the language that affords one an identity, continually¶ pursuing the traumatic impossibility of coherent subjectivity or ideological¶ consistency (1989, 124–29). Whereas Burke suggests that every rhetorical¶ language has a kind of rationality that supplies identity and order, Žižek¶ suggests that it is the basic irreconcilability of the competing demands that¶ our symbols place upon us that structures our desire (Žižek 1991, 162–69;¶ Burke 1966, 44–57). We continually pursue not simply the impossible but¶ that which is made impossible by the language of our ideologically constituted¶ identities.¶ I argue that the ongoing debate in rhetorical studies about the relationship¶ between scholarly reflection and political agency is illuminated by¶ Žižek’s account of ideology, identity, and desire. In this debate, references¶ to the factual, the empirical, or the material are deployed, not incidentally,¶ to address the impossible subject position that academics inhabit. Often¶ pursuing lines of research motivated by a desire to create wholeness¶ amid¶ coming to terms with the antagonism¶ 3¶ social, cultural, political, or institutional brokenness, rhetoric¶ scholars¶ nevertheless¶ become, in the sustained act of academic investigation,¶ significantly¶ alienated¶ from motivating practical concerns. Moreover,¶ because rhetoric scholars spend a large majority of their time in faculty¶ offices, classrooms, and archives of one kind or another, by necessity, mostly¶ talking, reading, and writing about political action, the felt alienation from¶ public life can feel like hypocrisy or, even worse, complicity in the perpetuation¶ of brokenness.¶ The subject position inhabited by many rhetoric scholars is not only¶ structured by a fundamental antagonism between scholarly reflection and¶ political agency but also by an antagonism between the production of expert¶ knowledge and a democratic faith in the judgment of the people. An academic¶ produces accounts or recommendations that are intended to enlighten,¶ supplement, or replace those currently accepted by a public imagined to be,¶ at its best, democratic. At the same time, the rhetoric scholar committed¶ to democracy often imagines that the academic’s role is to resist the expert¶ control of publics. Taken together, the two antagonisms yield a deeply conflicted¶ scholarly identity: the suspension of immediate action in favor of¶ reflection can be reduced to an act of complicity in the status quo, just as¶ the act of producing expert accounts can be reduced to the demonstration¶ of a lack of trust in democratic publics. The challenge is to resist synthetically¶ resolving these antagonisms, whether in confirming or disconfirming¶ ways. Rather, as Žižek might suggest, the aim should be to “come to terms”¶ with these antagonisms by articulating academic identities less invested in¶ reparative fantasies that imagine a material resolution of them (1989, 3, 5,¶ 133; 2005, 242–43). Accounts that fail to come to terms with the impossibility¶ of closure and continue to invest in such fantasies yield either indignant¶ calls for activism or too-easy assurance of the potential consequence of one’s¶ work, neither of which is well suited to scholar-citizen engagement.¶ Coming to terms with these antagonisms, I ultimately argue, is aided¶ by a reconsideration of a number of Jürgen Habermas’s (1973, 1970) early¶ works on the relationship between theory and practice and C. Wright¶ Mills’s (2000) account of the relationship between scholarly reflection and¶ political agency in The Sociological Imagination. Turning to Giambattista¶ Vico, Habermas shows us how to keep the antagonisms clearly in view,¶ even though he does not suggest a vision of scholarship that might allow¶ academics to deliberately respond to the antagonism between scholarship¶ and political agency. It is Mills, rather, through his concept of academics¶ working¶ in support of the sociological imagination, who suggests how¶ academics¶ might do just that. Directly and indirectly returning, in a sense,¶ to classical¶ rhetorical roots, each challenges rhetoric scholars to emphasize,¶ as the aim of rhetoric scholarship, the exploration and production of¶ inventional resources suitable for appropriation by citizen-actors. Such a¶ construction of the relationship between academics and politics locates¶ political agency and the situated pursuit of practical wisdom in democratic¶ publics without absolving scholars of responsibility to them.

#### THEIR GIROUX-CORROBORATED VISION OF ACADEMIC POLITICAL AGENCY IS DOOMED TO INEVITABLE FRUSTRATION PRODUCING SERIAL EPISTEMIC FAILURES – EVERY INSTANCE OF A LINK IS A REASON TO CAST ANNIHILATORY DOUBT ON THEIR SOLVENCY CLAIMS – BY LOGICAL NECESSITY, THEIR ACADEMIC KNOWLEDGE PRODUCTION IS UTTERLY INCONSEQUENTIAL GIVEN THAT THE 1AC IS AN EMPTY REPETITION OF THE SPECTRE OF POLITICAL AGENCY.

Welsch 12

[scott, “coming to terms with the antagonism between rhetorical reflection and political agency”, vol 45., no. 1, 1-23, prof. communications, appallacia state university]

Similarly, Henry Giroux concludes¶ his argument about the “responsibility of intellectuals” with the¶ declaration that “if we do not want to repeat the present as the future, or10¶ even worse, become complicit in the dominant exercise of power, it is time¶ for educators to mobilize collectively their energies by breaking down the¶ illusion of unanimity that dominant power propagates while working diligently,¶ tirelessly, and collectively to reclaim the promises of a truly global,¶ democratic future” (2004, 77).¶ Giroux’s concluding words, in which scholars reclaim the promises of a¶ truly global democratic future, echo Ono and Sloop’s construction of scholarship¶ as the politically embedded pursuit of utopia, McKerrow’s academic¶ emancipation of the oppressed, McGee’s social surgery, Hartnett’s social¶ justice scholar, and Fuller’s agent of justice. Each aims to unify the competing¶ elements within the scholarly subject position—scholarly reflection¶ and political agency—by reducing the former to the latter. Žižek’s advice¶ is to consider how such attempts are always doomed to frustration, not¶ because ideals are hard to live up to but because of the impossibility of¶ resolving the antagonism central to the scholarly subject position. The titles¶ “public intellectual” and “critical rhetorician” attest to the fundamental tension.¶ “Public” and “rhetorician” both represent the aspiration to political¶ engagement, while “critical” and “intellectual” set the scholar apart from¶ noncritical, nonintellectual public rhetoric. However, rather than allowing¶ the contingently articulated terms to exist in a state of paradoxical tension,¶ these authors imagine an organic, unavoidable, necessary unity. The scholar¶ is, in one moment, wholly public and wholly intellectual, wholly critical and¶ wholly rhetorical, wholly scholar and wholly citizen—an impossible unity,¶ characteristic of the sublime, in which the antagonism vanishes (2005, 147).¶ Yet, as Žižek predicts, the sublime is the impossible. The frustration-producing¶ gap between the unity of the ideological sublime and conflicted¶ experience quickly begins to put pressure on the ideology. This is born out¶ in the shift from the exhilarated tone accompanying the birth of critical¶ rhetoric (and its liberation of rhetoric scholarship from the incoherent¶ and untenable demands of scientific objectivity) to a dispirited accounting¶ for the difficulty of actually embodying the imagined unity of scholarly¶ reflection and political agency. Simonson, for example, draws attention¶ to the gap, noting how, twenty years later, it is hard to resist the feeling¶ that “the bulk of our academic publishing is utterly inconsequential.” His¶ hope is that a true connection between scholarly reflection and political¶ agency may be possible outside of academia (2010, 95). Fuller approaches¶ this conclusion when he says that the preferred path to filling universities¶ with agents of justice is through “scaling back the qualifications needed for¶ tenure-stream posts from the doctorate to the master’s degree,” a way of¶ coming to terms with the antagonism¶ 11¶ addressing the antagonism that amounts to setting half of it afloat (2006,¶ 154). Hartnett is especially interesting because while he also insists on the¶ existence of the gap, dismissing “many” of his “colleagues” as merely dispensing¶ “politically vacuous truisms” or, worse, as serving as “tools of the¶ state” and “humanities-based journals” as “impenetrably dense” and filled¶ with “jargon-riddled nonsense,” he evinces a considerable impatience with¶ the audiences he must engage as a social justice scholar (2010, 69, 74–75). In¶ addition to reducing those populating the mass media to a cabal of “rotten¶ corporate hucksters,” Hartnett rejects vernacular criticisms of his activism¶ as “ranting and raving by fools,” and chafes at becoming “a target for yahoos¶ of all stripes” (87, 84). In other words, the gap is not only recognized on¶ the academic side of the ledger but appears on the public side as well; the¶ public (in the vernacular sense of the word) does not yield to the desire¶ of the social justice scholar. Or, as Žižek puts it, referencing Lacan, “You¶ never look at me from the place in which I see you” (1991, 126). More telling¶ still, Hartnett’s main examples of social justice scholars are either retired or¶ located outside of academia (2010, 86). As Simonson suggests, and Hartnett¶ implicitly concedes, it may well be that it really is only outside the academy¶ that there can be immediate, material, political consequences.¶ In light of Žižek’s account of antagonism, one should not be surprised,¶ however, by the conclusion that broadly effective activism is only possible¶ outside of academia. The failure to unify scholarship and politics was predestined¶ in the symbolic imagination that rendered them unified. Instead,¶ effectively coming to terms with an antagonism means finding ways to¶ keep the competing elements of the antagonism in view—and not simply¶ as “bad” academic pretensions in conflict with “good” political motives.¶ Rather, the two elements that constitute the scholarly subject position,¶ reflective investigation and the production of unavoidable consequences,¶ must be constantly present, each vying for our attention. And, insofar as¶ the two elements are not kept in tension with each other, the scholarly subject¶ position becomes increasingly unbearable, leading to the production of¶ what Žižek calls supplemental ideological fantasies or ready explanations¶ for the gap.¶ For Fuller, the gap between lived experience and the wished-for¶ embodiment of the scholar as agent of justice is explained not by the basic¶ impossibility of resolving the antagonism within the realm of the symbolic¶ itself but by the treacherous acts of colleagues of low moral character.¶ Deploying a Puritan rhetoric (Roberts-Miller 1999), Fuller blames the¶ selfishness¶ of individual scholars pursuing personal gain and “convenience ¶ 12¶ for the failure of activist scholarship to emerge (2006, 150). Other scholars¶ who fail to be agents of justice are “feckless” (2006, 149). Those resistant to¶ such a scholarly identity “simply follow the path of least intellectual resistance,”¶ preferring “easily funded research” because it offers “greater professional¶ recognition” (2006, 110, 111). Hartnett follows Fuller in explaining¶ how “theory wolves” have “learned to play the tenure game for their own¶ benefit.” Current “¶ graduate students and assistant professors” are cynical,¶ self-obsessed, and content to explore “the intricacies of representation,¶ often with psychoanalytic overtones that explicitly focus on the self or¶ psyche rather than the community or the political” (2006, 72–73).¶ Yet, fantasy, according to Žižek, is not simple delusion. In fact, how¶ much scholarly research is unrelated to the exorcism of personal demons?¶ Who among us has not shaded an argument one way or another in order to¶ please a particular audience? Who has not fecklessly decided against even¶ sending a letter to the local newspaper? Rather, a key characteristic of fantasy,¶ in Žižek’s use of Lacan, is that it accounts for a persistent failure in a¶ prevailing ideology without making reference to basic, structuring antagonisms¶ inherent to every use of symbols. In this case, the gap—the existence¶ of academic work that appears not to serve (or in reality does not serve) a¶ sublime vision of an organic unity between scholarship and citizenship—is¶ accounted for by the existence of cynical, crafty scholars of low academic¶ rank who just want to get ahead. This fantastic pathway to the palliation of¶ the identity-jeopardizing symptom suggests that without these cowardly,¶ selfish, yet strangely powerful neophytes, scholarly reflection and political¶ agency would finally consummate their symbolic union. In this new context¶ of frustration, what is now most “real” is the spiritual principle of the¶ oneness¶ of scholarly reflection and political agency, while the experienced¶ fact of failed transcendence is reduced to a mere empirical obstacle (feckless¶ or selfish individuals) to be displaced.¶ What is Žižek’s psychoanalytic advice? Identify with the symptom¶ (1989, 128). Identification with the symptom means noting how the symptom¶ is quite likely a byproduct of the ideology itself, or a consequence of¶ one’s own symbolic identity, and not a simple empirical fact to be negated.¶ In this case, the antagonism between the symbolic practices of scholarly¶ reflection and political action yields academic products that cannot be¶ reduced to disinterested science or political engagement. To be an academic¶ is to be (unsettlingly) in the political world but not of the political world. It¶ is to resist the belief that one could finally fulfill the drive to transcendence¶ structuring the academic subject position. Žižek’s “coming to terms” with¶ coming to terms with the antagonism¶ 13¶ antagonism means, in Burke’s language, learning to leave the two impulses¶ constituting this dialectical pair in “jangling relation” to each other (Žižek¶ 1989, 3, 5, 133; 2005, 242–43; Burke 1969, 187) or to fold the existence of the¶ jangling relation into a less anxiety-producing vocabulary going forward.¶ To identify with the symptom is to begin the process of inventing an identity¶ that allows one to accept and even enjoy the tension as the constitutive¶ feature of the identity (Michael 2000, 12).¶ Nevertheless, the desire to “make a difference” needs to remain in full¶ force. However, when an individual scholar wants to make a difference as¶ the thing in and of itself versus making a distinctly scholarly difference, the¶ antagonism is again repressed. In seeking to make a difference as the thing¶ in itself, scholars, in Žižek’s language, “overtake” their “desire” and become¶ an object of disgust (1991, 110). In fact, Hartnett, McKerrow, Condit, and¶ Giroux are each sensitive to this. Hartnett puts it most explicitly when¶ he warns that the “haggard activist, angry and inflamed, accusing others¶ of their transgressions while embodying anxiety, achieves little, alienates¶ many, and often succumbs to despair” (Hartnett 2010, 70–71; Condit 1990,¶ 345; Giroux 2004, 73). In his eighth and final principle of critical rhetoric¶ (“criticism is performance”), McKerrow qualifies his call to political engagement¶ by distancing himself from Phillip Wander, whom he characterizes¶ as wanting scholars to “take to the streets as practicing revolutionaries.” In¶ other words, after seventeen pages of calling for scholars to perform critical¶ rhetoric in order to liberate the oppressed from institutional and cultural¶ domination, McKerrow devotes three blushing sentences to hedging his¶ bet, explaining that he really just means that scholars should be “specific¶ intellectuals” working within the confines of the university (1989, 108).¶ All of these scholars are correct to fear that the image of activist academics¶ engaging in practices indistinguishable from politics, especially in¶ state-supported institutions, is a potentially grotesque image, even if the¶ popular image is rarely accurate (Ivie 2005, 62–68). Hartnett in particular is¶ not unaware of the significance of public perception. He claims, however,¶ that the public sees decreasing value in universities because they are populated¶ by “inane” and “depraved” scholars (theory wolves) producing publicly¶ disconnected, jargon-riddled nonsense. While this assessment may account¶ for elements within academia that refuse the antagonism by maintaining a¶ relatively thorough detachment from the communities they claim to serve,¶ reducing scholarship to “activists writing about their activism” is no more¶ responsive to the antagonism and would understandably provoke public¶ suspicion (Hartnett 2010, 75, 78).¶ scott welsh¶ 14¶ Moreover, coming to terms with the antagonism is central to academic¶ freedom. In his bracing polemic on politics in the academy, Stanley Fish¶ recognizes the antagonism between academic freedom and the freedom¶ one enjoys as a function of citizenship. Academic freedom, he argues, is¶ the freedom to “academicize” anything freely and without fear of reprisal.¶ For Fish, this means the freedom to treat any subject whatsoever as an¶ open question in need of further study, no matter how politically controversial¶ investigating some particular subject may be (2008, 87). And insofar¶ as every citizen enjoys “freedom of speech,” as Fuller also points out in¶ his reference to Dewey’s founding of the AAUP, academic freedom also¶ includes the right to actually be a citizen advancing a political agenda without¶ fear of losing one’s university employment (2006, 151). However, when¶ the citizenly role of advancing a political agenda overtakes reflective investigation¶ in the practice of the scholarly role, “academic” freedom is not at¶ stake but is, rather, put into jeopardy by the refusal to inhabit the inherently¶ conflicted scholarly subject position that justifies one’s academic immunity¶ from political reprisal in the first place. While “the academic is political” no¶ less than “the personal is political,” that does not mean that it is not useful¶ or necessary to establish a social sphere defined by the intention to resist¶ political embeddedness, even if such a distinction is unavoidably tenuous.

### 5

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Byman 2013

(Daniel L., Research Director of Saban Center for Middle East Policy, “Why Drones Work: The Case for Washington's Weapon of Choice”, Foreign Affairs, July/August 2013, <http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>)

The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers.¶ Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders.

#### Constraining targeted killing’s role in the war on terror causes extinction

Beres 11

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71¶ Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.¶ What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.¶ But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115] ¶ What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Any attack turns the AFF

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, while the Bush administration bears the blame for these hor- rors, White House officials exploited a shift in public values after 9/11. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially. In fact, polling in the months after the attack showed Americans less concerned that the Bush administration was violating civil liberties than that **it wasn’t violating them enough**. What will happen the next time? It is, of course, impossible to predict the reaction to any particular attack. But in 2003, the Center for Public Integrity got a draft of something called the Domestic Security Enhance- ment Act, quickly dubbed Patriot II. According to the center’s executive director, Charles Lewis, **it expanded government power** five or **ten times as much**

 **as its predecessor**. One provision permitted the government to strip native-born Americans of their citizenship, allowing them to be indefinitely imprisoned without legal recourse if they were deemed to have provided any support—even nonviolent support—to groups designated as terrorist. After an outcry, the bill was shelved. But it offers a hint of what this administration—or any administration—might do if the United States were hit again. ¶ When the CIA recently tried to imagine how the world might look in 2020, it conjured four potential scenarios. One was called the “cycle of fear,” and it drastically inverted the assumption of security that C. Vann Woodward called central to America’s national character. The United States has been attacked again and the government has responded with “large- scale intrusive security measures.” In this dystopian future, two arms dealers, one with jihadist ties, text- message about a potential nuclear deal. One notes that terrorist networks have “turned into mini-s tates.” The other jokes about the global recession sparked by the latest attacks. And he muses about how terrorism has changed American life. “That new Patriot Act,” he writes, “went **way beyond anything imagined after 9/11**.” “The fear cycle generated by an increasing spread of WMD and terrorist attacks,” comments the CIA report, “once under way, would be one of the **hardest to break**.” And the more entrenched that fear cycle grows, the less free America will become. Which is why a new generation of American liberals must make the fight against this new totalitarianism their own.

### Case

#### Evaluate consequences

Weiss 99

Weiss, Prof Poli Sci – CUNY Grad Center, ‘99¶ (Thomas G, “Principles, Politics, and Humanitarian Action,” Ethics and International Affairs 13.1)

Scholars and practitioners frequently employ the term “dilemma” to describe painful decision making but “quandary” would be more apt.27A dilemma involves two or more alternative courses of action with unintended but unavoidable and equally undesirable consequences. If consequences are equally unpalatable, then remaining inactive on the sidelines is an option rather than entering the serum on the field. A quandary, on the other hand, entails tough choices among unattractive options with better or worse possible outcomes. While humanitarians are perplexed, they are not and should not be immobilized. The solution is not indifference or withdrawal but rather appropriate engagement. The key lies in making a good faith effort to analyze the advantages and disadvantages of different alloys of politics and humanitarianism, and then to choose what often amounts to the lesser of evils.¶ Thoughtful humanitarianism is more appropriate than rigid ideological responses, for four reasons: goals of humanitarian action often conflict, good intentions can have catastrophic consequences; there are alternative ways to achieve ends; and even if none of the choices is ideal, victims still require decisions about outside help. What Myron Wiener has called “instrumental humanitarianism” would resemble just war doctrine because contextual analyses and not formulas are required. Rather than resorting to knee-jerk reactions to help, it is necessary to weigh options and make decisions about choices that are far from optimal.¶ Many humanitarian decisions in northern Iraq, Somalia, Bosnia, and Rwanda—and especially those involving economic or military sanctions— required selecting least-bad options. Thomas Nagle advises that “given the limitations on human action, it is naive to suppose that there is a solution to every moral problem. “29 Action-oriented institutions and staff are required in order to contextualized their work rather than apply preconceived notions of what is right or wrong. Nonetheless, classicists continue to insist on Pictet’s “indivisible whole” because humanitarian principles “are interlocking, overlapping and mutually supportive. . . . It is hard to accept the logic of one without also accepting the others. “30¶ The process of making decisions in war zones could be compared to that pursued by “clinical ethical review teams” whose members are on call to make painful decisions about life-and-death matters in hospitals.sl The sanctity of life is complicated by new technologies, but urgent decisions cannot be finessed. It is impermissible to long for another era or to pretend that the bases for decisions are unchanged. However emotionally wrenching, finding solutions is an operational imperative that is challenging but intellectually doable. Humanitarians who cannot stand the heat generated by situational ethics should stay out of the post-Cold War humanitarian kitchen.¶ Principles in an Unprincipled World¶ Why are humanitarians in such a state of moral and operational disrepair? In many ways Western liberal values over the last few centuries have been moving toward interpreting moral obligations as going beyond a family and intimate networks, beyond a tribe, and beyond a nation. The impalpable moral ideal is concern about the fate of other people, no matter how far away.szThe evaporation of distance with advances in technology and media coverage, along with a willingness to intervene in a variety of post–Cold War crises, however, has produced situations in which humanitarians are damned if they do and if they don’t. Engagement by outsiders does not necessarily make things better, and it may even create a “moral hazard by altering the payoffs to combatants in such a way as to encourage more intensive fighting.“33¶ This new terrain requires analysts and practitioners to admit ignorance and question orthodoxies. There is no comfortable theoretical framework or world vision to function as a compass to steer between integration and fragmentation, globalization and insularity. Michael Ignatieff observes, “The world is not becoming more chaotic or violent, although our failure to understand and act makes it seem so. “34Gwyn Prins has pointed to the “scary humility of admitting one’s ignorance” because “the new vogue for ‘complex emergencies’ is too often a means of concealing from oneself that one does not know what is going on. “3sTo make matters more frustrating, never before has there been such a bombardment of data and instant analysis; the challenge of distilling such jumbled and seemingly contradictory information adds to the frustration of trying to do something appropriate fast.¶ International discourse is not condemned to follow North American fashions and adapt sound bites and slogans. It is essential to struggle with and even embrace the ambiguities that permeate international responses to wars, but without the illusion of a one-size-fits-all solution. The trick is to grapple with complexities, to tease out the general without ignoring the particular, and still to be inspired enough to engage actively in trying to make a difference.¶ Because more and more staff of aid agencies, their governing boards, and their financial backers have come to value reflection, an earlier policy prescription by Larry Minear and me no longer appears bizarre: “Don’t just do something, stand there! “3sThis advice represented our conviction about the payoffs from thoughtful analyses and our growing distaste for the stereotypical, yet often accurate, image of a bevy of humanitarian actors flitting from one emergency to the next.

**Extinction outweighs ethics**

**Bok 88**

(Sissela Bok, Professor of Philosophy @ Brandeis University, 1988, Applied Ethical Theory, ed. Rosenthal and Shehadi, pg. 203)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal kingdom of Ends.” **No one with a concern for humanity** could consistently **will** to **risk eliminating humanity** in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends **for the sake of justice. To risk** their **collective death for the sake of following one’s conscience would be** as Rawls said, “**irrational, crazy**,” And **to say that one did not intend such a catastrophe**, but that one merely failed to stop other persons from bringing it about **would be beside the point when the end of the world was at stake.** For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where **we would have to take such a responsibility seriously** – perhaps **to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish**. To avoid self-contradiction, the Categorical imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, **we** might **have to go against even the strictest moral duty** precisely **because of the consequences**.

## Wilderson

### A2: PERM

#### Permutation attempts to account for black identity but remains caught up in the discourse of work and hegemony – this discounts the positionality of idleness, replicating violence against the black subject.

**Wilderson 03** Frank B. Wilderson III, “The Prison Slave as Hegemony’s (Silent) Scandal,” *Social Justice* 30:2 (2003)

**Any serious musing on** the question of **antagonistic identity formation** --- **a formation, the mass mobilization of which can precipitate a crisis in the instituions and assumptive logic that undergird the United State of America** --- **must come to grips with the contradictions between the political demands of radical social movements**, such as the large prison abolition movement, which seeks to abolish the prison-industrial complex, **and the ideological structure that under-writes its political desire**. I contend that **the positionality of Black subjectivity is at the heart of those contradictions and that this unspoken desire is bound up with the political limitations of several naturalized and uncritically accepted categories** that have their genesis mainly in the works of Antonio Gramsci, **namely, work or labor, the wage, exploitation, hegemony, and civil society**. I wish to theorize the symptoms of **rage and resignation** I hear in the words of George Jackson, when he **boils reform down to a single word, "fascism,"** or in Assata's brief declaration, "i hated it," as well as in the Manichean delirium of Fanon, Martinot, and Sexton. Today, **the failure of radical social movements to embrace symptoms of all three gestures is tantamount to the reproduction of an anti-Black politics that nonetheless represents itself as being in the service of the emancipation of the Black prison slave**. By examining the strategy and structure of the Black subject's absence in, and incommensurability with, the key categories of Gramscian theory, we come face to face with three unsettling consequences: (1) **The Black American subject imposes a radical incoherence upon the assumptive logic of** Gramscian discourse and on **today's coalition politics.** In other words, s/he implies a scandal. (2) **The Black subject reveals the inability of social movements** grounded in Gramscian discourse **to think of white supremacy** (rather than capitalism) **as the base** **and thereby calls into question their claim to elaborate a comprehensive and decisive antagonism**. Stated another way, Gramscian discourse and **coalition politics are indeed able to imagine the subject that transforms itself into a mass of antagonistic identity formations, formations that can precipitate a crisis in wage slavery, exploitation, and hegemony, but they are asleep at the wheel when asked to provide enabling antagonisms toward unwaged slavery, despotism, and terror**. (3) We begin to see how Marxism suffers from a kind of conceptual anxiety. There is a desire for socialism on the other side of crisis, a society that does away not with the category of worker, but with the imposition workers suffer under the approach of variable capital. In other words, **the mark of its conceptual anxiety is in its desire to democratize work and thus help to keep in place and insure the coherence of Reformation and Enlightenment foundational values of productivity and progress.** **This scenario crowds out other postrevolutionary possibilities, i.e., idlenes**s. **The scandal, with which the Black subject position "threatens" Gramscian and coalition discourse, is manifest in the Black subject's incommensurability with, or disarticulation of, Gramscian categories: work, progress, production, exploitation, hegemony, and historical self-awareness.** Through what strategies does the o Black subject destabilize ? emerge as the unthought, and thus the scandal of? historical materialism? How does the Black subject function within the "American desiring machine" differently than the quintessential Gramscian subaltern, the worker?

### Link debate

#### Courts are inherently racist and evil

Zinn 2005(Howard, The Progressive, It’s Not Up to the Court, <http://progressive.org/mag_zinn1105>)

Still, knowing the nature of the political and judicial system of this country, its inherent bias against the poor, against people of color, against dissidents, we cannot become dependent on the courts, or on our political leadership. Our culture--the media, the educational system--tries to crowd out of our political consciousness everything except who will be elected President and who will be on the Supreme Court, as if these are the most important decisions we make. They are not. They deflect us from the most important job citizens have, which is to bring democracy alive by organizing, protesting, engaging in acts of civil disobedience that shake up the system. That is why Cindy Sheehan's dramatic stand in Crawford, Texas, leading to 1,600 anti-war vigils around the country, involving 100,000 people, is more crucial to the future of American democracy than the mock hearings on Justice Roberts or the ones to come on Judge Alito.

### 2NC Racism Impact

#### RACISM AND MILITARISTIC COLONIALISM ARE THE ROOT CAUSE OF OVERCONSUMPTION AND ECOLOGICAL COLLAPSE; IT MUST BE REJECTED IN EACH INSTANCE

Barndt 91

(Joseph, co-director of Crossroads, a ministry to dismantle racism, "Dismantling Racism: The Continuing challenge to White America," p. 155-6.)

To study racism is to study walls. We have looked at barriers and fences, restraints and limitations, ghettos and prisons. The prison of racism confines us all, people of color and white people alike. It shackles the victimizer as well as the victim. The walls forcibly keep people of color and white people separate from each other; in our separate prisons we are all prevented from achieving the human potential God intends for us. The limitations imposed on people of color by poverty, subservience, and powerlessness are cruel, inhuman, and unjust; the effects of uncontrolled power, privilege, and greed, which are the marks of our white prison, will inevitably destroy us as well. But we have also seen that the walls of racism can be dismantled. We are not condemned to an inexorable fate, but are offered the vision and the possibility of freedom. Brick by brick, stone by stone, the prison of individual, institutional, and cultural racism can be destroyed. The danger point of self-destruction seems to be drawing even more near. The overconsumption and environmental destruction may be reaching a point of no return, results of centuries of national and worldwide conquest and colonialism, of military buildups and violent aggression. You and I are urgently called to join the efforts of those who know it is time to tear down, once and for all, the walls of racism. A small and predominantly white minority of the global population derives its power and privilege from the sufferings of vast majority of peoples of all color. For the sake of the world and ourselves, we dare not allow it to continue.

## Terror DA

**Extinction outweighs ethics**

**Bok 88**

(Sissela Bok, Professor of Philosophy @ Brandeis University, 1988, Applied Ethical Theory, ed. Rosenthal and Shehadi, pg. 203)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal kingdom of Ends.” **No one with a concern for humanity** could consistently **will** to **risk eliminating humanity** in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends **for the sake of justice. To risk** their **collective death for the sake//// of following one’s conscience would be** as Rawls said, “**irrational, crazy**,” And **to say that one did not intend such a catastrophe**, but that one merely failed to stop other persons from bringing it about **would be beside the point when the end of the world was at stake.** For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where **we would have to take such a responsibility seriously** – perhaps **to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish**. To avoid self-contradiction, the Categorical imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, **we** might **have to go against even the strictest moral duty** precisely **because of the consequences**.

### 2NC Overview

#### Turns case ---

#### Any attack turns the K

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, while the Bush administration bears the blame for these hor- rors, White House officials exploited a shift in public values after 9/11. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially. In fact, polling in the months after the attack showed Americans less concerned that the Bush administration was violating civil liberties than that **it wasn’t violating them enough**. What will happen the next time? It is, of course, impossible to predict the reaction to any particular attack. But in 2003, the Center for Public Integrity got a draft of something called the Domestic Security Enhance- ment Act, quickly dubbed Patriot II. According to the center’s executive director, Charles Lewis, **it expanded government power** five or **ten times as much**

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#### Congress will give Obama unfettered power due to concerns of an attack

Brooks 13

(Rosa Brooks, “Mission Creep in the War on Terror” March 14, 2013, <http://www.foreignpolicy.com/articles/2013/03/14/mission_creep_in_the_war_on_terror>, KB)

AUMF or no AUMF, if the United States finds credible evidence of an imminent and grave terrorist attack -- of the 9/11 variety -- no one's going to give the president a hard time if he kills the bad guys before they have a chance to attack us. And trust me: If the president has solid evidence of such an impending attack, it won't matter if the terrorists are an al Qaeda offshoot or a rogue group of Canadian girl scouts.¶ And if, despite our best efforts at prevention, another serious terrorist attack occurs in the future, Congress will undoubtedly be quick to give the president any additional authorities he needs -- with the same speed with which Congress passed its 2001 authorization to use force.¶ In the end, it's not that complicated. If we can't shoehorn drone strikes against every "associate of an associate" of al Qaeda into the 2001 AUMF, we should stop trying to stretch or change the law. Instead, we should scale back the targeted killings.¶ It's past time for a serious overhaul of U.S. counterterrorism strategy. This needs to include a rigorous cost-benefit analysis of U.S. drone strikes, one that takes into account issues both of domestic legality and international legitimacy, and evaluates the impact of targeted killings on regional stability, terrorist recruiting, extremist sentiment, and the future behavior of powerful states such as Russia and China. If we undertake such a rigorous cost-benefit analysis, I suspect we'll come to see scaling back drone strikes less as an inconvenience than as a strategic necessity -- and we may come to a new appreciation of counterterrorism measures that don't involve missiles raining from the sky.¶ This doesn't mean we should never use armed drones -- drones, like any other weapons-delivery mechanism, will at times be justifiable and useful. But it does mean we should rediscover a long-standing American tradition: reserving the use of exceptional authorities for rare and exceptional circumstances.

### Link

#### Beres- Any changes would be terrible

#### The link threshold’s as low as possible---internal executive standards are already as stringent as they can be without compromising mission effectiveness

McNeal 13

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

In Part I we discussed the broad legal and policy determinations that lead to the creation of kill-lists, in Part II we narrowed our focus to the bureaucratic and political vetting of those lists. Now the article turns to the legal and policy considerations that inform the kinetic implementation of the targeted killing policy. When it comes time to eliminate a person on the kill-list, the United States has developed an extensive pre-execution set of policies, doctrine and practices designed to ensure that a target is in fact the person on the kill-list. Similarly, once that target is correctly identified, an elaborate process exists for estimating and mitigating the incidental harm to nearby civilians and civilian objects (so called collateral damage) that might flow from attacking the kill-list target. Discussing the mixture of law and policy applicable to the execution of a targeted killing is critical because in most contemporary operations the policy guidelines, special instructions, and rules of engagement are so restrictive that legal issues will rarely be the determinative factor in a strike.225 Rather, policy instruments will often prohibit attacks against persons that would clearly qualify as lawful targets under the law of armed conflict, and those instructions will place such a low threshold for acceptable collateral damage that attacks are usually prohibited before an operation could ever inflict “excessive” harm to civilians.226 As will be discussed in the end of this Part, where policy instruments differ as to strike authority or “acceptable collateral damage” (e.g strikes in Pakistan versus Afghanistan) we see a difference in the number of reported civilian casualties per strike, suggesting that policy instruments can have a significant impact on the conduct of targeted killings.

#### Signaling – plan demonstrates lack of U.S. resolve – emboldens challengers

Lambro 5/29/13

Donald, “OBAMA TOO EAGER TO WIND DOWN WAR ON TERRORISM”, <http://www.humanevents.com/2013/05/29/obama-too-eager-to-wind-down-war-on-terrorism/>

But now, under pressure from the drone program’s leftist critics, the administration is preparing **strategic changes in** its **operations**: **narrowing** rules of engagement and curbing the CIA’s enlarged role in **drone war**fare by turning it over to our military forces.¶ The tone of Obama’s address and the changes he wants to implement — which include **closing** the **Guantanamo** Bay military prison — have **triggered a firestorm of** Republican **criticism**.¶ Needless to say, **the** president’s many **GOP** critics **do not agree** with his repeated insistence that **al-Qaida is “on the path to defeat**,” the questionable theme in last week’s national security address.¶ “**We show** this **lack of resolve**, **talking about the war being over**,” said South Carolina Sen. Lindsey Graham, who thinks Obama is **sending a message of weakness** at a time when terrorists have stepped up their plots against us at home and abroad.¶ “**What do you think the Iranians are thinking**? At the end of the day, **this is the most tone-deaf president I ever could imagine**,” Graham said.

### 2NC Solve Terror

#### Expansive targeted killing policies provide and unparalleled capability to strike at terrorist groups without the downsides of large-scale interventions or counterinsurgency campaigns - they disrupt leadership and make planning large-scale attacks impossible

#### That takes out their offense – even if drones make some people join terror groups who otherwise wouldn’t, there’s no effective leadership or capacity for those groups to actually do anything – empirically proven in Yemen and Pakistan - that’s Byman

#### They have also conceded our

#### Prefer our evidence---critics are wrong---drones are highly effective at counter-terror, and don’t cause high civilian casualties or blowback

Young 12

Alex Young 13, Associate Staff, Harvard International Review, 2/25/13, “A Defense of Drones,” Harvard International Review, <http://hir.harvard.edu/a-defense-of-drones>

The War on Terror is no longer a traditional conflict. The diffuse, decentralized nature of terrorist organizations had already made this an unconventional war; now, the use of unmanned aircraft has added another non-traditional layer. Conventional military strategies have failed in Iraq and Afghanistan: the United States has, in many cases, stopped sending people into combat, opting instead for airstrikes by unmanned aerial vehicles. Over the past decade, US military and intelligence agencies have expanded their use of unmanned Predator and Reaper drones; these robotic aircraft are generally used to carry out targeted strikes against known members of terrorist groups. US reliance on drones in Afghanistan, Pakistan, Yemen, and other countries has changed the nature of the war on terror.¶ This strategy is not without controversy. The Obama administration’s heavy use of unmanned drones in the War on Terror has come under fire from a variety of opponents, including human rights groups, think tanks, and even foreign governments. Critics claim that drone strikes cause civilian casualties, incorrectly target only the most prominent leaders of terrorist groups, and create backlash against the US. To hear some tell it, the use of drones exacerbates, rather than solves, the problem of terrorism.¶ The reality is not so bleak: drones are very good at what they do. Unmanned attacks are highly effective when it comes to eliminating specific members of terrorist organizations, disrupting terrorist networks without creating too much collateral damage. Their effectiveness makes drone strikes a vital part of US counterterrorism strategy.¶ Predator and Reaper drones are not the indiscriminate civilian-killers that some make them out to be: strikes are targeted and selective. This has become increasingly true as drone technology has improved, and as the military has learned how best to use them. A confluence of factors has made drone strikes much better at eliminating enemy militants while avoiding civilians: drones now carry warheads that produce smaller blast radiuses, and the missiles carrying those warheads are guided using laser, millimeter-wave, and infrared seekers. The result has been less destructive drone strikes that reach their intended target more reliably. A number of non-technological shifts have also made drones a more useful tool: Peter Bergen, a national security analyst for CNN, summarized on July 13th, 2012 that more careful oversight, a deeper network of local informants, and better coordination between the US and Pakistani intelligence communities have also contributed to better accuracy. Data gathered by the Long War Journal indicates that the civilian casualty rate for 2012 and the beginning of 2013 is only 4.5 percent. Even Pakistani Major General Ghayur Mehmood acknowledges that, “most of the targets [of drone strikes] are hard-core militants.” Imprecise drone strikes that cause many civilian casualties are now a thing of the past. This improved accuracy may also help to mitigate anti-American sentiment that stems from civilian casualties.

#### Targeted killings play irreplaceable functions in counter-terrorism

#### 1 – Leader decapitation - drones are key - militants can’t replace senior leaders

Johnston 13

Patrick B. Johnston 13, Associate Political Scientist, RAND Corporation, and Anoop Sarbahi, postdoctoral scholar in the Department of Political Science at the University of California, Los Angeles, July 2013, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan,” <http://patrickjohnston.info/materials/drones.pdf>

We expect drone strikes that kill terrorist leaders will be associated with reductions in terrorist attacks. Previous research convincingly demonstrates that conducting effective terrorist attacks requires skilled individuals, many of whom are well-educated and come from upper middle- class backgrounds. 21 Indeed, captured documents containing detailed biographical data on foreign al Qa’ida militants in Iraq illustrate that among the foreign terrorists—who are conventionally known to be more sophisticated than local fighters—their most commonly listed “occupation” prior to arriving in Iraq was that of “student.” For militants for whom information on “experience” was available, “computers” was the most commonly listed experience type, just ahead of “weapons.”22¶ In the context of northwest Pakistan, where militant freedom of movement is limited by the threat of drone strikes, we expect that militant groups will be unable to replace senior leaders killed in drone strikes because recruiting and deploying them, perhaps from a foreign country with a Salafi jihadist base, will be costly and difficult. This is not to say that leaders killed in drone strikes are irreplaceable. On the contrary, other militants are likely to be elevated within their organization to replace them. But we also anticipate that those elevated to replace killed leaders will be, on average, of lower quality to the organization than their predecessors. Thus, we predict that the loss of leaders will be associated with the degradation of terrorists’ ability to produce violence. This logic implies Hypothesis 3:

H3: All else equal, drone strikes that kill one or mor e terrorist leader(s) will lead to a decrease in terrorist violence.

### 2NC Risk High

#### Risk of nuclear terrorism is real and high

Bunn 13 10/2/13 et al.

[Matthew Bunn, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

**There’s motivation and capability**

Brill 12

Kenneth C. Brill 12, is a former U.S. ambassador to the I.A.E.A. Kenneth N. Luongo is president of the Partnership for Global Security. Both are members of the Fissile Material Working Group, a nonpartisan nongovernmental organization. Nuclear Terrorism: A Clear Danger, [www.nytimes.com/2012/03/16/opinion/nuclear-terrorism-a-clear-danger.html?\_r=0](http://www.nytimes.com/2012/03/16/opinion/nuclear-terrorism-a-clear-danger.html?_r=0)

Terrorists exploit gaps in security. The current global regime for protecting the nuclear materials that terrorists desire for their ultimate weapon is far from seamless. It is based largely on **unaccountable**, voluntary arrangements that are **inconsistent** across borders. Its weak links make it **dangerous and inadequate to prevent nuclear terrorism.**¶ Later this month in Seoul, the more than 50 world leaders who will gather for the second Nuclear Security Summit need to seize the opportunity to start developing an accountable regime to prevent nuclear terrorism.¶ There is a **consensus** among international leaders that the threat of nuclear terrorism is real, not a Hollywood confection. President Obama, the leaders of 46 other nations, the heads of the International Atomic Energy Agency and the United Nations, and numerous experts have called nuclear terrorism one of the most serious threats to global security and stability. It is also **preventable with more aggressive action**.¶ At least four terrorist groups, including Al Qaeda, have demonstrated interest in using a nuclear device. These groups operate in or near states with histories of questionable nuclear security practices. Terrorists do not need to steal a nuclear weapon. It is quite possible to make an improvised nuclear device from highly enriched uranium or plutonium being used for civilian purposes. And there is a black market in such material. There have been 18 confirmed thefts or loss of weapons-usable nuclear material. In 2011, the Moldovan police broke up part of a smuggling ring attempting to sell highly enriched uranium; one member is thought to remain at large with a kilogram of this material.